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

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T. Parker.
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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: PRINTED for the Author, by Agreement with the Law-Patentees.
TO THE HONOURABLE

Sir LAWRENCE CARTER Knight,

ONE OF THE

Barons of the EXCHEQUER.

THIS Book (being Part of A General Abridgment of Law and Equity &c.) is most humbly Dedicated by

Your Most Oblig'd

and Obedient Servant,

Charles Viner.
### Table of the Several Titles, with their Divisions and Subdivisions

<table>
<thead>
<tr>
<th>Prohibition</th>
<th>Proceedings.</th>
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<tr>
<td>If the Common Law and Ecclesiastical Law differ, and the Proceeding is not according to the Common Law, a Prohibition lies, but where the Common Law gives no Remedy, it lies not.</td>
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#### In what Cases they shall not have Jurisdiction

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<td>Pardon.</td>
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#### Annoyance upon Oath

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| Tithes. See (F) pl. 12. |
| Where the Right of them comes in Question. |

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<th>(F.a) (D. a)</th>
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| Q.2 |

#### Property

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<th>In what Thing; it may be.</th>
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<th>Delivered or prejudiced by what, and when.</th>
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<th>Gain'd, After'd, or transferred by.</th>
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| Good. |

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<th>The several sorts of Protections.</th>
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<th>At what Time.</th>
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<th>Not for him that cannot appear.</th>
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<th>Not for the Plaintiff.</th>
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| When it shall serve for others. In respect of the Person. |

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<tr>
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<td></td>
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<th>C</th>
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**Recovery in Actions.**

A TABLE of the Several TITLES,

Registering Acts. 
Registering.
Relation.

Notes and Confinement.
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By what Words. B. 2
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By what Words. G.
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What shall be said releas'd by Release of All \nPowers, Debts and Duties, or, All Debts or Duties.
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By other Words, or general Words.
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Covenants.
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By Deed. In what Cases it ought to be by Deed.
At what Time

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As a Grant. See Grants (S. 2)
By Mitter l'Estate. Z.
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Without Words of Inheritance.
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For what Thing.
In what Cases.
Of one where it shall be
For others.
Of others.
To one, what shall enure to another.
To a Stranger where it shall enure to one
that is Priy.
To one that is in of one Estate where it shall enure to another that is in of another Estate.
To Tenant for Life where it shall enure to him in Reversion &c.
To Remainder-Man &c. where it shall enure to Tenant for Life.
To one Diff'lor where it shall enure by way of Entry and Possession.
To his Companion.
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To Feoffe of Diff'lor. Enure to extinguish a Condition created, or a Possession by Diff'lor.
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In Manner Recipients.
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REMEMBER.

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Sufficient Particular Estate, what.
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Who shall take the Remainder.

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<th>See (M. b)</th>
<th>For Infancy, or Covenance.</th>
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<td>Contingent Remainder,</td>
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<td>Right of Entry.</td>
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<td>Remitted, Nolens Volens.</td>
<td>In respect of the Form or Manner,</td>
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**Note**
- The several Sorts. See (N. a)
- Rent what, and what a Sum in Grace. Remedy for it.
- Part of the Rent. What shall be paid to be Grant.
- What Estate Grantee shall have by the Words. Seek.
- By what Words granted. Charge.
- By what Words granted. Grant thereof; Good. In respect of the Estate of the Grantor.
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- To whom. Illusing out of what Land it shall be paid to be. Nature of the Rent.
- Where it shall be of the same Nature of the Land out of which it illises. Discharged.
- By Evasion. One or several. By Grant.
- Extinctifh'd or Apportion'd, by Conjunction of Estates. Confirmed.
- Or Deemed or Devise. Grant.
- Grant.
- Purchase of Parcel. Recovery.
- Recovery.
- Re-entry. Relapse.
- Relapse.
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- In what Cafe, or on what Place the Whole shall issue out of the Residue. In respect of Time.
- In respect of Time. Suspend.
- Suspend.
- Revolved. By Re-entry.
- By Re-entry.
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- Of the several Sorts of Rents, as Rent-Serv., Rent-Charge, and Rent-Seek. In what Cafes Rent-Serv or Rent-Charge becomes Rent-Seek in the Hands of the Grantee.
- Demand of Rent, Necessary in what Cafe, and upon the Land, or not.
- Necessary what is, at what Place. Where. And what is a sufficient Attendance.
- Good.
- In respect of the Sum. Words, or Manner.
- To have Re-entry. Necessary in what Cafes.
## TABLE of the several TITLES

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<th>1. where it being Dittricts removed.</th>
<th>Y. b</th>
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<td>Mailed by.</td>
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<td>Frants to prevent Differees removed.</td>
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<td>Mail be.</td>
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<td>And Aiders punished.</td>
<td>Y. b</td>
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<td>May be.</td>
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<td>Of whole Cattle.</td>
<td>B. c</td>
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<td>Sewt Street. In what Cases for the</td>
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<td>Limitation.</td>
<td>T. a</td>
<td>Eftoppel.</td>
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<td>Disputive or Dubious.</td>
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<td>Doubled. By Holding over.</td>
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<td>General.</td>
<td>U. a</td>
<td>Readings.</td>
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<td>Months &amp;c. How to be</td>
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<td>Avowry.</td>
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<td>computed.</td>
<td>W. a</td>
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<td>By translating the</td>
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<td>In Debt for Rent.</td>
<td>D. c</td>
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<td>Pearl days men-</td>
<td>X. a</td>
<td>In what Cases he shall conclude his</td>
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<td>tioned in the Grant.</td>
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<td>Plea with (And to Nil Debet)</td>
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<td>On the Rent-day.</td>
<td>Y. a</td>
<td>In Cases of Re-entry.</td>
<td>K. c</td>
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<td>Good. And what amount to a Payment</td>
<td>Z. a</td>
<td>In Affid &amp;c. for Rent.</td>
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<td>Determined or not, where the Estate on</td>
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<td>In what Cases there must be a new or</td>
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<td>which it was referred is determined.</td>
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<td>one or more Pleas.</td>
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<td>Relation. Who shall have it by Relation.</td>
<td>C. b</td>
<td>By the Statute of Marlebridge.</td>
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<td>Nomeinees.</td>
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<td>Proprietary Probands.</td>
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<td>What is, and how recovered.</td>
<td>D. b</td>
<td>Who shall have it.</td>
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<td>Charg'd or Benefited by it, who, and how</td>
<td>E. b</td>
<td>The Effect of finding thereon, and Judgment.</td>
<td>F. 5</td>
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<td>Demand thereof, or of the Rent for which it is given.</td>
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<td>Property claim'd in what Cases, and the</td>
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<td>Necessity in what Cases.</td>
<td>F. b</td>
<td>Effect thereof.</td>
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<td>When.</td>
<td>G. b</td>
<td>Gager Deliverance.</td>
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<td>Sufficient. What is.</td>
<td>H. b</td>
<td>Upon what Plea.</td>
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<td>Re-entry.</td>
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<td>Want of Differees, and defeating the Premisses. And Power of Justices of Peace,</td>
<td>I. b</td>
<td>Counterplea, good.</td>
<td>K. 2</td>
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<td>Waived by what Act.</td>
<td>L. b</td>
<td>Blue good, and how tried.</td>
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<td>Remedy for Rent-Change, Rent-Sec &amp;c.</td>
<td>M. b</td>
<td>Return of Suits</td>
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<td>Where the Goods are taken in Execution.</td>
<td>N. b</td>
<td>Without Avowry, in what Cases; or upon a bad Avowry.</td>
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<td>By Estimement, where there is no Differees</td>
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<td>The Effect thereof as to the Thing fixed for.</td>
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<td>or Tenant in Possession.</td>
<td>N. b</td>
<td>Return Habendo.</td>
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<td>Tho' no Agreement can be proved.</td>
<td>N. b</td>
<td>Irrepeleable Return</td>
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<td>Arrears, after Alteration of the Estate by</td>
<td>O. b</td>
<td>In what Cases against Plaintiff.</td>
<td>O. 2</td>
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<td>him to whom they are due.</td>
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<td>At Common Law.</td>
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<td>Arrears recovered, at and from what Time.</td>
<td>P. b</td>
<td>Return by Sheriff, good or not.</td>
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<td>Chargeable with Arrears, who Aliences.</td>
<td>O. b</td>
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<td>Arrears, by Statue 32 H. S. 3. &amp;c.</td>
<td>S. b</td>
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<td>By Executors or Administrators. &amp;c (S. b)</td>
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<td>By Differees.</td>
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<td>By Recoverers.</td>
<td>R. b</td>
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<td>For what Rent.</td>
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<td>In what Land.</td>
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<td>At what Time.</td>
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<td>How to be made, and what to done.</td>
<td>X. b</td>
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(Q) If the Common Law and Ecclesiastical Law differ, and the Proceeding is not according to the Common Law, a Prohibition lies. [But where the Common Law gives no Remedy, it lies not.]

1. If a Man sues for a Legacy in the Ecclesiastical Court, and the Defendant there says, THAT the Legacy was given on Condition that he should not disturb the Execution of the Will of the Devisor, and alleges that he shat jur'd him so, and to the Condition broken. If they will not allow there such Condition upon a Legacy, yet no Prohibition lies, because a Legacy is a Gift by the Ecclesiastical Law for which no Remedy is in our Law; and therefore inasmuch as it is due by the Ecclesiastical Law only, it may be ordered and allowed according to the Common Law, and the Executor who is to pay it has not any Remedy but in Chancery by Way of Equity. 9. 15. between Wilton and Wilson, agreed per Curiam, and Prohibition denied. But this was denied partly because it does not appear to the Court whether this Plea was disallowed there or not.

2. So upon a Suit for a Legacy in the Ecclesiastical Court, if the Defendant there says, THAT it was given upon Condition that the Plaintiff (being a Female) should not eipoufe any Man without the Assent of his Executor, and that she had eipoufed J. S. without the Assent of the Executor; and to the Condition broken. If they disallow this Condition there, yet no Prohibition shall be granted for the Cause aforesaid, but he is put to his Remedy in the Chancery. 15. 15. in the said Case of Wilton, agreed by Winch and Warburton; and Winch laid that he had known it to be adjudged.

3. If a Man libel in the Ecclesiastical Court against an Administrator after Refusal of the Executorship for a Legacy, and he can prove the Will by which the Legacy was given but by one Witness, and therefore they will not allow it, yet no Prohibition lies; for by our Law there is not any Testament where there is not any Executor; and therefore if they will give him Relief, they may give it in what Manner they please. Ill. 37. Cl. B. R. Per Curiam.

4. If a Man libel in the Ecclesiastical Court for his Child’s Part against an Administrator, who pleads there that the Father of the Plaintiff made a Testament Nuncupative, and thereby devised a Term to the Defendant, and died without making any Executor, whereupon the Defendant took the Administration ad. And this Plea is refused because he cannot prove it but by one Witness, yet no Prohibition shall be granted, because by our Law no Testament is allowed in which there is not any Executor ordained, that the Ecclesiastical Court will compel him to perform the Will, if he proves it, as their Law requires. Ill. 37. Cl. B. R. Per Curiam.

For the Probate of Will is a Matter purely Spiritual, and so they may proceed in their own Manner.

For the different from ours. 2 Saik. 547. Ill. 1 W. & M. B. R. Shotter v. Friend.

If one makes a Will, but appoints no Executor; this is no Will, but is void. But the Ordinary cannot Admistror the Will unless the Administrator made a Testament Nuncupative, and thereby devised a Term to the Plaintiff, and died without making any Executor, whereupon the Defendant took the Administration ad. And this Plea is refused because he cannot prove it but by one Witness, yet no Prohibition shall be granted, because by our Law no Testament is allowed in which there is not any Executor ordained, that the Ecclesiastical Court will compel him to perform the Will, if he proves it, as their Law requires. Ill. 37. Cl. B. R. Per Curiam.

to whom any Legacy is devised by such Will, may sue the Administrator for their Legacies in the Spiritual Court. Agreed. Noy 12. Chardon v Harris.

In the Case of a Nuncupative Will which is merely Spiritual, and is null in their Law, unless proved by two Witnesses at least, no Prohibition shall go; tho they disallow the Will, because proved by one Witness only; for that Court has the Cognizance of the Probate of Wills. But yet if a Recitation of such Will is pleaded there, and proved by one Witness, and they refuse the Plea for Want of sufficient Proof, a Prohibition shall go. Adjudged. Caris. 145. Shotter v Friend.
5. If a Man makes his Son, being an Infant, his Executor, and during his Infancy he makes two others Guardians to the Infant, and also makes by the same Will two Supervisors, and devieth certain Legacies out of the Profits of certain Land, to be paid at certain Days: And appoints also by the Will, That the Guardians shall enter into an Obligation to the Supervisors to pay the Legacies at the Days appointed by the Will. In a Suit in the Ecclesiastical Court to compel the Guardians to enter into the Obligation as is aforesaid, if they say that they cannot raise the Legacies out of the Profits by the Days aforesaid, and this Plea is refused, a Probation shall be granted. Tr. 16 Ta. B. between Wilkedon and Adjudged, and Probation granted.

6. [Sæ] If a Man makes a Will, and thereafter gives a Legacy to J. S. and after revokes the Will, and dies intestate, and the Ordinary grants Administration to J. D. against whom J. S. sues for the Legacy in the Ecclesiastical Court, and J. D. there pleads the Revocation, and offers to prove it by one Witness, which is refused; for this Plea is in Effect that he made no Will. Tr. 4 Ja. B. R. between Brown and Wentworth Probation granted after Debate, but Demurrer upon the Court.

Agreed Show. 1. 2. in Case of Shorter v. Friend. If the Spiritual Court proceeds in a Matter merely Spiritual, and pertaining to their Court, according to the Civil Law, tho' their Proceedings are against the Rules of the Common Law, yet a Probation does not lie; And if they refer a single Witness to prove a Will; for the Controversy belongs to them. Nov. 12. Chadron v. Harris. — S. P. But when in such Case Collateral Matter arises, which is not of their Controversy properly, there the Courts of Common Law enforce to them such Evidence as the Common Law would allow. Per Holt Ch. J. 2d. Raym. Rep. 221. 222. Patch v. W. 3. in Case of Breeden v. Gill.

8. If a Man libels in the Ecclesiastical Court for a Pension where he never demanded it, tho' the Statute of 34 H. 8. [19.] which gives Remedy for such Penalties, is where it is wilfully denied, he shall sue in the Ecclesiastical Court, yet no Probation shall be granted, because the Suit belongs originally to the Ecclesiastical Court. H. 6 Ja. B. R. between Bulbrook and Bridges. Per Curtin.
Prohibition.


So where the Suggestion was, That the Lands out of which were Monastery Lands which came to the King, and is granted them Price, and that the Plaintiff claims under that Grant, and that he is entitled to

enforce the said Lands of all Penit &c. and this upon the Statute of 15 H. 6. cap. 19 which apprises the

Witn. of Penit in such Cases to be in the Court of Augmentations. But the Court would not grant it without producing the Letters Patent, being a Matter of Record; but that while the Sar

cine is Matter of Fact, it is sufficient to fuggle it. And the Court said that Penitons, whether by

Prescription or otherwise, might be sued for in the Spiritual Court; but if by Prescription, then there

was a Remedy * at Law also. Vent. 120. Pach. 25 Car. 2. B. R. Anon.

A. Rath is a Tenant by Prescription, he either lie at Common Law or in the Spiritual Court, or if he brings a Bill of Annexity at Common Law, he can never after sue in the Spiritual Court, for his Election is determined. Mod. 218. pl. 6. Trin. 28 Car. 2. C. B. Barry v. Trencwick

If the Prescription be denied to be Time out of Mind, then a Prohibition is to go, so that the Pre,

scription may be tried at Law. Vent. 263. Mich. 26 Car. 2. B. R. Anon.

The Spiritual Court has Cognizance of a Peniton as well between a Parson and a Layman, as between Spiritual Persons, eis all Improvements will be free, which would be mischievous; And it was suggested for a Prohibition that there is no such Prescription, yet the Prohibition was denied, because this Prescription is tribulable. 2. Keb. 41. pl. 82. Pach. 18 Car. 2. B. R. Phillips v. Hinkford.

9. Upon a Suit in the Ecclesiasticall Court for Subfraction of For the St.,

Tithes, if Defendant pleads that he let them out, and they will not at low the Proot by one Witness, a Prohibition lies. 39. 17 Ja. 3.

between Deacons and Deans. Per Curiam.

10. If Baron and Feme are divorced for Adultery a Mensa & Thoro & mutua Cohabitation, and after the Feme fues alone in the Ecclesiasticall Court against a Stranger for Slander and Deformation, and Sentence there given for her, and Penance imposed on the Defendants, and Cols of Suit atteds to the Plaintiff, and after the Baron releaseth But Caris all Actions, and this Suit and all appertaining to it, and the Defendant appeals. *-Menke


Report. That the whole Court were of Opinion the Baron's Action be granted, but merely for the Charge of the Suit, and upon Annulment of the Suit; therefore neither the Suit nor the Costs depending thereupon shall be released by the Baron. 1. 14 Ja. 3. between Mustand and that a Motain adjudged.

by the whole Court. - Holt Ch. J. said he took this. Difference. If a Feme Covent sue for Deformation in the Spiritual Court, and there the obtaining Sentence, and Cols are given her; if the husband with her Husband at that Time, he may release them, but if she be divorced a Mensa & Thoro, that the Marriage still conti

nues, he cannot, because there is a Divorce for Husband is to allow the Wife. S. C. But if the Husband the Cols expended in the Suit are acquitted of their stuff out of t, and therefore the Husband cannot release it, because the last separate, which is the Reason, that the not mentioned of Mustam's Case 2. Roll. Abr. 251. 1. 53. Mod. Sir. Hill & W. 3. Chamberlain and Husted. -5. Mod. 71. Chamberlain v. Hewton. 1. Talk. 113. S. C. -Ld. Raym. Rep. 73. 74. S. C.

11. But if such Feme after such Divorce sues in the Ecclesiasticall Court for a Legacy given to her, and the Release of the Baron is pleased and allowed, a Prohibition shall be granted; for here the Penitons
Prohibition.

Legacy is originally due to the Baron and Feme, and the Suit there is for a Real Interest, and therefore the Release of the Baron will discharge it. 44 Ch. B. R. between Stephens and Fitt adjudged.

Consolidation was granted, but that it was upon Terms, viz. That the Ecclesiastical Judge would not disallow the Release.——C. R. p. 28. S. C. And all the Court held the Release good.——Noy 45. S. C. accordingly.

Crt. C. 222, pl. 9. Trin. 7 Car. B. R. Anon. But seems to be S. C. And says The Court concurred that the Release of a Baron cannot be a Bar to this Suit. And Refers to B. R. for the Feme being scandalized, may be in the Spiritual Court to be required therein; and the Court may feature the Defendant to a Submission or Corporation Satisfaction, which the Baron cannot release; but for the Release of the Coists, the Baron may well do it. Whereupon Rule was given, if Cause were not shown at a Day &c. that a Prohibition should be awarded to stay the Suit against the Coists. A. died, and made B. and C. his Executors, and devised a Legacy to them. B. takes Husband, and dies, and the Husband files in the Ecclesiastical Court for a Money; for in that Court they will not allow any Survivorship; and therefore C. moved for a Prohibition; and it being opposed, it was granted per Curiam. And the Court told them, if they were not satisfied, they must demur to the Declaration, and cited a Roll. 201. Freem. Rep. 256. Trin. 1675; B. R. Barton's Case (But the Reporter says Nota de futur in effentia, nec de lege legalitatis, sed de legis in re), where J. S. devised Goods to B. and C. and the Executors affected to the Legacy; and afterwards B. died, and his Executor sued in the Spiritual Court for his Part; and thereupon C. sued a Prohibition, and declared. Upon Demurrer and Argument it was adjudged that the Prohibition should stand; for by the Executor's Act the Interest is vested, and is become a Chattel, and governable by the Common Law. 2 Lev. 259. Mich. 20 Car. 2. B. R. Buffard v. Stukely.——2 Jo. 150. Hill 51. & 52. Car. 2. B. R. Buffard v. Stukely. S. C. argued, but no Judgment.——3. Rob. 828. 2mo. 36. Mich. 20 Car. 2. B. R. S. C. adjudged accordingly.—[So that the Year and Term in Jones seem misprinted]


15. 59
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Prohibition.

15. So if the Suit be upon a Modus in the Spiritual Court, and
the Defendant says that the Modus is other than the Plaintiff has al-

leq'd, and they refuse to accept his Proof of this Modus, a Prohibition
lies. [Fol. 522a]

16. If a Suit be for a Legacy in the Spiritual Court, and the
Defendant pleads a Release in Bar, which is denied by the Plaintiff,
and the Defendant * proves it by one Witness, if they refuse this Proof
there, a Prohibition lies, because it is good Proof by our Law.

Sec. 15. 2d. between Pereker and Hilde. Per Curiam. Huh-

burt's Reports 255. Anonimus.

and furnished, That the Defendant filed him, being an Executor, in the Spiritual Court for a Legacy,
whereas the Plaintiff had a Release, but had only one Witness to prove it; but a Confutation was grant-
ed. Ent if he had furnished that he had placed this Release in that Court, and produced his Witness, and
that they would not allow it because he had not two Witnesses; this had been a good Surmise. And
it was laid the Plaintiff is at no Mitchief, for he may have a Prohibition after Sentence given in that
One filed for a Legacy in the Court of Audience, and the Libellee pleaded a Release, and proved it
by one Witness. The Plaintiff denied not the Release, but replied, That the Intestate that made it was an
Idea, and the Prohibition was denied; but if they will disallow the Proof, because it is by one Witness, which he affirm'd as a Reason at the first, a Prohibition will lie; nor is it not sustainable by our Law to disallow that Proof against a Legacy, which
is allowable by Law against a Statue, Recognition or Judgment, for that would make a Devolution;
but if they will except to the Credit of Witnefses, or the like, they may, according to their Law
Hob. 188. pl. 251. Anon. — * It was agreed, That a Suggestion that the Spiritual Court decided to the
Creditibility of a Witness, is not a sufficient Ground for a Prohibition; for they are the proper Judges

On proving a Prohibition to the Official's Court at York, because they would proceed to try a Deed
relating to an Executor, it was laid per Twifden, (and not denied by any) That from the Time of
Justice Jones till now, no Prohibition has been granted, upon suggesting that Spiritual Court adju	 to

17. So when the Release is pleaded in Bar of the Legacy, if they
will not allow it because the Witnefses named in the Deed are dead,
or will allow any Proof of the Deed by Circumstances, as by compar-
ing of the Witnefses Hands &c. A Prohibition shall be granted. Sec. 16.

Hob. 257. S. C. And the Prohibi-
tion, so granted, containing this
Averment of the Wit-
nefses being
dead, and
that they of-
fered to
prove by Witnefses that it was the Hands of the Witnefses, and that Watts the Husband confed'd that he
subscribed the Release. — S. C. Huet. 22. Combe's Case; and that in such Case the Spiritual
Court will allow no Proof but of those that wrote it, or who saw them subscribe.

18. Upon a Suit in the Spiritual Court, if the Court takes an Obli-
gation of the Defendant to perform their Sentence, a Prohibition lies;
for they have other lawful Means to compel him to perform it, if
they have Jurisdiction. Sec. 18. R. Cott's Case; per C. The Bench
main.

Dium, till they should determine what Annuity he should allow his Wife; the which he refus'd, and
therefore the High CommissARY Court, in which the Cause was committed, him. Whereupon he mov'd
for a Habees Corpus; and the Court told them they might commit him for refusing to take his Wife, or to
allow Causa to the contrary, but as to the Obligation they should ad- 
vice; and so he was remanded.

19. If a Parson sues against a Parishioner, for not setting out of 12. Ven. 48.
Tithes according to the Statute of 2 E. 5. and Defendant says that he set
out the Tithes, and this Plea is there re-fused, because it is not sufficient & B. Anon.
setting forth of Tithes unless the Parson be present; yet Prohibition
shall be granted, because it is sufficient by the Common Law, that
the Parson be absent. [Mich. 52 R. Rotolob, and Prohibition
granted.

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22. If a Baron sue another in the Ecclesiastical Court for calling him Battard, and the Defendant there pleads that he was born after a Contract between his Father and Mother, but before any Marriage, which plea is not refused, because they by the Ecclesiastical Law hold such Issue Legitimate which by the Common Law is a Bastard, no Prohibition shall be granted. D. 39 Cl. B. R. between Ambler and Metcalfe adjourned.

23. If Baron poses'd of Goods in Right of his Feme, as Administrator, grants the Goods to J. S. and after the Feme dies, and then a new Administration is granted to J. D. who poses the Grantee of the Goods for a Spoliation in the Ecclesiastical Court, a Prohibition lies. Hitch, 11 Car. B. R. between Clarke and Daniel, a Prohibition granted per Curtiana.

24. If Baron poses'd of Goods in Right of his Feme, as Administrator, waifs the Goods, and after the Feme dies, if the Baron be sued in the Spiritual Court for a Spoliation, or for Waste of the Goods, a Prohibition lies. B. 11 Car. B. R. in the said Case of Clarke and Daniel, said by Justice Jones that it had been so refused, that the Spiritual Courts complain of it to be very hard.

25. If a Parson sues for Tithes against a Parishioner, and thereupon the Parishioner pleads the Leave to him of his own Tithes by the Parson by Way of Discharge by Deed, and this Plea be refused, a Prohibition lies. Hitch, 15 Ja. B. R. Parson Strecy's Cafe adjourn'd, and Prohibition granted.

A Libel was for Subtraction of Tithes; it was suggested for a Prohibition, That the Plaintiff having a Leaf of the Tithes, had but one Winsif to prove it in the Spiritual Court, and for that Reason they would not allow it; but it was at Length resolved, that a Confination be awarded; for by their having Cognizance of the Principal, they have consequent Cognizance of the Accrual; and if such Sumif should be allowed in every Case, it would often be made for mere Deby, and the Spiritual Court should not try the Accrual as well as the Principal. Cro. J. 269. Hill 8 Jac. B. R. Robert's Case; 13 Rep. 65. S. C. accordingly.

A Libel was for Tithes; the Defendant pleaded there a Deed and Covenant to hold his Land Free from the Life of the Parson, rendring so much Rent, and for Default of Payment the Grant to be void; and to which the Plaintiff there said, That the Rent such a Day was not paid according to the Condition, by which &c. It was moved for a Prohibition, because now the Question is upon a real Contradiction, and they in the Court Christian will not allow one Winsif, which our Law does. Per Montague Ch. J. clearly, If the Parson had denied his Deed, so that the Question had been whether there was a Demise or not, a Prohibition should be granted for the Cause above; but he has confessed the Demise, and therefore as the Spiritual Court has Conscience of the Principal, they shall likewise have it of the Accrual; And Hougham is accordingly; and the Plaintiff now is upon the Payment of the Rent, which they may well try; but if upon Trial they refuse Proof by one Witness, a Prohibition shall be granted upon Suggestion thereof. And Doderidge and Crooke J. accordingly. 2 Roll. Rep. 42. Trin 16 Jac. B. R. Barnwell v. Tracy.—Godb. 272. pl. 384. Barnwell v. Pelfie, S. C. but mentions nothing of Non-payment of the Rent, or of one Witness; but that the Court would not grant the Prohibition, because the Original, viz. the Tithes, belong to the Spiritual Jurisdiction; but it was faid that the Parishioner might have Action of Covenant against the Parson in the Temporal Court upon the Death.

S. C. Roll. Rep. 12. Anon. that it was suggested for a Prohibition, That Arbitrement is a Matter trable at Law; but it was denied per Cur. But if the Spiritual Court adjuges otherwise upon Arbitrement than they ought by the Common Law, then a Prohibition shall be granted; Per Coke Ch. J. good fait conceffion per Doderidge, and therefore they advised to move it again if the Arbitrement be disallow'd.—But a Boll. 22. S. C. by the Name of Parke b. Stimp says, a Prohibition was prayed upon Refusal of the Plea; and that Coke said they would not grant it, and that the Court was all clear of Opinion, That this Plea of the Award there pleaded and by them refused, was no Ground for a Prohibition; and so by the Rule of Court a Prohibition was denied.

S. P. Upon a Sumif that diverc.

26. If an Executor be sued in the Ecclesiastical Court for a Legacy, and the Executor there pleads that there is an Obligation forfeited, which
Prohibition.

which ought first to be satisfied, and this plea is overruled, a

Obligation shall be granted; for by the Common Law Debts ought to be satisfied before Legacies. B. 11 Ja. B. R.

ones; and at length a Confutation was granted, so that the Libellers give Security to repay the Legacy in

Cafe of Recovery against the Executors, upon the Obligations. Mo. 22, p. 162. Trin. 37 Edw. Nector & Sharp v. the Wax Chandlers Company. — Goldsb. 141. pl. 54 S. C. — Geo. E. 166. (56.) pl. 17. Hill. 32 Edw. B. R. by Name of Nector & Sharp v. Gennes reports, that the Bond was for Inden-

ifying the Sheriffs of London from Etapes, and that it was held in B. R. to be no plea unless the Bond was forfeited; but Penner said, he doubted. Coke took a Difference between a Bond for Pay-

ment of a left Sum at a Day to come, which is a Duty immediately, and a Statute or Bond for Per-

formance of Conventio's, or to a collateral Thing: and that in the last Cafe it is no Plea against a Legatee.

And in the principal Cafe the Obligation not being forfeited, a Confutation was awarded. — Os. 72. Norton & Sharp v. Gennes, S. C. and same Difference taken, and a Confutation awarded, upon Con-

dition the Legatee would enter into a Bond to the Executor to make Reclamation if &c., otherwise not.

26. If the Executor be sued in Court Christian for a Legacy, and

the Executor pleads that he has fully administered all that he had, but there are some desperate Debts upon Obligations and upon Con-

trary, which he offered to the Plaintiff there, and to make Letter of At~

the Executor to him to sue in the Name of the Executor, and the Court Chrit-

man will not allow this plea, a Prohibition shall be granted. B. 22

Ja. 9. between Shweyney and Henry Dubbatur.

Spiritual Court would not allow the Allegation, yet the Opinion of the Court was, That no Prohibition should be granted; for the Legacy is a Thing merely determinable in the Spiritual Court, and this is a

Thing which confits merely in the Diocession of the Court; and 'twas resolved that therefore no Pro-

hibition shall be granted. Win. 78. Patch. 22 Jac. C. B. Anon.

27. If an Administration is granted to the next of Blood, and upon S. C. Cited

this an Appeal is fixed to the Delegates, and there they intend to re-

voke the said Sentence and to grant it to another, who is not nearer of

Blood by our Law but is by the Ecclesiastical Law, a Prohibition lies.

If Administration be once duly

Granted, it can not be revoked at the Will of the

Grantee has an extra Jurisdiction, and

which can not be re-

voked; and in such

a Case the

Power of the Ordinary is determined. And if he grants Administration to the Wife of the Intestate, he

cannot revoke it; but if he grants Administration to one as next of Kin, and another more near of Kin comes, he may revoke. H. 43. Mich. 3. Cor. C. B. Anon. — But for more as to this Point See Title

Executor, under the Division of Administration repeal'd in what Cases.

28. If Administration be granted to a Cousin of the Half Blood, and

upon this a Suit is by another, who pretends to be Cousin of the Whole Blood, where his Father was a Balliard by our Law, and appealed to the

Audience, and there they intend to repeal the first Administration, and grant it to the Son of the Balliard, according to the Ecclesiastical

Law, a Prohibition lies, because the Statute is to be interpreted according to our Law. B. 22 Ja. B. R. Prohibition granted

between ......

29. The Abbot of St. Albans kept the Wife of J. S. in his House 1520. So if. d. 48, Hours against her Will, to have made a Whore of her, and the Baron

and because the Baron of this Act may have Writ of False Impersonation, Spiritual

therefore a Prohibition lies. And per Brian, The Abbot for Court, a Pro-

hibition lies, and because the Baron of this Act may have Writ of False Impersonation, Spiritual

therefore a Prohibition lies. And per Brian, The Abbot for Court, a Pro-

this Case shall not have Confutation. Br. Prohibition, pl. 14. cites 22

E. 4. 20.

4. 20. — So in an Cafe, if Suit be in the Spiritual Court, where Action is thereof given at the Com-

mon Law, Prohibition shall be granted. Br. Confutation, pl. 6. cites S. C.

And
Prohibition.

S. P. F. N. B. 30. *And per Brian, if I swear to pay 10 l. Debt, and he fixes in the Spiritual Court, Prohibition lies; for he may have Debts at Common Law; if it's a Man by Reason of Marriage or a Will, ac.

knowledges in the Spiritual Court that he ought to pay 100 Marks, or any other Sum to a certain Day, then if he does not pay it according to his Acknowledgment, he may be fixed in the Spiritual Court for the same, and a Prohibition will not lie. So if he promises the Payment of Tithes. F. N. B. 41. (B) in the new Notes there, (b) cites 22 E. 4. 20.


32. (1) Because the Oath concerns a Temporal Thing, viz. Land.

31. A Parsoniplier had paid 12 d. and no more yearly, for the Tithes of such a Clefe for 60 Years; the Parson made a Lease of the Rectory, and the Lelee tied in the Spiritual Court for Tithes in Kind; the Defendant pleaded Payment of 12 d. &c. and the Court refused the Plea, and gave Sentence for the Lelee, and B.R. granted a Prohibition, upon Suggestion that this Plea was refuted, notwithstanding this Rent of 12 d. was nothing out of Land, so as an Affife lay thereof, or that it might be disfrained for. D. 79, a. pl. 49. Hill 6 & 7 E. 6. Anon.

32. If one recovers a Debt in the Spiritual Court against another, and after it has to have Execution, a Prohibition lies against the Party and the Judge. F. N. B. 41. (D)

33. It was suggefted for a Prohibition to a Libel for Tithes, that Defendant pleaded there that the Plaintiff was not lawful Incumbent &c. but one T., which being a Plea to the Right of Incumbency, that Court refused it, but a Prohibition was granted per Cur. For he being the Tenant to the Land, might plead it, otherwise he might be twice charg'd for his Tithes. Cro. Eliz. 228. Patch. 33 Eliz. B. R. Green v. Penifden.

34. If the Common Law differs from the Civil Law touching the Legality or Non-legality of a Thing, if they will proceed according to their Law, a Prohibition lies, because the Common Law is to be prefer'd. Stry. 10. Patch. 23 Car. the 8th Revolution in the Cafe of Betworth v. Betworth.

35. If any Thing is off'er'd in Proof which by our Law ought to be allowed, and they there will not allow it, a Prohibition shall be granted. Admitted. Arg. Lat. 217. in Cafe of Longmore v. Churchyard.

S. P. M. 36. It is, where they of the Spiritual Court ref-422. in Cafe of the Single Witnes in Proof of Payment of a Legacy. Noy 12. in Cafe of Chadron v. Harris ; cites Patch. 4 Jac. B. R. Peep's Cafe.

S. P. N. B. 37. In Neckton v. Sharp; cites Hill, 358. Eliz. Eaton's Cafe. — Yelverton J took a Difference where the Suit is merely Ecclefaifical, for a Sum of Money; as for a Legacy, where the Payment of the Legacy is of the Nature of the Thing, and the Ecclefaifical Court shall have Jurisdiction of the Proof and Matter; but if one gives a Legacy of 52 Oxen, and the other pleads Payment of fo much Money in Satisfaction, there they cannot proceed but upon the Common Law, because the Legacy is after'd; and if a Proof of one Witnes is not accepted, a Prohibition shall be granted, for now it is a legal Trial. Het. 87. Patch. 4 Car. C. B., in Cafe of Warner v. Barret. — To a Suit for a Legacy in the Ecclefaifical Court, the Defendant pleaded Fully admitted, but he proving his Payments only by one Witnes's. Sentence was given against him. He prav'd a Prohibition. And by Hale Ch. 1. Where the Matter to be proved (which fails in incidentally in a Cafe before them) is Temporal, they ought not to deny such Proof as our Law allows; and it would be a great Mistake to Executors, Should they be forced to take two Witneses for the Payment of every pe- litt Sum; and if they should, there would be the fame Inconvenience after their Death. And to a Prohibition was granted, and the Party to demur upon the Declaration, if he please. Vent. 291. Hill. 27 & 28 Car. 2 B. R. Richardson v. Diborough. — S. P. Argus'd Show 158. Trin. 2 W. & M. B. R. And afterwards in Mich. Term following adjudge accordingly by the whole Court. And there Holt Ch. observed that the Cafe in 2 Inf. 628, where all the Judges agreed under their Hands, That if the Question be upon Payment of Tithes or Legacy, or both like Incident, it is to be left to the 'Trial of the Law, tho' the Parties have but one Witnes, yet that in the very next Year, in Cafe of Brown v. Witchworth, a Prohibition was granted. Show. 172. Shatter v. Friend. — Curth. 142. S. C. —

S. C.
Prohibition.


37. A Libel was brought on a Custom, That the Constable of the Town should collect the Rates assessed for Repairing the Parish Church, which be refused to do; and on a Motion for a Prohibition, it was suggested that it was not triable there Whether the Party was Constable, and duly elected or not; but the Court denied to grant one, because this Matter is plentable there, and Prohibitions ought not to go, unless upon a Trial of the Matter there, their Law and Proceedings cross the Common Law, and in that Case a Prohibition lies only till Trial here, and after that a Consutation shall be granted. Harw. 510. Patch. 21 Car. 2. in Seacc. Goddin v. Wainwright.

(R) In what Case they shall not have Jurisdiction for a Collateral Cause, for Prosecution at the Common Law.

* See the Statute 1 E. 3. cap. 11.

1. If a Man be accused of being the Father of a Bastard before Justices of the Peace, and the Justices in examining the Matter say that it was pray'd, for that C. lived W. in the Spiritual Court, for saying, That he had a Bastard; Webb the Defendant alleged in the Spiritual Court that the Plaintiff was adjudged the reputed Father of a Bastard by two Justices of the Peace, according to the Statute, whereupon he spoke their Words; and they of the Spiritual Court accepted his Confession, but would not allow for the Jurisdiction, wherefore he pray'd a Prohibition, which was granted him. Gro. I. 555. pl. 19. Patch. 1st. B. R. B. Webb v. Cook.—S. C. Gro. I. 625. pl. 18. Mich. 19 Jac. B. R. Adjudged upon Demurrer that the Prohibition should stand, for being sentenced at the Sessions, which is by Authority of the Statute Law, it cannot be impeached else where, and all are conclusive to vary the contrary till it be revised.—S. P. Cited by Holt Ch. J. 7 Mod. 80. 81. as adjudged in Lord Hyde's Time, That since he had been adjudged before the Justices to have been the Father, he could not be tried before for Defamation. And of that Opinion was the Court.

2. If A. sits B. in the Ecclesiastical Court for saying that he liv'd incontinently with C. B. shall have a Prohibition, upon a Suggestion that he was produced before a Justice of Peace, where he gave Evidence that the said C. had confesse'd to him that A. liv'd incontinently with her, tho' he does not suggest that he laid the Words, for this is only Evidence. P. 11 Jac. B. R. between Berry and Miles adjudged, and Prohibition granted.

3. If a Militant in the Ecclesiastical Court for Tithes, and recovers, and there Cols. of Suit are taxed, and afterwards the Defendant procures a Prohibition, but after this a Confession is granted, and the Ecclesiastical Court taxes new Cols against the Defendant for the Cols of the Plaintiff in the Temporal Court to obtain a Prohibition, a Prohibition shall be granted for the taking of those New Cols, because otherwise every one shall be deterred from suing Prohibitions, and the Plaintiff in the Prohibition at the Common Law, shall not have any Cols, tho' he recovers there. Mich. 1st. B. R. between Berry and Read, per Curiam resolved, and Prohibition granted, if this may appear.

4. If a Man be detained for [getting] a Bastard by a Woman, and the Churchwardens compel him to enter into an Obligation to discharge the Parish according to the Statute, and then upon the Party detain'd, D
Prohibition.

6. If a Man be indicted in a Leet for keeping of a Bawdy-house, and the Party files in this in the Ecclesiastical Court, a Prohibition shall be granted. B. 10 Fid. 2. R. per Curiam.

7. If a Man be indicted in a Leet upon the Statute for Drunkennes, and J. S. gives Evidence there against him that he was drunk, and thereupon he lies J. S. in the Ecclesiastical Court for saying the Words, a Prohibition shall be granted. B. 12 Fid. 2. R. between Anfield and Feverell adjudged.

9. So if a Jury gives a False Verdict between the Partys, yet if they are sued for it in the Ecclesiastical Court, a Prohibition lies; for this Jurys sits upon a Temporal Cause. 13 H. 7. Kell. 39. b. per Curiam.

10. If A. a Sadministration of a Church lies for Tithes in the Spiritual Court against B. who obtains a Prohibition upon 2 E. 6. upon Surmise of barren Land, and thereupon Issue is join'd, and a Verdict for A. and a Constatation granted, and after a Sentence given in the Spiritual Court, and there Cofts tax'd, upon a Bill prefer'd, the Particulars of which amount to about 10 l. and there is prefer'd also to have Cofts pro Ex. penis Jurisperitorum & Solicitorum 48 l. and upon this Cofts assis'd for all to 48 l. In this Case, because A. the Plaintiff refused to take his Oath that nothing of these Cofts was for any Expenes at Common Law, tho' it was so certified by the Chancellor; yet upon this Surmise a Prohibition lies. Mich. 9 Car. 2. R. between Felter and Patier, per Curiam, but no Prohibition granted, because by Contemn of the Parties the Cofts were mitigated per Curiam to 30 l.

11. Newton shew'd to the Court, that A. had brought Trespass against B. in this Place, and are at Hullo; and pending this Suit the Plaintiff imputed the Defendant for the same Matter in the Spiritual Court, and prayed Prohibition, and it was granted to him. Br. Prohibition, pl. 19. cites 10 H. 6. 21.
Order that the Case shall be argued by Civilians; but afterwards an apparent Fault being in the Pleadings, a Prohibition was granted. Ld. Raym. Rep. 299. Mich. 1 Ann. B. R. S. C. by Name of Galliford v. Rigand. — 2 Salk. 52. S. C.

13. It was mov’d for a Prohibition to a Libel for Words, upon a Suggestion that the Plaintiff below had brought an Action for those Words, grounded upon special Damage sustained by the speaking them; and that tho’ the Words were such as are properly liable for in the Ecclesiastical Court, yet a special Damage attending the speaking them, so that an Action lies, they shall not proceed in the Ecclesiastical Court. But the Court denied to grant a Prohibition. Ld. Raym. 2 Rep. 1101. Hill. 3 Ann. Evans v. Brown.

(S) In what Cases they shall not have Jurisdiction for Collateral Cause, for Cause of Pardon.

1. If a. A. cites 2. In Court Christian for saying that he was a Pardon’d. Ld. Raym. Rep. 98. Nov. 8. Nov. 9. Lewes v. Croft. 2 Jew. 7. S. C. — 3. Ld. Brackenbery v. Wharton. 145. Lewes v. Whitby. 9 C. C. C. 3. S. C. The Court held for Words. The Defendant was condemned, and Costs taxed to 18. 1. And upon a Suggestion an Excommunioatio expiando intent, but before it was retumed, or he taken, a General Pardon was publish’d. He was afterwards taken, and proved to be discharge’d. Resolved that this Taxation of Costs being for the Plaintiff’s Benefit, is not discharge’d by the Pardon. Cro. J. 159. Patch. 8. B. R. Bunning v. Fryer. — But where the Defendant was first before the Ordinary for Defamation, and the Suit was begun, before the last General Pardon, ex Officio, and the Costs tax’d after the Time limited by the Pardon, a Prohibition was granted, inasmuch as all Things, promoted ex Officio are discharge’d by the Pardon, and inasmuch as the Principal was pardon’d, the Costs being as Accurately, shall be all pardon’d, notwithstanding that they were tax’d after the Pardon. 2 Brownl. 28. Mich. 9. C. C. 5. B. v. Watson. Between the Time of awarding Costs, and the taxing them in the Spiritual Court, came a Pardon, which pardon’d all Offences before December 1623. which was after the awarding and before the taxing them, yet they are not thereby pardon’d; and therefore a Prohibition was denied. Cro. C. 39. 7. Patch. 1. C. B. Dr. Brickenden’s Case. — On a Libel by B. for Defamation, he had Sentence, and 6. 1. were affiz’d for Costs. Defendant appeal’d to the Archdeacon, which was depending in 1622. By a General Pardon 21 Jan. the Offence of the Defamatory Words were pardon’d, and this was pleaded in the Archdeacon’s Suit, notwithstanding which they proceeded in the Appeal, where the first Sentence was reversed, and in that Suit 16. 1. were affiz’d for Costs to Appellant. All which was suggested for a Prohibition, and it was thereupon mov’d. But it was resolv’d, that there was no Cause of Prohibition; for the above the Pardon has discharge’d the Offence of the Defamation as to any Punishment to be inflicted by Way of Penalty &c. yet in Respect of the Costs in the first Suit, which are not discharge’d by the Pardon (being affiz’d before the Day in which the Pardon relates), as was agreed in Elliss’s Case, 5 Rep. 51 b.) if they are not thus affiz’d, the Costs may proceed in the Appeal to discharge the Party of them; and if they revoke the first Sentence, so it appears the Costs were unduly tax’d, and the Party unjustly vex’d, they may in the Appeal affiz’d Costs; for the Pardon does not extend to stop the Suit commenced in the Appeal, nor by Reason of the Pardon had they Cause to surcease the Suit; and tho’ the Costs in the Appeal be affiz’d after the Pardon, yet they are well affiz’d, the Cause of those Costs not being taken away by the Pardon: Whereupon Contemplation was awarded. But Hutton doubted thereof, because (as he conceived) the Pardon dischargeing the Offence, ought not to have proceeded for the Costs. Cro C. 49. 41. Mich. 2. C. B. Baldry v. Hickard. — In the Case of an Excommunioation by the Delegates, and the Party taken upon an Excommunioatio expiando, the Court resolved that he should be discharge’d; for the Contempt and Imprisonment was pardon’d, but the Costs were not, and that the Party may sue again in the Delegates against the other when he is large, to compel him to perform the Sentence for the Costs. Jo 227. Hill. 6. B. R. Codrington v. Redman. The Redman. — And Bidd. says, This Case was mov’d again Patch. 7. Car. And the Court was of the same Opinion as above; and that a Precedent was shewn in 2 Car. of a like Judgment, whereupon the Party was discharge’d.— Cro. C. 1958. accordingly, The King and Codrington v. Redman. W. 2
Prohibition.

W. a Parson was fined in the High Commission Court for Injunction, and was deprived, and another pre-
ched to his Living. He procured a Pardon to be refund'd, and was afterwards proceeded against for
Grant of Suit; whereupon he prayed a Prohibition, the Pardon being before any Sentence given. And it
was granted; for if the Pardon comes before Sentence, they shall not afterwards give Coils. Cro. J. 335.
Hill. 14 Jac. B R. Watts's Case. — 253. 182. S. C.

2. And in the said Case, if before the Pardon, and after the said Sentence, the Defendant appeals, and then comes the said General Pardon, and after the Defendant deserts his Appeal, upon which new Coins are taxed for this Detention, a Prohibition lies; because he has no other Way to have Benefit of the Pardon but this; for the said Court ought to allow the Pardon. 92. Car. between Lexis and Whitley.

3. If a Parson of a Church be convicted of Man slaughter, and after his Clergy allowed, according to the Statue of 18 Ed., and delivered out of Prison, if he be not fined in the Ecclesiastical Court to be de-
prived of his Benefit for this Office, a Prohibition lies; for by the Allowance of the Clergy by Force of the Statue, he is purged and acquitted of the Felony, and all Penalties and Damages incident to it in Nature of a Pardon. Hobart's Reports 355. between Serle and Williams adjudged. And there cites D. 27 Cl. Rot. 2442.
Nichol's Case accordingly.

4. Prohibition was brought to stay a Suit in Court Christian for Defa-
mation, upon these Words, If Mather William Norwood had not gone out of Town, he should have answered for the two Battards he begot upon two rich Women. He there pleaded the General Pardon, which would not be allowed; and thereupon the Prohibition was brought, furnishing this Matter, and now Confutation was prayed. And all the Courtbe
ides Granville held, That it is well grantable; for they all resolved that a General Pardon doth not aid him for the staying a Suit in Court Christian, which is for and Ad infinitum partis; but if it were fixed there ex Officio Judicer, the General Pardon would then discharge him. Cro. E. 684. pl. 18. Trin. 41 Eliz. in C. B. Norwood's Case.

5. A. and his Wife were fined before the High Commissioners, that is to say, the Wife for Adultery with Sir M. B. and the Husband for Coin-
veny to it as a Wittal; and they were sentenced there for that, and Coins tax'd in July; and after the General Pardon came, and pardoned all the Offences before the 9th Day of November before; and thereupon A. moved for a Prohibition, and had it, because the Offences were not Enormous Crimes, and the Statute and the Commission upon that, is to give Power to them to proceed upon Enormous Crimes, and to Fine and Impison for them. Also resolved that the General Pardon hath dis-
charged the Coils, though the Coils were tax'd before the Pardon was in Print; and this by the Relation that it had to the Day before the Coils were tax'd. 2 Brow. 37. Mich. 6 Jac. Dr. Conway's Case.

6. Dr. H. Illesly'd in the Spiritual Court against one of his Parshipers for Tithes; the Defendant there pleaded, that the Doctor came to the Par-
onage by Simony and Corruption, and upon Suggestion thereof made in C. B. pray'd a Prohibition; Dr. H. alleged that he had his Pardon, and pleaded the same in the Spiritual Court; and notwithstanding that the Court granted a Prohibition, because the Pardon did not raise the Church's to be Plains, but maketh the Ointence only dispensable. But in such Case, if the King doth present, his Prelevence shall have the Tithes. Godb. 202. pl. 238. Trin. 10 Jac. in C. B. Dr. Hutchinson's Case.

Cro. C. 115.

7. It was mov'd for a Prohibition to the High Commissioners for Mrs. P. The Articles against her were, That for 1622 and 1623, he had a Houfe next adjoining to Somerfet-Houfe, and that there was a private Pallage

And by
Prohibition.

T) In what Cases they shall not have Jurisdiction for Collateral Caufe. [Answering upon Oath.]

1. WHERE a Layman is to forfeit a Penalty either by Statute or otherwise, there he is not bound to answer upon his Oath in the Ecclesiatical Court, whether he has committed the Offence which caused the Forfeiture; for otherwise he shall be bound to discover sufficient Matter for an Informer to inform against him upon the Statute. N.S. 12 Ja. B.R. per Curiam, in BradshoW's Case.

2. If a Man be ordered in the High Comission Court to give Alimony to his Wife, and also bound in an Obligation of 300 l. to perform it, he is not bound afterward upon a Suit there, to answer whether he hath given Alimony to his Wife accordingly, because by his o very discovery the Forfeiture of the Obligation. N. 12 Ja. B. R. BradshoW's Cafe, per Curiam refused.

Cafe, to have been resolved accordingly in the Time of Wray Ch. J. and a Prohibition granted.

3. A Man is not bound to answer upon his Oath Articles concerning the Book of Common Prayer punishable by the Statute of 1713 S. & C. by the Name
Prohibition.

of Deacon's

El. because then he shall discover Matter for an Information. D. 13

32. B. R. Dighton and Holt's Case.


Trin. 14 Jac. B. R. Holt and Dighton S. C. but D. P. — Cro. J. 483. Hilt. 13 Jac. B. R. Dighton and Holt's Case. After three Terms Deliberation, the Court gave their Resolutions that they ought to proceed against them by Writtes, and not compel them to accede themselves by Oath.

4. But a Clergyman may be examined upon his Oath for preaching against the Book of Common Prayer; for Clergymen are not within the Statute. Cr. 7 Ja. 3. Parson Manfield's Case, adjudged per Curiam.

A Man may the a Prohibition directed unto the Sheriff, not to suffer the King's Lay Subjects to come to any Place at the Citation of the Bishop, ad faciendum aliqua Recognitionis, et Sacramentum profanandum, nisi in Caufis Matrimonialiibus & Testamentariis; and the Party may have thereupon an Attachment against the Bishop, if he cite or distrain any one to appear before him, to take an Oath at the Will of the Bishop, against the Will of him who is so summoned or cited. And by that it appears, that the General Citations which Bishops make to cite Men to appear before them Pro Salute Anime, without expressing any Cause, are against the Law, and the Party may have an Attachment against the Bishop for the same, and may sue a Prohibition to do. And if he do express any Cause in the Citation, it is deemed that it ought to be for some Matrimonial or Testamentary Cause. F. N. B. 47. (A)


S. C. by the Name of Huntley v. Gge.

6. If a Feme be filed in the Ecclesiastical Court for a Contraet of Marriage, and enters into an Obligation to the Court, with Condition not to marry, or to rehabit in Fornication, with any Pendente lite. She cannot afterwards be examined there upon her Oath whether she be a single Woman; for this tends to the Forfeiture of the Obligation. D. 8 Ja. between Clifford and Huntley. Per Curiam relibuid.

S. C. 4 Ja. 194. pl. 397. But the Court would advise. — Serpium producere, where Diferedit ensa; but otherwise it is in Cases Matrimonial or Testamentary. Mo. 906. pl. 1265. Mich. 32 & 33 Eliz. B. R. Collier v. Collier.

7. In a Libel for Incontinency, the Judge in the Spiritual Court would have examined the Parties upon Oath, whether they did it in Law or not. Whereupon a Prohibition was awarded, because no Man is bound to a Prohibition, where Diferedit ensa; but otherwise it is in Cases Matrimonial or Testamentary. Mo. 906. pl. 1265. Mich. 32 & 33 Eliz. B. R. Collier v. Collier.

S. C. accordingly, by the Name of Cullier v. Cullier — S. P. And upon a Reference to the Lord Anderfon, and the Lord Chief Baron, and Wray, they certified thus, viz. Where the Knowledge of the Matter belongs to the Court Civilian, they may proceed according to the Civil Law. Gaudy told the Oath cannot be admind't'd to the Party but where the Offence is profess'd by two Men, Quod Muit Concedit; and it was said it was 6o in this Case. Cro. E. 262. pl. 52. Mich. 55 & 56 Eliz. C. B. Dr. Hunt's Case.

It was mov'd for a Prohibition against the Ecclesiastical Court, in case of Adultery, because they obliged the Party to answer on Oath; and Prohibition was granted quoad that, that he should not answer on Oath, but proceed as to the rest; then it was mov'd that there was a Temporal Penalty for providing for Baffled Children. But per Cur. We will not grant it, because the Ecclesiastical Court proceeds only to the Punishment of the Crime of Adultery. 12 Mod. 40. Pach. 5 W. & M. B. R. Anon.

8. Upon a Suit against the Executor of a Parfon, by his Succesor for Dilapidations, a Question arose about a Lease for Years allowed to be taken by the Executor in his own Name, but covenanted in Trust for the late Parfon, and would put him to his Oath to answer concerning the Covin; whereupon a Prohibition was granted quoad their examining him on Oath concerning the Covin; for tho' the original Caufe belongs to their Cognizance, yet the Covin is Criminal, and the avowing it to be Bona Fide is punishable both in the Star-Chamber, and by the Penal Law of Fraudulent Gifts; and therefore not to be exerted out of himself by his Oath. Besides the Expulsion of the 13 Eliz. 10. of Dilapidations, and what shall be Covin or not within the Law, rels not in them to judge, but in the Courts of Common Law. Hob. 84. Spencelow v. Smith.

S. P. And because the Bishop had

9. One was excommunicated for not taking the Oath of Churchcridor, to present upon all the Articles contained in a Book therunto annex'd, among
among which were some that would oblige him to accuse himself. It was communicated him for refusing to do so, and he was declared to be in the Book that contains such Matter inter alias and that Churchwardens ought to be sworn to do what appertains to their Office, and no more. Hard. 364. Patcl. 16. 2. in Scacc. King v. Lake.


In the Spiritual Court they tender'd an Oath to a Churchwarden, to present according to the Bishop's Articles, which he refusing, was Excommunicated. It was suggested for a Prohibition, That some of the Things to be presented, according to those Articles, were Filthy Talkers, Rebels &c. and Common Sowers of Sedition amongst Neighbours, which were general Terms, and might be understood to comprehend Things out of their Jurisdiction. And the Court conceived a Prohibition ought to go to those Things, but he should first have pleaded them, that non tenetur respondere as to those Matters; and upon their Refusal to have pray'd a Prohibition. Vent. 114. Patcl. 25 Car. 2. B. R. Anon.—Afterwards this Matter came on again, and then it appeared that the Church tender'd was in general Words, (viz.) to present according to the King's Ecclesiastical Law; and those Articles were offer'd only by Way of Direction, and Quasi a Charge; and to a Prohibition was denied. Vent. 127. & C.

10. Upon a Prohibition it was held, That if Articles ex Officio are exhibited for Matters Criminal, and the Party is demanded to answer upon Oath, he may plead there Quod non tenetur respondere; and if notwithstanding this they proceed against him, he shall have a Prohibition. But otherwise if the Matter be Civil, for then he ought to answer. Sicq 374. Trin. 20 Car. 2. B. R. Goulton v. Wainwright.

11. A Prohibition was pray'd to a Suit in the Ecclesiastical Court. The Libel sets out, That a Tax has been made for the Repairs of a Church, where the Defendant inhabited, and was to make him pay his Proportion. To which they required his Answer, (viz.) Whether he had paid &c. v. Brown. The Suggestion was, That the Party had tender'd his Answer, but the Court had refus'd it, because it was not upon Oath, and that the Ecclesiastical Court cannot tender an Oath to the Party sued, Nisi in Caussis Matrimonialibus & Testamentariss. But the Court, after hearing diverse Arguments, denied the Prohibition; for they said it was no more than the Chancery did, to make Defendants answer upon Oath in such like Cases. 1 Vent. 339. Trin. 31 Car. 2. B. R. Herne v. Brown.

(U) In what Cases the Spiritual Court shall have Jurisdiction of a Matter subsequent after the Suit, [Incident or Dependent] Having Jurisdiction of the Original Suit. [And what may be tried there.]

1. If a Suit be in the Spiritual Court for a Modus Decimandi, if the Defendant pleads Payment thereof, this shall be tried there, and no Prohibition shall be granted, because the Original Suit was well commenced there. Mich. 14 Th. B. R. between Giffin and Harden, agreed per Curiam. Bodare's Reports, Calf 314.
Prohibition.

2. So if Payment be pleaded in a Suit in the Ecclesiastical Court for any Thing whereof they have Original Coninance. 43 P. Reports.

As in Case of a Suit for a Legacy, if Payment be pleaded, a Prohibition shall not be granted; for it is a Matter depending upon the Original. Roll Rep. 12. pl. 14. Pack. 12 Jac. B. R. Anon.

3. In an Action in Spiritual Court by two Churchwardens, if Defendant pleads the Release of one, this shall be tried there, and no Prohibition shall be granted. 43 P. Reports. 14 Jac. Citizes it to be so adjudged 7 Jac.

S. P. Jenk.

4. If a Man sues for Tithes against J. S. in the Ecclesiastical Court, and makes Title to them by a Leave made to him by the Parson, and J. S. makes Title also to them there, by Force of a first Leave made to him by the same Parson; so that the Question is, which of the said Leave shall be preferred, a Prohibition shall be granted; for they shall not try which of the said Leaves shall be preferred, tho' they have Coninance of the Original Suit; for the Leaves are Temporal. 5. 12 Jac. B. R. between Watts and Clifton. Per Curiam, and Prohibition granted.


5. If a Man having a Patronage Improper, makes Leave for Years of Parcel of the Tithes by Deed, and the Deed is denied in the Ecclesiastical Court, and Suit taken thereupon, a Prohibition shall be granted. 5. 12 Jac. B. R. per Curiam.


6. If a Parson compounds with a Parsoniere for his Tithes, and grants them by his Deed to him for a certain Sum by the Year, according to the Agreement, and after he sues the Parsoniere in the Ecclesiastical Court for the Tithes in Kind, no Prohibition shall be granted upon this Discharge by Deed; for they may well try this, having Coninance of the Principal. 8. 5. 4.

7. 14 Jac. B. R. between Griffin and Bullfin, resolved, and Prohibition denied, tho' once before it was resolved to the contrary for the Church of Wakerly.

8. If a Parson lease all the Tithes of his Benefice to a Parsoniere, and after sues him for his own Tithes, no Prohibition shall be granted; for this Lease is a good Discharge there. 8. 5. 4. 14. per Choke.

9. If a Parsoniere grants Land to a Parson for his own Tithes, and after sues him for the Tithes, a Prohibition shall not be granted; for this Matter will be a good Discharge there. 8. 5. 4. 14. per Choke.

10. If a Parson grants to a Parsoniere the Tithes of his own Land for a certain Rent by the Year, upon Condition of Non-payment, and after sues the Parsoniere for his Tithes in Kind, no Prohibition shall be granted, tho' the Parson supposes that the Condition is broken; for they shall try there, having Coninance of the Principal; and if they adjudge otherwise than the Common Law allows, then a Prohibition shall be granted. 16 Jac. B. R. between Griffin and Bullfin to hold.

11. If a Parson sues for Tithes in the Ecclesiastical Court, and the Defendant there pleads an Arbitrement in War, they shall try it there, and no Prohibition shall be granted thereupon till they have disallowed the Plea; for by Intendment this is a good Discharge there. 53 P. Reports. 12. 14 Jac. B. R. between Reynold's and Hayes adjudged, and a Consultation granted. 15.
Prohibition.

12. If a Parson sues for Tithes in the Ecclesiastical Court, and the Defendant there pleads a Lease of them by Deed by the Parson to him rendering Rent, to which the Plaintiff says, That the Rent was reserved upon Condition of Non-payment to be void, and avers that he did not pay it at a certain Day, and the other pleads Payment at the Day, this shall be tried there, and no Prohibition shall be granted. 

13. If a Parson leaves by Deed the Tithes of the Parish, and after sues for the Tithes in the Spiritual Court, and there this Lease is pleaded, where the Question between them is, Whether the Tithes of all the Parish, or only of some particular Things; yet no Prohibition lies; for they have Conscence of the Original, and they ought to take Notice of those who are learned in the Common Law to direct them, as the Judges of the Common Law do of them; but if they judge contrary to the Common Law, a Prohibition lies after Sentence. 

14. If a Parish leaves a Legacy in the Spiritual Court, and the Defendant pleads a Release for Bar, and the Plaintiff denies it; this shall be tried there, and no Prohibition shall be granted, because it is a Matter arising from the Original Cause of which they have Jurisdiction. 

15. If a Parish leaves a Legacy in the Spiritual Court, and the Defendant pleads an Administrator, and the Plaintiff avoids it because his Tituror was an Ideot; it seems to be this Legacy shall be tried there, and no Prohibition shall be granted, because they have Jurisdiction of the Original Matter. 

16. If a Parson sues in the Ecclesiastical Court, and the Defendant there pleads that the Plaintiff was presented upon a Simoniical Contract, against the Statute of 31 El. this shall be tried there, as much as they have Jurisdiction of the Original Thing. 

17. If a Parish of a Church be outlawed, and the Benefit of the Out. * So in Cate law granted over to J. S. who receivs the Tithes of the Parthioners Definatory as I intend it, and not the Farmer for the Tithes, who pleads the Outlaw against him, and calling the Grant over to J. S. the Farmer, a Prohibition lies in this Case, because this is a Matter of Record, which they cannot try there. 

18. If the Parish of B. in London libels in the Spiritual Court, upon a Custom, that if a Parthioner of B. dies in B. and is buried and buried in another Parish in London, and there are given to the Parish for a Gown, a Pulpit Cloth, and a Pair of Gloves, that the same
Things ought to be given to him; a Prohibition lies to try this Custom, if it be denied; for a Custom may be made by a shorter Time than at Common Law. \textit{Ct. 15 Car. B. R. between Carter Parson of St. Thomas Apostles, and Gooe; Prohibition granted.}

A Prohibition was tried on agitation of No such Custom. The Court held the Custom good, because the Parish is to be at the Charge of making up the Church Floor; but if the Custom be denied, it must be tried at Law, as in Case of a Modus Declinand. In the Parish of St. Peter, Hertford, and afterwars Halle Ch. being present, a Prohibition was granted, which he said was sometimes granted Pro Defectu Jurisdictionis, and sometimes Pro Defectu Triads, as in this Case and others, where the Ground of the Suit is Prefcription; for in their Law they have sometimes allowed Prescriptions of 20 Years, and sometimes of 49, but we admit none but what are De tempore sec. \textit{Vit. 7.4. Mich. 27. Car. 2. B. R. Anon.}

See (F) pl. r: 25. and the Notes there — And see (M) pl. 9 and the Notes there.

19. If the Parson libels in the Ecclesiastical Court for a Modus, (as for Tithes of His brought from Ireland) if the Defendant suggests that the Parson has mistaken his Modus, and flows * another Modus, he shall have a Prohibition, because the Ecclesiastical Court shall not try the Modus by which his Inheritance shall be bound, and an Usage for 10 Years is good Custom by the Ecclesiastical Law; and if this shall be injured, they will decline the Temporal Court of all Jurisdiction. \textit{By Reports.} \textit{14 Ja. 2. R. adjudged between Golyn and Hardin.}

20. So if a Suit be in the Ecclesiastical Court upon the Manner of Tithing, that is to say, upon a Custom for the Owner to have 54 [47 Shipwax] and the Parson 5 [47] Tithes. If the Custom be denied a Prohibition lies; for they shall not try the Modus, it being to charge the Inheritance. \textit{Dobart's Reports.} \textit{Ct. 314.} between See and Wall. \textit{Prohibition granted.}

For the Custom, then a Consultation must go, otherwise the Prohibition funds. — \textit{Ret. 135.} \textit{S. C.} to be as to any Other Custom; for a Custom is not liable in the spiritual Court; and where a Libel is for not repairing a Church-Wall, according to Custom, where the Foundation of the Libel was the Custom, the Ecclesiastical Court could have no Complain till the Custom was tried at Law; and therefore a Prohibition was granted to try it, which being tried, and found against the Plaintiff in the Prohibition, a Consultation was awarded. \textit{See Garth. 55.} cites the Case of Vanacre v. Spleen.

21. If the Churchwardens of the Parish of Steevenage libel in the Ecclesiastical Court against J. S. Farmer of the Farm called D. for Contribution to the Reparation of the Church, and allege that Parcel of the Farm lies in Steevenage, and Parcel in Walkerne another Parish, and allege a Custom, by which the Farmers of the said Farm have used to contribute to the Reparation of the Church of Steevenage for all the said Farm. If the Defendant lays that Parcel of the Land lies in the Parish of Walkerne, and that he has used Time whereof Memory to. to contribute for it to the Church of Walkerne, and not to Steevenage, and denies the Prescription; this shall not be tried in the Ecclesiastical Court, but by the Common Law; and therefore a Prohibition lies; for they shall not try the Custom in the Ecclesiastical Court, by which the Inheritance is to be perpetually charged. (Note, that this is but in Effect a denying the Prescription.) \textit{Ct. 16.} \textit{B. R. between the Churchwardens of Steevenage and Green resolved, and a Prohibition granted accordingly.}

22. If a Suit be in the Spiritual Court for Tithes of Calves in Kind, a Prohibition lies upon the General Custom, to pay ob. [a Halfpenny] for every one under 7, and a Halfpenny if 7, and that the Parson will give a Halfpenny for every one above 7, with Demand that the Parson can not drive over to the next Year, that is to say, not to relinquish his Tithes till the Parishioners have 10 Calves, as he may by the Canon Law. \textit{P. 11 Car. B. R. Langford's Case. Prohibition granted; for by the Canon Law it is at his Election.
Prohibition.

19

the Tenth without paying any Thing. Berkeley and Jones held, That the Canon Law is to, and so received in the Spiritual Court, and it is framed, that the Spiritual Court allows of it, and therefore there needs not any Prohibition; but because it was alleged, That it was a Canon, and that the Parson would not pay till the Tenth, and would refuse to accept according to the Canon, and that in the Spiritual Court this Surmise is not allowed; therefore it was held that a Prohibition is grantable. 

22. pl. 2. Patch. 10 Car. B. R. Anon.

23. If A. the Parson of D. feast for Tithes in the Spiritual Court against B. who pleads a Lease for Years made to him by the Parson, to which A. the Parson replies, That he was Non-resident, and absent 80 Days and more in such a Year as. from his Benefice, by which the Lease became void. No Prohibition lies upon this plea, tho' it is grounded upon the * Statute of 13 El. And tho' it was objected that the Judges of the Spiritual Law shall not have the Expulsion of a Tenant in Contempt of the Court, for inability as they have Jurisdiction of the Original Cause, they shall have Power to try this, which incidently arises, libel was granted hereupon N. 14 Car. B. R. between Sir Thomas Lucy and Dr. Lucy, per Curiam; Prohibition denied.

24. Citation was awarded in the Spiritual Court for a Slender against a Feme sole; and the Libel proved true; Whereupon the Court awarded 10l. to the Plaintiff for the Costs and Defamations; and after the Feme took Barson, and made him her Executor, and died; and Citation was sued afterwards against the Baron as Executor of the Feme, to satisfy the 10l. And the Baron obtained Prohibition; and the best Opinion was, That it does not lie, because the Matter is merely Spiritual, and the Sum for Recompence was well awarded. Br. Prohibition, pl. 9. cites 12 H. 7. 24.

25. If a Man acknowledges in the Spiritual Court to pay a certain D. be at a certain Day, and does not pay it at the Day for which the other suits him in the Spiritual Court, and Excommunicates him there because he did not pay it at the Day, the other Party shall have a Prohibition against him. F. N. B. 41. (C)

26. A Libel was for a Rate for Repairs of the Church. It was suggested for a Prohibition. That in this Suit they of the Spiritual Court would try the Quantity of the Land, for they were taxed according to the Rate of their Land. And they pretended that he hath more Land there than in Truth he hath, which is always triable at the Common Law. Sed non allocatur; for the Principal being liable there, the Circumstances concerning it are inquirable, and triable there also. Wherefore a Consultation was awarded. Cro. Eliz. 659. 660. pl. 5. Patch. 41 Eliz. in C. B. Paget v. Crompton.

27. In Prohibition the Cause was, That a Parishioner served the Tithes from the 9 Parts; but being in a Cafe, the Gate was locked, so the Parish could not come at them; and he sued in the Spiritual Court; And there the Question was, Whether the Gates were Locked or Open? And thereupon a Prohibition was brought, supposing this to have been a Temporal Matter; for the Tithes being sever'd, are Lay Chattles. But the Court said, That altho' the Tithes be sever'd, yet by the Statute they remain liable for in the Spiritual Court; and then the other is but a Consequent thereof, and therefore there is Triable. And if they refuse to allow his Proofs, as it was furnish'd, (but not within the Prohibition,) it was said that he ought to appeal. Cro. Eliz. 843. 844. pl. 26. Patch. 41 Eliz. in C. B. Blackwell's Cafe.

28. B. sued for Tithes in the Spiritual Court; and the Parishioners The Cause pleaded. That there was an Act of Parliament that fitted these Tithes upon was. That W. And the Spiritual Court refusing to allow this Plea, Baldwin mov'd a Rectory for a Prohibition; and said, where the Parishioners did plead to the Jurisdiction of the Court. W.
Prohibition.

was indebted to W. and absolved; upon which it was enacted by Parliament, That this Mortgage should be vested in W. as fully as it was in P. B. sued in the Spiritual Court for Tithes, and W. came in Pro Interesse too, and there this Matter to the Court; and yet they gave Judgment for B. for the Tithes; upon which W. prayed a Prohibition, which was denied per Moles and all the Court; for the Act vest'd the EBue in W. as was in P. and B. being only Mortgagee, and out of Possession, and B. Mortgage in Possession, P. could not have recovered the Tithes before he had recovered the Possession of the Rectory by Ejection; no more can W. but till the Rectory be recovered against B. the Tithes belong to him. 2 Lev. 64. Trif. 24. Car. 2. B. R. S. C. by Name of Sir William Juxon v. Lord Byron.—S. C. cited; Lev. 15. Mich. 34. Car. 2. C. B. in Cafe of Bonley v. Lee.—In the above Cafe of Lord Byron, Freem. Rep. 67. pl. 81. Mich. 1672. C. B. Lord Byron's Cafe.

Parson's Title in the Spiritual Court, and they related to allow of it, that it was usual to grant a Prohibition. Vaughan at first oppos'd it, because he said, If the Party set forth his Tithes, it did not concern him who had the Interest in them, for he had no more to do; but Atkins J. ask'd what he should do if he had not set them forth. And after Debate, the Court ordered a Prohibition Nili. Freem. Rep. 67. pl. 81. Mich. 1672. C. B. Lord Byron's Cafe.

See (Y) (X) Jurisdiction Spiritual. Where the Right of Tithes comes in Question.

WHERE the Right of Tithes comes in Question in the Temporal Court, the Temporal Court shall be out of Jurisdiction. 2 C. 4. 15.

2. In Action of Trespass by one Parson against another Parson, if Defendant claims it as Tithes appertaining to his Parsonage, the Court shall be out of Jurisdiction; for the Debate being between two Parson's, it shall be intended that it is for the Right of Tithes. 38 C. 3. 5. b.

In Trespass, if the Defendant justifies for Tithes as Parson, and gives Notice to the Plaintiff as Parson of another Church adjoining; this shall only the Court of Jurisdiction; for the Right of Tithes will come in Debate between Parson and Parson. Br. Jurisdiction, pl. 60. cites 58 H. 6. 21. Per Porreca J.—But if the Defendant gives Notice as Parson, he gives Jurisdiction to the Lay Court; for it does not appear that Right of Tithes will come in Debate. Br. Jurisdiction, pl. 60.—But if the Plaintiff in his Replication insists himself as Parson to the Parish of Tithes out of the Parish of the Defendant, as appertains to his Church, there, it must be confined by the Defendant, the Lay Court shall be out of Jurisdiction; for as soon as it appears that the Right of Tithes will come in Debate, the Lay Court shall cease, and shall be out of Jurisdiction; and the same Law of the Spiritual Court, if it may appear that the Right of Advowson is in Debate, the Parsonage, and the Detail would not appear at first; quod nota; for it was agreed. Br. Jurisdiction, pl. 60. cites 58 H. 6. 21.

Where the Right of Tithes are in Question between two Parson's, the Trial belongs to the Civil Law. Cor. C. 151. 32 & 42 Eliz. C. B. Dullingham v. Kylley.—Le. 48. pl. 76. Patch 29. Eliz. C. B. The Parish of Eacham's Cafe.—But where two Parson's were of two several Parishes, and the one claimed certain Tithes within the Parish of the other, and said, That he and all his Predecessors Parson's of that Church, still of D. had as'd to have the Tithes of such Lands within the Parish of S. and that was pleaded in the Spiritual Court; and the Court was mov'd to grant a Prohibition; And per Suit and Clauses. He shall have a Prohibition; for he claims only a Portion of Tithes, and that by Preceptum, and not merely as Parson, or by Reason of the Parsonage, but by a Determination; viz. by Presentation, which is a Temporal Court.

Prohibition.
3. If a Man who is not a Parson brings Trespass of his Corn taken against another, who claims it as Tithes, he being Parson; the Court shall not be ousted of Jurisdiction, because it is not between two Persons; and therefore the Idea is but a Traverse of the Writ, that is to say, that it is not the Corn of the Plaintiff. 38 E. 3, 6. b. adjuvated.

4. If a Prior brings Trespass against an Abbot, of his Corn carried away, if Defendant says that the Plaintiff is Parson, and that the Lands of the Defendant ought to be free of Tithes by Composition, and that the Action is brought for Tithes there, the Court shall not be ousted of Jurisdiction, because the Plaintiff has not supposed himself Parson, nor that the Action is brought for Tithes. 38 E. 3, 8.

5. In Trespass against a Prior, of his Corn taken, Defendant faith that he is Parson &c. and the Corn was levied for Tithes from the nine Parts, and so he took them. If Plaintiff pleads an ancient Privilege to be quit of Tithes, and a Composition made between the Plaintiff and Defendant, rendering a certain Sum to the Defendant by the Year, yet the Court shall be ousted of the Jurisdiction, because the Right of Tithes comes in Question. 38 E. 3, 6. b. adjuvated.

between Spiritual Persons for Tithes, the Plaintiff took nothing by his Writ — It was suggested for a Prohibition, that the Parsoniines had compounded with the Parson for the Tithes, but yet the due Tithes were levied and exacted, and the Parson took and carried them away, and the Parsoniines met him and took them from him, whereupon the Parson lived in the Spiritual Court, and a Prohibition was awarded. Nov 40. Brook's Cafe.

6. But in Trespass against a Parson, if the Defendant justifies as for Tithes levied from the nine Parts, and the Plaintiff pleads the Grant of the Defendant of the Tithes of the Land for one or two Years, the Court shall not be ousted of the Jurisdiction. 38 E. 3, 6. b.

7. In Writ of Covenant by the Parson against another, the Plaintiff counts that the Defendant covenanted by Composition to give all his Demesne Lands, the which he hath not done; the Court shall not be ousted of the Jurisdiction, because the Action is grounded upon the Deed which cannot be pleaded elsewhere, and the Plaintiff is not to recover in this Action the Tithes, but only Damages. 38 E. 3, 6. b. adjuvated.

8. In Trespass of his Corn taken, if Defendant faith, that he is Parson of E. and by Composition between his Predecessor and the Plaintiff, who is an Abbot, (it seems it is intended that he was Parson of the Parish where the Corn was taken) that the Demesne Lands of each of them should be free, and the Place where the Corn grew was his Glebe; the Court shall be ousted of Jurisdiction, because the Right of Tithes comes in Question. 38 E. 3, 19. b.

9. If an Abbot be Parson impotently, and another Parson is in Contention with him for Tithes, to the Value of the fourth Part of the Church, Indicavit lies, tho' there are four Perfons, viz. Two Patrons and two Parsons; for the Abbot is Patron and Parson, and so in Effect they are four. Per Littleton and Coke; quere; for afterwards Littleton was contra. Br. Prohibition, pl. 12, cites 12 F. 4. 13.

10. The Parson may sue for Modus Deimendi in the Spiritual Court, and cites 2 R. 3, 3, 4. But if the Parishioner devises it, they ought to succeed; and a Prohibition lies, and it shall be tried at Common Law. Nov 8; Steward's Cafe.
Prohibition.

11. If a Parson pleads a Modus in the Spiritual Court for Tithes, and the other pleads a Modus to the Vicar; this Modus now can never come in Question by this Suit between the Parson and him for Tithes due to the Parson, but must be questioned and determined in the Spiritual Court to whom they belong, whether to the Parson or to the Vicar. Per Coke Ch. J. And says it has been diverse times adjudg'd, and cites Bully's Case in C. B. 2 Bullit. 157. Mich. 11 Jac. Drantion and Cotterill v. Smith.

12. In a Suit for Tithes Defendant pleaded in the Spiritual Court, that the Tithes belonged to another, who was Rector, and not to the Plaintiff, which Plea being refused, and Oath made thereof in B. R. a Prohibition was granted. Vent. 248. Mich. 25 Car. 2. B. R. Anon.

(V) Right of Tithes. [Jurisdiction.]

A libel'd against B. for Tithes in Specie, of certain Pastures in N. where A. was Parson. B. suggested for a Prohibition, That he was an Inhabitant in S. and that Time out of Mind every inhabitant there that had Pastures in N. had paid Tithes for them to the Vicar of S. and that the Vicar of S. had paid to the Parson of N. 2 d. for every Acre. And the Court held the Prohibition did lie, and that the Plaintiff shall declare, and the Defendant may demurr to it, if he will; for it is as if he had preceeded to pay 2 d. for every Acre. Cro. E. 576. pl. 4. Trin. 51 Eliz. B. R. Coleford v. Pece.

2. As in Trespasses of Corn taken, Defendant faith that he was Parson of D. and that the Corn grew in certain Land within his Parish, and was sever'd from the nine Parts; and the Abbot of W. claiming the said Corn as a Portion, commanded the Plaintiff to take them, by which he took them, and the Defendant retook. The Court shall not be out of Jurisdiction till the Right of Tithes comes in Question. 2 Eliz. 4. 15.

3. So if Libel of a Parsonage brings Trespasses for Tithes recover'd from the 9 Parts; the Court shall not be out of Jurisdiction till the Right of Tithes comes in Question by some Plea pleaded. 2 Eliz. 4. 15. B.

4. So if a Parson leaves his Parsonage rendering Rent, and brings Action here for the Rent; this Court shall not be out of Jurisdiction without Plea pleaded of the Right of Tithes. 2 Eliz. 4. 15. B.
5. If the Right of Tithes comes in Question between a Layman and a Spiritual Man, the Temporal Court shall be ousted of Jurisdiction. As in Trespasses by a Parson against a Layman, etc. claimed by

Lessee of the Parson of D. who had two Parts of the Tithes, and the Plaintiff the third Part. Galeogone. This Court shall be ousted of Jurisdiction because 'tis of Tithes; but it was said that M. 43 E. 5. it is adjudged that the Bank shall have Jurisdiction, because it is between a Layman and a Parson; for it was said that by the Statute de Actuallis Case, the Tithes by the Currall pass unto Cottagers, and therefore the Court shall have Jurisdiction; and so it seems clearly, that upon Contention of Tithes between Parson and a Lay Servant of another Parson, the Spiritual Court shall have Jurisdiction; for the Servant claims to the Use of his Master, and not to his own Use by any Lay Court. Br. Jurisdiction, pl. 82. cites 3 H. 35. — Do in Trespasses by a Parson against a Layman of Skene's taken, the Defendant justified by Lessee of Tithes made to him by another Parson, and gave Colour &c. the Plaintiff said that the Skene's were a Portion of Tithes belonging to him; and therefore the Defendant prayed that the Court be ousted of Jurisdiction, for both claim the Tithes, and because he concluded his Part to the Action, and also he is a Layman, he cannot try for Tithes in the Spiritual Court; therefore this Court of Bank shall have the Jurisdiction. Queue; for the Truth was, they were growing in the Parish of the Lessor of the Defendant, but the Plaintiff as Parson of another Parish claimed them as Portion of Tithes belonging to him; and they demand'd, and so Adjourned. Br. Jurisdiction, pl. 80. cites 20 H. 6. 17. — S. C. Cited Cro. E. 251. in Case of Dallingham v. Kyylest. See (Y) pl. 9.

6. In Trespasses by a Parson against J. S. of Corn taken, if Defendant justifies as Servant to another Parson, as for Tithes seceded from the 2 Parts within his Parish, S. who is Plaintiff replies, That he is Sarf of the Parish adjoining, and that he has a Part within the other Parish, and therefore he took the Corn as. The Court shall be ousted of Jurisdiction, because the Right of Tithes comes in Question, 31 H. 6. 11. adjudged.

and took as Tithes feared from the 2nd Parts. Judgment if the Court will take Confinement, &c. and Altn. for he cannot try the Right of Tithes as his Master may, and therefore he pleaded it in Bar. Br. Jurisdiction, pl. 8. cites 44 E. 3. 32. — S. P. Br. Jurisdiction, pl. 89. cites 1 H. 6. 4.

So in Trespasses of Corn in Stock and Hay in Stacks by the Parson of D. and the Defendant said that it grow'd in the Parish of S. which J. was Parson, and were seceded from the Ninth Parts, and he as Bailiff of it took them; and demanded Judgment if the Court will take Confinement, &c. and Altn. but because it is between Parson and Bailiff of the other Parson, which Bailiff cannot try the Right of Tithes in Court Christian Br. Jurisdiction, pl. 19. cites 50 E. 3. 23.

So in Trespasses of Grain taken between a Servant and Servant of a Person who claimed as Tithes of his Master, and the Plaintiff claimed as his Tithes as Vicar, affirming that they were the Tithes of the Parson. And per Moyles, Needham and Younge, because it is between Vicar and Servant of Parson, the Court shall have Jurisdiction, for the Plaintiff cannot have Action against the Servant in the Spiritual Court; provided it was between Vicar and Parson, or between, and Parson; and for this in a Case as here, the Servant may have Prohibition against the Spiritual Court. Br. Jurisdiction, pl. 75. cites 6 E. 4. 3. — But Action lies in Spiritual Court between Parson and Farmer of another Parson; for he claims the Tithes to himself during his Term, and shall have Action in the Spiritual Court, and Action of Tithes lies there against him, by being the Owner of a Person who does not claim Interest in the Tithes; and therefore as here, in the 1st Case this Lay Court shall have Jurisdiction. Br. ibid. Per Moyles.

7. In an Action, tho' both Parties are Laymen, yet if it be come so far by Monstrance of the Parties, that the Issue shall be upon Right of Tithes; the Temporal Court shall be ousted of Jurisdiction. 2 E. 4. 15. v. 29 all the Servants.

8. Trespasses by the Parson of E. of Corn carried away in E. the Defendant said that he is Parson of W. and he carried them away as His Tithes, and the Plaintiff claims them as His Tithes &c. Judgment if the Court will take Confinement. And per Cur. The Defendant ought to say that the Place where &c. is in his Parish, or if he be within the Parish of the Plaintiff, to claim it as a Portion; and therefore the Defendant proceeded in the Place &c. for Tithes there; and well; and because the Right of Tithes were to be tried, the Court ousted him of Jurisdiction, notwithstanding that the Plaintiff said that the Defendant had leased his Parsonage for Tents, which yet continues. Br. Jurisdiction, pl. 28. cites 14 H. 4. 17.

9. Trespasses between Parson and Parson; if the Right of Tithes be in Law, or in a Place where they grow as in the one

Parish or the other, this shall be tried in Bar. Br. 14 H. 4. 11.
10. If the Lord of a Manor claims the Tithes of such Lands in D. to find a Chaplain in D. and the Parishioners also claim it for the same Pur- pose, it is laid for Law that the Lay Court shall have Jurisdiction between them, and not the Spiritual Court. Br. Jurisdiction, pl. 95. cites 25 H. 8.

11. A Parson may sue Pro Modo Decimandi in the Court Christian; as if the Parishioner will not make his Tithe into Cocks where he ought by the Caffion; but then the Suit ought to be special for not setting it out in Cocks, and not generally for not setting it out. Per Cur. Lat. 125. in Layton's Case.

12. Libel in the Spiritual Court against W. for Tithes; W. suggests for a Prohibition, That the Dean and Chapter of Carlisle are seised of the Manor of which the Place where is Parcel, and that he is Copyholder thereof in Fee, and that all the Tenants of the Manor have been discharged of the fourth Part of the Tithes for all their Lands (in whatsoever Place they lie) paying to the Lord so much for Quit-Rent. And upon this Suggestion the other demurr'd. And per Cur. No Prohibition shall go; for it cannot be that other Lands held of others may be discharged by Payment to the Lord; and it does not appear that the Payment to the Lord here was in other Manner than for Rents; but if it was, it does not appear that he hath any Title to receive them, and so Quacunque via no Prohibition. Sid. 258. Trin. 17 Car. 2. B. K. Wilkinston v. Richardson.

13. A Prohibition was prays'd, upon a Suggestion that all Letters Patents and Grants of the King are triable &c. at Common Law, and not in the Spiritual Court, and that the now Defendant libell'd there for Tithes, upon a Title to the Rectory by a Grant of the King, whereas the Plaintiff had a precedent Title to the same Rectory by the King's Grant. The Prohibition was granted by three Justices, but Levins contra. Because the Suit was founded on the Tort only, (viz.) In Withdrawing the Tithes; and if the Title should come in Question, it falls in only as an Incident; and in Suits at Common Law for Tithes, the Declaration is general as Proprietor, without shewing Title in the Declaration; And in such Cases the Spiritual Court shall try the Temporal Matter, so as they proceed according to the Temporal Law therein; and he cited many Cases to that Purpose, but a Prohibition was granted. 3 Lev. 72. Mich. 34 Car. 2. C. B. Bonfey v. Lee.

14. One may libel in the Spiritual Court for Tithe of Rakeings of Corn, if it never was gather'd into Sheaves, but after Corn has been gathered into Sheaves, and there was no Fraud in the Gathering; and Prohibition would lie. Per Holt. 12 Mod. 235. Mich. 10 W. 3. The King v. Moor.

(Z) What Persons shall have the Prohibition. Right of Tithes. Spiritual Persons.
of Memory re. to have those Tithes, and is endowed of them, and that the Vicar had leased them to him, [it] this Plea is rested in this Ecclesiastical Court, per no Prohibition shall be granted, because it is between Ecclesiastical Persons. Tr. 11. B. R. Per Curiam.

3. If the Parson sues in the Ecclesiastical Court for Tithes, and Defendant pleads a Modus to be paid to the Vicar in Discharge of those Tithes, and that this Modus anciently was due to the Parson, and was paid within Time of Memory upon the Endowment of the Vicarage this Modus was affigned to the Vicar, a Prohibition shall be granted; because upon the Matter this Plea amounts but to this, that Tithes in kind are discharged by the Parson, and made Lay Fee. H. 7. Car. B. R. between and Sir Richard Butler, per Curiam. Prohibition granted. Contra H. 11. Car. B. R. between Smith and Drayton, per Curiam.

of A. for all Tithes of Willows. It was held that a Modus to the Rector is a good Liquid against the Thos. Mod. 210. Trin. 25. Car. 2. C. B. Anon.

4. If a Man sues for Tithes as Rector against another, and another comes in Pro Interest sue, claiming the Tithes by the Letters Patents of the King, and after sues for a Prohibition, because the Spiritual Court shall not try the Letters Patents, per he shall not have a Prohibition, because they are Spiritual Persons. M. 14. J. between Adams and Sir Thomas Pass for Rectors of Skillingdean against Haverford. Prohibition denied.

5. If a Vicar sues against the Parson Appropriate, this is a Layman, in the Ecclesiastical Court, for Tithes of Salston, supposing them to be Minute Decima, whereas he is endowed, and the Parson there says that he has used Time whereas Memory re. to have Tithes of 1s. and Corn of this Land, till new within 40 Years, when it was town with Salston; yet no Prohibition shall be granted to try this Custom, and whether Salston be Small Tithes, but it shall be tried in the Ecclesiastical Court, mainly as it is between the Parson and Vicar, for they can but judge of this, and of the Composition. P. 38. Car. B. R. between Beldingfield and Fokes adjudged, and Composition granted.

for Tithes Salston against the Vicar, who pleased that Time out of Mind he and his Predecessor had Tithe of all Salston growing within the Parish &c. And per Tantum, Thos' here the License be made Party to the Suit, yet the Right of the Tithes is in Question between two Spiritual Men, and to the Temporal Court has no Jurisdiction; and said that this very Prince was enjoyed 32 Eas. between Barnard and Beldingfield. This Court, that the Party should have Composition. The other of the Partys is a Man Temporal, and to was it now your Case. — C. Mo. 299. p. 125. by Name of Beldingfield v. Reath, minister the suit to have been by the Vicar against the Parson, and that a Composition was granted, according to Poole. — E. 36. (69) p. 25. Ps. 15. 35. Eas. B. R. accordingly. — 3 Nell. Abr. 272. p. 2. et alia. Goldsb 149 that a Prohibition was granted, because the Plea was refused in the Spiritual Court. But the Books were not here.

6. If the Vicar sues a Partitioner for a Modus, and Defendant pleads A libros that it belongs to the Parson, yet no Prohibition shall be granted, because the Right of Tithes comes in Question. Mith. 29. 29. Eas. between the Vicar of * Fawkridge and Boffes adjudged, and a Composition was granted accordingly.

That Time out of Mind &c. they had paid to the Vicar of the said Parish a Modus of 4d. for the Tithe of Hay of every Acre. It was moved, That upon that Surmise a Prohibition ought not to be granted, for that a Modus Decennial shall never come in Question but the Parson ought to have pleaded the same Matter in the Spiritual Court, fell That the same goes to the Vicar, and not to the Parson; and then if the Vicar sues for the Tithes of the Hay, the Modus Decennial will come in Question, and thito' that he has avered in his Surmise that the Tithes-Hay belongs to the Vicar, yet that is not material, and a Composition was awarded. 5 Le 287. 21. 21. Park. 5. Eas. in C. B. Botham v. Lady Graham — C. Gould. 23. p. 85. and B. D. 59. p. 76.

7. 13 F. 1. 17. 5. Off. 4. Enacts that when the Parson of the Church is Disturbed, to demand Tithes in the next Parish in a Writ of * Intenti- cur, the Parson or the Parson so Disturbed, for all Exc. a Writ to be served at
Prohibition.

Common

Advowson of the Tithes being in Demand; And when it is Derogated, then shall the Plea pass in the Court Christian, as far forth as it is Derogated in the King’s Court.

Law of England, the Form whereof of Appearance in Glanville and other Antient Authors. 2 Inft. 362.——It is a Preliminary, and shall be directed as well unto the Judge of the Court as unto the Party, that they do not proceed in the Plea etc. and then the Patron of that Patron who is so prohibited by the Indicavit, may have and use a Writ of Right of Advowson and Dilates. F. N. B. 50. (E)

By the Common Law, if the Incumbent of one Patron demanded Tithes against the Incumbent of another Patron, the Writ of Indicavit did lie, for that the Right of the Patronage should come in Question; for by the Pretentation of the Patron his Incumbent is to have the Tithes, which are the Profits of the Church; and in a Writ of Right of Advowson the Patron shall allege the Epistles in his Incumbent, in Taking of the Great and Small Tithes; and therefore if the Right of the Tithes come in Question that concerned the Right of Advowson, the Writ of Indicavit did lie; and this appeareth by the Writ itself. 2 Inft. 364.

But for Substitution of Tithes against an Inhabitant within the Parth of the Rectors, claiming from one Patron, where the Right of Advowson of the Tithes never came in Question, the Court Christian hath Jurisdiction. 2 Inft. 364.

The mischief before this Statute was, That feasing the Right of Tithes could not be tried between the two Persons after the Indicavit granted, the Person prohibited was without Remedy for Trial of the Right of Tithes; and therefore this Act hath given the Patron, whose Clerk is prohibited, a Writ of Right of Advowson Decennial, the Form of which Writ appeareth in the Register, and if the Right be tried for the Demandant, the Court shall be prohibited to the Court Christian. 2 Inft. 364.

But what if the Patron hath but an Estate in Tail, or an Estate for Life &c. so as he cannot have this Writ of Right of Advowson, what Remedy shall be had for Trial of the Right of Tithes in this Case? It seemseth by Conformity of this Statute, the Defendant in the Indicavit appearing upon the Attachment, shall plead to the Right of the Tithes in the King’s Court, or otherwise he shall be without Remedy. And this hath been with the Words of the Writ of Indicavit, viz. Verba probantibus, non Placitum illud teneatis donec difficiuil furrit in Cura noformo, ad quem illorum pertinent ejusdem Ecclesiae advocato etc. 2 Inft. 364.

By this Branch it appeareth, That the Value of the Tithes at the making of this Act was not material; for of whatever Value they were of, the Right of Tithes could not be determined in Court Christian, but by the Statute Artistic, Coram cap 2, the Tithes must amount to a fourth Part of the Value of the Church in that Case, or otherwise the Writ of Indicavit doth not lie; but the King may have a Writ of a lesser Part, for he is not bound by that Act. 2 Inft. 364.—F. N. B. 50. (E)

Also by this Act a Writ of Indicavit was maintained Ante littera testament. That is, when the Party hath libelled in Court Christian, and the adverse Party hath answered thereunto; but this is remedied by the Statute 1st conjunction Foggatt. 2 Inft. 365.—F. N. B. 50. (G) That Indicavit lies not before a Libel exhibited, and he ought to shew the Copy thereof before the Indicavit be granted; and Indicavit lies not after Judgment in the Spiritual Court.——Indicavit lies only before Sentence given in the Spiritual Court. Br. Prohibition. pl. 21. cites the Register, fol 47; — S. P. 2 Inft. 365. For it is but a Superfides donee &c. Ne placitum illud teneatis, donee difficilium furrit etc. And this Act faith, Procedat pro omnibus placitum in Curia Christianitatis, which could not be after Sentence.

And albeit this Statute doth give the Writ of Right of Advowson of Tithes, yet a Writ may be brought De Decesis & Oblationibus; for Oblations be in Confimillia calce. 2 Infl. 365.

This Writ of Indicavit is against the Canonical Sanction, and yet hath been ever obeyed; for all Foreign Sanctions, or Causes against the Law or Custom of the Realm, are of no Force, and bind not the Indicavit. 2 Infl. 365.

The Writ of Indicavit shall not mention that the Tithes &c. in Suit amount to the fourth Part of the Church; but it shall be pleaded by the other Party to have a Confutation. 2 Infl. 365.

If an Abbot be Parson Imparson of the Church of D. and another Abbot is Parson Imparson in the Church of E. so that there be (in Respect of the Improprations) but two Parties, yet because each Parson is both Patron and Incumbent, an Indicavit lieth between them. 2 Infl. 365.

8. If two Incumbents are in Suit for Tithes, which exceed the fourth Part of the Church, there, if one and the same Man be Patron of both Churches, the one Incumbent nor the other shall not have Prohibition nor Indicavit; for which foever of the Incumbents shall have the Tithes, it is no Prejudice to the Patron; Contra if two several Men were Patrons. Br. Prohibition. pl. 16. cites 2 H. 7. 12. Per Kebbe for Law.

9. A Proprietor of the Parsonage of S. in Suffolk, libell’d against C. for Tithes of certain Land in the Parish of S. Afterwards B. the Parson of H. in Suffolk, came in Pro interesse suo, and alleged a Custom within the Parish of S. that the Parson of H. should have 13 Weeks for the Tithes of those Lands in S. and that in Recompense thereof the Parson of S. had 13 Weeks for the Tithes of such Lands in H. and formed for a Prohibition, that he had pleaded this in the Spiritual Court, and it would not be received. It was objected that a Prohibition lies not here, it being for one that is not fixed, and it is not Reason he should try the Suit of a Stranger. It was answered, That the Right of Tithes is not in Question, but a Modus
Prohibition.

Modus Decimandi, and so is triable here, and that the Parishioner might well plead this, and that what the Parishioner might plead, he that comes in Pro Interesse may plead. Gedway held that the Parishioner might well plead it, but that when the Parson of another Parish will plead it, the Right of Tithes will thereby come in Question between the two Parishes; and cited 20 H. 6. 18. and 31 H. 6. And afterwards the Court was of Opinion to grant a Conflatation. Sed adjournatur. Cro. E. 257. Mich. 33 & 34 Eliz. C. B. Dullingham v. Kykley.

10. Libel for Tithes of Underwood in Thackley Park; the Defendant foggested a Modus to pay 10s. yearly to the Vicar for all Tithes of Underwood there, yet a Conflation was granted, because it appeared that the Suit, as to the Right of Tithes, was between the Parson and the Vicar, which is triable in the Spiritual Court. 3 Nelf. a. 315. pl. 9. cites Moor 907. * Sherbourne v. Cleirke, in the Case of Fryer v. Bethney, S. P. Moor 907. Dubitatur. Because a Modus was foggested, which is not triable in that Court.

the Queen's Solicitor cited two Judgments, viz. One of Mich. 28 & 29 Eliz. Briti b. Hunt Parson of Pancras, and the other Mich. 30 & 31 Eliz. Dame Grimthan's Case. Ed adjournatur. Mo. 907. pl. 1257. Mich. 35 & 36 Eliz. B. R. Sherbourne v. Clarke — — — — The like Case was in Question for Tite Hay, where the Sum of is a Modus Decimandi of 6s. 8 d. to the Vicar, the Suit being by the Parson who was Patron of the Vicarage. And it was doubted if a Conflation should be granted, because the Ground of the Prohibition is a Modus Decimandi, which the Spiritual Court will not allow. Quere. Mo. 907. pl. 1269. Mich. 36 Eliz. Fryer v. Bethney.

11. Vicar Libels for Small Tithes, upon his Composition between him and the Parson upon the Appropriation, against B. Defendant in Court Christian pleads Preterition for the Parson against the Composition; and because the Court Christian allowed the Preterition against the Composition, the Vicar had Prohibition in B. R. 16 bar his own Suit in Ecclesiastical Court; and upon several Arguments the Prohibition stood. Mo. 730. pl. 1081. Pringe v. Child.

(A. a) What Persons shall have the Prohibition.

1. If the Churchwardens of A. libel against the Parishioners of B. for the Reparation of A. the Parish Church, and the Defendants allege that in the same Parish there is a Parish Church and Chapel of — — — —. The Eafe, and preterite that they have used Time wherein Memory is to Court seems'd repair the Chapel, and in Consideration thereof that they have been discharged of the Reparation of the Church, yet no Prohibition shall be granted, because both those Things belong to the Ecclesiastical Court. D. 12 Ja. B. R. between the Churchwardens of Ashton and Brum- mage.

vise. Roll Rep. 126. S. C. — — If the Chapel of Eafe has been built within Time of Memory, they ought to have Proof of some Agreement, by Virtue of which they are discharged of Reparations of the Mother Church. Mar. 91. pl. 151. Hill. 16 Car. B. R. Anon.

2. If the Vicar sues the Parson Improperate for Damages for cutting the Trees growing in the Church-yard, a Prohibition shall be granted, because if the Trees belong to him he may have Trespass at Common Law. D. 13 Ja. B. R. Bellamy's Case resolved, and Prohibition granted.

yard belong to the Vicar, and not to the Parson; and that therefore it was maintainable in the Spiritual Court; but the Suit here being for Damages, the Court agreed that no Conflation should be granted. Roll Rep. 255. pl. 25. Mich. 13 Jac. B. R. Bellamy and ....

3. If there be a Parsonage Improperate, which comes to the Crown by the Ditillation of Monasteries, and after this is granted over to a common Person, and there is also a Vicarage endowed in the same Parish, and
by Command of the Bishop of the Archdiocese in his Distinction the Churchwardens make a Terrar of the Tithes and Elick in the Parish (being) which belong to the Parson, and which to the Vicar, and deliver it into the Spiritual Court; and thereupon the Vicar Libels in the Spiritual Court against the Parson, to have it confirmed and sentenced for him, and the Parson Prays a Prohibition, and shows in his Suggestion, and agrees that all which is in the Terrar belong to the Vicar, except some particular Tithes, to wit, Tithes of Carcoats, Coal, and such like, growing and being in Lands out of Gardens, and for Burials in the Chancel, and for them prays a Prohibition; a Prohibition lies, because tho' it be between Parson and Vicar, and to the Right of Tithes will come in Question between them, yet (because it is not between the Vicar or Parson, and a Parishioner, in which Case no Prohibition would be, because against him the proper Suit is in the Spiritual Court) the Prohibition lies, because the Vicar may have his Action at the Common Law against the Parson, if he takes the Tithes being set out by the Parishioner. 

5. If a Man libels in the Spiritual Court for a Matter which does not appertain to the Jurisdiction of the Spiritual Court, but to the Common Law, as for Matter of Frankentenement, yet he himself against his own Suit may pray a Prohibition, and shall have it. 

6. If the Parson of D. sues a Parishioner of the Parish of S. for Small Tithes, as a Porion appertaining to his Rectory of D. and thereupon comes the Parson of S. Pro interelle tuo, and claims it as Parson of S. appertaining to his Rectory, it being within his Parish; in this Case no Prohibition lies for the Parson of D. to prohibit his own Suit, because it is between Spiritual Persons, and the Plaintiff can not have any Remedy at the Common Law for those Tithes, they being Small Tithes, which are not within 2 E. 6. 

7. If the Bounds of a Vill within a Parish, come in Question in the Spiritual Court, in a Suit between the Parson Improper and the Vicar of the same Parish, as if the Vicar claims all Tithes within the Vill of D. within the Parish, and the Parson all Tithes within the Residence of the Parish, and the Question is between them, whether cer-
Prohibition. 29

In what Cases. 3

1. If a Parish recover in Quare Impedit in 2 B. against an Incumbent, if a Man recover his Place, 
upon which the Incumbent brings a Writ of Error in B. R. where the judgment is affirmed, and A Petition to the Bishop granted for the Recoverer, and by Force thereof his Clerk is Admitted and Instructed by the Bishop, and after the Metropolitan grants an Injunction to the Archbishop not to induce him; a Prohibition may be granted, because it appears apparently that it is for Delay. 13 Eliz. B. R. between Murray and Sir H. Wallop, for the Church of Langham in Cornwall, and another Petition for a Prohibition granted.

Admonition by Provision from the Pope, in the Spiritual Court to avoid the other Clerk, the Patron who hath recovered his Prebend, &c. shall have a Prohibition unto the Judge for to barcafe &c. F. N. B. 42. (C)

2. 13 E. 1. Stat. 4. S. 1. 2. 3. 4. For Penance Corporal or Penitent in- Note a Diproven

for deadly Sin, as Consecration, Adultery, or the like; also for not being between a Spiritual Man, to fence, or not Reparins the Church, or injuriously Adorning it, a Prohibition hath not; Nor for Oblations, Titles, Morteames, Benefices, * Laying violent Hands upon a Clerk, Deception, (when Money is Church committed) Nor for Breaking an Oath.

of God, and God's dedicated to Divine Service, or merely Ecclesiastical; for Living of violent Hands, upon the Person of any Infras Secres Ordines, the Ecclesiastical Court hath Condemnation; but for the Violent taking away, Consuming of Ornaments of the Church, or Goods dedicated to Divine Service, that Court hath no Condemnation, for that is not given to them; as for Taking away of the Bible, the Book of Divine Service, the Chalice, and the like, or for the Taking away of a Image out of the Church, but Remedy must be taken for thefts at the Common Law. 2 Inst. 492. — But if a Clergyman be arrested by Privy Council, he cannot for this be in the Ecclesiastical Court. 2 Inst. 492. — See Perugione (N. c) pl. 9.

* A Parson or other Priest may sue in the Spiritual Court for Laying violent Hands upon him &c. in order to have him Excommunicated, but not to have Amendments &c. F. N. B. 41. (K) — And if the Defendant in a Case of Deception be put to Corporal Punishment, or for Laying violent Hands upon Clerks &c. if the Party will redeem in Penance, and agree to pay the Party dammified a certain Sum of Money for his Damages, the Party dammified may Suit for this in the Court Christian; and if the other Party purchaseth a Prohibition, he shall have a Condemnation. F. N. B. 55. (A) — And if one is condemned in the Spiritual Court for Deception, and he appeals, and the Sentence is confirmed, and is confirmed in 20 a. and, and the Cause remitted whereupon he may a Prohibition, the other Party shall have a Condemnation. F. N. B. 52. (D) — S P. And fame Cases cited 2 Rep. 22. 6 pl. 17. Tit. 2. 24. E. B. R. in a Case of Almirr v. Storps, and says that upon these Divert sales you will better understand the better Opinion in 12 H. 2. and the Sense of the Registrar, fol. 32. where all the Judges refused to grant Condemnation in a Case of Deception, viz. whether the Murer of the Deception was not merely and solely Spiritual, or because the Plaintiff sued for Damages or Amendments for such Deception. — And if the Clerk sue in Court Christian for Damages for the Battery, he is in Case of Premises; for in that Case the Ecclesiastical Judge ought to proceed Ex Officio only to correct the Site 2 Inst. 492.
Prohibition.

Prohibition; for that P. libelled against L. before the High Commission, that the said L. beat him, or at leas threaten him with a Bill, and would have drawn him, being a Clerk, and called him Goode and Woodcock, with many such Words; whereas such Pleas of Affulate and Battery appertain to the Court Temporal. And now Confutation was prayed; for being done to a Clerk, the Court Spiritual might examine it. But all the Court held, That a Prohibition well lies; for although for Violent manner injections in Clericum, the Suit ought to be in the Spiritual Court, as appears by Articuli Cleri, cap. 1. yet for an Afflate only, it is clear that the Suit ought to be at the Common Law, and for these Words they be not actionable; therefore it is it be not be taken for a Clerk.

4. Attachment upon a Prohibition, because the Defendant sued in Court Christian for Detinue of Goods, the other ther'w'd that he sued for Detinue of Goods defined by Testament, where the Plaintiff claimed them by Gift. And yet per Judicium, the Plaintiff took nothing by his Writ; for it be under the Name of a Legacy, it belongs to the Spiritual Law whether he sue Right or Wrong; and notwithstanding the other ther'w'd Gift, it belongs to them to try the Circumstances, if the Droste be good or not. Br. Attachment for Prohibition, pl. 4. cites 46 Eliz. 3d. 32.

5. Where a Man suits in the Spiritual Court for Spiritual Caules, and the Defendant purports a Prohibition directed unto the Judges there, and delivers the same, and for doing the Judges excommunicate him for the Offence which he did to the Church, in bringing a Prohibition to them upon a Spiritual Cause, the Party excommunicate shall have a New Prohibition upon that Matter, commanding them to revoke the same; for a Man shall not be punished for suing forth Writs in the King's Courts, whether he is Right or Wrong. F.N.B. 42. (G)

6. Always when an All of Parliament commands or prohibits any Court, he it Temporal or Spiritual, to do any Thing Temporal or Spiritual, if force, which is punishable by Canon Law, they may also proceed to Deposition, but not punish it as a Temporal Offence. 12 Mod. 259. in Case of Bishop of St. David's v. Lucy.

7. If the Spiritual Court refuses a Plea nearly Spiritual, as Excommunication, Divorce, Hereby, Simony &c. an Appeal lies, but no Prohibition. 13 Rep. 44. Trin. 7 Jac.

8. A Teteator bequeath'd several Legacies out of a Term for Years to the Children of A. and made J. S. Executor, A. on the behalf of his Children required J. S. to pay the Money to him, that he might employ it for his Children's Benefit, but A. relaying, J. S. fixed him in the Spiritual Court, and had Sentence; whereupon A. mov'd for a Prohibition, alleging that he was Executor, and chargeable in an Account for the Money; but because he came after Sentence &c. and also because he refused to give Security for Payment of the Legacies to the Children, the Court relinced to grant a Prohibition. Godb. 243. pl. 337. Hill. 11 Jac. C. B. Ayliffe v. Brown.

9. Libel for Tribus; the Defendant, who was a Layman, sugggested for a Prohibition, That he was seized of the Manor of D. and to proceed to have the Tribus within that Manor, and that he and all those whose Easte he had &c. had used to maintain a Chaplain in the Church of D. It was objected, That the Defendant had not alleged that the Church of D. is within the same Parishes where the Manor is, and is no Consideration to the Parson who is the Plaintiff. 2dly. Because the Maintenance of the Parson is not alleged to extensiverly as the Claim of the Tribes, 1st. Time.
Prohibition.

out of Mind &c. 3dly. He has not prov’d that Part of the Suggestion, as to the Maintenance of the Parson, within 6 Months, tho' he has the Residue, whereas this is the Principal Matter which makes his Prescription good, and that therefore a Consultation ought to be granted; Quod fuit concemissum per Cur. as to this last Point. But Coke said, That it should be granted for the other Exceptions also; but as to the other Justices said nothing. Roll. Rep. 2. pl. 3. Paich. 12 Jac. B. R. Boocher v. Rogers.

10. A Libel was brought for Tithes; the Plaintiff here suggested for a Prohibition. That he is an Executor, and was sued for Double Damages, which do not lie against an Executor. Keyling J. said, That if by the Common Law an Executor shall not be charg’d, if the Spiritual Court will sue him there, a Prohibition lies, because it exposeth him to a Devaitavit. But the Reason of Keyling was disaffolved, and a Prohibition was denied. Raym. 95. Hill. 15 & 16 Cur. 2. B. R. Wilks v. Ruffell.

11. A Suggestion that the Spiritual Court objected to the Credibility of a Witness, is not a sufficient Ground for a Prohibition; for they are the proper Judges of the Credit of a Witness. Carth. 143. Trin. 2 W. & M. in Case of Shotter v. Friend.

12. It is not a sufficient Ground for a Prohibition to suggest that the Plaintiff had only one Witness to prove the Fact, unless he allege that he offered such Proof, and it was refused for Insufficiency. Carth 144. in Case of Shotter v. Friend.

13. A Libel was for Building Sheds upon the Church-yard; it was suggested for a Prohibition. That they were built upon a Lay-fee, and not on any Part of the Church-yard. This was held a good Suggestion. Carth. 151. Trin. 2 W. & M. Quilter v. Newton.

14. Where the Suggestion upon which a Prohibition is moved for, appeared to be false, the Court denied to grant a Prohibition upon the Authority of the Parish of Alden’s Case in Hob. 66. Ld Raym. Rep. 222. Patch. 9 W. 3. Breedon v. Gill.

15. A Suggestion for a Prohibition was. 18. That they refused a Copy of the Libel. 2dly. That the Citation was Pro Profanatione Cemeterii, which supposeth Profanation was at Corvus, in Digging up a Corpse for a View, according to the Duty of his Office. Holt Ch. J. said, That these Matters ought not to be joined, and are Grounds for Prohibitions of different Natures; the first being for a Prohibition only Quisque, which is Ipso Facto discharged by granting a Copy of the Libel without Writ of Conulsation, and the other a Peremptory Prohibition, which ties them up till a Consultation; and upon such a Suggestion we ought not to grant a Prohibition. Indeed a Prohibition Quisque they give a Copy of the Libel, if it be granted before any Libel exhibited does not bind them from exhibiting a Libel, and after they shall not proceed till they give a Copy of it; and then to have a Prohibition upon the Merits, you must make a new Suggestion. 6 Mod. 328. Mich. 3 Ann. B. R. Anon.

(B. a 2)
(B. a 2) In what Cages it lies. In respect of the Libel,

1. 2 H. 5. 3. \(\text{E}^\text{N} \text{A} \text{C} \text{T} \text{S} \), That a Copy of a Libel grantable in the Eclesiastical Court shall be presently delivered upon the Defendant's Appearance.

R. B. delivered 200 Marks to the Chamberlain of London to deliver to his Executors or Administrators after his Decease to dispense for his Soul, and he delivered these 200 Marks to T. B. upon Bond to deliver to the Chamberlain when it should be required; R. B. died, and P. P. took Administration from the Bishop of London; whereupon he sued Subpoenas against the Chamberlain to the Obligation against T. B. to bring in the said 200 Marks, because the Obligation was made to the Use of R. B. and after T. B. (because R. B. had Goods in divers Dioceses, as he pretended) obtained Administration from the Archbishop of Canterbury, and after libel'd in the Archs at the Church of Bow, to cite P. P. and after P. P. sued Prohibition out of Chancery to the Archs, commanding them to deliver the Copy of the Libel to the said P. P. according to the Statute of 2 H. 5. cap. 2. to require till the Copy of the Libel was deliver'd, and not relinquishing this they proceeded; whereupon the said P. P. sued Attachment upon the Prohibition and Statute aforesaid, rehearing the Statute, against the Judge of the Spiritual Court, and prayed another Prohibition to the Party and to the Officer to suffer, because Matter is pending in Bank to deliver the Libel; and the other said, That this is a Spiritual Matter, for the Power of the Bishop of Canterbury and of London are here to be tried; and notwithstanding this a special Prohibition was granted, that they suquease 'till Libel be deliver'd to the Party; quod not. Br. Prohibition, pl. 11. cites 4 E. 5. 37. — Br. Prohibition, pl. 19. cites S. C. — Br. Consent, pl. 10. cites S. C.

If a Man be fixed in the Spiritual Court, and the Judges there will not grant the Defendant a Copy of the Libel, then he shall have a * Prohibition directed to them to suquease &c. until they have deliver'd the Copy of the Libel according to the Statute 2 H. 5. and also the Defendant may have an Action against them upon the said Statute, if they will not deliver the Copy of the Libel, whether the Cause in the Libel be a Spiritual Cause or not. F. N. B. 45. (E) — * S. P. Hard 552 in the Case of the King v. Sir Edward Lake. — 2 Salk. 555. pl. 19. Anon. — S. P. But the Court being instructed, That the Prohibition which was taken was absoleute, they did not think fit to grant a Consoleation, but discharged it by a Supercedent; whereupon the Eclesiastical Court proceeded to execonseicate the Party for want of answering, who again moved for a Prohibition, and the Court granted one with a Mandamus in it to absoleute the Party, if it were for not answering before they gave him a Copy of the Articles. 1 Vent. 4. Hill. 20 & 21 Car. 2. Anonimous.

But a Prohibition Quodque a Copy of the Libel deliver'd, being mov'd for, was refund'd, without an Affidavit that they tender'd the Fees, and yet they refund'd to deliver it. 1 Keb 825. pl. 117. Mich. 16 Car. 2. B. P. Dr. Whittington's Case.

It was formerly held by all the Judges of England, That when there was a Proceeding Ex Officio in the Eclesiastical Court, they were not bound to give the Party a Copy of the Articles; but the Law is otherwise; for in such Cases, if they refuse to give a Copy of the Articles, a Prohibition shall go quánfere they deliver it; and accordingly, upon Motion, a Prohibition was granted in the Like Case. Per Holt Ch. Juft. Lord Raym. 2 Rep. 991. pl. 5. Trim. 2 Ann. B. R. Anon. — S. C. cited 2 Salk. 555. pl. 19. Anon. — But Patch. 11 W. 3. Holt Ch. J. deny'd to grant a Prohibition to the Admint. Court, upon a slaughter, that they refused to give the Party a Copy of the Libel, because the Statute extends only to Eclesiastical Courts, and not to the Admiralty Court. Lord Raym. Rep. 445. Anon — S. C. cited 2 Salk. 553. pl. 19. Hill. 2 Ann. B. R. in a Note of the Reporters.

* S. P. Per Car. Comb. 136.

2. No Prohibition shall be granted where the Libel is * not brought into Court, and the Party put to answer to it, viz. Of the Tithes, and this cerificd to the Chancellor by view of the Libel; Per Henxton; who said, That this is by the Statute De Regia Prohibitions, and of Conjunctim Fomitis in Pinc, which Porteauce concern'd, and thereupon the Parties pleas'd over. Br. Prohibition, pl. 22. cites 3 H. 6. 14.

3. A Prohibition was granted in Case of Tithes, because the Libel was not against proper Parties. Le. 10. Mich. 25 & 26 Eliz. C. B. Sutton v. Dowle.

4. Libel for Tithes of Biller, Faggots, and Tall-wood, and aver'd It came of Birch, Hoft, Hole, and Maple; the Defendant siggested, That they came from Oak, Ald, Elm, and Birch; and the Plaintiff, in his Libel, had not alleg'd how many Faggots were made of Hoft, therefore a Prohibition was granted, and afterwards a Consoleation was denied. Goldsb. 127. pl. 18. Hill. 43 Eliz.

5. Defendant siggested for a Prohibition to a Libel for Tithes, That the Prior of D. was left of the Grange of S. in Right of his Priory, and preferred in the Prior and his Predecessors to it if this Grange without Payment.
Prohibition.

Payment of Tithes, and fixed the Dismission thereof, and that it came to H. 8, by the Statute of 31 H. 8, to hold it as the Prior held it before, and is derived from a Leaf from Queen Elizabeth for 50 Years, and that afterwards the Plaintiff libel'd against him in the Spiritual Court for the Tithe of 40 Fleece of Wool &c. The Defendant in the Prohibition pleaded, that he sued the Plaintiff for the Tithes of 400 Fleece of Wool, and so pray'd a Confutation; and because of this Variance between the Libel and the Suggestion a Confutation was awarded by the Judges of Allire, and Double Costs; but adjudg'd erroneous for both Causes, for the Variance is not material, because the Plaintiff prescribed in New Testament, and is ordered the Spiritual Court of all Jurisdiction for any Tithes arising from this Grange, and the giving Double Costs is Error upon the very Letter of the Statute of 2 E. 6. which gives them in no Case but in Default of proving his Suggestion. Yelv. 79. Mich. 3 Jac. Hutton v. Barnes.

6. The Defendant was presented in the Ecclesiastical Court for working upon Holidays, viz. Carrying Hay on St. Jobu Baptift's Day in Church Time; but a Prohibition was granted, because this was out of the Statute by the very Words of the Act, viz. 3 E. 6. because it was for Necessity; and this being an Holiday by Act of Parliament, it belongs to the Judges of the Common Law to determine whether it was broken or not. Godd. 218. pl. 315. Mich. 11 Jac. C. B. Wheeler's Case.

7. Where the Libel against the Defendant is too general, as for certain Offences, there are good Causes for a Prohibition. Per Cur. Hard. 364. Patch. 16 Car. 2. in the Exchequer, in the Case of the King v. Sir Edward Lake.

8. A Prohibition was mov'd for because the Libel in the Ecclesiastical Court was against the Plaintiff for not coming to Church at all, or very seldom, because very seldom was utterly uncertain; but to that it was answer'd per Curiam, That that was their Form of Proceeding there; and tho' such a Pleading here would have been naught, yet it being according to their Form of Proceeding, it was well enough; and if it was not, they might help themselves by appealing. And Twijfeld cited a Case where a Libel was for speaking scandalous Words vel his Similia, and the Court would grant no Prohibition because it was their usual Way of Proceeding. Freem. Rep. 285. 287. pl. 332. Trin. 1675. B. R. Anon.

9. It was urg'd, That if it appear on the Face of the Libel, that the Wherever the Ecclesiastical Court has no Jurisdiction, they may be prohibited without Suggestion; but Cur. contra, for the Suggestion is a fundamental Point, and is the Declaration on the Writ. 12 Mod. 435. Blaxton v. Honore. Before you can have a Prohibition, otherwise where the Case of Prohibition appears on the Face of the Libel. Salk. 351. 315. Hill. 12 W. 3. B. R. Anon. cites it as held by Holt: Ca. J. 12 W. 3. B. R.

(B. a. 3) In what Cases it lies. In respect of the Matter being Temporal.

1. For Rent referred for Tithes or Offerings, Prohibition lies if the Party sue in the Spiritual Court; for this is a Lay Debt. Br. Attachment for Prohibition, pl. 3. cites 44 E. 3. 32.

2. In Debt, if the Defendmt says his Law, by which the Plaintiff is barr'd, and after the Plaintiff sues thereof in the Spiritual Court, Prohibition shall go. Mordant said, He shall shew the Libel &c. Br. Prohibition, pl. 26. cites 13 H. 7. 16.
3. H. desired, That his Goods should be divided between his Children according to the lawful Custom of London; C. one of his Children, libel'd for his Legacy, averring, That the Goods amounted to such a Sum, and so demanded so much Virtue Legationis. Wray Ch. J. was for granting a Prohibition, because here is not any Legacy; for the Testator sets forth his Meaning to be, That the Custom of London should be observed in the Division of his Goods, and that C. is put to his Writ De Rationibus Parte Honorum; But afterwards a special Consultation was granted. 4 Leon. 12. pl. 45. Trin. 26 Eliz. B. R. Harvey v. Harvey.

4. Libel against an Administratrix to account for the Personal Estate. She made an Inventory of the Goods, in which she inserted some Goods which the Intestate had disposed of in his Life-Time by Deed of Gift (which she knewd) to a younger Child; all which she pleaded, but the Court refused her Plea; and thereupon, and because the Deed of Gift was pleaded before Sentence, A Prohibition was granted, quoad those Goods, but not as to any Choses en Action; But Day was given for a Civilian to come and shew Caufe why the Spiritual Court rejected the Plea, and for want of shewing Caufe the Prohibition to stand; And no Caufe being shewn, the Prohibition stood. 2 Bull. 315, 316. Hill. 12 Jac. James v. James.

5. The Plaintiff exhibited a Bill, suggesting a Title to a Portion of Tithes as Heir at Law &c. and set forth, That the Lands out of which this Portion of Tithes was issuable, were so very obscure that he could not know where to rejoin; and therefore having no Remedy at Common Law, he prayed that the Tenants, the Defendants, might set out the Boundaries of the Lands, and discover them to the Plaintiff; the Defendants answered, That the Complainant was not Heir, but another; and thereupon the Complainant moved for a Prohibition, and had it; for otherwife that Court would try who was Heir. 5 Nell. Abr. 294. pl. 11. cites Palm. 424. Duckett v. Burley.

6. Prohibition was mov'd for to the Spiritual Court upon Suggestion, That the Plaintiff was fined there for Forgery Letters of Ordination, but the Truth was, That he was fined there to deprive him, because he was More Latins, and therefore a Prohibition was denied; but if one be fined there to punish him by Corporal Pain or Fine &c. a Prohibition shall go. Sid. 217. Trin. 16 Car. 2. B. R. Slater v. Smallbrook. As Shaler v. Smallbrook. — S. C. cited Gibb. 192. Hill. 4 Geo. 2. B. R. in the Cause of Newcomb v. Higg.

7. Libel in the Ecclesiastical Court against his Brother, Executor of his Father, Pro Rationibus Parte of the Goods, according to the Custom of the Province of York. It was suggested for a Prohibition, that this is a temporal Caufe founded on a Custom, and for which there is an original Form in the Register, and where there is any Remedy at Common Law, that Court shall not meddle; but adjudged by three Judges, abente Hale Ch. J. that in this Cause and the Cause of a Pension Both Courts have a Jurisdiction. 2 Lev. 128. Hill. 26 & 27 Car. 2. B. R. Trafford v. Trafford. 2 Salk 557. pl. 16. S. C.

8. A Suit in the Spiritual Court may be founded upon a Prefiguration, and where it is against a Vicar for not performing Divine Service in such a Chapel, for which he received such a Recompence &c. and a Prohibition shall not be granted, especially if the Prefiguration is not transferred in the Suggestion; For it is an Ecclesiastical Right, to bind an Ecclesiastical Person to do an Ecclesiastical Duty; and tho' the Duty began by Custom, yet
Prohibition.

the Person neglecting it may be sued in the Ecclesiastical Court. If this was a Prescription to bind Laymen, Holt Ch. J. said it might perhaps have another Consideration: Le. Raym. Rep. 579. Trin. 12 W. 3. Jones v. Sone.

(C. a) In what Cases it lies, where the Temporal Court cannot give Remedy, but the Conuance belongs to another.

1. If the Lord of Manor has Probate of Testaments within his Manor, if any such Will be to be proved in the Ecclesiastical Court a Prohibition lies, because the Jurisdiction thereof belongs to the other. Co. 5. Orphans of London. 73. b.

2. If any Orphan who is by the Custom of London under the Government of the Mayor and Aldermen, lies in the Spiritual Court, or Court of Requests, for any Goods or Chattels due by the Custom of London, or for a Devise or Legacy, Prohibition lies; because the Government of Orphans belongs to the Mayor & Co. 5. Orphans. 73. b.

3. If the Council of the Marches of Wales holds Plea of an Ecclesiastical Matter, which appertains to the Prerogative Court, as it was fixed for to bind an Administrator to render an Account there which is not in the Council of the Marches, they have no Jurisdiction in themselves, by the Temporal Court cannot give Remedy, yet Prohibition lies. P. 17 Js. Drinkerwater's Will, per curiam, the Value of 50l. viz. 60l. and for that Reason a Prohibition was prayed. This was said by Pop. Ch. J. in the Case of the Orphans of London. 5 Rep. 73. b.

4. If an Executor or Administrator of Goods within the Government of the Court of Orphans of London be sued in the Ecclesiastical Court, to do any Thing against the Custom of the Court of Orphans to impugn the Custom, a Prohibition lies. Hobart, Cal. 213. Lucy's Case.

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5. If a Parson in London sues for Tithes of a House by the Statute of 27 H. 8. in the Ecclesiastical Court, a Prohibition shall be granted in W.R. though they cannot hold plea therefor; for the Jurisdiction of this Suit belongs to the Mayor of London; for the Statute has expressly limited it to be tried there. 16. 16a. W.R. between Doctor George and Board and others, referred and Prohibition granted. 24 Stat. 1 to B. between Bell and Abbot, referred and Prohibition granted.

6. If a Man sues before the Collector of the Pope (who has Power given to him by a Bull of the Pope to hold Plea) for a Matter spiritual which belongs to the Ordinary to determine, though the Temporal Courts cannot hold Plea therefor, yet a Prohibition lies; for the King has Judges Spiritual who have Jurisdiction to determine Spiritual Matters, as Archbishops and their Dicers, Deans, and other Hierarchy, and other Consecrators of Privileges, as St. John's of Jerusalem, and others. 2 H. 4. 10. the Case of Salute's Cafe adjudged.

7. If one Bill of his own Gree will put himself in Judgment of a Lapman or other Clerk who furnishes him to have Jurisdiction where he has not any, a Prohibition lies. 2 H. 4. 10. per Bant.

8. Where the Diocesy of Winton extends to the Borough of Southwark as part of the County of Surry, and the Judge of the Audience of the Archbishops of Canterbury holds a Court sometimes in Southwark, and cites Men there from the remotest part of the Dioces of Winton, being 60 Miles, and if they do not appear to communicate them, and would not absolve them, unless they attend to transmit the Cause into the Archbishops' Court, by which the Statute of 28 H. 8. was eluded, yet Prohibition lies, though it be touching the Jurisdiction between two Spiritual Persons; because the King is to see that every Court keep within its Bounds, and though it has been heretofore concurred, that the Archbishops has a concurrent Jurisdiction in every inferior Dioces, yet this was not as he was Archbishops, but as he was Legatus Natus to the Pope; (for the Archbishops of York neither has it nor claims it within his Archdiocrice) and then this Power is ended, being abrogated with the Pope, and the late Practice, if any such has been, was an Illegitimation; and if the Archbishops of Canterbury shall be permitted to erect an Audience in every Dioces, he may take away all Causés out of the Interior Courts. Howard's Reports, Doctor James's Cafe. 2d. Prohibition granted per Curiam.

9. 24 E. 1. Enacts, that when the Chancellor or Chief Justice (upon Sight of the Libel) conceive that the Plaintiff cannot have Remedy in any Temporal Court, the Plaintiff shall have Conjunction; viz. the said Chancellor or Chief Justice shall write to the Ecclesiastical Judges before whom the Cause depends, that they proceed therein notwithstanding the King's Prohibition.

10. 13 E. 3. Stat. 3. cap. 5. Enacts, that no Prohibition shall be accorded but where the King hath Consent.
Prohibition.

11. A lying Sick upon his Bed made his Will, and afterwards said to his Executors named in the Will, I will that B shall have so much, if you cannot procure it; and the Executor answering and said, Yes, perfectly; but no Codicil was made of the same Legacy. And a Bill was preferred in the Spiritual Court for a Legacy, whereupon the Executor prayed a Prohibition; and it was held by this Court, that although this Court has Power to hold Plea of the Thing libelled for there in the Spiritual Court, yet it has Power to limit the Jurisdictions of other Courts, and if they abate their Authority, to grant a Prohibition, and cited 2 H. 4. 10. but it was doubted, whether the Spiritual Court, as this Case is, might give Remedy to the Perfon for the Legacy; for the same not being annexed to the Will by a Codicil, it was but Fidei Consuetudinem, and to the Doubt was, whether the Spiritual Court might hold Plea of it; for if they cannot hold Plea of it, then in this Case a Prohibition may be lawfully granted, although that this Court has not Power nor Jurisdiction of the thing in that. The Court would be advised of it, and therefore it was adjourned. Godb. 246, 247. pl. 344. Patch. 12 Jac. in B. R. Cartwright's Case.

12. The Defendant forgottend for a Prohibition to a Libel for Tithes, that the Tithes did arise within a Peculiar, and that it was against the Statute of H. 8. to sue for them before the Bishop, the Archdeacon having Authority by Commission from the Archbishop; but if he had Authority by Composition, this shall not take away the Jurisdiction of the Bishop; but if he had Authority by Prescription it shall. In the principal Case it is not shewn by what Commission he has Authority, so as it appears not whether, it be exclusive [or] concurrent therewith, and for that Reason a Consultation was granted Nisi Ec. 2 Coll. Rep. 357. Trin. 21 Jac. B. R. Gaitrell v. Jones.

(D. a) In what Cases it lies, though the same Court which grants it cannot give Remedy, but the Convenience belongs to another.

1. If a Man be sued at the Council of York for a Matter within the Jurisdiction of Durham, a Prohibition shall be granted; for Durham is a County Palatine, and has a Chancellor, and the Work of the King does not trim there, nor is it within the Jurisdiction of York. P. 16 H. 3. B. R. between Proctor and Sibey, a Prohibition granted.

2. If the Vice Warden of the Stanneries in Cornwall, when a Suit is in one of the Dutchy Courts of Record in the same County, pretending himself to have Power to order all Things there depending, upon a Petition made to him as a Chancellor, makes a Decree by Way of the Council of Equity, he not having any Court, but upon a Petition preferred and Notice given to the other Party, and Examination of some Witnesses makes a Decree Summarie & de Plano & fine Figure judicii, a Prohibition lies, upon Sureties that he did this out of any Court and before any Suit commenced before him, or in any Court. Hist. 9. Cat. 9. B. R. between Adams and Adams. Resolved per Curiam prescr Richardon; In which Case the Decree of Corbyne the Vice Warden was confirmed by the Lord Warden; but it appears the same Case that Corbyne claimed this Authority not as Vice Warden, but as Deputy-Steward to the Lord-Warden, and to have Power over the Dutchy Courts as this Court was, to wit, Calstock, where the Action was brought; But Corbyne, upon Examination, could not make such Appearance as the De-
appears that he was Deputy Steward of the said Courts: Also in this Case a Decree was made for some Persons who were not Parties to the Petition, which was in Nature of a Bill as was pretended.

3. A Bill was preferred in the Exchequer of Chester against two Executors, one of them living in Chester, and the other in London, relating to an Agreement made with their Teller in the County Palatine. He who lived in Chester put in his Answer, and the Process was awarded to him who lived in London, and an Injunction granted to stay their Proceedings at Common Law; It was inferred, that this Agreement was made in the County Palatine, and the Privilege followed the Person who dwelt there; But Hobart Ch. J. said, that by this Means one dwelling at Dover, might be forced to come and answer to a Bill in Chester, which would be infinite Trouble, and the Matter is transitory. And resolved that the Court of Chester had no Jurisdiction in this Case, but it belonged to the Court of Chancery at Westminster; And a Prohibition was granted. Hunt. 39. Grigg's Case.

(D. a. 2) Proceedings. What must be done in order to get a Prohibition.

*This Word is very material, for this additional Act (Repealed) is material, for this additional Act
Prohibition. 39.

Is be granted; That then in every such Case the same Party, before any Prohibition shall be granted to him or them, shall bring and deliver to the Hands of some of the Judges or Judges of the same Court, where such Party demanded Prohibition, the true Copy of the Libel depending in the Ecclesiastical Court concerning the Matter wherefore the Party demanded Prohibition, subscribed or marked with the Hand of the same Party, and under the Copy of the said Libel shall be written the Suggestion, wherefore the Party demanded the said Prohibition; and in Case the said Suggestion by being bought and sufficient Witnesses at the last be not proved in the Court where the said Prohibition shall be granted within 6 Months next following after the said Prohibition shall be so granted and awarded, and that the Party that is stated or hindered of his or their Suit in the Ecclesiastical Court by such Prohibition, shall upon his or their Repugnt and Suit, without Delay have a Consultation granted, in the same Case in the Court where the said Prohibition was granted, and shall also recover double ** of the said Prohibitory and Damages, against the Party that so purchased the said Prohibition, the said Costs and Damages to be allowed or afforded by the Court, where the said Consultation shall mixt, and to be so granted, for which Costs and Damages the Party, to whom they shall be awarded, may have an Action of Debt by Bill, Plain, or Information in any of the King’s Courts of Record, wherein the Defendant shall not urge his or their Laws, nor have any Efficacy or Pretension allowed or admitted.

And it is to be observed that this Branch respects the Cause of Suit, viz. for Tithes or Offerings, and not the Cause of the Prohibition 2 Inf. 662. cites Dyce 2 Eliz. f. 170. This Act extend to Suit for small Tithes as well as great: Ed. Raym. 2 Rep. 1172. says it was so agreed by the Counsel and the Court. Trin. 4 Ann. in the Case of Five v. Litcher.

4 Exception was taken, because the Suggestion was delivered by Attorney, whereas it ought to have been in proper Person, and to that Purport was cited this Statute; And it was affirmed the Clerks of the Court that the common Use and Practice for 20 Years had been not to exhibit such Summaries or Suggestions by Attorney; But it was refolved by the whole Court that it ought to be Attorney. Le. 256. pl. 386. P. 29 Eliz. B. R. Sir Glib. Gerard v Sherriippin. The Suggestion ought to be entered in the Office, otherwise a Consultation shall go 2 Show. 328.

Straker v Baynes.

5 This Clause was made in Favour of the Clergy for Proofs by Witnesses, which they had not the Common Law. 2 Inf. 662.

If the Suggestion be in the Negative, as if the Proprietary of a Parsonage improper; for Tithes, and the Cause of the Suggestion be, that the Parsonage is Not Improper; or if the Parson of Dale for Tithes of Lands in that Parish, and the Party for a Prohibition for that the Land lie not in that Parish, as that the Parish that such for Tithes was Not Induced, &c. or any like Cause in the Negative of any Matter of Fact, he shall not produce any Witness by Force of this Branch, because a Negative cannot be proved; and therefore a Prohibition upon Causes in the Negative remains at the Common Law. 2 Inf. 662.

If a Man pleads a Deed in Bar wherein Witnesses be, and like is joined non eft Factum, and Proofs is awarded against the Witnesses who are joined to the Jury, and it is found Non est Factum, notwithstanding this Rejoinder, the Party grievous shall have an Ataint; For it is Maxim in Law, That Witnesses cannot testify in the Negative, but in the Affirmative; otherwise it is if they found it to be the Deed of the Party in the Affirmative, there no Ataint would lie Vid. 11. Aed 19 22 Aed p. 12 23. Aff. p. 114. Aff. p. 23. 11 H. 6. 6. P. R. 160 (B) So it is, if the Suggestion be granted upon any Matter in Law, for that the Suit for Tithes in that Kind are not due by Law. As if the Libel be in the Ecclesiastical Court for the Title of Tithes, Tarts, or the like, there need no Witnesses to be produced; for that Matters in Law are to be decided by the Judges, and not to be proved by Witnesses, and Quod condit Curiae, Operae Telliman non indiget, and the Cause of this Prohibition, or the like, appears in the Libel Inf. 662.

If a Prohibition be granted upon Matter at Common Law, as upon personal Agreement between the Parson and Paritioner for his Tithes, and not upon Matter within the Statute of 2 & 3 Ed. 6, the Suggestion shall not be proved within the 6 Months according to the Statute. Per tot. Car. Litt. Rep. 297.

Trin 5 Car. C. B. Anon.

If a Suggestion extant of 2 Parts, it is said to be sufficient to produce one Witness to the one, and another to the other. Vent. 107. Hall. 22. 22 Car. 2 B. R. in Robin’s Cafè.

The Court agreed, That a Right Proof of the Suggestion will force, viz. as he thinketh or believeth; and that if there be not any Certainty in the first Proof, it cannot be supplied by good Proof after the 6 Months, because the Statute is strict in this Matter; but, within the Time, better Proof may be given, and if the Proof be within the Time it may be certified, after the 6 Months. Litt. Rep. 155. Trin. 4 Ed. 4. And in 1 Toldard, al Giddard v. Tiler, supra, Proof of the Proofs must reconcile upon this Statute, but Proof by Hear.

fay is sufficient. Palm. 577. Trin. 21. B. R. Bennett v Smell. If it affirm they have known it to or by, or that Common Formsb is, it is sufficient. Nov. 28. Webb v. Batts. 44. Anon.

1 The 6 Months to prove the Suggestion must be extended in Term Time, and the Vacation into Part of it. Nov. 74. 13. 158. Mich. 41. 22 Eliz. per tot. Car. Anon. 6. The Proof is good, the made in the Vacation Nov. 95. in Skinner’s Cafè, cites Patch. 45 Eliz. B. R. Pettiger v Johnston.—— and 172. 108.
Prohibition.

Café in Mo. 573. was denied 2 Salk. 534. Trin. 4 Ann. B. R. in the Café of Hoy v. Lifter. —— L. 4 Raym. 2 Rep. 111. accordingly in S. C. They shall be taken for Half a Year, and the principal Café the Proof was offered the 1st Day of the 6 Months after the Composition of 28 Days to the Month; but because it was Dies Dominica, the Judge refused to take it, but he took it the Day after and well. Lit. 19 Hill. 2 Car. C. B. Dr. Clea 5. His Chaplains.

** H. libell'd for Tithes against C. who suggested for a Prohibition a Modus Declinandi as to Part of the Titules demanded, and to the Refidue suggested a Contract executed in Satisfaction of the Refidue, and because he proved not his Suggestion within 5 Months H. had a Confulation and Cofts allowed. Afterwards H. brought Debt in C. B. for the Cofts &c. and had Judgment; It was alluf'd for Error (among other Things) that no Cofts ought to be attir'd or adjudged in the Case above, because the Prohibitions is grounded solely upon the Modus Declinandi, which needs Proof, and upon the Contract between the Parties which requires no Proof, and the Suggestion being inte'me, and Part of it needing no Proof, they could not give any Cofts; For that is only where the whole Matter of the Suggestion requires Proof; And therefore the mixing of the Contract with the Manner of Tithing, privileges the Whole as to the Matter of Cofts; but they might grant a Confulation as to the Part of the Suggestion which concerned the Manner of Tithing, but not for the refell; which was granted by the whole Court, Yelw. 119. Hill. 1 Jac. B. R. Cobb v. Hunt. —— Brownl. 98 Gobb v. Hunt S. C. and seem to be only a Translation of Yelverton.

++ This Statute does not give any Damages for Subtraction of Tithes merely; but if the Tith be first left forth and then subfracted, there the Parish shall recover treble Damages, because he had once an Interest in them Gobb. 245. pl. 541. Hill. 1 Jac. C. B. Baldwin v. Girry.

This A. shall not give Power to any ecclesiastical Judge to hold Plea of any Matter against the Meaning of the Statute of Wefm. 2 cap. 5. Articuli cleris, Greenepege aetatis, Sylva Casea, the Trestive De Regia Prohibitions, nor of 1 Ed. 3. 10. nor of any of them, nor where the King's Court ought of Right to have Jurisdiction.

2. Upon Suggestion of a Modus the Court do ufe to grant Prohibitions without Notice given to the other Party. Freem. Rep. 75. pl. 95. Trin. 1673. Anon.

3. Where the Matter suggested for a Prohibition appears upon the Face of the Libel we never inquit upon an Affidavit, but unless it appears upon the Face of the Libel, or if you move for a Prohibition, as to more than appears upon the Face of the Libel, to be out of their Jurisdiction, you ought to have Affidavit of the Truth of your Suggestion. Per Holt Ch. J. 2 Salk. 549. Trin. 11 W. 3. B. R. Godfrey v. Lewellin.


5. Rule was made to shew Cane why a Prohibition should not be granted to lay a Suit against the Plaintiff in the Court of the Archdeacon of Litchfield, for not going to his Parish Church, nor any other Church on Sundays or Holydays, nor receiving the Sacrament thirce a Year, upon Suggestion of the Statute of Eliz. and the Toleration Act, and then qualifying himself within the Act, and alleging that he pleaded it below, and they refused to receive his Plea. Cane was shewn that this Fact was false, and that the Plaintiff was not a Difenter, nor had qualified himself ut fupra, and therefore hoped the Court would not allow the Rule to stand, unless he had an Affidavit of the Fact; For by that Means any Perfon might come and suggest a false Fact, and ouf the Spiritual Court of their Jurisdiction; Quod Curia concelebit, and therefore the Rule was discharg'd, the Counsel for the Plaintiff having no Affidavit. Ld. Raym. 2 Rep. 1211. Trin. 4 Ann. Burdet v. Newell.

6. After Sentence in the Spiritual Court for defamatory Words the Court will not grant a Prohibition upon Suggestion that they were spoke in London, and are actionable there by the Cufiens; For the Courts at Westminster are not Ex Officio to take judicial Notice of such Cufiens after Sentence; but if such Matter had been mov'd before Sentence, it need not then be proved by Affidavit, because it is sufficiently known. 8 Mod. 176. Trin. 9 Geo. Brook v. Winfield.

(F. a)
Prohibition.

(E. a) How it may be Granted. To part.

1. If a Suit be in the Spiritual Court for a Thing spiritual mix'd
with a Matter triable by the Common Law, a Prohibition shall be
granted under the Bearer triable at the Common Law, and not
for the Whole if they may be favored. Mich. 14.

B. R. Eich and Chamberlain Resolved. Cour. 9. 8. La B. Per Cenam
Jane's Cafe.

2. As if the Suit be in the Spiritual Court by a Vicount to avoid
an Institution of another who is instituted to A's Chapel of Cae as
he pretends. If the other testifies that A is a parochial Church by it-
self, a Prohibition shall be granted as to the Thing whether it be a
Parish by itself, because they shall not try the Bounds of the Pa-
rist, but not for the Institution; because it appertains to them to
Chamberlain the Prohibition granted, But Haughton said, That

3. If a Testament be made of Land and Goods, and the Suit in
the Ecclesiastical Court is for the Goods, and the Question is Wheth-
er the Testator revolved Will in his Life, or not, a Prohibition shall
be granted Over the Land, and not Over the Goods. 9. 13.

In. B. between A billed and A billed Reolved.

4. If a Man sues for the Probate of a Testament in the Spiritual
Court, in the Testament Land is devise'd, and other personal Things,
a Prohibition shall be granted Over the Land, and not Over the

5. Upon Application in such Cafe, that the Devilor revolved the Will
before his Death, a Prohibition shall be granted Over the Land.


granted, upon the Will of Sir J. Norris.

6. If a Ban by Wall devise all his Land, Goods to a Stranger
and dies, and after his Death Administration is granted to another
upon Supposition that the Devilor was Non Sane Memorize at the Time
of theDevil, a Prohibition may be granted to say the Probate
of the Will as well for the Goods as for the Land; Because other-
wise the Proof of the Will for the Goods will be an Evidence for the
Land; and here there is an Administrator who may sue the Execu-
tor in the mean Care, and to the Will may be tried at the Common
Law. 9. 12. In. B. R. Sir John Egerton's Will Resolved, and

Prohibition granted.

Prohibition.

({}^7) in the Notes.

({}^6) pl. 12

and the
Notes —

see (b.)

({}^4) pl. 19

See (l.)
Prohibition.

An Article (among others) was against a Bishopshop, that the Bishop of the Diocese for the Time being was a Priest of a Publick School, and that this Bishopshop had prevented the Charity to other Persons than directed by the Founder, and upon his Fiduciary had carried away all the Books which concern'd the Charity, and the very Grant by which it was given, and governed now at his Pleasure. As to the other Matters, a Prohibition was denied, but was granted as to this School, which was held to be merely Temporal. Gartn. 334. Pauch. 11 W. 5. Bishop of St. David's v. Lucy. — 12 Mod. 259. S. C. & P.

10. Administration was granted to the Wife; the Master brought an Appeal, alleging among other Things that the Wife had commenated she should not meddle, for that she was well provided for otherwife; and it was held that they had nothing to do with this Matter in the Spiritual Court. But it was insisted that this fell incidently into the Principal Matter, of which that Court had Cognizance, and it did not appear whether the Delegates would admit this Allegation, or not, and there is no Instance of a Prohibition quia timor; a Prohibition was granted quoad that Allegation only. 1 Vent. 313. Trin. 29 Car. 2. B. R. Baker v. Baker.

11. Prohibition on a Suggestion of a Modus laid by Way of Cautum, for a Great to be paid for every Hog of Blood of Cider, or 25. per Annum in Lieu of all the Vines, all Grain and Fruit in any such Orchard growing; and another Cautum of the Parson's having the Sile Milking and Milk of all our Milk Kine for so many Weeks after Midsummer, and to so many Weeks after Michaelmas, in Lieu of all the 'Tithes' of Milk. The Statute of Improvement was suggested as to Part; and thereupon prayed a Prohibition for Tithes quoad hoc; and upon Debate it was granted. 2 Show. 460. 491. pl. 428. Hill. 1 and 2 Jac. 2. B. R. Hill v. Harris.

Cumb. 200.

12. A Suit was for Leave in marrying a first Wife's Sitter. The Plaintiff in the Prohibition suggested that the second Wife was dead, and he was

2 Nc

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Prohibition.

great House and Family which was disinherited by the said Will; and no a Prohibition was granted for the Whole—bul. 111. Pauch. 9 Jac. Anon. Prohibition was granted for the Whole; For the Land being the more considerable Thing shall draw all to it, and make the Probate of all to be here, and not in the Spiritual Court for any Part. — A Prohibition was granted to the Proving a Will of Lands and Goods. Bul. 199 Pauch. 10 Jac. Mary Semaine's Case—Croc. C 113, pl. 7. Trin. 4 Car. A Prohibition was granted generally for both Lands and Goods, and there being revoked, there shall be no dispensing in the Prohibition; But if one makes several Wills, viz. one of his Lands and another of his Goods, and a Revocation is alleged of both, there a Prohibition shall be granted for the one and denied for the other. Den's Case. — Het. 113. Denon v. Sparkes S. C. — No Prohibition shall go in any Case to the Ecclesiastical Court to retain the Probate of a Will, for the Probate doth not affect a Devil of Land, the 2 Cro. 346. (Egeron v. Egeron) was objected to; to which Holt answered, That it had been adjudged contrary to that Case ever since. Cumb. 173. Hadon v. Fifer. — The Probate of the Will in the Spiritual Court, for the Land will not prejudice the Heir; For it shall not be Evidence at Common Law, nor shall the Examination of the Writs, there be given in Evidence at Common Law. Per Berkeley. J. Cro. C. 396 in the Case of Nemer v. Brett. — S. P. by Fleming Ch. J. Pauch. 10 Jac. Bul. 199. in Mary Semaine's Case. — S. P. mentioned. 2 Ch. Cas. 322. in the Case of Rothwell v. Hufsey. — See (F. a) pl. 1, 2.

7. Libel was for Tithes and Assignment to several Values. After Sentence a Prohibition was granted, that they should not proceed as to the Tithes only. Mo. 873. pl. 1217. in Gerey's Case, cites 1 Jac. Cook v. Stafford.

8. The Suggestion was a Modus for a Farm, and the Libel was for Tithes and Offerings; so that the Suggestion did not extend to the Offerings, wherefore it was ruled per Cur. That Prohibition shall be only quoad; and so it was ruled in the Case of Coleman v. Elffett, upon a Motion for the other Term. Sid. 251. Pauch. 17 Car. 2. B. R. Luther v. Webb.

9. A Bishop was libelled against for Sinning, and also for taking exorbitant Fees for giving Inflation, and for misaplying Charities, and converting them to his own private Use, and for certifying that several Persons had taken the Outlay, when in Truth they had not. It was suggested for a Prohibition, That these Things are punishable in the Temporal Courts, and as to the Fees, that there was a Custom for taking for too much Fees for granting Ordinances; and a Prohibition was granted quoad &c. 5 Mod. 433. Pauch. 11 W. 3. The Bishop of Chester's Case. [But it seems misprinted, and that it should be The Bishop of St. David's, viz. Dr. Watfon's Case.

An Article (among others) was against a Bishopshop, that the Bishop of the Diocese for the Time being was a Priest of a Publick School, and that this Bishopshop had prevented the Charity to other Persons than directed by the Founder, and upon his Fiduciary had carried away all the Books which concern'd the Charity, and the very Grant by which it was given, and governed now at his Pleasure. As to the other Matters, a Prohibition was denied, but was granted as to this School, which was held to be merely Temporal. Gartn. 334. Pauch. 11 W. 3. Bishop of St. David's v. Lucy. — 12 Mod. 259. S. C. & P.
Prohibition.

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a Son by her, to whom an Estate was devised as Heir to his Mother; and 12 Mod. 53. that tho' he had pleaded this Matter, they went on to annul the Marriage, and baffardize the Issue. Per Cur. A Prohibition shall go as to Mod. 182, the Annulling the Marriage, and Baffardizing the Issue, but they may pro- 3 Patch. 5ceed to punish the Incest. 2 Salk. 548. Harris v. Hicks. & M. B. R. S. C. by the Name of Hicks v. Harris. ——-Carr. 271. S. C. accordingly.

13. A Libel was for Words spoken of a Person, and also for Brawling in the Church-yard. A Prohibition was granted as to the Words, but not as to the Brawling. 3 Salk. 288. pl. 9. Patch. 2 Ann. Brown v. Tanner.

(F. a) How it shall be granted [as to a Part.] See (E. a)

1. If a Man devise Goods and Land, upon a Suggestion that the De- visor was Non compos mentis at the Time of the Device, a Prohibition shall be granted to stay the Probate Quoad the Land only, and not Quoad the Goods, because it shall be granted Quoad the Goods, the Executor cannot have any Action in the Devises Title, which would be inconvenient. 12 Ta. 25. R. Prohibition so granted. This was the Practice hereunto, but now no Prohibition will be granted in such Case; for under Probate be, the Executor cannot sue for Debts which might be inconvenient. And to grant Prohibition as to the Land would be in vain, because as to the Land the Probate is no Evidence either Pre or Con in any Court of Law, but as a Proceeding Caram non Judice; yet it is good as to the Goods. 2 Salk. 532. Partridge's Case.

2. If a Man makes his Will in Writing, and thereby devises several Legacies, and deviiseth thereby also certain Land to his Executor hereafter nam'd in Fee for Payment of Debts and Legacies, and after names the Executor, who proves the Will, and another appeals to revoke the Probate, no Prohibition lies either for the Land or Goods, or otherwise, upon Surmise that Testator was Non compos mentis for the Inconvenience which will ensue as to the Legacies and Personal Estate, and the Probate is no Evidence as to the Land at Common Law, Tr. 1650, between Bezaes and Clerk adjudged per totam Curaem, and Prohibition denied to the Predecessors Court.

3. If a Man makes his Will, and disposes of his Goods, and then makes A. B. his Executor thereof, and after deviiseth his Lands; in this Case if the Executor be cited into the Spiritual Court to prove the Will Quoad the Land, a Prohibition lies Quoad the Land; for these are several Wills. 8. 10. Car. R. B. Refused per Curaem, and Prohibition granted upon Stephen Brett's Will, between Brett Nofie and Stephen Brett. But Will. 10 Car. 1 a Constitution was granted upon solemn Argument in this Case, upon View of the Will, by which it appeared that it was One Will, the [there were] several Parts thereof; and this was granted by Jones and Barksby against the Opinion of Croke, and they laid that in the Case of Co. 2. * See (B. a). 391. S. C. That the Land was char'd with a Condition for Payment of certain Legacies. Jo. 555. pl. 3: Noter v. BreTT. S. C. accordingly. 76. Geo. C. 50. S. C. That the Land was char'd'd with a Condition for Payment of certain Legacies.

* Marquis of Winchester, a Constitution was also granted as well for the Land as for the Goods. Instruct. Rich. 10 Car. Rot. 132.

Reason of Croke's Doubt was, because the Land was the Principle, and they have no Authority to meddle with any Will concerning Land, and that there might be an Inconvenience if the Will there should be questioned or Countermand'd concerning the Land; but because a Prohibition was granted, the W. of Opinion that the Parties ought to pursue the usual Course for the Defendant to appear, and the Plaintiff to declare. But the other Justices gave a Rule that Constitution be awarded Nisi feci —— 1844. 555. S. C. and S. P. Upon Motion for a Prohibition, because they proceeded to prove a Will of Lands and Goods; Hale Ch. J. said, Their proving the Will signified nothing as to the Land, and that the Will is Intire, and
Prohibition.

we are not adv'd to print a Prohibition in such Cases. Mod. 92. pl. 57. Mich. 22 Car. 2. B. R. Anon. — S. P. Comb. 46. Patch 5 Jac. 2. B. R. Anon. And Holloway J. said that Writs might well be examined there to the whole. — 6 Rep. 25. — Sec. (E. 3) pl. 5. 4. and the Notes.


4. In a Suit in the Ecclesiastical Court, if the Court there gives Sentence for the Plaintiff, and gives to him treble Damages, where by the Statute they cannot give but Double Damages, a Prohibition shall be granted; but this shall not be generally upon the Cause, but that they shall not proceed to the Execution of the Sentence without more, and if they there may by their Law issue it, they may proceed to the Execution for the Double Value. Pll. 11 Fa. B. between Baldwin and George per Curiam reversed, and Prohibition is granted.

5. If a Man makes a Will in Writing for his Land only, and there by dispos'd his Land, and does not make him Executor of his Goods by the same Will, but this is a distinct Will of it itself, and is endeavoured to be proved in the Spiritual Court, a Prohibition lies; because it is made declivable by the Statutes of 32 & 34 H. 8. and concerns real Things with which the Spiritual Court has nothing to do, and were not Testamentary at the Common Law. H. 10 Car. B. R. between Brett and Nettas per totam Curiam agreed.

6. If a Man libels in the Ecclesiastical Court for two Things, whereof the one belongs to the Jurisdiction of the Ecclesiastical Court, and the other is triable at Common Law, and thereupon Sentence is given; if by this the Punishments are intermixed for both, that the Sentence cannot stand for any unlesse for both, a Prohibition shall be granted for both. P. 38. 39 Ed. 3. B. R. between Butler and Bartlet.

7. As if a Man libels for saying of him, Thou art fitter for the Pilelory than for a Preacher, and that he spoke those Words in Time of Divine Service, and thereupon Sentence is given that the Defendant shall recant the Words so. If the Defendant shows to the Temporal Court that he, speaking of a certain Release so, said, that the Plaintiff had forg'd the said Release, and by Reason thereof he spoke the said Words, so that he may have Action for the Words at the Common Law. In this Case, tho' the Suit is maintainable in the Ecclesiastical Court for speaking of the Words in Time of Divine Service, yet because the Sentence is given that he shall recant the Words, which is for all, a Prohibition lies for all. P. 38. 39 Ed. 3. B. R. between Butler and Bartlet adjudged.

8. A Woman libell'd for saying, That she had a Bessard. A Prohibition was awarded as to the Ballantry, but that they shall proceed for the Defamation. Mo. 873. pl. 1217. cites 37 Eliz. Cullier v. Cullier.

(F. a. 2) Wit, Declarations &c. in Prohibitions, and Rules concerning them.

1. If Prohibition issues to the Spiritual Court, and notwithstanding this the Party is there Suspended or Excommunicated, those Proclav shall issue to the Bishop to affix him, but the first Wit shall not be with a Petia, Br. Prohibition, pl. 25. cites 13 H. 7. 16.

2. If a Libel be in Court Christian for Defamation, the Defamation must be particularly express'd therein. 2 Inst. 433.

3. The
3. The Surrift for a Prohibition is as a Writ, so that if Variance be le-
the Plaintiff between the same and the Declaration, all is naught. Le. 128. pl. 175. Trin. 30 Eliz. B. R. in the Cane of Gomerhall v. Bishops.

The Plaintiff proved his Suggestion, spoke nothing of the Wool, but only of the Lamb; when the Court was moved for a Conundrum, because the Suggestion was of a joint Prohibition, & Modus Deemnind, both for Wool and Lamb; and no Proof being as to the Wool, he had filled in Text. But per Cur. there is a Difference between a Suggestion to have a Prohibition and a Prefcription comprised therein, and where the Prefcription is by way of Defence for Plea in any original Action; for in the last Case a joint Prefcription is alleged for two Things, and falling in one destroys the whole, because it is by way of Title; but 'twas otherwise here, because this Prohibition is only to give the King's Court a Jurisdiction; and therefore, the Plaintiff supposed, That the Court ought to hold Plea both of the Tithes of the Wool and the Lamb, and as to the Wool it is payable in Kind, and to be sent under the Spiritual Court, yet the Modus is good for the Lamb, and the Court shall have Jurisdiction of that; for now, upon the Proof, it shall be taken, That the Prefcription, which makes the Plea Temporal, was only for the Lamb. Yelv. 35. Mich. 2 Jac. B. R. Cane of Prohibition.

4. A Vicar libel'd against two of his Parish for small Tithes, S. P. Le. 236, and also for Herbage, Milk &c. they joined in a Prohibition, and fug-

M. B. R. getted for all but the small Tithes a Custom of Tithing. Adjudge'd Sir Gilbert. They could not join in one Prohibition, because the Vexation of one Gerard v. could not extend to the other; but because the Custom suggested was Sherry. But in so far as it ought, and therefore ordered the Plaintiffs to declare severally, and to proceed as upon severall Prohibitions. Yelv. 128. Trin. 6 Jac. B. R. Burgess and Dixon a. Alton.

5. Libel &c. for calling the Plaintiff Old Thief and Old Whore; the Defendant suggested for a Prohibition, that if any such Words were spoken they were spoken at the same Time; This Suggestion was ill, because the Words ought to have been fully confess'd. Vent. 10. Hill. 20 & 21 Car. 2. B. R. Day v. Pitts.


7. The Plaintiff declared upon a Prohibition, and upon Demurrer to the Declaration, Exception was taken to it, because the Declaration sets forth, That the Defendant sinned in the Spiritual Court poet Regiam Prohibitationem et prisci inde in contrarium direct'; but does not say (deliberat') and here appears no Caufe of Action, since it is not set forth, That the Prohibition was deliver'd. The Court was of Opinion, Holt abente, That when you proceed for Damages, then it must be set forth, That the Prohibition was deliver'd, and also a Form laid; But in this Case, which is only to maintain the Jurisdiction of the Court, it is not necessary. 11 Mod. 263. Hill. 8 Ann. B. R. Bishops v. Eagle.

8. If Declaration in Prohibition be by him who finds the Prohibition, and no Plea be put in in due Time, the Plaintiff may have Judgment by Nihil dicis, id est Prohibitis; but if it be of the other Side, and no Plea, there shall be likewise a Nihil dicis, and a Conundrum. 12 Mod. 447. Patch. 13 W. 3. B. R. Turton v. Reiner.

(G. a) The Continuance of a Prohibition.

1. If a Prohibition was granted by Q. Eliz. it seems, That this When a Prohibition cannot proceed. 99. 14 Jac. B. R. between Johnson and Peppinger B. R. if no Prohibition was doubted per Curiani, because it was granted for a Contempt to other Process be there, it is distinct, continued by Demise of the King. But if Attachment issue and is return'd, as the Chief Justice said, or if the Party appear, and put in Bail, it is then become the Suit of the Party, and is not discontinued.
Prohibition.

used by the King's Demise. Lat. 114, 115. Watkins's Case. — * Because in this Case the Prohibition is the Suit of the Party. Noy 77, Dix v. Brown.

(H. a) By whom it may be granted. [And when. Before Plea pending.] pl. 3.

1. Among the Petitions in Parliament of 13 Ed. 1, fo. 1, there is such Petition and Answer to it.


3. A Prohibition may be granted by the Court of Common Bench to the Ecclesiastical Court, to the Court of the Council of War, &c. upon Suggestion made to the Court of the Caule, tho' there be not any Plea pending in the same Court for the same Thing. P. 6. J. 23. S. P. 2. &c. between Banks and Wharton, per Curiam; Contra, Balmes. P. 7.

4. A Prohibition may be granted to the Court of Bristol, upon Suggestion, that a Plaintiff was entered there by S. against W. for a Thing done out of their Jurisdiction. S. 454. pl. 9. Trin. 22. Car. 2, B. R. Wainman v. Smith.— Ibid.,says, The like Prohibition was cited to be granted here to the Court of the Marches, after the Party had declared there. Hill 10. &c. Car. 2. Smith v. Bond.— Vent. 88. Weyman v. Smith, says, That the Plaintiff was entered there for 66 L. and Affidavit was made, That the Cause of Action arose in London, and not in Bristol.— Noy 77, in the Case of Divo v. Brown, those Points were touch'd upon, That in C. B. a Prohibition shall not be awarded until the Suggestion be of Record, and because it is the Suit of the Party, it shall not be discontinued by the Demise of the King; but otherwise, if it be out of B. R. for there a Prohibition may be awarded upon a bare Surmise, without any Suggestion of Record, and is only in Nature of a Commission Prohibitory, which shall be discontinued by Demise of the King — Palm. 432. Parch. 1 Car. B. R. S. C.— 88. P. Lat. 115. Watkins's Case. — Noy 155. cites Regull. 34. F. N. B. 45. 2 E. 4. 11.— Except in Case Demodo Decimando, cause the Spiritual Court will not allow that. Noy 153. Anon. cites 22 E. 4. 20. — Upon a bare Surmise, That the Matter arose out of the Jurisdiction of the Court, this Court will not grant a Prohibition, if Likewise it must be pleaded, and the Plea must be fancied, and it must come in before Impartiality, Mod. 81, Mich. 22. Car. 2. in the Case of Cox v. St. Albins, it was said by Hale Ch. J. to have been so adjudg'd.— Vent. 181. S. C.

A Prohibition cannot be granted to the Ecclesiastical Court where there is no Proceeding there by way of Suit. Mar. 22. pl. 52. Parch. 15 Car. The Parish of St. Ethelborough's Case — S. P. That there must be a Suit there, and that upon a Petition to the Archbishop or any other Ecclesiastical Court, so Prohibition be. Mar. 45. pl. 50. Trin. 15 Car. Per Berkeley and Croke J. only in Court. Anon. — Prohibitions may grant a Prohibition, and if the Matter after appears to be Spiritual, they may grant a Confinement: quod tota. Br. Prohibition, pl. 3. cites 38 H. 6. 14. — Br. Prohibition, pl. 6. cites S. C.

5. A Prohibition may be granted by the Court of Common Bench to the Court of Delegates, for fusing there to avoid an Institution of a Church in Lancashire after Induction made of him therein: this the Suare Impedite for this Church cannot be brought here but only in the County of Lancaster, because the Title of the Advowson is not to be questioned by this Prohibition, but the Indution upon the Common Law, of which this Court has special Care, and is to be restrained. Hacket's Reports 23, Hacket's Case. Prohibition granted to Chester, where the Suit was.

6. Prohibition was sued out of Chancery, directed to the Justices of C. B. to make Attachment, because the Defendant has filed in the Ecclesiastical Court for a Debt which neither touched Matrimonium nor Testamentum, and of which Confinence belong'd to the King's Court; and it was shew'd, that notwithstanding this Matter the Party had proceeded in the Spiritual Court.
Prohibition.

Court, and the Judges there held the Plea, and pray'd Prohibition out of C. B. to the Judges and Party to caufe ; And it was in doubt at first, but afterwards, because Precedents were thereof shown, it was therefore granted with Affent of all the Justices; And to see that the Chancellor, B. R. and C. B. may grant Prohibition. But it seems, That C. B. cannot grant Prohibition, unless they have first an Original pending in the same Bank of the same Matter, Br. Prohibition, pl. 6. cites 38 H. 6. 14.

Spoliation; for Spoliations, in its proper nature, appertains to the Spiritual Law.

6. If a Man sines in C. B. for Trespasses, or the like, and likewise in the Spiritual Court for the same Cause, he may shew the Matter in C. B. and shall have a Prohibition from hence directed to the Judges &c. F. N. B. 45. (G)

His Surnames, furnishing, That he is joined in the Spiritual Court for a Temporal Cause &c. alimo' he be not joined in B. R. or elsewhere, for that Cause. F. N. B. 43. (H)

7. The Grand Sessions of North Wales may send a Prohibition, and bid him, write to the Spiritual Courts there as well as the Courts here may; and if so they have us'd to do, and it is the ancient Court of the said King's Court, which has been Time out of Mind, and is confirm'd by the Statute cannot write 37 H. 8. Sid. 92. pl. 16. Mich. 14 Car. 2. B. R. Wynn's Case. to the Bishop, and this is the Reason that Quare Impedit does not lie there — But Cre C. 341, 342. Hill's 9 Car. B. R. in the Case of Cor. v. Bishop of St. David's and Owen &c. It being assign'd for Error, That the Bishop being Party, the Grand Sessions could not write to the Archbishop of Canterbury, because they have no Power to punish him if he should not obey. The Court doubted, but the Reporter says, It seems Prima Facie, that they may well write to him; for it is now a Court of the King's, and a Quare Impedit was Admit't if he do not admit; But when they were the Marches in Wales they had no such Power, and for that Reason a Quare Impedit lay in the adjoining County, but not so at this Day; But they would advise. — Ibid. 538. Judgment was affirm'd. —— Jo. 530, 532. S. C. & P.

(I. a) To the Courts Temporal. In what Cases it lies.

1. If there be one entire Contract above 40 l. and the Suit for it is in a Court Baron, severing it into diverse small Sums under 40 l. a Prohibition shall be granted, because it is done to defraud the King's Court. 16 H. 6. 54. (Note, There have been several Pro & P. Prohibitions granted in such Cases of late Time.) Vide the Statute of 11 H. 7. cap. 19. accordingly.

2. If an Inferior Court of Record, which has Power by Charter or by Prescription, of Things and Actions arising within the Jurisdiction of the Court, hold Plea of a Contract, Battery, Obligation, or other Thing done out of the Jurisdiction of the Court, tho' it be transitory, yet the Cause of Action not arising within the Jurisdiction of the Court, a Prohibition lies. 39 15 Car. 2. R. Per Eunus, pretex Berkeley, who strem'd a contro by reason of the common Wages, that such Courts hold Plea in such Cases.

To the Cae in 2 Roll. Abr. 517. is to be understood. 2 Lutw. 1527. Per Powell J. in Case of Gwincey v. Poole.

If a Matter arises Extra Jurisdictionem, and the Plaintiff declares of it as Extra Jurisdictionem, the Defendant may plead to the Jurisdiction of the Court, and if that be over-ruled, that have a Prohibition on the Subject of Wellminton; but if he waives that and pleads to the Matter, he can never have a Prohibition, nor can he take Advantage of their Want of Jurisdiction; for by the Avenue of the Court and his own Admission, he is Filched to say that it was a Matter that arose out of their Jurisdiction. Per Car. B. R. Salk. 582. in Case of Luking v. Denning.
3. If a Suit lies in the Marches of Wales, and shows a Matter which the Defendant has done, to the great Damage of the Plaintiff, a Prohibition shall be granted, because it is not shown in the Bill to what Damage it is: for this Court cannot hold Plea by their Instructions over the Value of 40 l. and here the Damages may exceed this Sum, and it ought to appear that they have Jurisdiction of the Matter, to quit the Court of the King of Jurisdiction. P. 14 L. 3 R. between Jennings and Brewage resolved, and Prohibition granted.

4. If the Court of Council of York, which is a Court of Equity, do decree against a Maxim in Law, as against a Jointenant who was in by Survivorship, that the Heir of his Companion shall have the Moietie; in this Case a Prohibition shall be granted, unless during the Lives of the Parties it was agreed that there shall not be any Survivorship; and then if they hold Plea upon that Equity, it is good. Win. 79. Pach. 22. Jac. C. B. Porington v. Beamont.

5. In Affirmity for Wares brought in Feverham Court, the Defendant tender'd a Plea, that the Contrail was made out of the Jurisdiction, and demanded Judgment if &c. Upon producing of an Affidavit of the Tender of the Plea and Restful, a Prohibition was granted. Raym. 189. Mich. 22 Car. 2. B. R. Michel v. Bisy.

6. A Prohibition was prayed to the Court of the Chamberlain of Chester, where an English Bill was pretend'd, setting forth that J. S. being indebted to the Plaintiff, the Defendant upon good Consideration promised, that if J. S. did not pay it, he would, and that he wanted such precise Proof of the Promise as the Law required; and so prayed to be relieved by the Equity of the Matter, the Defendant confess'd the Promise in his Answer, and said that he had paid the Money. And a Prohibition was granted;
Prohibition.

for the Plaintiff had now obtained the End of his Suit, and might have

7. Prohibition to the Admiralty was denied to be granted, unless they So a Prohib-
refused a Plea. Carth. 166. Mich. 2 W. & M. B. R. Edmonston v. ity was
Walker.
nied unless the Defendant there would appear and give Bail. 2 Salk. 548. Trin. 4 & 5 W. & M. Willa-
ton v. Pitts.

(K. a) To what Court it may be granted.

1. If a Writ of Right of Dower be sued in B. where the Lord has a
Court to hold Plea; the Lord may sue a Prohibition directed to
the Justices of B. that they proceed not upon this Plea. Fitz. Nat. 8, (25)

2. A Prohibition may be granted by the King's Bench to the Court
of the Dutchy, if they held Plea of any Land not Parcel of the
Dutchy. Tr. 12 Ja. 3 B. R. between Sir Thomas Benten and the
Hospital of Wensin adjudged. * 14. 13 Ja. 3 B. R. between Coates and
Suckerman Plaintiffs, and Sir Henry Warner Defendant adjudged. (the
Dutchy)

A Prohibition was granted to

Plea of the Validity of Letters Patents granted of a Manor. 2 Salk. 119. Sir H. Warner v. Suck-
the Suit being for Tithes, it was held that a Prohibition lies, Tithes being an Inheritance.

A Suit was commenced in the Dutchy Chancery Court to ouster Matters whereby the Defendant there
would forfeit his Freehold; and a Prohibition was granted. 2 Salk. 550. Sir Balf. Firebrace's Case.—

* Hob. 77. pl. 101. S. C.

3. If a Man lies in the Chancery of Chester for a Matter triable at
the Common Law, yet no Prohibition shall be granted by the Court
of B. R. because the King's Writ does not run there, and there is a
Court of B. R. to grant a Prohibition; for there are all Courts
there as here. 14. 13 Ja. 3 B. R. and here 13 Ja. be-
tween * Pawley and Pannell relation, and Prohibition denied. But
Tr. 1651. between * Fitton and Richardon relation, a contra, and Pro-
hibition granted accordingly. Contra 12 . 12 B.

a Suit there by English Bill for Divorce of the Wife, which is a Matter of Freehold, and notwithstanding
such Answer there, they having made a Decree, a Prohibition was granted. Per Car. Sid. 189. Gerard
v. Butler & al.

4. If an Obligation be made in Cheshire (but it is not so dated) and
the Parties inhabit there, and Debt is brought upon this Obligation in
Bank, and thereafter the Obligor exhibits a Bill in the Exchequer at
Chester to be recorded, and an Injunction is awarded against the Plaint-
iffs not to proceed at Common Law, a Prohibition may be granted
out of Bank to them; for such crantulatory Actions may be filed in any
Place, tho' the Parties dwell in Cheshire. Tr. 7 Ja. B. between
Poyey and Ales, per Curiam.

5. If a Quare Impedit be brought in the Court at Lancaster after
the Incumbent is Inducted, and afterwards a Suit is in the Ecclesiasti-
cal Court to avoid the Institution, yet no Prohibition will be
granted.

6. If a Suit be in the Ecclesiastical Court of Chester to avoid an In-

See (H. a)

situation, after which the Clerk is Inducted to the Benefice within the Pl. 2
County Palatine of Chester, tho' it be within the County Palatine,
Prohibition.

and to the Writ of the King does not run, and that the Common Law Court within the County Palatine may grant a Prohibition, yet a Prohibition may be granted here in Bank or Banco Regis; for it is only to reform the Utterance which they make upon the Common Law. M. 12 Ja. 3, between Sir Timothy Hutton and the Bishop of Chester per Curiam.

7. Prohibition was granted to the Council of York for holding Pleas in Replevin and Avowries, the Court being clear of Opinion that there are Matters determinable at Common Law. 1 Bulst. 110. Patch. 9 Jac. Baker v. Dickenfon.

8. If any English Court holds Plea of a Thing whereof Judgment is given at the Common Law, Prohibition lies up a Statute 27 Eliz. 3. 4 H. 4. 23. Per Choke Ch. J. and cites 13 Eliz. 2. Prohibition II. that after Judgment in a Quare Impedit, the Defendant fined in Chanery to avoid the Judgment, and there Prohibition was awarded. Mo. 836. pl. 1129. Mich. 12 Jac. Wright's Cafe.

9. A Prohibition was granted by B. R. to the Court of Exchequer, for holding Plea of Common Pleas without a Writ of Privilege. Per Coke Ch. J. who cited the Register. 3 Bulst. 120. in Cafe of Warner v. Suckerm. 10. If the Judges of C. B. hold Plea of an Appeal, a Prohibition is to be granted by B. R. Per Coke Ch. J. 3 Bulst. 122. cites the Register. 11. B. R. may prohibit any Court whatsoever, if they exceed and transfer their Jurisdiction; Per Coke Ch. J. And he said, There is not any Court in Westminster-Hall but may be prohibited by B. R. if they exceed their Jurisdiction, and that this is clear without any Question. 3 Bulst. 120.

12. Prohibitions are granted to almost all Sorts of Courts which differ from the Common Law in their Proceedings; to Courts Christian, to the Admiralty, and the Delegates, and even to the * Steward and Marshal, upon the Statute of Articuli super ChartaS, cap. 3. Show. Parl. 2 Cases 63. Arg. in the Cafe of Oldis v. Donnille.

* S. P. F. N. B. 241. (C)

13. A Cafeau-House Officer exhibited an Information of Seizure of an Hoghead of Wine belonging to E. and seised for not paying Cafeau. E. neglected to enter his Claim in the Exchequer, but in the mean Time brought Trepass in B. R. The Barons, upon Motion, order'd the Proceedings in B. R. should be stay'd, and the Cafe removed into the Exchequer in the same State and Forwardness. E. was serv'd with the Order, but gave Rules for Pleading; whereupon an Attachment was issu'd by the Exchequer against him, upon which he mov'd for a Prohibition to the Court of Exchequer, and a Rule was made to hear Counsel; On the Argument several Precedents were cited, one in 19 H. 7. Rot. 16. exactly like this. The Court took Time to consider of the Precedents, and in the mean Time the Matter was compounded. 2 Salk. 550. Mich. 12 W. 3. B. R. Earle v. Paine. — cites Reg. 187. 2 Int. 551.

14. A Prohibition lies in the Court of Honour to prohibit a Suit there for Words. Holt Ch. J. at first doubted, Whether there was or could be any such Court? but laid a Prohibition would lie to a pretended Court; and tho' it was urg'd, That there would be no Remedy if this would not allow'd, yet no one Precedent being to be found of such a Suit for Words in the Court of Honour, the Prohibition went absolutely. 2 Salk. 553. Hill. 1 Ann. B. R. Chambers v. Sir John Jennings.

(L. a)
Prohibition.

51

(L. a) At what Time it shall be granted. After Sec. (M. a) Sentence.

1. If a Man be fixed out of his Diocese, and there answers without S. P. Petition:
   taking Exception to it, and afterwards Sentence is given against him, he
   shall not have a Prohibition, because he hath not taken Ex-
   ception to the Jurisdiction before, but had affirmed the Jurisdiction Car. 2 Show.
   there. P. 15. B. R. per Erunian. Prohibition Seized in such
   Cafe between Pymbly and Richardson.

   Hill. 52 & 54 Car. 2. B. R. Anon. — 5. P. And in no other Cafe it is ever too late to move for a
   Prohibition to any Court. Per Holt Ch. J. 41 Mod. 6. pl. 23. cites Combs 244, 245, 418, 419, 427,
   and Show. 197, 517, 526. — The Reason is, because the Cause belongs to the Spiritual Court, and tho'
   not to that Spiritual Court, yet it belongs to some other, and not to the King's Temporal Court. 2.

2. If it appears in the Libel, That the Court has no Jurisdiction of Salk. 548. 7.
   the Cause, a Prohibition shall be granted after Sentence; but other-
   wise it is, If it does not appear in the Libel, but it ought to appear by
   Aberration. B. 5 Fa. 25.

   In the Spiritual Court in a Cause where they have Jurisdiction of the Libel, the Court will not grant a
   Prohibition; but if it be of a Matter whereof they had no Jurisdiction, they will grant a Prohibition, al-

   If it appears upon the Face of the Libel, That the Ecclesiastical Court can have no Consequence of Salk. 548.
   the Cause, At where there is no other Foundation than a Copy by which, or if it appears, That the Party
   cited is an Inhabitant at a Place out of the Diocese, there the Libel is false and; in such Cases the
   Sentence makes no Alteration; but it is otherwise where no such Thing appears in the Libel. Gard. 25.
   Pitch. 1 W. & M. B. R. Tyler v. Mantell — 10 Mod. 439. Trin. 5 Geo. 1. S. P. in the Cause of Agilid
   and Hunt. B. R. — Where it appears in the Libel, only the Proceedings in the Cause, That the Consequence
   belongs not to the Spiritual Court, a Prohibition may be moved for and granted after Sentence; and this
   holds in all Cases, except where one is not found out of the Diocese, but in that it does not, for the Reason men-
   Ch. J. But adds, That indeed if a Suit be in the Spiritual Court for a Motus, and the Defendant pleads
   Payment, he comes after too late to plead or Suggest, That there is no Motus, because he had admitted
   one by pleading a Payment. 6 Mod. 535. Mich. 7. Anne. B. R. in the Cause of Barker v. Clark.
   — See (M. a) pl. 1.

   appearing on
   the Libel it
   fell that the
   Cause was out of their Jurisdiction 2 Show. 143. Mich. 52 Car. 2. Tholomison v. Freeman — Note: It
   was ruled in full Court, If Sentence is given in the Spiritual Court, and Costs not, and the Defend-
   ant brings an Appeal, yet if the Suit did not originally or properly belong to that Court to determine, as of
   Suits of Trusts, Suit in Felon, a Prohibition shall be granted as well to the Cause as to the principal Suit,
   notwithstanding the Statute 32 H. S. exp. 5, says, That the Ecclesiastical Court shall compel the Appel-
   lant forthwith to pay Costs; for that is to be intended when the Cause appertains properly to the Spiritual
   Court. Nay. 151. Anon.

   2 in Sergent Morgan's Cafe.

4. A Sentence in the Spiritual Court at Lichfield was had against the Halliwell v.
   Plaintiff, who afterwards appealed to the Arches, where the Sentence was
   affirmed, and adjudget us Supra against the Plaintiff; whereupon he filed 459. pl. 642. 3d
   a Commision to the Delegates, and the Matter was re-examined, and Sent. Upon Confer-
   ence then given for the Plaintiff, and thereupon another Commission was vouch'd with
   fixed forth to re-examine this Matter; and now a Prohibition was pray'd for all the judges
   to stay this, for it was said, That by the Statute of 25 H. S. it is appointed, That a Sentence before the Delegates shall be final, and then this at length 2d Commission is not well awarded; but it was thereeto said, That the agreed, That the
   Queen hath by Law an absolute Power to grant Commissions to re-exam-
   mine, which is not restrained by the Statute of 25 H. S. and that it hath
   been, and
Prohibition.

that Conduction be agreed to; but if the Commons do not proceed to the Examination according to the Common Law, they shall be restrained by Prohibition.

5. It was given for a Rule by Coke Ch. J. to which the Court agreed, That after Sentence in the Spiritual Court he would not grant a Prohibition if there was not Matter apparent within the Proceedings; for he said, He would not allow the Party to shew any Thing not grounded on the Sentence, because he has admitted the Jurisdiction, and there is no Reason for him to try if the Spiritual Court will help him, and afterwards to sue for a Prohibition at Common Law. Godb. 163. pl. 228. Pauch. 8 Jac. C. B. in the Cafe of Candice v. Plomer.

6. It was revolv'd per tot. Cur. That if one be fixed in the Admiralty for a Thing alleged to be done upon the High Sea, within the Jurisdiction of the Admiralty, and the Defendant pleads to it, and confesses the Thing to be done, and after Sentence is given the Court will be advised to [before they will] grant a Prohibition, upon Surname, That it was done infra Corpus Comitanis, against their own Confession; unless it can be made appear to the Court, by any Matter in Writing, or other good Matter, That it was done upon Land; for otherwise every one would stay till after Sentence, and then, for Vexation only, sue out a Prohibition. 12 Rep. 77. Mich. 8 Jac. Anon.

The Sentence be given in the Admiralty, yet if it appears, That the Matter within the Libel is true, as at Common Law, a Prohibition shall be granted.

2 Brown 30. Mich. 9 Jac. C. B. in the Cafe of Jennings v. Audley. — S. P. Per Holt Ch. J. Comb. 463; Mich. 9 W. 3. in the Cafe of Tremoulin v. Sands. A Libel in the Admiralty set forth a Contract made upon the River of Lisbon; The Defendant put his Answer, whereupon Sentence was given. It was now suggested for a Prohibition, That this Contract was made upon a River, and not Super alium Mare. Coke Ch. J. proposed, and it seems to have been agreed to. That in Cafe of a Contract supposed to be made Super alium Mare, and Suit thereupon in the Admiralty, and answer'd to, and Sentence given, no Prohibition shall be granted upon a noted Surname, That it was not done Super alium Mare, unless it appears by the Libel, or by Writing, or other Matter apparent. And the Court said, It cannot appear to them where this River is, and that perhaps it may be an Arm of the Sea. Boll. Rep. 80. Mich. 12 Jac. B. R. Tourton v. Tourton.

A Ship in her Voyage Home was out of Repair on the High Sea; J.S. the Matter, perceiving it, sent to Plymouth to A. who came and agreed with J. S. to repair the Ship. Afterwards J. S. brought the Ship into the Harbour, and there A. repaired her; A. fired in the Admiralty, and Sentence was given for him. A Prohibition was pray'd for, but denied; for the Contract, which was the Culp of Action in the Admiralty, being made on the High Sea, within the Admiralty's Jurisdiction, the Work was done on the Land, yet the Recompence shall be had in the Admiralty, especially as in this Cafe, the Matter being ran away; And being after a Sentence, this Court will not enter into the Examination of the Merits farther than what appears upon the Face of the Libel; for it is a constant Rule, That no Matter declares it shall be admitted as a Suggestion to ground a Prohibition after a Sentence in a Civil Law Court. 8 Mod. 194. Mich. 10 Geo. Anon. —— 8 Mod. 176. Trin. 9 Geo. 1724. Brock v. Wingfield. You can not have Prohibition to the Admiralty before Sentence, but otherwise it is to Court Chriftian. Per Holt Ch. J. Holt's Rep. 49. Brown's Cafe.

7. A Bill was brought for a Trespass at the Sessions at Montgomery, and proceeded to a Decree, a Prohibition was granted; Upon shewing Cauze against the Prohibition, it was urg'd, That this might have been denuer'd to at first, it being a Bill for a Trespass; but it was answer'd, That if there is no Equity in the Bill, the Court may award Prohibition notwithstanding the Decree; but Twifden said, That hereby, upon 34 H. 8. the Jurisdiction of South Wales will come in Question; and therefore, besides the Suggestion, they would see the Bill itself, because a Prohibition is not Honorable; whereupon the Prohibition was order'd to a View had of the Bill. Keb. 100. pl. 99. Trin. 13 Car. 2. B. R. Cooper v. Gardiner.

8. After a Sentence in a Suit for Tithe of Mills was given on the Right, a Rule for a Prohibition was for that Reason dichar'd. 2 Keb. 721. pl. 117. Mich. 22 Car. 2. B. R. Meffinger v. Jennings.

The Reporter makes a Quere, be-
Prohibition.

dication; The Defendant demurred on the Evidence, but the Steward refused, and the Plaintiff had a Verdict and Judgment, and now moved for a Prohibition; but it was denied because after judgment. 2 Lev. 230. Mich. 30 Car. 2. B. R. Jackson v. Neale.

10. If it appears upon all the Proceedings in the Ecclesiastical Court, That the whole was of Ecclesiastical Consequence, a Prohibition lies not after Sentence, Comb. 448. Trim. 9 W. 3. B. R. in the Case of Chicken v. Dickfon.

Court for a Mortuary, upon suggestion the Statute 13 H. 8. cap. 6, alleging also, That there is no peculiar Custom within the Parish to have Mortuaries, to which it was answerd, That this was too late, being after Sentence, and that a Mortuary is merely of Ecclesiastical Consequence, whereas B. R. has no Jurisdiction; and that it shall not be granted after Sentence, except it appears, That the Spiritual Court had no Jurisdiction of the Case. The Court, upon the whole Matter, was doubtful, Whether a Prohibition would be a Mortuary; and so advised the Defendant to accept a Declaration, and thereupon to demurr, that the Matter might be solemnly debated. Carth. 97. Mich. 1 W. & M. B. R. Broad v. Piper.

11. An Information was for stricking in the Church, and an Acquittal thereon, and then they exhibited Articles in the Spiritual Court for Brawling in the Church, but the Court would not grant a Prohibition, because they should have pleaded this Matter, which they fugglet here, in the Spiritual Court; and if they had refused the Plea, then they might have justly come and moved for a Prohibition. 11 Mod. 222, 201. Hill. 7. Anne B. R. Sawyer v. Loggin.

(M. a) At what Time it lies. After Sentence.

1. Generally if a Suit be in the Spiritual Court, and there Sentence given for the Plaintiff, and upon this the Defendant appeals, and after prays a Prohibition, no Prohibition shall be granted, though he had come before Sentence it ought to be granted; because it is inconvenient after such great Expense, and no Exception taken to the Jurisdiction to grant a Prohibition. P. 9 Car. 2. R. in the Case between Frizewell and Per Curiam said, That all the Judges of England have agreed under their Hands, that when Prohibitions were in Question, not to grant Prohibition in such Case.

this Difference, and held the Opinion of the Court had been so, viz. where the Party pleads the Matter, and where not; For if he pleads it, there notwithstanding a Sentence Prohibition has been granted, but contrary where he does not plead it. But notwithstanding the Court refused to grant a Prohibition. Mar. 23. pl. 111. Mich. 14 Car. Anon.

In all Cases except being out of the Diocese, if the Ecclesiastical Court has no Jurisdiction, they may be prohibited as well after Sentence as before, and Griffiths Case in Roll is no brand Doctrine, per Hol. Ch. J. Hill 5 W. 5. B. R. Camb. 536. Holmes v. Jefcor. — See (L. 2. pl. 1, 2.

2. But if a Suit be in the Spiritual Court for Tythes, where the Question is, Whether the Land out of which the Tythes are rising, be within the Parish of the Parson, or it is in, and within a Forest of the King; After a Sentence for the Plaintiff, and an Appeal by the Defendant a Prohibition shall be granted, because it is utterly out of their Jurisdiction to try the Sounds of the Party. And also this concerns the King: For if it be within the King's Forest, he shall have the Tythes, and Nullum Tempus occurs. Reg. Diet. 9 Car. 2. R. between Frizewell and which concerns the Lord Darcy of the North, a Prohibition granted per Curiam.
Prohibition.

3. Prohibition is grantable after a Sentence in Court Christian for a
   fixed for a
   Legacy in
   the Spiritual
   Court, and
   pleaded.

Payment, and offered to prove it by an 
Witness, which was refused, and Sentence against him. Prohibition
lies; For the Sentence in this Case is the Grievance. 2 Safr. 543. Hill 1 W. & M. B. R.
Skeetro v. Friend. —— Show. 178. 12 S. C.

A Prohibition was
   granted upon
   23 H. 8.
   Cap. 9. for
   suing in the
   Prerogative
   Court for a
   Legacy of
   10 l, when
   the Parties
   lived in an
   other Diocese,
   but because the
   Will was
   proved in that
   Court, and
   the Seits in the same Court where the Probate was, and Sentence there given for the Legacy, and upon an
   Appeal afterwards to the Delegates the Sentence was affirmed, and Costs taxed, and Communication upon that Sentence, and no Endeavour before to stay the Proceedings, the Court said, That having
   to long allowed the Jurisdiction of the said Court he came too late now for a Prohibition. Cro. C. 97.
   in Case of the King v. Brown.

4. A a Feme, Leafe for Years, had Issue two Daughters, vis M. mar-
   ried to J. S. and C. to W. R. B. had Issue 4 Daughters, and C. also
   had Issue. A devered Legacies to B's Children out of the Rent reserved upon
   the Lease, and made W. R. Executor, and died. 7 S. demanded of
   W. R. the Executor the Legacies due to his Children, that he might em-
   ploy the Money for their Benefit, and libelled for it in the Spiritual
   Court, and had Sentence; from which Sentence the Executor appealed; and there the first Sentence was confirmed; then he moved for a Prohibition, suggetting that he was Executor, and chargeable in Account for
   Money, but because he came after Sentence, and after he had appealed to the Delegates, and a Sentence there against him also, and for other
   Reasons the Court refused to grant a Prohibition. Godsb. 243. pl. 337.

5. Upon a Rule in C. B. for a Prohibition, the Party laid it by without
   serving it, and the Spiritual Court proceeded to Sentence; then the Defen-
   dant appealed, and two Terms afterwards he served the Prohibition. The
   Court held, that because he had suffered Sentence to pass, he should
   have no Benefit now of the Prohibition; and a Difference was taken, where a Prohibition is granted and the Party not serving it is excommunicated for not enforing the Libel; in such Case he shall have the Benefit
   of the Prohibition; but not where there is a Sentence Definitive. Cro.

Cro. C. 97.
Mich. 5
Car. C. B.
Smith v. the
Executors of
Poyndeit.
— S. P. Sir
the Matter
being of Ec-
celestial Consequence
and not delivering the Prohibition till after Sentence, the Court will grant a Consultation; For it is a

After Sentence in the Spiritual
Court for
Defamatory Words, the
Court will
not grant a Prohibition on a Supposition that the Words were spoke in London, and that there is a Calendar in London, that Defamatory Words spoke there are actionable, but it should have been pleaded to the Jurisdiction of the Court; for the Courts at Westminster are not Ex Officio to take special Notice of such Calibom in London after Sentence, but if such Matter he moved before Sentence it need not then be proved by Affidavit, because it is sufficiently known. S. Mod. 176. Trin. 9 Geo. 1224. Brook v. Wingfield
— S. P. 10 Mod. 459 Trin. 5 Geo. I. B. R. Ayliffe v. Hahn. —— In such a Case the Court doubted, whether a Prohibition should be granted after Sentence; and yet per Car. the Plaint-
ffs, notwithstanding the Sentence, may bring an Action in London for the same Words, to which the Sentence cannot be pleaded in Bar; and by this Means the Party may be doubly punished for one and the same Thing; Curtis advizare vult. Cairns. 215 Hil. 5 W. & M. B. R. Hawkins v. Cook.

6. Libel was in the Arches for scandalous and defamatory Words, and
   Sentence was given for the Plaintiff, and four Years after the Sentence the
   Defendant prayed a Prohibition, and the Court were against the Prohibition,
   Dudley v. Crompton.

7. Executor becoming afterwards Bankrupt, the Prerogative Court re-
   quired the Probate and committed Administration, as it was agreed they
   might in the Cause of Lunacy or other natural Disability; but in the Cause
   here the Court was clearly of Opinion, that the Revocation is void,
   and the Tsettator having trusted him, Bankruptcy is not such a Disability,
but that he may continue Executor this Non Obstante; for the Tenant's Estate is not liable to be aligned by Commissioners, but remains subject to the Truths in the Will; and a Man having made his Executor and dying, shall never be said to die Intestate as long as he has an Executor alive who will intermeddle, and has proved the Will; and therefore, though after a Sentence and Appeal brought, the Court granted a Prohibition, it being twice moved. Skin 299. Mich. 3 W. 3. B. R. Adriel Mills's Case.

8. A Prohibition was granted Anno 9 Will. 3. to stay a Suit in the Condictory Court at Wells for Tithe Hay, and Seed of Clover Grains, upon a Suggestion of a Modus to pay 4d. per Acre for all Up-land Meadows, which Modus was pleaded below, and Depositions taken there. And in Trinity Term, Anno 10 Will. 3. this Court was moved for a Consultation, because the Plaintiff in the Prohibition had not proved this Modus within six Months; and thereupon a Consultation was awarded, and then the Spiritual Court proceeded to Sentence against Pool. And now it was moved for a new Prohibition, because the Consultation was awarded for Default of proving the Modus in Time, and not upon the Merits of the Cause, so not within the Statute of Ed. 3. by which it is enacted, that no Prohibition shall be allowed after Consultation duly granted, so as the Matter in the Libel is not charged. And the Court was of this Opinion; whereupon a Prohibition was granted upon Payment of double Coifs, according to the Statute, though it was strongly opposed, because after Sentence. Carth. 463. Mich. 10 W. 3. B. R. Pool v. Gardner.

9. In a Motion for a Prohibition it was agreed, that though a Prescription, As whether a whole Parish or a select Vestry should be liable to Common Law by a Jury, yet Sentence is to be given in the Spiritual Court according to the Verdict, and therefore though this Matter be triable at Common Law, yet if the Party submits to a Trial in the Spiritual Court by not demanding a Prohibition, it will be too late after Sentence to move for one. 10 Mod. 12 Mich. 9 Ann. B. R. Banister v. Hopton.

(N. a) Pluis citius. [Where he may have a more speedy Remedy]

1. Where a Ban by Intendment shall have Remedy by Appeal, if the Spiritual Court will not permit, then the Appeal shall be heard by an Extraordinary Judge appointed by the Court of Exchequer, instead of an Ordinary Judge, for their Rules and Orders of Justice, that is not a case of Prohibition but Appeal; Per Richardson. Her. 115. in Case of Dames v. Sparks.

2. [As] if a Man devise a Legacy to B. to be paid him within a Year after his Death, proviso that if he dies within this Year, that then this Legacy shall be void, and it shall be divided between D. and E. and after B. dies within the Year, and his Executor files for the Legacy, and Sentence given for him, because the there holds the Condition void, yet no Prohibition lies, because by Intendment he shall be added by Appeal. 9. 21. A. B. R. Clarke's Case resolved, and Prohibition denied.

(O. a)
Prohibition.

(0 a) After Confutation. At what time it lies.

1. If a Prohibition be granted upon a Discharge of Tithes upon the Statute of 31 H. 8. in the Hands of the Abbots, and upon Nune joined it is tried at Common Law, and the Plaintiff is non-suited thereupon, and a Confutation granted, and after the Confutation granted, the Plaintiff in the Prohibition pleads in the Ecclesiastical Court the same Plea in Discharge of Payment of Tithes, which was alleged in the Prohibition, which the Spiritual Judge accepts, and proceeds to try it there, a Prohibition lies. For the Trial at Law is final upon this Libel, and shall not be tried in the Ecclesiastical Court again, it being proper for a Trial at Common Law. Hobart's Reports, Case 372. Farmer's Case.

Prohibition upon a Libel for Tithes of Stale-Stones, the Defendant prayed a Confutation, for that herebefore the Plaintiff sued a Prohibition for the same Cause in Chancery, and upon the same Libel, and there a Confutation was granted, for otherwise he shall be infinitely vexed, that when one Court grants a Confutation he shall sue a Prohibition in another Court. And of this Opinion was all the Court, that he shall have a Confutation, if before a Confutation was granted in another Court upon the same Cause. Cro. Eliz. 277. pl 8. Patch 33 Eliz. in B. R. Left v. Watts.

Prohibition for Tithes, the Defendant shows, that before that Time the Plaintiff had sued in Chancery for a Jury by English Bill, and afterwards brought a Prohibition there, and a Confutation was there granted, and that this Prohibition was for the same Cause, viz. for Matter of Discharge; whereas he played a Confutation upon this Statute. But the Court held, that this Confutation was not duly granted according to the Form of the Statute, because the Prohibition was not duly granted there, and so it is out of the Statute: for it was not duly granted upon an English Bill. And by Popham, the Statute is to be understood, where the Confutation is granted upon the Examination of the Matter, and not for the Convenience of the Proceedings. Good Faith Confutation. Whereupon it was awarded, that the Prohibition should Failed. Cro. Eliz. 756. pl. 4. Hill. 42 Eliz. C. Sibley v. Crawley, if it be apparent Matter, that the first was not duly granted, then a new Prohibition may be granted: by the whole Court, and with this agrees the Book of Enquiries in the Title of Prohibition; but this is to be intended to the Spiritual Judges; and it seems that the Amazor is out of this Statute. 2 Brownl. 33. Trin. 11. Jan. 1612. B. R. Anon. cites 277.

In a Suit for Tithes of Lumb in Wool Ec. of Sheep defrauded in a Cloke called G in B. The Plaintiff suggested for a Prohibition, that G had always paid his. In Discharge of all Tithes of Lumb, Wool, Ec. It was moved for a Confutation, because the same Suggestion had been made before in four several Prohibitions for the same Cause, and the same Allegation was made there, and Confutation was there granted, and that this Prohibition is for the same Cause, viz. for Matter of Discharge; whereas he played a Confutation upon this Statute. But the Court held, that this Confutation was not duly granted according to the Form of the Statute, because the Prohibition was not duly granted there, and it is out of the Statute: for it was not duly granted upon an English Bill. And by Popham, the Statute is to be understood, where the Confutation is granted upon the Examination of the Matter, and not for the Convenience of the Proceedings. Good Faith Confutation. Whereupon it was awarded, that the Prohibition should Failed. Cro. Eliz. 756. pl. 4. Hill. 42 Eliz. C. Sibley v. Crawley, if it be apparent Matter, that the first was not duly granted, then a new Prohibition may be granted: by the whole Court, and with this agrees the Book of Enquiries in the Title of Prohibition; but this is to be intended to the Spiritual Judges; and it seems that the Amazor is out of this Statute. 2 Brownl. 33. Trin. 11. Jan. 1612. B. R. Anon. cites 277.

A Man elected upon this Statute in the Spiritual Court for a Libel, and a Confutation was granted, yet the Defendant in the Court Christian might have a new Prohibition if it appeared the F. S. Con- futation was not duly granted. 2 Brownl. 26. Dorwood v. Brockinden, so if a Man Libel for Tithes for twelve Years, and Prohibition is granted for part of the Years, and after that a Confutation is moved, yet the Plaintiff may have a new Prohibition for the Register of the Time, notwithstanding this Statute, and that it be upon one self same Label. But if there be any Amendment in the Label, and that it be for the same Confutation, it is to be before the same Judge, and for the same Cause. And a Prohibition was denied per Cur. for the great Inconvenience which might ensue; for so it is upon several Appeals several Prohibitions might be granted. 3 Holst. 182. Patch. 14. Jac. Biggs v. J. S. Parton of D. S. C. Roll. Rep. 372. pl. 75 Anon accordingly. But says, if a Prohibition be not so amended, in such Case a new Prohibition lies.

In a Prohibition to a Libel for Title Bay it was found for the Plaintiff, because the Lord which was pleaded to be Pawn of the Pufflings of a Priory and held discharged Title whereas Memory essays Discharge for so long only as it was in the Hands of the Priory, and not when it was in the Hands of their Parsonies, the Priory being by the Order of Dismission; and therefore, a Confutation was
was awarded. Afterwards another Libel was, but differing from the former, viz. where the first Libel was, that (They had paid Tithes Time out of Mind) now in the second Libel it is added, (That though the Prior was discharged, yet they, viz. the Farmers, had paid Tithes by 25, 29, or 42 Years, and Time whereof Memory &c.) It was argued, that this was no Changing of the Substance of the Libel, and to this Mountain, the J. Judge in the Ex & the Defendant and the Answer to that, For now by the last Libel they could fetch the Plaintiff in for Tithes; for though the Land was discharged in the Hands of the Abbots, yet because Tithes had been paid for 29, 30, or 42 Years since the Statute, (which according to the Civil Law is sufficient to make a Prescription) they would charge the Lord with the Tithes in whatever Hands it be, whereas by the Statute it ought to be discharged only in the Hands of some Person who had the Court Servant, and if the Court Servant proceeded upon this Addition to as to give Sentence for the Tithes upon any Prescription from the Statute, they would grant a Prohibition. 2 Roll. Rep. 205; Mich. 18 Jac. B. R. Lady Denon v. Comitis de Chur- richward.

It was agreed by the Court, That if there be a Suit in a Ecclesiastical Court, and a Prohibition awarded, and afterwards Conflation granted, that upon the same Label no Prohibition shall be granted again; but if there be an Appeal in this Cause then a Prohibition may be granted, but with these Differences; if It who appeals pray the Prohibition, there he shall not have it, for then Suit shall be deferred in Infinitum in the Ecclesiastical Courts, adly, If the Prohibition and Confusion were upon the Body of the Matter and the Substance of it; for otherwise he shall be put many Times to try the same Matter, which is full of Vexation. Poph. 159. Par. 1. C. B. R. Bowyer v. Wallingdon —— The Cause was thus, viz. W. Libelled against B. for Tithes, who upon suggesting a Modus had a Prohibition, and an Attachment, and declared, and Illeg found for the Defendant, and upon a Conflation granted Sentence was given against B, who appealed and prayed a new Prohibition and had it. Now moved for a Conflation, it is Become a Prohibition and Attachment upon it are but one Act for the Conflation, and therefore once tried, and tried again. And as to this Cause he confuted the printed Book, and alio in the Extract of the Parliament Roll itself, that was printed in the Tower is (the same Judge) but the Parliament Roll itself, and the Petition is (Late Judge) Ecclesiastica pro Discell. adon an Trendand and the Answer to the Petition is (One Conflation granted sufficient) and the Parliament Roll itself was brought into Court and viewed; but he found it were, in the printed Book and Extract, (the same Judge) it shall not be intended the same Persuasion Judge, but the same Judge of Conview of the same Jurisdiction or Cause, to avoid Infinitum. Poph. 119. Par. 1. C. Bowyer v. Wallingdon —— Poph. 415. S. C. and Doderidge and Bridgman laid, the Appeal was the Party's own Act, and therefore in this Cause the Intent of the Statute was (Ecclesiastical Judge in general.) And Jones laid, it was hard to have a new Prohibition when the Matter is tried against him, Doderidge ordered it to be moved again when the Court is full. —— S. C. Lat. 6. —— S. C. Lat. 155 no Conflation was awarded.

Prohibition, upon the Statute of 2 E. 6. because he saies for Tythes of Heath and Barn Ground within 7 Years after the Improvement. The Defendant pleads the Statute of 50 E. 3, cap. 4, and that at another Time a Prohibition was granted, and Conflation thereupon, therefore he shall not now have another Prohibition. It was shown that the Conflation was not upon the Substance of the Prohibition, but because he did not prove by two Witneses the Suggestion within the 6 Months, and it was thereupon demurred. It was resolved, that the Conflation being granted, for not proving the Suggestion by two Witneses, according to the Statute of 2 E. 6, and not upon the Substance of the Suggestion for want of its Verity, or for the Infficiency thereof, it is not within the Statute of 50 E. 3, cap. 4. For that is intended where Conflation is granted upon the Substance of the Suggestion being proved to be insufficient in Verdict, or Nonfruit after Evidence, and not where it is granted for the Want of the Infficiency of the Form of the Suggestion, or in the Proceeding thereupon; Wherefore it was adjudged for the Plaintiff; Effectually as this Cause is, for that it is a collateral Cause out of the Suggestion, and no Cause of Conflation at the Time of the Statute made. Cru. C. 258, 259 pl. 5, Hilt. 6 Car. B. R. Serond v. Hoskins. —— In 231. pl. 5, B. C. Accordingly, and that the Defendant, notwithstanding his Pleas in Bar of the Prohibition, may plead in chief to the Matter of the Suggestion, and if he will disjove it, then he shall have several Constractions upon the said Libel.

A Motion was made for a Prohibition to a Suit for Tithe Lamb upon a Suggestion of a Modus to pay 2 d. a Lamb for Lambs falling in the Plaintiff's Farm in the Parish. It was objected, That a Prohibition was granted before this Suit, a Suggestion; which was try'd and found for the Plaintiff, and a Conflation granted; But it was answered, That that Suggestion was for every Lamb which fell in the Parish, whereas this is only for Lambs falling in a particular Farm, and no not within this Statute, but the Court inclined against a Prohibition, by Reason of the said Statute. 2 Vent. 47. Trin. 1 W. & M. C. B. Anon.

3. If a Conflation be once granted, the Party shall never have another. Upon a Mo- ther Prohibition in the same Cause. Le. 159. pl. 177. Trin. 30 Eliz. B. R. motion to dis- solve a Prohibition granted to the Spiritual Court upon a Libel for Tithes, the Court took this Rule: When a Conflation is law-fully granted, there a new Prohibition shall not be granted upon the same Libel; and yet they qualified that with this Difference, That when a Conflation is granted upon any Facts of the Prohibition in Form, by Mitprison of the Clerk, or by Mispleading of any Statute, or such like, there a new Prohibition may be granted upon the same Libel; But if Conflation be granted upon the Facts of the Prohibition in Question, there a new Prohibition shall not be granted upon the same Libel 2 Brown. 25. Poph. 1. Jac. Anon. Q. Where
Prohibition.


4. A Prohibition was granted to a Suit for Tithes upon a Suggestion of the Lands being Barren and nearly improved, Hereupon a Trial is had on a Declaration on the Prohibition, and a Verdict for the Plaintiff, that the Lands were not barren, and thereupon is a Contumacy, and he proceeding there gets a Sentence; from thence there is an Appeal to the Arrow, and there they enter an Allegation that the Land is barren, and the Court there is proceeding to repeal the Sentence, because Barren Land, tho' contrary to the Verdict at Law; And upon all this Matter the Court grants a Prohibition Quoad the Allegation of Barren Land. 3 Show 195. pl. 195. Patch 34. Car. 2. B. R. Owen's Cafe.

(O. a. 2) Contempts to Prohibitions. Punish'd How, and Where. And Pleadings.

1. Attachment upon a Prohibition was fined, inasmuch as the Defendant fined in Curia Cleri of Lay-Fee contrary to the Prohibition of the King, and Counted that he delivered the Prohibition in Presence of certain Persons; Nombrye said * He has fined No Plea contrary to the Prohibition of the King, Prift. Thorp said, You shall not have such Plea; For if no Prohibition was delivered to You, and You had fined there of Fee, You had committed a Contempt; For the Statute is a Prohibition in itself, and after the Issue was taken that he had not paid any Plea of Lay-Fee in the Spiritual Court, &c; and the others contra. Br. Attachment for Prohibition, pl. 9. cites 21 E. 3. 29. Court of Lay-Fee before, nor after, the Prohibition, Prift, and the others contra. Br. Attaint pl. 14. cites 21 E. 3. 38.

2. Attachment upon a Prohibition lies in the County where the Summons to appear in the Spiritual Court was made, tho' the Plea, and the Excommunication, which is a Grief, was in another County. Br. Attachment for Prohibition, pl. 3. cites 44 E. 3. 32.

3. Attachment upon a Prohibition, because the Defendant held Plea of great Trees after Prohibition delivered to him, and he said That he held Plea de Silva Cedia by reason of a Contumacy to him directed after the Prohibition, Alitque hoc that he held Plea of other than De Silva Cedia, and no Plea; For he ought to traverse Alitque hoc, that he held Plea of great Trees; For, Per Bek Silva Cedia is all that which is fit to be cut and will grow again, and every Tree cut will grow again if it be kept from Bents, to that by this Word Silva Cedia * Priests sue for, or claim Tithes as well of great Trees as of final, and it was never seen that Tithes should be demanded of great Trees, nor of Timber, by which he ought to traverse That he he did not hold Plea of great Trees, Quod Curia concedit. Br. Attachment for Prohibition, pl. 5. cites 56 E. 2. 16.

5. The Prior of E. brought Attachment upon a Prohibition against the Collectors of Tenths and Fifteenths, and counted that he delivered to them a Prohibition in the Presence of certain Persons, That they should not distrain for certain Rents issuing out of certain Tenements held of

* Orig. is (Priests pursuant)
Prohibition.

In London; and notwithstanding this, they had taken certain Sums of Rents of certain of the Tenants of the Prior for Teneths aforesaid tortuously &c. They justified for Tithes ariling out of the Lands of the Religious, purchased after 21 E. 1. because the Ward in London, in which the Tenements lay, was not sufficient of Goods, they took the Rent of the Tenants, because the Day of Payment was come, and because the Tenants had paid the Fifteenth for their Goods, therefore per Cur. the Prior shall not pay Teneth for the same Tenements, and therefore the Defendants were condemned, and the Damages fixed to 10 l. and the Collectors capituar.

Br. Attachment for Prohibition, pl. 7. cites 7 H. 4. 33.

5. Attachment upon a Prohibition, the Writ was Tenet placium contra Prohibitiorem nostri, and did not Count That Prohibition was delivered to the Defendant, by which the Defendant demanded Judgment of the Court for this Default; And per Cur. he ought to Count it, and yet it is not traversable. Br. Attachment for Prohibition, pl. 1. cites 9 H. 6. 61.

6. Prohibition Issued to a Bailiff not to hold Plea in Action between J. C. and W. D. and after Attachment upon the same, Prohibition was brought against the Bailiff and the Plaintiff; because they proceeded contrary to the Prohibition of the King; And per Newton, clearly the Action does not lie against both, because the Prohibition was directed only to the Bailiff, so that the Plaintiff has not committed any Contemn; But per Acue the Statute is a Prohibition in itself, and so the Action lies well against both; Where inde; For the Reason was, that the Bailiff held Plea of 40s. which belong to the King's Court, and it seems that there is not any Statute thereof, but only the Common Law; and it seems that the Attachment is the Original, and the Prohibition and the Relining to obey it is the Ground and Cause of the Action, but the Attachment is the Original and the Action. Br. Attachment for Prohibition, pl. 11. cites 19 H. 6. 54.

7. A Man shall have an Attachment upon a Prohibition against the Judge, and ibid. 49 if be refused to receive the Prohibition, and to admit of it. E. N. B. 40 (K) (1) in the New Notes there (c) days, where there shall be an Attachment against the Judge and Party by a feudal Pone per Vat. Sec 53 E. 3. 912. For the Act of the Judge is depending on the Suit and Act of the Party, and if there be an Attachment on a Prohibition against the Plaintiff and the Judge, where the Prohibition was directed only to the Judge, and held by Newton not good; For the Plaintiff in the Suit there shall not answer to the Contemn, but only to the Trefpafs; because no Prohibition was directed to him, and so be cannot be joined in the Action. But although contrary, that the Law is in itself a Prohibition, and so there needs no Mention of any Prohibition, and therefore the Plaintiff shall answer for the Contemn, as in a Premisture &c. which Norton agreed, had the Prohibition been directed to both of them, and yet this Sums are not traversable 19 H. 6. 54. a. b. See Accordingly of the Matter of the Prohibition that it is not traversable. 9 H. 6. 61. a. 21 E. 5. 29. a. 58. b.

8. If a Parson likes for Tithes, and a Prohibition is brought, and he lies, where a Bells for Tithes of another Year, the first not being determined, an Attachment shall be awarded. Per rot. Cur. Mo. 599. pl. 824. Mich. 37 & 39 Eliz. Sharington v. Fleetwood.

is granted for one who is fixed, if the Parson sees another upon the same Title before the first is determined, an Attachment shall be awarded. Per rot. Cur. Mo. 599. pl. 824. Mich. 37 & 38 Eliz. Sharington v. Fleetwood.

The Parson of B. libell'd for Tithe Milk of a Kine decaufing in Bl. Acre in his Parish; Defendant preferred to pay 100 s. a Year to the Parson for the Tithes of that Field, which Plea being refused, a Prohibition was granted, and an Injunction against the Judges, Doctors, Proctors, &c. Afterwards the said Parson libell'd again against the same Parishioner for the same Tithes, but there was no Difference in the 2 Libells, only that the latter Libell was for a left Number of Kine than the first, whereupon the Parishioner proved an Attachment, which the Court granted; For otherwise a Prohibition should be granted to no Purpose. Le 111. pl. 151. Ditch 50 Eliz. 2 H 8 Stafford's Case.

(P. a)
(P. a) Consultation. In what Cases it shall be granted.

1. If a Prohibition be granted upon a good Suggestion, and the Parties go to Issue upon the Suggestion, and the Issue is found against the Plaintiff in the Prohibition, yet if it appears to the Court on the finding of the Jury that there is good Discharge of Tithes upon a Modus Deemander, the Plaintiff has misstaken his Issue, no Consultation shall be granted; because it appears that they ought not to have Jurisdiction thereof in the Spiritual Court. Hobart's Reports, Vol. 259. Berry's Case.

2. As if upon a Prohibition the Issue be whether all the Land in such a Parish ought to be discharged of Tithes for a certain Modus Deemanded, and the Jury finds that all the Land except certain Acres ought to be discharged; but not those Acres, tho' the Issue be found against the Plaintiff in the Prohibition, yet no Consultation shall be granted for any of the Land, but for those Acres, without that there appears that there is a good Discharge; and real Composition for it. 259, 11. 22. between Perry & Bovington adjourned. Hobart's Reports, Vol. 259. Such [Case] yet there, because the Suit was for Tithes in mind out of the Land excepted only, the Consultation was granted; for there the Suit was well founded.

3. In a Prohibition, if Plaintiff declares that he is seized in Fee of 2 Meliages and 2 Mills, and that he and all those whose Estates he has &c. have nieed to pay 20 to the Parish in Lieu of all Tithes issuing out of these 2 Meliages and Mills, and that he has crested de novo 2 New Mills within the said 2 Meliages, for which also he ought to be discharged of Payment of any Tithes by the Law, and that Defendant has sued him in Court Christian for Tithes of the 2 Mills; to which the Defendant pleads for a Consultation, and travels the Prescription as to the 2 Meliages and 2 ancient Mills, upon which they are at Issue, and to the 2 new Mills a Demurrer is joined, and after the Plaintiff is nonsuit upon Trial of the Prescription, this determines the Deferrers assail, and therefore a Consultation shall be granted for the Whole. Mich. 13. 15. B. R. between Goodwin & Smith. Pet Curiæ adjourned. This concerns Torrington Mills in the County of Devon.

4. If the Declaration in a Prohibition be good, and the Plea for a Consultation be insufficient, and yet Issue joined, and a special Verdict found, by which the Plaintiff has not any Cause to have a Prohibition, yet if this which is so found be incompetent to the Issue, no Consultation shall be granted. Co. 11. Priddle and Napper 15. Adjourned.

5. After a Prohibition, if the Party will submit himself to the Judgment of one who furnishes that he has Jurisdiction (where he has not any) yet no Consultation shall be granted. 2 H. 4. 10.

6. If a Man has a Prohibition upon a Libel for Tithes of Faggots, upon a Suggestion, That they were made of great Trees above 20 Years of Age; and in the Suggestion the Quantity of the Faggots is mistaken, yet if it appears that he makes his Suggestion according to the Copy of the Libel given to him by his Proctor, no Consultation shall be granted; for by the Statute of 2 H. 5. he ought to have a true Copy of the Libel. 259, 11. 22. between Scammerton and Mann. Adjourned.

7. 51
Prohibition.

7. It was agreed in the Parliament at Sarum, That Consultation lies of S suce Causa, notwithstanding that they are renew'd Annually. Br. Consultation, pl. 11. cites the Register.

8. Consultation after Prohibition shall not be directed to the Spiritual s p Br. Court to hold Plea in Caeof Defamations; for the Caufe belongs to Consultat- the King's Court; by all the Justices. Br. Jurisdiction, pl. 96. cites the the Register, 

9. Citation was rised in the Spiritual Court against a Feme Sole upon Slender, and the Libel prov'd for the Plaintiff; upon which the Court a-awarded 10 l. to the Party for his Costs, and for the Defamation; and after the Feme took Baron, and made the Baron her Executor, and dy'd; afterwards Citation was against the Baron, as Executor of his Feme, to pay the Sum to the Party; upon which Prohibition was fued, and the other pray'd Consultation; and by the Opinion of the Court, because the Slander is Spirit- and, they cannot award better Reconcience than Money, and that the Baron has prov'd the Testament of the Feme, therefore it was agreed, That as he made him Executor, a Consultation shall be granted. But several Serjeants e contra, and that the Spiritual Court cannot award a Sum of Money, and that the Slander dies with the Person, and all that depends upon it likewise. But Brooke saies, It feems to him, that it is a Debt, and by the Death of the Feme the Debt shall not run upon the Baron; But it feems, The Probate of the Testament he has taken upon him to pay it in Law. Br. Consultation, pl. 5. cites 12 H. 7. 22.

10. It feems, That where the Spiritual Court is prohibited to hold Plea as if a Man of a Thing whereof the Plea belongs to them, in those Cases Consulta- tion lies. Br. Consultation, pl. 7.

and the other Party for Prohibition, the Plaintiff shall have Consultation; for it is merely Spiritual, and trashable in the Spiritual Court. Br. Consultation, pl. 9. cites 38 H 6. 19. Br. where a Prohibition is granted of such Matters, for which Allain he at Common Law, a Consultation shall not be granted. Br. Consultation, pl. 6. cites 22 E. 4. 20.

The Justices said, That properly a Consultation ought not to be granted, but in Cases where a Man cannot recover at the Common Law in the King's Courts. F. N. B. 53. (11) — It does not lie of a Thing which a Man may recover in a Lay Court. Br. Consultation, pl 7.

11. When a Consultation is once duly granted, the Court Christian may proceed, notwithstanding the Party purchase a new Prohibition, directed to them, if the Libel be not changed. F. N. B. 45. (A) saies, Quod Vide by the Statute of 50 E. 3. cap. 4.

12. Prohibition for Tithe against the Defendant, Farmer of the Reccov- on of Frit-tender, in the County of Elflax, and nearmifeth, That from Time whereas &c. he had used to pay 45. per Annunum, in discharge of all Tithe; and his Proof were, That he did use to pay 45. 6 d. per Annunum. And upon this Proximatas, a Consultation was pray'd, and because it appeared, That there were not any Tithes due in Kind to the Parfon, as he high paid, but it is a Modus Decimandi, altho' not in such Manner as the Plaintiff nearmifeth, the Court held, That the Defendant should not have Consultation; for he had not any Charge for Tithes of that Land; and it was ruled accordingly. Cro. Eliz. 819. pl. 13. Patch. 43 Eliz. in C.B. Beal v. Webb. cites 2 Eliz. Dy. 171.

13. A Prohibition was granted upon Suggestion of a Modus Decimandi. Afterwards a Consultation was pray'd, and granted, as to Offer- ings; because the Modus &c. does not go to the Personalty. Mar. 81. pl. 131. Patch. 16 Car. Anon.

14. It is moved, That where a Prohibition was 6 Months since granted for Stay of a Suit in the Ecclesiatical Court at Hereford, upon Saufife, That the Lands are held in Capite, whereas it appeared by Letters Patents whereof, That the Lands were bottin of Eas'. Greenswicke; therefore Consultation was granted, unless Caufe shew'd, and the Party to pay Double Costs, according to the Statute whereby the Prohibition is granted. Cary's Rep. 112.

114 Wolfe v. Merrick Clums. R.
Prohibition.

15. The Temporal Court may well try the Regularity of a Deprivation, and if it is within their Jurisdiction, we will admit the Justice of their Proceedings where they have Authority. Per Holt Ch. J. Comb. 134. Trin. 1 W. & M. B. R. in the Case of Crawley v. Oldith.

16. A Prohibition was granted upon Suggestion of a Cause to pay no Tithes for Assessments of Barren Castle; and in a Declaration upon the Prohibition, the cause was joined upon the Cause, and found for the Plaintiff; and notwithstanding, because it was void in Law, a Consultation was awarded. Lord Raym. Rep. 1162. cites it as adjudg'd. Hill. 8 W. 3. B. R. in the Case of Dix v. Woodfon.

17. If a Prohibition be granted before Sentence, and not deliver'd till after Sentence, the Matter being of Ecclesiastical Consunace, the Court will grant a Consultation; for it is a Prohibition after Sentence. Comb. 445. Trin. 9 W. 3. B. R. Gibbons's Café.

(Q. a) Consultation. At what Time, and out of what Court, and How.

Br. Condi- tions, pl. 226. cites S. C. 1. QUARE Impedit by the King, who recover'd the Presentation, and his Clerk in, who after dy'd, and another in by the Collection of the Bishop, and E. made Spoliation, by which the Presence of the Bishop fined Spoliation in the Spiritual Court, and the other got Prohibition upon certain Matter, and the other got Consultation upon Condition that it should not impugn the Presentation of the King; by which Consultation the other was ousted, and found in Chancery, supposing, That this Consultation was in Deference of the Presentation of the King; and because the Prefentee of the King was in all his Life, and the Spoliation does not go in Deference thereof, nor any Thing to the Right of the King; and if any Part shall be, it is to the Bishop who made Collation, and not to the King; therefore the Defendant was dismiss'd. Br. Consultation, pl. 10. cites 43 E. 3.

Br. Conful- tation, pl. 5. cites S. C. 2. If a Prohibition be granted by the Court of C. B. a Consultation may afterwards be granted out of C. B. after, if it appears, That the Matter is Spiritual; quod nota. Br. Prohibition, pl. 6. cites 38 H. 6. 14. Per Mole J.

3. Libel against the Bishop of L. for refusing to admit the Plaintiff pres- ented to the Church of P. The Bishop suggested for a Prohibition, That there is no fuch Recurry with Care of Souls in the Diocese, but it is only a perpetual Vicinage. It was objected, That a Consultation ought not to be granted; for whether there be such a Recurry or Not shall be tried Here; But afterwards, by Assent of the Parties, a Consultation was granted Quoad Institutionem of the Plaintiff, but that they should not proceed further. Le. 181. pl. 255. Trin. 31 Eliz. B. R. Slugg v. the Bishop of Landaff.

4. Prohibition for suing for Tithes of Faggots of Oak and Elm, cautiously making his Libel for Faggots which were of Beech and Thorn; The Defendant prayed a Consultation, Its quod he should not meddle with the Faggots of Oak and Elm; for otherwise the Party, that makes the Faggots, may per Caualae put in a Stick of Great Wood into the Faggots, and to prejudice the Parson of all the Tithes of the Ritudle But the Court said, If it be so the Party must shew the Special Matter Pro Consultatione Habenda, that the Oak and Elm are so intermixed that he cannot do otherwise, and pray a Consultation as to that which was Thorn and Beech. And so it was done in Rously's and Drum's Case, where such a Special Consultation was granted upon such Special Plea, but as it is, he can have no Consultation for any Part. Cro. Eliz. 347. pl. 18. Mich. 36 & 37 Eliz. in B. R. Buckhurt v. Newton.
Prohibition.

5. No Consultation can be granted out of Term, because it is an Award of Court, and is final, and cannot be granted by all the Judges out of Term, nor by any of them in Term out of Court. 12 Rep. 41. Fuller's Cafe.

6. A Consultation was granted Quoad Procurations demanded generally; but if the Plaintiff denied the Quantum, then a Prohibition. Raym. 366. Pach. 32 Car. 2. B. R. Kirton v. Guildor.

For more of Prohibition in General, See Courts, Difines, Privileges, and other Proper Titles.

Property.

(A) In what Persons may be, or shall be said to be.

1. NOTE, That the Goods of an Abbot belong to him during his Life, and he has Property in them, and may give or sell them; but if he dies, the Property of the Goods not given or sold are in the Sexton. Br. Property, pl. 36. cites 9 H. 6. 25.


5. A Man may have a Property, the not in himself, as in the Cafe of Jointenants, where it is not in one but in both. Arg. 2 Mod. 97. Hill. 1 Jac. 2. B. R. in Cafe of Upton v. Dawkion.

6. If a Man hires an Horse for a particular Time to ride such a Journ-ey, he hath a stated Property in the Horse during that Time against all S. C. and P; Men, even against the right Owner, who cannot justify the taking it during the Time it was hire'd for, tho' upon a Pretence of the other's intending to coven his Horse, or to ride him to any other Place than was agreed upon. Cro. J. 256. pl. 7. Hill. 7 Jac. B. R. Lee v. Atkinion and Brooks.

7. Whatever an Apprentice gets belongs to his Master, and whether legally Apprentice or not, is no ways material; for it is enough if he be to de Faité. 1 Salk. 63. Trin. 2 Ann. Barber v. Dennis.

(B.) In what Things it may be.

1. Property may be of Fish in a Piscary, and therefore in Trespass Quare Piscem Piscarius ad Valentinum &c. cepit, the Plaintiff shall recover Damages by this Word Valentinum. Br. Property, pl. 18. cites the Regiller, fol. 95.

2. Trespass was brought of J. N. Scutum Prisunerum suaum quem ipse cepit & de quo habere debuifcit to l. Pro Vita sua falvanda &c. cepit &c.
&c. Brooke says, And so it seems that a Man has Property in a Prisoner. Br. Property, pl. 18. cites the Register, fol. 102.


Br. Brief, pl. 11. cites S.K.

4. A Man who has a Warren has no Property in the Hares; and yet he shall have them by Reason of the Warren; and his Writ of Trefpafs of mille Lepores was held good without faios. Br. Property, pl. 4. cites 3 H. 6. 55.

5. When Savages are out of the Forest, none has Property in them. Br. Customs, pl. 64. cites 7 H. 6. 36. Per Newton.

6. As long as * Hawks, * Hares, * Deer, * Coits &c. are in my Soil or Land, or in my Warren or Park, I shall have an Action of Trefpafs of the taking of them, therefore I have Property in them as it seems, and per Newton, it shall say Damas faas. Br. Property, pl. 16. cites 22 H. 6. 59.

* Trefpafs was brought Quare Vi & Armis tuis pullus Efferendum curiam Pretii &c. quatenus Apud &c. and so fec that he has Property when they are in his own Land, as it seems. Br. Property, pl. 18. cites the Register, fol. 193 — A Man has Property in Young Hawks, and in their Nefis. Br. Property, pl. 28. cites 10 E. 4. 14. — Br. Property, pl. 59. cites 16 E. 4. 7.

† S. P. And Brooke says it appears there, that those which are in Nefis &c. are Young Wild Birds in Nefis, the Owner of the Soil has Property, as of Hawks &c. Br. Property, pl. 48. cites 14 H. 8. 1.

‡ Trefpafs does not be Quod Damnum Jam cepit; For he has not Property; Contrary, if it be Damnum Damnum cepit; For in Tame Deer the Owner has Property; Note the Diversity; For in Deer, Fowls, or Pigs, as are Savage, there is no Property, unless Ration Sis. Br. Property, pl. 57. cites 3. E. 3. 24 — No Property is of Deer in a Park, unless they are tame and reclaimed, 5 Lev. 227. — Trin. 1. Jac. C. Ballock v. Eadly.

¶ Trefpafs was brought Quare &c. duces nostras insignes Pretti &c. apud D. cepit &c. and also nomen this Word Pretti &c. pretends that the Plaintiff ought to recover Damages, and fo Property. Br. Property, pl. 18. cites the Register, fol. 93. 102. – Deer in a Park, or Coites in a Warren, as long as they continue in the Park or Warren, the Owner has a Special Property in them; otherwise he has not, unless they are dedicated. Cro. Car. 545. Trin. 15 Char. Cafe of Child v. Greenhill. — S. P. per Haughton J. 2 Roll. R. 50. See (F) pl. 2. in the Notes. Sainon v. Moody.

7. Trefpafs of taking 50 l. the Defendant intitled himself as to an Offender, by reason that he is Parson of D. by which he took it as Offering, and delivered it to N. to keep to his Use, and he delivered it to the Plaintiff, and the Defendant took it, Judgment &c. And so it seems here that it is admitted that a Man may have Property in Money out of any Purposes, Beg, or Chefs; and he gave Colour as above, and justified the recovering, Quod mirum; For one Penny cannot be known from another. Br. Property, pl. 7. cites 34 H. 6. 10.

So it seems to be of Secundum, which after the Taking produce Signis, a Mare, with Field, a Cow with Calf &c. But quare if it was not big with Young at the Time of the Taking. Ibid.

8. If a Man takes my Sw with Pigs, and after the farreors 5 Pigs, I shall have Replevin of the Sw and Pigs, and shall recover Damages for both, Quod nota; and yet they were not in Effe Quod Mundum, before they were farreward. Br. Property, pl. 29. cites 12 E. 4. 5.

9. There is no Property in Pidgrogs. See Br. Property, pl. 30. cites 16 E. 4. 7.


* And therefore Trefpafs lies for frieking and killing his Hawk, tho' the Traver and Conversion lies but for a Hawk reclaimed, which may be known by her Varrels, Bells, or by some other Mark, whereby Notice can be taken of her Owner. Cro. Car. 18. pl. 11. Merth. 1 Cro. C. B. Vincent v. Skene.
Property.


12. Absolute Property, cannot be in any Thing but what is Domite Nature. Qualified for Possessory may be of Things Force Nature; but then it is after they are named, and as long as they remain Tame, or in Possession; but there is no Property in Savage Beasts which a Man has Re- tains Possessory, as Deer &c. in Park or Warren &c. 7 Rep. 17. b. Trin. 34 Eliz. in the Cafe of Swans.

there is an absolute Property; Per Hutton J. Het. 52. Mich. 3 Car. C. B. Ireland v. Higgins.

(C) Devested or Preferred, by what, and when.

1. WHERE a Man enters into another's Frankentenuent, and cuts Trees, and makes them Tinker, yet the Property is in the Owner of the Soil till they be carried away; per Prior, quod non; And yet the Cutting and Carrying away [immediately] is not Felony, as adjudged elsewhere, and therefore it seems that the Property was never in the Owner of the Soil as a Chattel. Br. Property, pl. 8. cites 35 H. 6. 2.

2. If a Man loses his Goods, and J. S. finds them, and after sells them to the first Owner in Market Ocer for certain Money, Quere if the Vendor be Carried in Action of Debt for the Money or not; for the Sale seems to be void; Because the Property was never out of the Owner. Br. Property, 11. 27. cites 7. E. 4. 15.

3. In Trespass, the Defendant said, That the Place is 10 Acres, which was the Frankentenuent of S. and he as his Servant, and by his Command entered, and S. took the Briers Damage sevenfours, and delivered them to the Defendant to put them in Pound &c. which he did &c. and it was held a good Felon; for by such taking the Property is not out of the Plaintiff; For if it was then the Plaintiff could not have Trespass against the second Trespassor. Br. Trespass pl. 329. cites 12 E. 4. 10.


5. If a Man various his own Goods without [having done any] Offence, and says, That he will not have them any longer, this is no Forfeiture, and he may retake them at his Pleasure. Br. Forfeiture de Forres, pl. 112. cites 10 L. 2. cap. 29. fol. 115.


6. If a Forrester follows a Buck, which is chased out of the Park or Forrest, altho' he that hunts him kills him in his own Ground, yet the Forrester or Keeper may enter into his Ground and retake the Deer, by reason of the Property and Possession which he hath in it by the Pursuit. Arg. Godd. 123. pl. 144. cites 12 H. 8.

7. If I keep certain Sheep for 2 Years, now upon that Lease somewhat Leas of live remains in me, but that cannot property be said a Property, but rather a Possibility of a Property which cannot be granted over; per Windham J. Le. 43. Mich. 28 & 29 Eliz. C. B. in the Cafe of Wood v. Otter. cites 11 H. 4. 177, 17.

Property of the Leasor is no longer than the same Cattle live, and the Property of those that succeed is
8. If Goods are taken by a Trespasser, yet if the Party, from whom they were taken, be attainted of Felony, he shall forfeit them; for the Right and Property remains in the Owner, and the Law shall adjudg them in him until he makes his Election to the contrary by bringing a Writ of Trespass. Cro. E. 824. Pach. 43. Eliz. C. B. in the Case of Bishop v. Lady Montague.

9. If a Man bring Trespass for taking his Horse, and is barred in that Action, yet if he gets the Horse into his Possession, the Defendant in the Trespass can have no Remedy, because notwithstanding such Recovery the Property is still in the Plaintiff. 2 Mod. 319. Trin. 30 Car. 2. B. K. in the Cafe of Put v. Rolfer, als. Rawlernne.

10. If Condemnation be of Goods by the Court, and they are proclaimed as forfeited, the Property is altered. Raym. 336. Mich. 31 Car. 2. in Scacc. Eikens v. Smith.


12. In Trover the Plaintiff made Title under a Will made in 1669, by which the Testator devised to her all his Personal Estate; the produced the Probate; the Defendant produced a Deed of Gift made by the Testator in 1650, Habendum to Trustees for the Use of his Children; the Plaintiff admitted the Deed of Gift to be made of the same Goods as in the Will, but intitled that it was not good against Creditors; that a Judgment was had against the Testator 7 Years after the Deed of Gift; That by Virtue of a Testament Fieri Facias, the Goods were taken in Execution, and sold by the Sheriff in 1657 for 8000 l. It was proved that the Testator's Steward paid the Money, and redeemed the Goods, and that the Testator gave him Bond for the Money, which he afterwards paid him, and the Bond was cancelled; so that by this Means he had gained a New Property. A Copy of the Testament Fi. Fas. was produced, and the Bill of Sale by the Sheriff, and the Bond cancelled; and thereupon the Plaintiff to whom the Goods were devised, had a Verdict. 4 Mod. 51. Mich. 3 W. & M. B. R. Lady Winchellia v. Lady Maidtine.

(D) Property Gain'd, Alter'd, or Transfer'd by what Act &c.

1. Prior took a Man's Son, and put a Suit of new Cloaths upon him. The Father took away his Son, and the Prior brought a Trespass for the Cloaths; but adjudg'd he should be barr'd, because he had annex'd it to his Body. Arg. Mo. 214. pl. 354. Mich. 27 & 28 Eliz. in Cases of Adulterer chost a Man's Wife, the Husband may take his the Wifecornets of Bindon's Cafe, cites 12 H. 4.

But if an Adulterer chost a Man's Wife, the Husband may take his the Wifecornets of Bindon's Cafe, citeth 12 H. 4.

2. If an Adultror chost a Man's Wife, the Husband may take his the Wifecornets of Bindon's Cafe, citeth 12 H. 4.

But in both Cases, if the Son and the Wife had two Suits of Apparel, or upon their Body and another Box to their Chamber, neither the Father nor the Husband can take the Spare Suits; for the Law which tolerates Necessary, doth not tolerate Excess. Ibid. Arg. ——S P. But putting a Washing-bay on a dead Body, gives no Property to the dead Body, but the Property remains in the 1st Owner; for a dead Body is not capable of Property, and a Man cannot relinquish the Property he has in Goods, unless they are vested in another. 12 Rep. 112. Mich. 11 Jac. Hynne's Case.
Property.

2. If A. licenses B. to sow A.'s Land, and B. sows it, yet A. the Land not, then the H. of the Land shall reap it. Hob. 35. cites 21 H. 6. 37. for it is not a Leaf.

3. Note, That any Man may sèle such Goods as Enemies of the King, and he calls them Goods, and retain them to their proper Use. Br. Forticolore de Terres, pl. 57. cites 7 E. 4. 14.

4. If a Man buys 20 Quarters of Malt, which is not put in to Sacks, nor selle'd from the other Malt, the Property is not alter'd, but if it was in Sacks, or otherwise sever'd from the other Malt, the Property is alter'd. Keill, 77. pl. 25.

5. A. sells Trees to be cut at Michaelmas next, and before Michaelmas Hawks, which breed in them, A. shall have the Hawks; by which it appears the Property is not alter'd. Per Warburton J. Arg. 2 Brownl. 197. Trin. 10 Jac. in Cae of Rowles v. Mafon,—cites 29 Ad. 29.

6. If A. B. a Merchant carries certain Wares in the Name of W. S., this in Action does not prove the Property of them to be in W. S. for it is usual that Goods may Custom Wares in another's Name, and well; for the In Case was, that the King shall not be deceived, but paid his viz. Harvey Custum. Br. Property, pl. 46. cites 2 H. 7. 15.

7. Property may be changed without Offence in the Owner, as by Wreck, Wilt, Stray, Dodand, Sale in Market, and the like. Br. Property, pl. 48. cites 14 H. 8. 1. and Deft. & Swol. lib. 2. cap. 51.

8. Money delivered to be re-delivered cannot be known, and therefore the Property is altered, and Deft lies for it; but if Portugal or other Money which may be known, be delivered to be re-delivered, Deftinue lies.

9. Liberty de-

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Property.

Account, the he never buys or merchandises. 3 Le 38. Mich. 15 Eliz. in B. R. Anon. 2. Goods are delivered to A. to the use of B. the Property is in A. but if Money be delivered to A. to pay B. there the Right of the Money is in B. and he may bring an Action of Debt. 2 Vent. 310 Patch. 2. W. & M. in the Exchequer, in Cafe of Cranmington v. Evans. —Skin. 263. Hill. 2 & 3 Jac. 2. 30. P. in S. C. in B. R. by Name of Evans v. Cranmington.

The hee Delivery of Goods and Charters upon a Confidence is not a Trust, but the Property remains in Cell by use. Arg. Show. 4. Patch. 1 W. & M. in Cafe of Cranmington v. Evans, cites Salk v. Northwood Tels. 25. and Harris v. Brabant 2 Cro. 764. And where Goods or Money, or other Personal Things are delivered to another, they give no Units to him hee to his. So if it he be expressly to the Use of the Deriver, or a Stranger, cites D. 20. 21.


9. Where a Tender is of a Thing which the Party ought to have by the Price for the same, it was charg'd in the wrong, &c. Per Doderidge J. Godb. 330. Trin. Goods, A.


11. Property of Money flated at Gaming, is altered by the Caft of a Dye; otherwise if not flated; in the one Cafe it is Executory, in the other it is Executed. Per Holt Ch. J. Cumb. 303. Mich. 6 W. & M. B. R. in Cafe of Walkor v. Wetherall.


14. In Trover the Cafe was this; The King's Orders were iss'd upon on disbanding of the Army, that each Trooper should retain his Horse; and this was against a Captain, who, in Breach of the said Orders, had taken the Troopers Horse; and held that Trover lay for the Trooper in this Cafe: For tho' before the Property was in the King, yet by the Order it was vested in the Trooper, he having the Possession at that Time. 12 Mod. 311. Mich. 11 W. 1. B. R. Anon.

15. Son employ'd his Father to buy a Frame for him; Father agrees for it in his own Name, and pays Part of the Money down, and gave a Note for the Rest; By the Payment of the Money and giving the Note, the Property of the Frame was immediately vested in the Father; And tho' the Bill of Sale, which was not made till a Month after, was made to the Son, the Property which was already altered and vested in the Father, could not be thereby devested and lodg'd in the Son; But if the Bill of Sale had been made to the Son at the Time of Sale, it would have vested the Property in the Son. And an Earnest does not alter the Property, but only binds the Bargain, and Property remains in Vendor till
Property.


17. A Goldsmith has Lottery Tickets of A. and B. and delivers A.'s Tickets to B. for his own. A. may maintain Trover against B. This was no Change of the Property, or any Consideration; For tho' the Goldsmith had Power from the Owner to receive Money for the Tickets, yet he had no Power to Exchange them for other Tickets. Per Holt. 1 Salk. 283. Hill. 12 W. 3. B. R. Ford v. Hopkins.

19. A. by Articles agrees to pay B. 35l. for every 100 Stacks of Wood 2 Salk 68. lying in such an Wood, and so for as many more as should be sold till Michaelmas following. Agreed per Car. That so much a Hundred by Retail was the same Thing; and that here neither Party may tell them out, and that if he that told them had told them wrong, then the other S. P. does not appear.

For Ann.; a full H. For Fraud or 15. Trefpafs, and this affirms Property, so as to the Real, as they were cut down. Farr. 88. Mich. 1 Ann. B. R. Grips v. Ingledew.

(E) Property Given, Alter'd, or Transferred; By what Act. Fraud &c.

1. Th'o' a Trefpafsor gains Property by the taking of Goods, viz. His &c. And if a Man takes my Goods in A. and of a Horse Damage Feathers in his Barke, and he took his Horse and the Barke again, For where Trefpafs is done of Goods taken, the Owner may sue Replevin, and this affirms Property; or may bring Action of Trefpafs, and this affirms Property, and so he has Election. Quod nota. Br. Trefpafs, pl. 134. cites 19 H. 6. 65.


2. If a Man takes my Goods or Money and Offers them to an Image, in this Cafe I am barr'd, as if the Goods had been told in a Fair or Market overt and Told'd; But if they come again to the Hands of the first Trefpafs, I may re-take them. Per Molle & Choke, E. non Negatur. Br. Property, pl. 7. cites 34 H. 6. 10.

3. If I Bail Goods to a Man who Gives or Sells them to a Stranger, and the Stranger takes them without Delivery, I may have Trefpafs; For by the Gift or Sale the Property is not changed, but by the Taking. Per Fineux & Tremall Jutices. Br. Trefpafs, pl. 216. cites 21 H. 7. 39.

4. Steal't alters not the Property, as a Trefpafs' docs. Fin. Law, S. P. Br. Corone, pl. 179. cites 54 H. S.

45 H. S. — It was said by Littleton J. that the Opinion of the Jutices was, That if a Man takes my Goods feloniously, and another takes them from him feloniously, I shall have Appeal of the second Taking; For by the first Taking the Property was not out of me; For a Felon can claim no Property. Contra it is said elsewhere of a Trefpafs. Br. Appeal, pl. 135. cites 15 E. 4. 6.

5. In all Cases where a Thing is taken tortiously, and alter'd in Form, S. P. As if if that which remains is the Principal Part of the Substance, then is not a Man takes Cash and makes thereof a Relig; the Notice of them left, and so the Property of them not altered. Mo. 206. pl. 67. Mich. 2 Eliz. Anon.

If a Man takes my Garments and embroiders it with Silk, or Gold &c. I may take my Garments. But if I take the Silk, or embroider my Garments, you shall not take my Gar-

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Property.

went for your Silk which is in it, but are put to your Action for taking the Silk from you. Agreed by the Justices. Poph. 38 Hill 36 Ellis. Br. Anon. — S. P. Mo 22. pl. 67. Anon. — And if a Man takes my Tree and figures it into Timber, yet I may retake it; For it may be known. Br. Property, pl. 23. — So of These made into a Bar. Br. Property, pl. 23. — So in Trefpats of taking Shoes and Boots, the Defendant said that he was supplied of these by Leather and Paid them to H. S. as part of the Payment, who made them for Shoes and Boots, and the Defendant retakes them, and the Retaking good and lawful; For the Nature remains. Br. Property, pl. 23, cites 5 H. 7. 15. — But where Grain is taken and made into Malt, or Money taken and made into a Cup, or a Cup made into Money, these cannot be taken; For Grain cannot be known one from another, nor one Penny from another. Per Cur. Br. Property, pl. 23. — And if a Man takes Timber and makes a House of it, this cannot be retaken; For the Nature is altered into Frankenstein. Br. Property, pl. 25. — S. P. Mo 22. pl 67. Anon. — So by some, If a Man takes a Little Piece and carries it to be Calf, the Owner cannot retake it. Br. Property, pl. 23, cites 5 H. 7. 15.

S. C. Roll Rep. 155. Hill 12 Jac. accordingly And Coke and Coke said it was so ruled in Sir Richard Martin's Case; And the Reporter by Way of Remark, says he had heard Coke cites Martin's Case to be, That if a Man takes a Handful out of my Heap, and puts it into his Heap, that I may take a Handful out of his Heap back again; And that peradventure Coke and Coke intended this to be all one with the Case here. — Roll 45. Trin. 12 Jac. In Case of Hill v. Hanlars, Coke J. cited Martin's Case according to what Roll mentions, and that it was Popham's Opinion; And that the whole Court then deemed to be of the same Opinion, (it being of taking Salt out of the one's Heap and flinging it into the other's) And the Haughen and Doderidge seemed to be of the same Opinion as to the taking of Corn in like Manner; but Coke doubted of it, and in a Manner denied it; For he said, That if one takes my Goods, I cannot take his Goods for them — Gro. J. 266. S. C. of Ward v. Ayre, accordingly. — If one blends his Money with mine, by rendering my Property uncertain he loses his own. — Per Ed K. Wright. 2. Vern. 316. Mich. 1705. in Case of Fellows v. Mitchell and Owen.


S. P. cited by Dodderidge J. who said the Court inclined that B. might take as much again presently. — 2. Bull. 204. in Case of Hill v. Hanlars. — Pot. Pach. 36 Ellis. B. R. It was agreed by the Justices, That if A. takes B.'s Hay and carries it to A.'s Hay, and there intermingles it with A.'s Hay, there B. can't take back his Hay, but is put to his Action against A. for taking his Hay. And, per Anderson Ch. J. If a Goldsmith be melting Gold in a Pot, and as he is melting it, I will call Gold of mine into the Pot which is melting, together with the other Gold, I have no Remedy for my Gold, but have lost it. Poph. 58. Anon. — And Coke and Roughton J. said, There was a like Case here of Corn, and that it might presently take his own Corn again; Because it was done of his own Wrong; And that it was pleaded, That he took most of his own Corn again. But Coke said, He somewhat doubted of this Case; For he can't take his own Corn in Htherman, and he can't do Wrong; because the other has done Wrong. — But the Case of Ward and Eyre supra, was so adjudg'd before; and Coke Ch. J. himself, cites Sir Richard Martin's Case for adjudg'd by them; For that his own Corn or Money could not be known, and his own Act, and of his own Wrong. — 2. Bull. 374. — Roll. B. 155. Ward v. Eyre.

9. A Man comes to a Merchant or other Dealer, and by false Infirmities and Account of himself, prevails on the Merchant &c. to sell him Goods upon Tuck. Holt Ch. J. seemed to incline that that was not such a Cheat as would alter the Property. 6 M. d. 114. Hill 2 Ann. B. R. Anon.

(F) Gain'd
(F) Gain'd; by Possession only, and in what Cases Actual Possession is necessary to give Property. See Occup. (C)

1. He that hath Possession hath Right against all but him that hath the Act. Equ. very Right. Chan. Cases. 23. Trin. 15 Car. 2. in the Case of Smith v. Oxenden.

be possessed of any Thing had't to him, there, during the Possession he has Property against all People but the Bailor. Br. Property. pl. 11. cites 2 H. 4, 22, 11 H. 4, 17; 7 H. 4, 13. 21 H. 7, 14, 15; 43, E. 3, 29, 35, 47 E. 3, 12.

2. Beasts for Nature are reduced to such Property when they are in my Ground, by Reaon of my Possession which I then have in them, that I may have Action of Trespass against him who takes them; As if one has Deer in his Park, and another takes them away, he may have Action of Trespass for the Taking. Arg. Godb. 123. Hill. 29 Eliz. B. R. in Co. v. Choke, this Liberty of Possession declares, But if I. S. hath Warren by Grant or Prescript. in my Ground, Warren, the Liberty Ratione Po.

sions, or rather pays the Privilege Ratione Sole, so that the Property of the Conies sec. is in him that has the Warren; the otherwife whether the Conies be wild or tame, is in the Owner of the Ground while they continue there as much as if he had a Warren, the Warren not making the Conies to be more or less. the Privilege of a Warren only giving a Man Liberty to employ his Ground in keeping Conies sec. which otherwise he cannot do 12 Mod. 124. Mich. 9 W., s. Sutton v. Moody. 5 Salk. 128. S. C. --- 5 Mod. 316. S. C. --- Comb 428. S. C. --- If a Man has a Close Pond, in which there are Fisht, he may call them Fishes fuxo in an Indictment, or he may not do it, at his Pleasure, and either Way is good; because being in a Close Pond, the Property (Ratione Loci) in them cannot be lost, because they cannot swim away; but notwithstanding he cannot call them Bos or Camillas, if he be not in Trance, and for that the Indictment is bad; but however not to be punished on Mortu. the Offence of fishing in other Mens Ponds, and taking away their Fisht, being too great to receive to much Consequence. 6 Mod. 183. Trin. 5 Ann. B. R. the Queen v. Steer & al.

3. Where a Trespasser takes my Goods, I may have Replevin: for I may affirm Property in me; or have Trespass, and disaffirm Property; Per Danby; and note by him, Where a Man builds his Goods to W. N. and a Stranger takes them, yet the Bailor may give them to another, and the Gift is good. Contr. Per Littleton; For the Property is in the Stranger. And Brooke says, Bene dictum est videatur; and yet, that Replevin ius, is good Law; for this was of the Property which was in him at the Time of the Taking; but in the other Case, Property was not in him at the Time of the Gift. Br. Replevin. pl. 39. cites 2 E. 3, 16.

4. When the King's Savage Beasts go out of the Bounds, the Property is S. C. cited out of the King. Brooke says, And it in Feems, that the King has Property in them when they are in the Forest; For, Per Newton, the Land gives the Property of such Beasts; Quod nota. Br. Property. pl. 20. cites 7 H. 6, 78.

5. Where a Controversy for Tithes is between Parson and Vicar, and the Parsonus cites the Tithes, the Property and Possession is in him without carrying them away. Br. Property. pl. 35. cites 22 E. 3, 23. Per Brian, Choke, and Catesby J.

6. Where a Man robs his Land except the Wood, and Hens breed there in them, there the Loyal has Interest in the Hens by Reason of the Trees wherein they build, and also has Property in them when they are in the Wood sec. Per Brooke J. and Pollard J. But if they are out of the Nefts or Trees, a Stranger may take them, but not in the Nefts, nor when they are in the Branches; And in Trespass he shall say, Quod noster Arableum substantiatum est. Per Brooke, and so, by him, the Plaintiff has Property in the Fowls. Br. Property. pl. 17. cites 14 H. 8, 1.

7. If a Bond is sealed and delivered to a Man's Use, who dies before Notice, his Executors may bring an Action, Per Ventrils. J. 2 Vent. 203, in the Case of Thompson v. Leach. --- cites D. 167.

S. 11
Property.

8. If A. starts an Horse in my Cage, and kills her there, 'tis my Hare but if A. hunts her into B's Close, and kills her there, then 'tis the Hunter's. 2 Salk. 556. Mich. 9 W. 3. in the Case of Sutton v. Moody.

9. Holt Ch. J. said, It was agreed on all Hands, that while the Ducks are in a Decoy Pond, the Owner of the Pond has a Property, and he that disturbs them is a wrong Doer. And Powell J. said, That the Defendant by frightening them away had destroy'd the Plaintiff's Property, and done an Injury thereto; And Powis and Gould J. accorded. 11 Mod. 74, 75.

(G) Gain'd, Alter'd, or Transferr'd by Operation of Law.

1. PROPERTY of Money or Goods, upon Satisfaction or Con- deration, shall be alter'd in the Hands of him that has it without Word, without Contraé, and without Suit of Law or Execution, and all by Operation of Law. Arg. Pl. C. 186. Trin. 5 Mar. 1. in the Case of Woodward v. Darcey.

2. A Sheriff, upon his Account, is charged with a Debt to the King not receiv'd by him of the King's Debtor; by this the Debt of the King's Debtor is become the proper Debt of the Sheriff. Jenk. 158. pl. 88.

3. A. brings Trespasses against B. of a Horse taken, and receives Damages from this Recovery and Execution thereupon, the Property of the Horse is in B. Solicio petiti Emptionis loco labetur. Jenk. 159. pl. 88.


5. It was said by Counsel, Arg. That a Patent for a new Invention, that none for so many Years shall use the same, may vest a Property. Vern. 62, 63. Mich. 1682. in the Case of Jenks v. Holiford.

7. Attachment and Condemnation of a Debt in London, alters the Property; But till Condemnation the Property is not altered. 1 Salk. 280. pl. 6. Coram Holt Ch. J. at Niti Prius in Middlesex. Patch. 5 W. & M. Brook v. Smith.

8. Award or Judgment, Quod fait Executio on a Seize Facias, fixes a Property in the Baron of a Debt due to the Wife, and recovered by both. 1 Salk. 117. Mich. 9 W. 3. B. R. Woodyer v. Greham.

9. If Cattle be taken in Witteman by Way of Execution in Replevin, the Plaintiff thereby gains an absolute Property in them in lieu of his own; But not so where the Witteman is only a Proceed. Per Holt. Ch. J. 12 Mod. 428. Mich. 12 W. 3. In Cafe of More v. Wata.

(H) Gain'd, Altered, or Transferred; By what Words.

1. Covenant in several Cases may alter the Possession of a Thing from one A to another. Br. Property, pl. 2. cites 27 H. 8. 16. 29 with me, That if I pay him

10. such a Day, that I shall have all his Reefs in D. or his Lease of the Manor of D. There, if I pay,

1 shall have the Beasts, or after enter into the Manor. Quod Nota ibid.

So if A. Coveneants that B. shall have his Cow, by this the Property is presently altered to B. Arg. 3 Bull. 352. Mich. 14 Jac. In Cafe of Howley v. Hare—Cites 27 H. 8. 5.

So a Covenant, That if B. Marries his Daughter, B. shall have such Goods; If B. Marries her, the Property is in B. Arg. Roll. R. 69. Mich. 12 Jac. B. R. In the Cafe of A. Blacklock v. Fox.—Cites 27 H. 8. D.

So if A. Coveneants with B. That if B. will marry A.'s Daughter, B. shall have such a Flock of Sheep; B. marries the Daughter; the Property of the Sheep is presently in B. Because it was but a Personal Thing, and the Covenant is a Grant. Per Tanfield, Cro. J. 172. Trin. 5 Jac. B. R. in Cafe of Evans v. Thomas, cites 43 E. 3. Menfrains de Baie, 144.—2 Brownl. 588. S. P. Per Coke Ch J. in the Earl of Rutland's Cafe.

2. Bargain and Sale of Trees growing Holend. Succedent. & Exportation for Money, of all the

Butter which shall be made of A's Trees in one Year, is only a Covenant and Agreement, but no Property transferred, because not in Life. But Sale of Wood or Sheep Backs, or all his Corn growing on the Land before, transfers Property; Because in Life before the Contract. No. 172. pl. 527. Mich. 25 and 26 Eliz. Anon.

A. demises, grants, and to Farm lets his Land, and also all Timber-Trees growing on the same; adjudged, That no Property in the Trees passes by the Words, nor if the Words had been With Liberty to Sell and Sell. No. 851. pl. 1117. Trin. 10 Jac. Billingly v. Bercy.

3. Sale to A. to the Use of B. The Use is only Confidence, which does not give Property to B. in Law. No. 702. pl. 975. Hill. 36 Eliz. Hinton v. Burridge.

4. In Cafe &.c. the Plaintiff declared that J. S. Pass'd Goods to him, S. C. 5 Bull. upon Condition of Redemption on a certian Day, which was not done, but it is wrong Pag'd. Afterwards the Plaintiff told the Defendant that he would Sell the Goods, and should the Defendant promise, that if he would forbear for three Days, he would pay the Money and take the Goods; The Plaintiff averred that he forbear to sell them accordingly. It was moved, in Arruit of Judgment, that the Declaration is not good; For it seems here was no Consideration, because this Agreement did not alter the Property of the Goods in the Defendant. Sed per Coke Ch. J. and Coke J. The Pawnee might sell the Goods, and this Agreement is in Nature of a Sale; For if the Defendant had paid the Money, he might have brought Debitum for the
Property.

Goods. Per Doderidge J. If the Plaintiff has any Lots, the Consideration is good; And the Court thought it a good Consideration, and Judgment was given accordingly. Roll Rep. 215. pl. 10 Trin. 13 Jac. B. R. Capper v. Dickenson.

5. A. sells Sheep to B. in a Market, but did not deliver them, and afterwards, in that very Market, they discharged each other of the Contract, and a new Agreement was made between them; That B. should drive the Sheep home, and Departure them till such a Time, and A. would pay him so much per Week for their Pature; And, if at that End of that Time, B. would pay A. so much for his Sheep, then B. should have them. — Before the Time expir'd A. sells them to C. Per Cur. The first Sale to B. was defeated by the After-Agreement, and the new Agreement to have the Sheep, if B. would pay so much at a future Day, will not amount to a Sale; and the new Property is changed, and consequently the Sale by A. to C. before the Day, is good, and to the Property of the Sheep is in him. 2 Mod. 242. Trin. 29 Car. 2. C. B. Miers v. Solebey.

6. In an Action upon the Cafe, upon Mutual Agreements, the Evidence was a Note, in the Nature of a Bill of Parcels, to this Purpose; Bought by Anne Knight, of —— Hopper, 100 Pieces of Muslins at 40 s. per Piece, to be fetched away by 10 Pieces at a Time, to be paid for as taken away. It was held in this Cafe, per Holt Ch. J. That the Pieces being Mark'd and Seal'd, the Property is altered immediately, and that they remained only as a Security for the Money. Skin. 647. Trin. 8 W. 3. at Guildhall. Knight v. Hopper.

See (H) pl. 1. in the Notes.

I. Vests. At what Time.

1. Trees standing are held by Husband seised in Jure Uxoris, or by Tenant in Tail and the Husband, or Tenant in Tail dies before Severance, the Vendee shall not have them; And he has no Property in them till actual Severance. Per Doderidge J. 2 Bulit. 7. Mich. 10 Jac. In Cafe of Billingly v. Herley. ——Cites 15 E. 4. 6. and 21.

2. When titles are severed from the nine Parts, they are presently vested in the Party that has Right, and they are Things Transitory, and to also is the Taking of them; For the Party may take them in any Place as well as in his own Parishes, and the Place where is not traversable. Le. 39. Mich. 28 and 29 Eliz. The Queen v. Lord Vaux.


Arg. In Cafe of Thompson v. Less—Show. 300. S C. and P.

4. If I request B. to buy a Gelding for me, and promise to repay B. again, and B. buys this Gelding for me accordingly; B. may have an Action against me for this Money upon my Promis, and I may take the Gelding; And before my taking him, the Property is not in B. who bought him to my Use, but in me who requested B. to buy the Gelding for me. Per tot. Cur. Bulit. 169. Trin. 9 Jac. In Cafe of Moor v. Moor.

(K) Where
(K) Where several Properties may be in the same Thing.

1. Manwood said, It is not strange in our Law to see that two shall have an Interest severally in one and the same Term, and two Properties therein; For he said, That if Leffe for Years grants over his Term, by Deed indented to another, rendering Rent, and for Default of Payment, to enter and retain till paid; there, if he enters for Default of Payment, and retains, he has a Property, and this is uncertain; For upon Payment of the Arrears by the other it shall be determined; and the Grantee has also another Property; For his Interest is not totally gone, but he has a Property, such as it is, and may have the whole Property upon Payment of the Arrears. Pl. C. 524. b. Hill. 20 Eliz. In Case of Weeden v. Elkington.

2. So if a Termor for Years be, and he is bound in a Recognizance or Statute Staple, and Execution is fixed against him for Non-payment, and the Term is extended, and delivered to the Conurfe at a certain annual Value as it well may be; For it may be told utterly, or extended at the annual Value, as Franktenement may at the Election of the Sheriff; there the Conurfe to whom the Term is delivered has a Property, which is uncertain; For how long he shall retain it he does not know; and the Leffe himself has another Property; For upon Payment of the Debt, or upon the Debt received out of the Revenue thereof by the Conurfe, he shall re-have the Term; And to have two Property severally in one and the same Term. Per Manwood. Pl. C. 524. b. in the Case of Weeden v. Elkington.

3. A Feme made a Lease for Years of Mills in Kent with Exception that she should have the Profits for Term of her Life, and it was greatly debated if this Exception was good or not, inasmuch as the Profits of the Mills is all the Benefit, and in effect the Mills themselves; and at last the Exception was adjudged good in Law, and the Feme had the Profits; there if she enters to take the Profits, she has thereby a Property, and the Leffe another Property, and the Property of the Feme is uncertain how pleaded as many Years it shall continue, cited by Manwood as a Case in Kent. Pl. the Case of C. 524. b.

In Chattels merely personal, as in Sheep leased for a Time, or to compete Land, or in a Chain one Property, and he to whom the Sheep are leased, or the Chain is pledged, has another. A Forer or two Properties may be in a Leafe, which is a Chattel rea, and has long Continuance certain. Per Manwood. Ibid.

(L) What may be an Interest, but no Property.

1. Forster pursued a Hunter who chased a Hart out of the Forest into his own Land, and there killed him, and the Forster retook it, and the other brought Trefpass De Cervo mortuo, capto & alportato, and was barred; For as long as Wild Beast, Fowl, or Fowl, is in my Land, I have Possession but not Property; and so he who chases it out of my Land, and kills it in his own Land shall lose it, and I shall have it I purdue; For it it may be known by the Skin, Horns, &c. Br. Prop. pl. 45. cites 12 H. 8. 7a.

2. And by Brooke J. if a Man permits his Fowlou to fly at a Pheas. So where my fiant, which kills it in another's Land, he may enter and take the Pheasant. Hund takes a fiteage and
76 Property.

and shall not be punished but for his Entry, for the taking of the Pheasant by my Faulcon is Possession in me. Br. Property, pl. 45. cit. 12 H. 8. 10.

3. If I lose certain Sheep for 2 Years, now upon that Leave somewhat remains in me; but that cannot properly be said a Property, but rather a Possibility of a Property, which cannot be granted over. Le. 43. pl. 54. Mich. 28 & 29 Eliz. C. B. in the Case of Wood v. Folter, cites 11 H. 4. 177, 178.

4. A Man may have an Interest without a Property in a Chattel, and such an Interest as gives the Person a Remedy to recover, as in the Case of 1600 Load of Wood sold to A. and assigned by A. to B. (the Wood being standing) and after the same Vendor sold 2000 Load to C. to be taken at C's Election. B. cut 600 Load, and C. carried it away, B. brought his Action and Judgment for him; because A. had an Interest, which he might well align. 5 Rep. 24. Sir Tho. Palmer's Case.

(M) Pleadings. Good. And in what Cases it must be set forth.

1. Executors, who have Possession of the Goods of the Testator, shall call them Bona fide in Replevin, Recordare, &c. and not Bona Teitatoris, tho' he names himself Executor in the Writ; Quod nota. Br. Property, pl. 21. cites 24 E. 3. 35.

Br. Property, pl. 37. cites S. C. — In Trefpas Quare clausum frigid & damas cepit, he may say Damas fuit; per Newton. Brooke says, And so it seems that where Beasts Fun Nature are taken out of my Soil, I have Property in them as long as they are in the Soil. Br. Property, pl. 19 cites 22 H. 6. 59.

Br. Property, pl. 4. cites S. C. — In Trefpas Quare Warrenam fuit frigid, & nullus Lepores cepit; and did not say Lepores fuit; And good by the Opinion of the Court, because he has no Property in them, but has them by reason of the Warren; Quod nota. Br. Briel, pl. 11. cites 3 H. 6. 55.


4. If a Man chases in my Park, I shall have Action, Quod Pariem frigid, and Feras ibidem cepit &c. and not Feras mens. Per Newton. Br. Property, pl. 20. cites 7 H. 6. 35.

5. In Trefpas of Goods, if the Defendant says, that before the Trefpas the Property was in him, and be baited them to A. who gave to the Plaintiff, the Plaintiff shall say that he himself was possess'd till the Defendant took them. AbIQUE hoc, that the Property was in the Defendant, and this is a good Plea. Br. Trefpas, pl. 308. cites 5 E. 4. 1.

6. In Trefpas De Pareo fratis, and Beasts taken, the Defendant said that the Property was to T. A. before the Trefpas who was thereof possess'd, till B. took them from him, and baited them to the Plaintiff, by which T. A. sued Plaintiff of Replevin in the County against the Plaintiff before the Sheriff which Sheriff made Precept to the Defendant to deliver them to T. A. by which he came, and found the Park open, and entered and made Deliverance. Per Grene
7. 77. Trefpas. Quare Quam rei et personae, of the Plaintiff, and the Defendant plead an Non culp. and found against him; and Exception taken in Arret of Judgment, because he doth not say Quam rei et personae, or that he was taken from the Plaintiff's Possession; for otherwise it may be that the Plaintiff had not any Cause of Action, if he had not Property or Possession; and it may be, for any thing which appears in this Declaration, that he had not any of them, therefore the Declaration is not good; and of that Opinion was Gawdy, Fenner, and Yelverton, and the Declaration cannot be aided by Intendment, but ought to be certain; But Popham and Williams econtri; Because it being alleged Quod cepit a Personâ, it is necessarily to be intended that he had Possession; wherefore &c. But notwithstanding afterwards upon a Second Motion for the Reasons aforesaid, it was adjudged for the Defendant. Cro. 46. Mich. 2 Jac. B. R. Bulfin v. Martin, alias Parlier v. Walter.

8. Trefpa. &c. for Fishting in Several Piscaria, of the Plaintiff, and taking Pices iphis (the Plaintiff) He had a Verdict. "Twas moved in Arret of Judgment for faying Pices iphis, whereas they are Perea Nature, and to no Property in them; Berkeley J. admitted it true that in a general Sense they cannot be faid Pices iphis, but in a particular Sense iphis they may, and that a Man may have a special and a qualified Property in Things Perea Nature 3 Ways viz. Ratioe Informentis, Ratioe Loci, or moved in Ratione Privilegit, and in this Case the Plaintiff hath a Property Ratioe Privilegit, and Judgment was affirmed by the whole Court upon this Reason, that the Difference, that where Plaintiff declares, generally for taking Pices iphis or Pices item, Lepores etc &c. the Action will not lie; But it be for Fising in his Piscaria, or several Fishery as here, or for breaking his Clofe, and taking Lepores etc call them etc. it will lie. Mar. 49. pl. 77. Trin 15 Car. Child v. Greenhill.

9. In Trefpa. for taking of a Hook &c. Defendant pleaded that he had a Way such a Wood upon the Land of the Plaintiff; and that he was paffing there, and the Plaintiff endeavoured to cut his Harfe, and to wound him with the faid Hook, and therefore he took the faid Hook out of the Hands of the Plaintiff, and delivered it to the Conforable &c. and filed upon the Way, and Verdict for the Plaintiff; it was moved in Arret of Judgment, that the Plaintiff had not fpotted in his Declaration, that the Hook was in his Possession; And it was agreed, per Car. That if the Defendant had pleaded Not Guilty, the Judgment should be arrested, because the Plaintiff in his Declaration did not say Hautom fuma, nor fhow that it was in his Possession, But in this Case the Court were of Opinion, that the Defendant by his special Plea made his Declaration good for the Defendant pleaded that he took the Hook Extra Possessionis &c. the Plaintiff, for which the Plaintiff may well maintain this Action upon his Possession, without any Property. Sid. 184, 185. Pach. 16 Car. 2 B. R. Brooke v. Brooke & al.
Protection.

10. Upon Writ of Error the Cause was, that Trespass was brought in C. B. and the Writ there was Bona & Catalla fina capitis, and the Declaration was *Uxum bonam & c. without saying (Summ) & c. and Verdict for the Plaintiff, and Judgment there; and Writ of Error brought in B. R. and Error aligned, because the Plaintiff hath not shown in his Declaration that it was his Ox &c. but the Judgment was affirmed per Cur. and a Difference taken between C. B. and B. R. for in C. B. the Writ is Parcel of the Declaration, and therefore Saum in the Writ makes the Declaration good. *Sid. 157. Pat. 16 Car. 2. B. R. Jones v. Prossard.

For more of Property in General See Market, Pawn, Piracy, and other proper Titles.

Protection.

See (D) (D. 2.) (F) (H) (K)

(A) Protection. By what Person it may be cast.

Quia Protecturis.

The Defendant came in Ward upon Capias, and was Mainprised to another Day, and at the Day cast Protection Quia Protecturis, and it was allowed; for he may cast it in Person. *Cont. of Eliz. de Servitio Regis; for he is supposed in Prifon by the Mainprize. *Note. Br. Protection, pl. 50. cites 3 C.

In Account Exigent libid, and the Defendant render'd himself in Bank, and found Mainprize, and had Supercedes to the Sheriff, and now in Bank the Defendant was demanded, and Protection was cast for him. Green saith, If it be allowed, the Mainporners shall be discharged, which cannot be; but notwithstanding this it was allowed. *Fitz. Tit. Protection, pl. 5. cites M. 30 B. 2. and says 22 E. 3, accordingly, twice.—Plr. took a Difference between the Defendant's being by Mainprize or by Bill, that in the last Case he may cast a Protection, but not in the first. *Fitz. Tit. Protection, pl. 13. cites M. 52. H. 6. 4.

Quia Moraturus.

The Protection was cast by an Infant, and not by the Defendant himself; and upon praying Allowance it was agreed that Infant, *Mark and Feme covert may cast Protection; and it was said that the Defendant was in London, fed non Alloctent, because it is set forth of Record; and it was said that if the Plaintiff had sued Habeas Corpus against him, he would be present to answer. Quere inde; for he may be come hither to Victual. *Br. Protection, pl. 14. cites 21 E. 4. 18.—pl. 77. S. P. As to Infant, cites 21 E. 4. 82.—S. P. As to Infants. *F. N. B. 28. (L.) but says, There are diverse Opinions among the Justices, if it shall be allowed for a Feme covert.—Co. Litt. 130 a. says it is allowable for Men within Age, and for Women as necessary Attendents upon the Camp, and that in three Cases, *Quia liberis, Quia naturis fec. Oblivitare.—*But Co. Litt. 151. 3. (5) says that an Infant was vouched, and at the Parliurs venire fac. a Protection was cast for the Infant, and disallowed, because his Age must be adjudged by the Inspection of the Court.

See pl. 1. 2. *He who is by Mainprize, may cast a Protection Quia Moraturus for himself in Person, tho' it appears that he is in Prifon. *Dubi- tatur. 4 D. 6. 8.

See pl. 1. 

3. He who is by Mainprize, may cast a Protection Quia Moraturus for himself in Person, tho' it appears that he is in Prifon. *Dubitatur. 4 D. 6. 8.
Protection.

Both.

4. An Infant may cast a Protection. 21 C. 4. 18. 32. adjudged. Br. Feoff.-
ment de Terres, pl. 69. cites S C.—In this Case the Protection was cast by the Infant for his Father. Vide the Year-book.—See pl. 2.

5. So a Monk may. 21 C. 4. 18.

6. So a Feme Covert may. 21 C. 4. 18.

7. Recordare by J. against F. who avowed upon F. the said J. said that F. gave by Fine to E. which E. leased to him for Years, and prayed Aid of E. and had it, tho' E. was a Stranger to the Avowry, and at the Day of Sumanus ad auxilium E. cast Protection; and upon long Argument it was agreed, That J. Plaintiff who prayed Aid, cannot be by Protection; for he is Plaintiff, and is to recover Damages. But yet the best Opinion was, that E. of whom he pray'd Aid, may be by Protection. Br. Pro-
tection, pl. 39. cites 5 H. 5. 5.

8. In Detinue the Garniture came, and pleaded to Issue, and at the Nisi Prius the Garniture made Default, and A. B. cast Protection for him; and thereupon Day was given in C. B. At which Day Repellance was set forth, and yet the Protection shall save his Default, because it was allowable at the first Day; but contra if there be Variance between the Rec-
ord and the Protection, for this is never allowable; and so lose that Garniture may be by Protection. Br. Protection, pl. 59. (bis) cites 4 H. 6. 9.


(A. 2) What it is. And in what Cases it lies.

1. 25 Ed. 3. ENACTS that notwithstanding the King's Protection of his Where the Debt, other Creditors may proceed to judgment against him, with a Copy Executio until the King's Debt be paid; and here, if the Creditors still undertake for the King, they shall have Execution against the Debtor both for their own Debts, and likewise for so much as they have speedily Pay-
ment of the King. Br. ex-
cepted the said G. M. the Defendant into his Protection, and that same should abide with his Persons or Goods, or for or against him in any Court for any Debt or Treasons &c. until the King be satisfied. This Protection is not allowable, the statute being expressly, that none shall be defended upon this Protection, but that the Party shall suffer and go to Judgment, that he may be executit to find the King. Cro. J. 47. Poth. 10 J. 12. B. R. Travers v. Malins.

This Statute is to be intended of such Executions, whereby the King may be prejudiced, viz. Execu-
tion of Lands or Goods, but not Execution of the Body; for that is all to all. Hals. H. pl. 139. See Tho. Shirley's Case.

J. S. being in Execution for Debt to the King, had Judgment given against him in B. R. was brought to the Bar by Habeas Corpus to be charged in Execution for this Debt also. It was objected that this could not be by Reason of this Statute, and of that Opinion was the whole Court; but because he had not a Writ of Protection, the Court resolved that he is out of the Statute, and therefore awarded that he should be in Execution as well for the Party as the King. Cro. C. 589. pl. 23. Mich. 10 Car. B. R. Stevenson's Case.

2. Regularly a Protection lies only where the Defendant or Tenant is dem-
andable; for the Protection is to excuse his Default, and he cannot make Default when he is not demandable. By the Justices of both Benches. Jenk. 94. pl. 83.

3. Writs of Protection lie not in Cases of Felony, nor is it to be allowed to any that is Prisoner to the Court. 3 Inst. 249. cap. 125.

(B) Ar
Protection.

(B) At what Time.

At the Nisi Prius, if Protection be cast before one Judge, and prays Allowance, the other Judge being absent, and after the other comes, the said Calling and Praying shall not be held without a new Prayer. 43 E. 3. 20.

Quia Prosecturis.

For one Judge alone at the Day of Nisi Prius cannot record the Protection without his Companion. Br. Protection, pl. 20. cites S. C.

Fitzh. Tit. Protection, pl. 54. cites S. C. per Thorne.

3. In Trehats, the Sheriff returned Capt Corpus, but the Party did not appear; a new Sheriff is made, and Distresses Issues to the old Sheriff to have the Body se, which is returned Disfran'd, but he has not the Body, yet the Defendant may cast a Protection Quia Prosecturis; For he has Day in Court, and he may appear. 44 E. 3. 43.

Quia Moraturus.


5. So if at the Nisi Prius the Inquest passes for the Demanant, no Protection lies for the Tenant at the Day in Bank; For both are but one Time. 17 E. 13. b. 25 E. 3. 43.

by Thorp.
That the Day of Nisi Prius and the Day in Bank is not all one to all Respects; For Writ purchased, Mene shall abide, notwithstanding Nonuit at Nisi Prius, but as to the Pleading any Plea which comes Mene between them, it shall be one and the same Day; For Le shall not plead the Plea Puis le Directe Compromise Mene between the Nisi Prius and the Day in Bank. But Brooks says, See the contrary Elsewhere. Br. Continuances, pl. 14. cites 40 E. 5. 38.

The Inquest pass'd against the Defendant by Nisi Prius en Pays, and now in Bank the Defendant was by Protection, and was disallowed, and Judgment given for the Defendant upon the Verdict &c. Fitzh. Tit. Protection, pl. 88. cites M. 20 E. 3. —See (P) pl. 2. 3.

Both.

F. N. B. 29. (C)

6. A Protection may be cast at the Return of the Petit Cape, or before. 11 E. 4. 7. b.

Br. Protection, pl. 52. cites S. C. —Hib. pl. 83. cites S. C.

7. At the Petit Cape, if the Defendant cast Esfgoa de Servicio Regis, yet at the Day which he has to shew his Warrant, he may cast a Protection; because this proves that he is in Service of the King.

7. D. 4. 5. b.

At Nisi Prius en Pays, the Defendant made Default, and the Default was recorded, and at the Day in Bank, the Demanant pray'd Petit Cape, and one cast a Protection for the Tenant, and the Default was enter'd on the Roll, and there the Protection was allowed. Fitzh. Tit. Protection, pl. 94. cites T. 9 E. 3. 21.
Protection.

8. A Man Outlaw'd in Account, purchas'd Charter of Pardon, and laid Seire Pacias; a Protection for him does not lie, before the other has Counted against him upon the Original, for before this he himself is Plaintiff; But thus lies after the Count, for then he is Defendant. 3 T. 3. 36.

9. At the Nisi Prius Protection may be call. 43 T. 3. 22. b. 48 T. 3. 8. 3 H. 6. 56. 17. G. 3. 22. b. Protection after the left Continuance, may be allowed at the Nisi Prius, as well as a Pies after the left Continuance. There is equal Reafon in both Cases. Jenk. 85. pl. 66.

10. After Trial, and Inues returned against Parties upon Dismiss & Aliax with Nisi Prius pray'd, Protection lies for the Defendant. 3 H. 6. 55. b.

But Eflbogns of Service of the King does not lie; For the one is certified by the King under his Seal, and the other is only the Surman of the Party himself. Note the Diversity. Br. Protection, pl. 4. cites S. C.—Br. Esflation, pl. 2. cites S. C.

11. After Dismiss returned, and Challenge taken to the Array, The Prior and Triors choses, Protection does not lie for the Defendant, for he shall not be demand'd after, and the Protection is to have a Difiail. 4 H. 8. 22. b.

12. After the Jurors, or any of them, are sworn upon the Principals, a Protection does not lie. 4 H. 6. 23.

This is for the one Bench, and after the fourth Day of the Inquest shall be return'd, and the four Days after, at which the Protection bearing Date after the fourth Day (if call'd), it lies for the Defendant, and this shall be entered specially. 10 H. 6. 3. b. 

13. But after the Return of a Dismissings, a Protection lies, before In Trespass, if any Challenge to the Array. 4 H. 6. 23.

at the Trial fame of the Jurors appear, and some make Default; a Dismissings with Decem Tiales is awarded; upon this Dissmissings a full Jury appears; at this Day a Protection call for the Defendant shall be allowed; For he is then demandable, and the End of the Protection is to excuse his Default. Jenk. 108. pl. 6. —S. P. Jenk. 168. pl. 5. * This should be (6).

14. If at the fourth Day of the Eight, the Inquest be ready to S. P. Br. Paps, and Day given till two Days after, at which Day, the Protection bearing Date after the fourth Day (if call'd), it lies for the Defendant, and this shall be entered specially. 10 H. 6. 3. b. 

and the other. Br. Protection, pl. 9c. cites 6 H. 6. 3. That it shall not be allowed, by the feu OPiion; For the Two Parties are demandable at this Day, yet the Jury shall be general, and shall have Relation to the fourth Day. and then there is no Day to allow the Protection.

If the Jury or the other, they appear at the Day, and the Jury al're, and for Shortness of Time they were adjourned till in Grafton &c. And at the next Day, the one call Protection, which bore Date the first Day, and the other call Protection, which bore Date the second Day, and it was doubted whether they shall be allowed or not; Because they have appeared at both, and call no Protection. and are not now demandable, therefore cannot call Protection. Quere; For this said there, That in M. 28 H. 6. 1. the Protection was allowed in each Case. Br. Protection, pl. 9. cites 2: H. 6. 4.

15. If at the Return the Parties and Jurors appear, and the Court command them to appear when they shall be demand'd, if they shall be demand'd four Days after, Protection lies for the Defendant, and it shall be entered specially.

16. 13 R. 2. cap. 16. Easils, That no Protection with the Chief of S. P. Paroe. • Quia Protection, shall be allowed in any Plea, where the Suit was com- tion Preliminary before the Date of such Protection: Except in a Voyage, where the Protection was made.
Protection.

King goeth in Person, or other Voyage Royal, or in the King's Majesties. Heaveth this Act will not infringe Protections with the Claus of Quia Moratur; And if the Party protected tarry more than a convenient time in the Country, without going to the Service, or return from the Service, the Chancellor Pleas; But having Notice thereof, shall Repeal his Protection.

For this Earleth when he goeth in the King's Service in a Voyage Royal; and that is twofold, either touching War, and that is only when the King himself, or his Lieutenant, that is Fores, goeth, or when any goeth in the King's Ambassage, Pro Negotio Regni, or for the Marriage of the King's Daughter, or the like. This also is called a Voyage Royal, but a Protection Mortuus may be purchased, and call, Pendente Pleato. Co. Lit. 150. b. (k) — One had Benefit of a Protection, for that he went into the King's Wars, in Company of the Protector, into France, the greatest Part thereof being then under the King's actual Obdience; So as the Subjects of England were employed into France for the Defence and Safety thereof: In which Case it was obser'd, That seeing the Protector Pro Rex went, the same was adjug'd a Voyage Royal. 7 Rep. S. a. in Calvin's Case, —— Cites 3 H. 6 tit. Protection 2 — So the Lord Talbot went with a Company of Englishmen into France, then also being for the greater Part under the actual Obdience of the King, who had the Benefit of their Protections allowed them. 7 Rep. S. a. in Calvin's Case. —— Cites 8 H. 6, 16. b. —— * S. P. Jenk. 94 pl. 84. cites 20 E. 3 Protection Fitzh. 83. &c. 155.

17. In Debt, it was said, That in Trespaffect against the Baron and Fene, the Sheriff returned that the Baron Non est inventus & cpi Corpus upon the Forex, and Protection was cast for the Baron the same Day, and was allowed; For he had a Day by the Roll tho' he had no Day by the Return of the Sheriff. Br. Protection, pl. 79. cites 3 H. 6. 3.

18. In Precipe quod reddat, the Tenant made Attorney, yet he may cast Protection after, notwithstanding that he had made Attorney. Br. Protection, pl. 71. cites 2 E. 4. 15.

19. A Protection does not lie to disturb an Arrest, or the Execution of it; For the Judges ought to allow it first, which cannot be without the View of it first in Court. Jenk. 94. pl. 83.

(C) What Persons shall have Protection, and against whom. Quia Prosecturum.

1. Protection lies for the Praye in Aid alone. 37 H. 6. 32. b.

S. P. Br. Protection, pl. 16. cites 42. E. 3. 18 —— This was in a Scire Facias on a Fine, and per Cur. it well lies, and yet the Statute De quis recordata sunt are to ouft Delays. Br. Protection, pl. 63. cites 57 H. 6. 32. Br. Protection, pl. 58. cites 25. E. 5. 26. Contra, that it does not lie for the Praye in Aid; For then the Plaintiff will not the Reformans, and no Delay of Justice; Quod non bene.

In Replevin, the Termes Plaintiffs prayed Aid of his Lavor; and the best Opinion was, that the Prime shall not be by Protection, no more than the Plaintiff who prayed shall be; For the Avowant cannot have Reformans against them; and also they are Plaintiffs, and are to recover Damages against the Avoiant, and no Plaintiff shall be by Protection. Br. Protection, pl. 55. cites 8 H. 5. 5.—But 81 H. 6. 16. in Trespaffect the Praye in Aid was by Protection; For there he was to join to the Defendant, and not to the Plaintiff, as here in Replevin, note the Diversity. Ibid.

Quia moraturus.

A Plaintiff in Execution upon a Condemnation. D. 4. 5. 3. 162, 50.

2. Protection Quia moraturus does not lie for a Man in Execution on the Fleet was thought a Man very necessary to serve the Queen in her Wars, and the Court was moved by the Attorney, Per Mandatum Concilii, whether the Queen might Licence him with a Keeper to go be Berkswich to defend it, But all the Justices of B. R. and C. B. held That the could not.
Protection.


3. Protection does not lie for any Officer in Courts of Record. 7 D. Br Protection, pl. 34.

that in Debt it was agreed by Thorne and all his Companions, that Protection shall not be allowed for any Officer of the Receipt; Quod nota, and this it seems touches the Receipt, or because he ought to be always Resident. — S. P. Nor for any other Officer in Court of Record, whose Attendance is necessary for the King's Service or Administration of Justice. Co. Litt. 150. b. (b)

(D) What Person in respect of Estate shall have them.

1. A Protection lies for the Garnishee at the Return of the Scire Facias, because he is not Plaintiff before he appears, and Declaration is made. 3 D. 6. 18.

 citas 48 E. 3. 18. — He is not Plaintiff till he has made Title to the Thing demanded. Br. Protection, pl. 3.

2. But after Plead he pleaded no Protection lies for him, for then he is Actor. 9 D. 6. 36. b. 20 D. 6. 29 h.

3. In a Replevin before Avowry made Protection lies for the Defendant; For before Avowry he is not Actor. 3 D. 6. 18.

Br. Protection, pl. 1. cites S. C. (f)

4. In Quod ei deforcat a Protection lies for the Defendant before he has maintained the Title of the first Record; For before this he is not Actor. 3 D. 6. 18.


(D. 2) For what Causes or Things they may have it, [and who, and when.]


2. A Prohibition does not lie for one before he is Party to the Action. 14 D. 4. 16.

3. As if a Man prays to be received, and Plaintiff says he has nothing in Reversion; At the same Day, nor at another Day, before the Action is tried for him, a Protection does not lie for him; For he is not Party to the Action before. * 14 D. 4. 16. 121 C. 3. 13. Ad judged.

Br. Protection, pl. 37. cites S. C.


Br. Protection, pl. 2. cites S. C. S. P. Notwithstanding it was said that the Protection is Quod sit Quem de omnibus Placitis & Querellas, and he is not Party, nor is he yet joined. Br. Protection, pl. 28 cites. 5 S. C.

5. But
84

Protection.

5. But otherwise it is, if the Sheriff returns Non est inventus, for then he has not a Day in Court. 17 E. 3. 66. adjudged.

6. So Protection lies for the Vouchee upon Return of the Summons ad Warrantzandum fer'd before Entry into the Warranty; for the Demendant has made himself Privy by the Grant of the Voucher. 3 D. 6. 30. C. 49. b.

Value shall be given against him upon his Default; and therefore Protection lies. And so was the Opinion of the Court. Br. Protection, pl. 2. cites 3 H. 6. 50.

7. So Protection lies for Garnishee at the Return of the Scire facias. 3 D. 6. 49.

It does not lie for Vouchee till in Judgment of Law he be made Privy. And if Demendant counterpedes the Voucher, then until it be adjudged for the Voucher, a Protection cannot be call for him. Co. Litt. 150. b (1)


In an Information for Barrettery, it was said the Defendant stood upon his Protection. But per Cur. There is no Protection in Cafe of Breach of the Peace, nor against a Rule of this Court. Freeman Rep. 359. pl. 458. Mich. 1673. B. R. Anon.

(E) How many. [Or the several Sorts of Protections.]

Mo. 239. Warrum's Caesar. Protection is either General or Particular. The General Protection extends generally to all the King's Subjects, Denizens and Aliens within the Realm, whose Offences have not made them incapable thereof. And there is a Particular Protection by Writ, which is of two Sorts, One to give a Man an Immunity from Actions or Suits, and the other for Safety of his Persona, Servants, Goods, Lands and Tenements, whereof he is lawfully possessor from unlawful Molestations and Wrong. The first is of Right and by Law, the second are all Ex Gratia (having one) for the General Protection implies as much. Co. Litt. 150. And then divides Particular Protections in the same Manner as here, and says that there are Excellent Points of Learning, and that the Cause of granting the two first is of two Natures, the one concerns the Service of War, as the King's Soldiers &c. the other Wildom and Counsel, as the King's Ambassador or Minister pro Negotis Regni; both the being for the Public Good of the Realm, private Men's Actions and Suits must be suspended for a convenient Time; for Juris Publici antecedenda Prima.—— As to the third Protection cum clavilula Volumus, The King by his Prerogative regularly is to be prefer'd in Payment of his Duty or Debt by his Debtor before any Subject, both the King's Debt or Duty be the latter; and the Realm hereof is, for that Theauraur Regis est Fundamentum Bellii, & Firmamentum Pae. And thereupon the Law gave the King Remedy by Writ of Protection to protect his Debtor, that he should not be sued or attached until he be paid the King's Debt; but hereof grew some Inconvenience, for to delay other Men of their Suits, the King's Debts were more slowly paid; and for Remedy thereof was made the Statute of 25 Ed. 3. Co. Litt. 151. b (1)

The 4th Protection is when the King sends a Man in his Service into the Wars beyond the Seas, or into the Marches of Scotland, and there he is detained and kept Prisoner, when a Man he shall have a Special Protection, reciting the whole Matter; and in the

The 5th Protections are in divers Forms, and of diverse Effects; and the King may grant them for diverse Causes. And there are 4 Manners of Protections with the Clause Volumus. One is a Protection called Quia Profecturus, and another Protection Quia Morator. And the 3d is a Protection which the King by his Prerogative may grant, and the same is where a Man is Debtor into the King, the King may grant unto him that he shall not be sued nor attached, but taketh him into Protection until he hath paid the King's Debts. But otherwise now by the Stat. of 25 E. 3. 12. [which see at (A. 2)] F. N. B. 28. (B)
the End of the same Protection shall be such Clause, * * Protection minime sent into the custumuris poti delinition. pred. R. a prof. pred. fi conting. ipsun iterum i- herari ad cadem. F. N. B. 29. (c)

there, so as neither Protection Profection or Moratour will serve him; and this hath no certain Time limited; whereas you shall read at large in the Register, and F. N. B. Co. Litt. 131. b. ——ie so likely the Statue of this latter filled not assizes, so in the Alion. F. N. 131. b.

4. It appeareth by the Register, fol. 280. That there are diverse Maker of Forms of Protections. Where a Man search to travel the Country with his Merchandizes, or to collect the Alms for the Poor of an Hospital, or of the Church, then they may purchase Letters Patent of the King's Protection, commanding the King's Subjects for to Defend them, and to Maintain, Aid and Assist them. F. N. B. 29. (D)

5. The Protection Com daufula Voluntas, which is of Right, is, That every Spiritual Person may sue a Protection for him and his Goods, and for the Farmers of their Lands and their Goods, that they shall not be taken by the King's Purveyor, nor their Carriages or Chattels taken by other Ministers of the King, which Writ doth recite the Statute of 14 Ed. 3. Co. Litt. 131. b. (p)

6. Lord Coke lays of these Protections he cannot say any Thing of his own Experience; for albeit Queen Eliz. maintained many Wars, yet the granted few or no Protections; and her Reason was, that he was no fit Subject to be employed in her Service that was Subject to other Men's Actions, least she might be thought to delay Justice. Co. Litt. 131. b.

7. Quia ipsi in Gueris nebris in Flandria detentos exilis per annum annum duraturus. 3 Lev. 332. Trin. 4 W. & M. C. B. Barradale v. Lord Cuts.

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(F) For what Persons it lies. [*Corporation &c.*]

Protection does not lie for a Corporation Aggregate, as for ** S P Nor mayor and Commonality, because this is to have their Ag- Propet Person, and such Corporation cannot appear in y of Commonality, and therefore is out of the Cause of Protection. 4 & 79. b. 30. Co. 2. 3. 1. Dubitatavit.

Note of the King &c. Br. Protection, pl. 56. cites 21 E. 4. 9. — Corporations Aggregate of many are not capable of these two Protections, viz. Profection or Moratour, because the Corporation it self is invisible, and rests only in Consideration of Law. Co. Litt. 130. a. b. (d) cites some Cases ——i Br. Elfoign, pl. 114. cites 8. C.

(G) Against what Person. [*King &c.*]

1. If the King brings an Action, a Protection does not lie against him. 21 E. 3. 13. b.

2. But see 23 E. 3. Protection 98. A Protection lies against the King in an Action brought by him, unless it be a Plea which touches the Crown. 34 E. 3. Protection 122. Accordingly.

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2 Hawk. Pl C. 25.
Protection.

26. pl. 61. And there he cites, in the Margin, for the Affirmative he cites Fitzh. Protection 68, 122. Keilw. 135.

S. P. Tho'.

3. If the Queen brings an Action, a Protection lies against her.
   she a Person
   excepted.
   Br. Protection, pl. 44 cites 21 E. 5. 13. —— Fitzh. tit. Protection, cites S. C.

(H) For whom it lies for a Collateral Respect.

1. It lies for a Man who is upon Mainprize, tho' he is in a Hau-

2. So if a Man who comes in by the Exigent be lett to a Main-
   prise, yet a Protection lies for him. 22 E. 3. 4. Adjudg'd. 7. b.

Protection is not allow-
   able for him
   who comes
   in upon the
   Capias Utlagatun.
   3
   Lev. 132.
   Barrudale v. Lord Cutts.

3. One taken upon a Capias Utlagatum after Judgment, had a Protection,
   but being brought to the Bar of C. B. his Creditor moved, Thit he
   might be charged in Execution; Hobart Ch. said, and the Court agreed
   thereto, That because the Capias Utlagatum is the King's Suit, and for
   the Subject but in the second Degree, therefore the King may discharge
   it, but hardly by a Protection, especially not being deliver'd or made
   4. Upon a Capias Utlagatum the Sheriff returned, That the Party who
   was arrested had a Protection from Lord Stafford, who is a Lord of Par-
   liament. But by Winch J. only in Court, the Return is clearly naught;
   and Day was given to amend his Return, and this was granted by Hob-
   Anon.

(I) Not for him who can't appear.

1. If at the Summonses Ad Warrantizandum sicat alias returnable
   no Writ be returned, no Protection lies for the Vouchee, be-
   cause he could not appear if he was present, inasmuch as the Land is
   not now to be lost. 30 E. 3. 22. Adjudg'd.

(K) Not
Protection.

(K) Not for the Plaintiff.

1. Protection does not lie for him who is Plaintiff or Demandant in a Suit. 19 H. 6. 51. 17 C. 3. 24. The Plaintiff cannot call a Protection, for the Protection is always for the Defendant, and shall be called for him, if it be not in such Cases where the Plaintiff becometh Defendant. F. N. B. 28. (G)

It cannot be called for the Defendant or Plaintiff, because the Tenant or Defendant cannot sue a Re-summons or a Re-attaction, but the Plaintiff only that finds out the Summons or Attachment &c. shall sue also to the Re-summons or Re-attachment. And so it is of an Actor, in Nature of a Plaintiff as is the Garnishee after Appearance, and an Avowant, and the like. Co Litt. 150. b. (g)

2. If a Man be outlaw'd in an Action of Trespasis, and purchases S. P. Per his Charter of Pardon, and gives a Scire Facias against the Plaintiff, a Protection does not lie for the Defendant in the Scire Facias, for he is Plaintiff, for this is but to bring him in to Count. 38 C. 3. 1.

S.C. After the Plaintiff has counted, a Protection in this Case lies for the Defendant, but not before. F. N. B. 28. (G) in the new Notes there. (a) cites 43 E. 1. 26. It lies for the Garnishee at the Day of the Return of the Scire Facias, but not after he has made Title. F. N. B. (G) in the new Notes there. (a) cites 3 H. 6. 18. &c. 6 H. 36.

3. So in such Scire Facias a Protection does not lie for the Plaintiff, before the Plaintiff in the first Action has counted against him, for before this he himself is Plaintiff. 43 C. 3. 26.

4. But after the Plaintiff in the first Action has counted against him, a Protection lies for the Defendant in the Scire Facias, for the Scire Facias is but to bring him in to Count. 43 C. 3. 26.


Accordingly, S. P. For he is become Actor; and e contra where he pleads No Przs pas, there Protection lies. Br. Protection, pl. 45 cites 22 H. 6. 28. — Ibid, pl. 86. cites S. C.

* F. N. B. 28. (G) in the new Notes there. (a) cites S. C. &c. 25 E. 3. 45.

6. But otherwise it is before Avowry.

7. In a Replevin a Protection does not lie for the Plaintiff, then the Plaintiff will not sue Re-summons, and it Delay of Justice; quod rota bene. Br. Protection, pl. 48. cites S. C. — F. N. B. 28. (G) in the new Notes there. (a) — S. P. cites 26 R. 2. Fitz. Protection 106. 5 H. 5. 5.


8. In a Replevin if the Plaintiff hath Aid of him in Reversion at S. P. Br. Pro the Summons return'd, a Protection does not lie for the Plaintiff (because he is Actor.) 24 E. 3. 27.

9. In an Audita Querela against the Converse of a Statute for suing the Defendant, and not Actor, the Defendant shall call it, and not the Plaintiff. Br. Protection, pl. 33. cites S. C. — S. P. For the Execution against the Decease of the Statute, sitzicut where he has performed the Condtions, no Protection lies for the Plaintiff in the Audita Querela, because he is Plaintiff and Actor. * 47 C. 3. 5.


10. In an Audita Querela against the Converse for suing Execution against his own Release, a Protection does not lie for the Converse after the Converse has threw his Matter, for now the Converse is Actor, and this Plca of the Converse is only an Answer to bat the
Protection.


11. If the Conuise of a Statute lies Execution against his lie upon a Feoffee of Part of the Land, and the Feoffee lies Scire Facias against the Conuise at the Return thereof, the Conuise may have a Protection rait for him. 47 E. 3. 4

12. In a Quod ci deforceat no Protection lies for the Tenant, after that he has shewed his Right according to the Nature of his Hert, because he is Error. 38 E. 3. 3.

New Notes there (a) cites S. C. & P. but says that it lies for him before he has made Title, and cites 43 E. 3. 6. And that after Title is made for the Tenant, it lies for the Plantiff, and cites 20 R. 2. Protection, 126. 5 H. 5. 5.

(L) In what Actions.

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1. A Protection Quia Prosecturus lies in a Quod permittat. 56 P. 3.

S. P. Br. Aid del Roy. pl. 165. cites F. N. B — Br. Protection, pl. 53. cites 21 H. 6. 42. by the Statue of E. 5. 7. — And the fame of Attaint. Ibid.

Both.

3. They lie not in a Quare Impedit. * 39 P. 6. 39. 10 P. 4. 6. 43

Allis. 21. per Thorpe for the Distich of the incurring of Lapie in the mean Time.


4. Protection lies in a Scire Facias upon a Fine. 42 E. 3. 18. b.

S. C. — Co Litr. 151. (y) — S. P. Notwithstanding the Statue which oufs, the Delays. Br. Scire Facias, pl. 217. cites S. C — Fitzh. tit. Protection, pl. 95. cites S. C.

* Fitzh. tit. Protection, pl. 53. cites S. C.

5. So it lies in a Scire Facias upon Charter of the Pardon of Outlawty, after a Count upon the first Original. 43 E. 3. 36.

† 6. Protection lies in Writ of Right of Dower. 43 E. 3. 6. b.

† Fitzh. tit. Protection, pl. 50. citers S. C.


— S. P. Br. Aid del Roy, pl. 165. cites F. N. B. — Jenk. 50. pl. 95. cites S. C. For this would tend to starve the Widow.

8. But it lies in Quod ci deforceat, where she claimed to hold in Dower, for this is grounded upon her own Possession. 43 E. 3. 6 b.

Jenk. 50. pl. 95. that it does not lie in a Quod ci deforceat brought by Tenant in Dower, where she had lost her Dower by Default.

Fitzh. tit. Protection, pl. 50. cites S. C.

9. So it lies in Writ of Entry sur Diffein brought by Feine, where she makes Title to hold in Dower, for this is of her own Possession. 43 E. 3. 16. b.
Protection

10. In Dover, if the Dowerer denies the Deed of the Heir, by which the Demanant recovers immediately, and the Tenant and the Dower go to Assize upon the Deed, a Protection does not lie for the Dowerer, because the original plea is a Plea of Dover (and not of the same Nature) 17 C. 3. 22. b. Ajudg'd.

11. If Dover be assigned to a Feme in Chancery, and after it is Existed by an Elder Title, and the brings a Seire Facias against the Tenant to be endowed of the other two Parts in Chancery, a Protection does not lie for the Tenant, Quia Placitum dicit. 43 Aff. 32. b. Protection, pl. 68. cites 43. b. Ajudg'd.

32. S. P. and seems to mean the S. C.

12. In Seire Facias against Conunee of a Statute Merchant for suing Execution against his own Release, a Protection lies for the Conuuie who it does not lie in the Suit to have Execution of the Statute. 47 C. 3. 4.

13. In Seire Facias in Nature of an Affile, Protection does not lie, because he shall not have more Advantage in this than in the Affile. 3 B. 4. 16. b.

14. The Lame Law in Seire Facias against a Lord upon Reversal of an Attaint. 3 B. 4. 16. b.


16. In a Writ of Error, and Seire Facias thereupon, to reverse a Fine, the Error be assigned in the Fine, because he was within Age at the Time of levying it, yet a Protection lies for the Defendant; but the Plaintiff shall be immediately interfered for the Mistake, that he may be of full Age before the Year is ended. * 21 C. 3. 24. b. Ajudg'd.

17. If upon a Capas awarded against Conunee of a Statute Merchant, the Sheriff returns, That he is dead, the Conuice of the Connuie of the Land habe to the Statute, upon showing thereof to the Court, shall not have his Protection Quia Protecfturos allow'd, because he has not any Day in Court. 33 C. 3. Protection 115.

18. In an Elegie within the Year in B. R. a Protection, by which the King has taken into his Protection Lands and Chattels, was allowed for him against whom the Judgment passes, tho' he had not Day in Court. 13 C. 3. Protection 72.


Protection.

The King shall not grant Protection in this Case by reason of this Statute. Per Pifton. And Brook says, that the Statute saying, that Protection shall not lie, is as much as to say, That the King shall not dispense with the Statute; quod non. Br. Parliament, pl. 50. cites 39 H. 6. 39.

(L. 2) Case in what Court.

1. A Prohibition shall be allow'd in a Court of Antient Demesnes, or in any other Court of Record, as London &c. and when the Plea is removed, the Protection may be allow'd. F. N. B. 28. (K)

(M) For what Causes it may be granted. Quia Prosecturus.

See Pleta, Lib. 6. cap. 7. De Causis Excommunication; and cap. S. De Etonis ultra Mare, and Britton, cap. 122, 123, 124. The Cause of granting a Protection must be express'd in the Protection, to the End it may appear to the Court, That it was in Pro negotiis Regni, or Pro bono Publico. Co Litt. 150.

* S. P. And the Business of the Realm shall not serve, unless it was certainly express'd what Business.

| 1 | Quia Prosecturus to F. and there Moraturus in Negotiis Regni fì | not sufficient Cause without showing some especial Retainer | by the King, or Incurrent, as Ambassador, or | | 2 | F. N. B. 28. (K) |

2. A Protection has not been seen for the going to Rome to be Procurator of the King. 39 D. 6. 39.

3. It may be Quia Prosecturus ad Curiam Romanam de Licentia Domini Regis. 56 P. 3. Rot. 8. The Prior of Little Widmore's Case, Abjudg'd.


Both.

5. If the Possessions and Chattels of any Man be taken into the Protection of the King without Cause, this shall not constitute or delay any Plea of his Action. 11 D. 6. 10.

6. But if the King takes a Man into his Protection because he is in his Service in his War, this Protection shall be good. 11 D. 6. 10.

7. R. 2. S. Enacts that No Protection with the Cause of Voluntarium shall be allowed for Violations taken or brought upon the Voyage or Service wherein the Protection makes Mention, neither yet in Pleas of Trespass or in Contrats made after the Date of the said Protection.

(N) For
(N) For what Causes it shall be granted in Respect of the Place where.

Moraturus.

1. *Quia Moraturus* ought to be upon a certain Place, as upon the dwelling of Calais, or the like. 39 P. 6. 39.

The Protection, as well Moraturus as Profecturus, must be regularly to some Place out of the Realm of England, and that must be to some certain Place, as supra falsa Custodia Calidie &c. Co. Litt. 150 b. (q)

2. *Quia Moraturus* super altrum Mare, is not good.

S. P. Because uncertain.

Br. Protection, pl. 67, cites 39 H. 6. 39. - S. P. Because the Sea cannot fly, and by Consequence he cannot fly upon the Sea. F. N. B. 28 (f) cites Thn. 36 H. 6. - S. P. And also because a great Part of the Sea is within the Realm of England. Co. Litt. 150 b. (q)

3. *Quia Moraturus* in obsequio nostror in paribus Walliae is not good. S. P. Day of because Wales is within the Realm, 7 H. 14. 72. Ditbitur.

Advisement was given to the Demandant, and in the mean Time the Protection was expired, and the Demandant prayed betwixt the Land, and could not have it; for the Day of Advisement was given to the Demandant, and not to the Tenant upon the Protection. Br. Protection, pl. 35. cites S. C. - A Protection to Wales is not good. Co. Litt. 150 b. (q) - S. P. Jenk. 66 pl. 24 because it is in the peaceable Possession of our Lord the King. - And where the Protection was *Quia moratur in Persibus Zelandiis or in co"tus nostris", it was laid by Tuntief to be no Cause of Protection; for the usual Form (and so is the Law) is that such a Person is employed in *Nees Regui for the Defence of England &c. For if the King will give All to another Prince or Subjects employed in such Service, they shall not have Protection. Le. 185 pl. 258. Hilt. 33 Eliz. B R. Osborn v. Kirion.

4. Protection of *Voyage Royal in Ireland* shall not be allowed; for it is in the Jurisdiction of this Realm. But otherwise it is of Scotland; &c. It is in Peaceable Possession of our Lord the King.

Jenk. 66. pl. 24. - But Co. Litt. 150 b. (q) lays it may be to Ireland or Scotland, because they are distinct Kingdoms.

5. *And Protection* super falsa Custodia lies there; and otherwise not. Per Littleton. Br. Protection, pl. 72.

6. *And Protection* caus *Quia moratur with E. W. Deputy of the Duke of Clarence is good, if the Duke by his Commission has Power to make a Deputy.* Br. Protection, pl. 72. cites 7 E. 4. 27.

7. *The King's Protection containing this Cause (quod defendens pro &c. Co. Lit. 127 b. c.) is good,* if the Default of a Defendent in a Suit, because Carlisle is within the Kingdom of England. By all the Judges of England; The King in his Kingdom is presumed to be sufficiently defended with Arms, and every Subject is bound to aid the King to subdue his Enemies and Rebels. Jenk. 66. pl. 24.

8. *The Register of Wris is, That a Protection is good with this Clause,* Qua in Exercitio profectionem per fenio Regio super Scottam, and is also good for the Defence of Calais, or of any Part of France subdued by the English. Jenk. 66. pl. 24.

9. In Debt the Demandant shew'd forth a Protection *Qua profectionus with the Lord Hunsdon to Berwick.* Oyer doubted if the Protection did lie, but said that it should rather be Moraturus than Profecturus; for a Profecturus to Calais was never good, but super Freutationem Cathalici; but Harper contra; for Berwick is out of the Realm. 5 Le. 25. pl. 49. Patch. 14 Eliz. C. B. Christmas's Cafe.

(O) For
Protection.

(O) For what Time it is to be granted. 

Both.

1. 1 E. 1. Rot. Pat. Protection durativa usque ad Feftum Purificationis proximo futurum.

2. Ibidem, Proteftio quia Proteftator durativa usque ad Feftum omnium Sanctorum proximo futurum.


5. Protection lies * not for more than one Year at a Time; but when the Year is ended, the King may grant it for another Year, and so on in Infinitum. 39 P. 6. 39. 40.

6. But it lies for an entire Year, and if there be a Reattachment within the Year, it shall abate. 40 E. 3. 18.

7. If a Protection be call, which bears Date 7 Jan. durativa for 1 Year, Garnishment may be 8 January the next Year; for this is a Day after the Year, or it may be 7 January, for it shall be deemed to be purchased after the Time in the Day of the Grant of the Protection. 40 E. 3. 18.

8. A Protection granted to one &c. until be be returned from Scotland, was disfallowed for the Uncertainty of the Time. Co. Litt. 130 b. (p)

9. The Lady M. had a Protection of the King, and the Protection was granted for the King and his Successors; and yet by the Judgment of the Court it is gone by Demife of the King. Lat. 58. Patch. r Car. Lady Mollineux's Cafe.

(P) At what Time it may be cast.

If a Summons ad Auxiliandum issues against Peace in Aid, and the Sheriff returns Quod mandavit Ballivo &c. qui nullum respondum dedit, a Protection does not lie for the Peace at the Day of the Return, because he had not Day in Court. 17 E. 3. 68, adjudged.

and when if he had made Default, it should give his Default; therefore when Execution is to be granted against Body, Land or Goods, no Protection can be cast, because the Defendant hath no Day in Court. Co. Litt 130 b. (l)

See (B) pl. 5.

2. If the Inquest be taken at the Nifi Prius, no Protection lies at the Day in Bank, because they [are] one Day. 21 E. 3. 51.

3. If Defendant makes Default at the Nifi Prius, by which the Inquest is taken, a Protection does not lie for him at the Day in Bank, because...
Protection.

because they are one Day in Law. 3 H. 4. 13. b. Contra 18 C. 57. cites 22 B. 5. and P. 53 E. 5.

S P. For the Party shall not plead a Release merely; quod nota. But cites 21 E. 5. contra, that Protection was allowed in such Case. — In Plea Real the Tenant made Default at the Nisi Prius, and at the Day in Bank Protection was cast and allowed, and no Petit Cape awarded. Br. Protection, pl. 50, cites 9 E. 5. at the End. — And M. 19 E. 5. the Parties were at Issue in Account, and at the Nisi Prius the Defendant made Default, by which the Inquest was taken by Default, and remained; and at the Day in Bank Protection was cast, and allowed. Br. Protection, pl. 50.

Protection was cast at the Day of Nisi Prius, and the Justices took the Inquest by Default, and at the Day in Bank Retaliation was cast, by which the Plaintiff prayed Judgment, and could not have it; for the Protection was allowable at the Day when it was cast, and therefore it shall leave this Day; by which if they had had Power to allow Protection at the Nisi Prius, it had faced the Defendant's Default, and their Writ of Power shall not put the Party to Mitchell to award the Inquest by his Default; by which it was awarded, that the Plaintiff shall have Process against the Inquest upon the first Issue &c. And note, That at this Day of Nisi Prius aforesaid, the Defendant made Default, and a Stranger cast the Protection for him, and the Inquest, notwithstanding this was taken by Default, found for the Plaintiff, and all was void at the Day in Bank for the Reason aforesaid; good nota. Br. Protection, pl. 64. cites 14 H. 6.

4. Br. Enquest, pl. 25, cites S. C. — And this too in some Respects, the Day of Nisi Prius and Day in Bank are all one. Br. Enquest, pl. 25. cites 21 H. 6. 20. But where Protection is cast at the Day of the Nisi Prius, and the Justices do not take the Inquest, but record it, and at the Day in Bank the Protection is dissolved, there the Inquest shall be taken by Default; for in this Case the Defendant never was found to take a Future. — And albeit professed in B. R. against T. S. they were at Blue, and at the Nisi Prius the Plaintiff appeared, and the Defendant was demanded, and made Default, by which it was entered Quod de jure credidimus non sentit, sed quo H. N. cast Protection for him, and to all was recorded; and before the Day in Bank the Plaintiff sued Replevin, and at the Day in Bank cast it in Court, and prayed that the Protection be annulled; and to it was, and the Inquest awarded by Default; the Reason seems to be insufficiency. — But much as the Default was recorded before the Protection was cast. Br. Protection, pl. 71. (bis) cites 4 E. 4 — Br. Enquest, pl. 41. cites S. C.

Quia Profecturus.

4. If Defendant in an Action prays an Imparlance, when he is demanded to come to his Answer, a Protection Quia Profecturus of a more ancient Date than the Appearance, may be cast for him. 29 C. 3. 41. adjudged.

Quia Moratusur{s.

5. If the Defendant prays to Imparle when he is demanded to answer, a Protection Quia Moratusur{s in obsequio, of colder Date than his Appearance, lies not for him. 29 C. 3. 41.

Both.

6. In an Account, if the Defendant comes in upon the Capias, and the Plaintiff sues against him, and he defends, he can't call a Protection Quia Profecturus after, because he has entered the Plea. Contra 13 C. 3. Amereement. 18. adjudged.

Yet at another Day of Continuance after that, a Protection may be cast; so at a Day after an Exigent; but after Appearance he cannot call a Protection in that Term until a new Continuance be taken. Co. Litt. 130. b. (m)

7. If the Defendant pleads, and the Plaintiff impares, a Protection lies for the Defendant the next Day, notwithstanding the Plead- ing before. 44 C. 3. 16.

8. Note, That in Scire facias a Protection purchased pending the Writ, S. C. shall not be allowed, but where he goes in a Voyage Royal, that is with S. P. F. N. B. him who conducts the King's Holt, or with the King's Lieutenant, and 28. (2.) B B
Protection.

not with him who goes with the King's Son into Ireland; for it may be that it was no Journey of War, as it seems. Br. Protection, pl. 34. cites 41 H. 4. 7.


10. Where a Man has Nisi Prius and Affite, against one and the same Person, and at the Day the Defendant appears to the Affite; yet at the same Day he may cast Protection Quia Moratur, in the Nisi Prius. Br. Protection, pl. 51. cites 21 H. 6. 20.

(Q) How. Quia Moraturus.

Br. Protection, pl. 66. cites 58 H. 6. 22. — Co. Litt. 131. a. (g)

* Br. Protection, pl. 67. cites S. C. accordingly.

1. If a Protection, Quia Moraturus, be cast by the Party himself in Person, then he ought to show Caution, as to say, That he came into these Parts to buy Physical or other Necessaries for the Castle, for which Purpose he leaves here; But when it is cast by a Stranger, as sufficient for him to say, by Protection. 38 D. 6. 23. b. per Stole.

2. In such Protections there ought to be an Exception of Dearer, Quare Imp. and Affite. Arg. Noy 177. cites * 39 H. 6. 39.

3. A Protection may be cast for the Party by a Stranger, as well as by the Party himself. F. N. B. 28. (E)

(R) Alloweing, and Disallowing of Protection. Who shall be Judge. [Pl. 1, 2, 3, 4,] [And the Effect of Allowing, or Disallowing it, pl. 5, 6, 8.]

The Courts of Justice, where the Protections is cast, are to Allow or Disallow of the same, be they Courts of Record, or not of Record, and not the Sheriff, or any other Officer or Minifier. Co. Litt. 131. a. (c)


See (B) 1.

3. At the Nisi Prius, a Judge can't Allow nor Disallow Protection before his Associate come, and if it be cast before the one, before the other comes, this shall not serve when the other Judge comes, without new Prayer to be allowed. 43 C. 3. 20. b.

4. At the Nisi Prius, the Judge cannot Allow nor Disallow a Protection. 48 C. 3. 7. b. 17 C. 3. 22. b.

5. But the Judge of Nisi Prius, when the Protection is cast, may take Inquest de Bene Est, and if the Protection be allowed at the Day in Bank, then the Verdict shall serve for nothing; But if it be disallowed it shall be good. 49 C. 3. 7. b.

Br. Protection, pl. 70. cites S. C. accordingly.


— When Protection is cast, he ought to Serve, unless he take the Jury de Bene Est. Br. Protection, pl. 15. cites 54 H. 6. 18. per Jusurietation.

6. When
Protection.

6. When Protection is cast at Nisi Prius, the Justice is to Record the Default and Protection; and so at the Day in Bank, if the Protection does not lie, this shall be a Default. 17 C. 3. 22 b.

If a Protection be cast at the Nisi Prius for one, and be for the Day in Bank, it is repeated by Insuetudinem; yet because it was once well cast, it shall save his Default; But if the Protection be disallowed, either for Variance, or that it lay not in the Action, or the like, there it shall turn to a Default. Co. Lit. 150 b. (1)

7. If the Protection be cast for Birton, where the Record is Bur. Sec(§)ton, the Protection shall be disallowed. 25 C. 3. 43. admodum.

33 Eliz. 1. Enacts that A Challenge shall be entered against a Protection of the King's Servant; And if the Country press against him that cast the Protection, it shall turn to a Default, if he be Tenant, and if he be Demandant, he shall lose his Writ, and shall also be amerced to the King.

9. Protection was Quad Praeventiva nostra Regia Sucespinus in Protectionem nostram Regiam, Corpus, Terras & Bona de W. & Nelmans quod inquiratur, Nic good Praeventiva nostra arguuet. Wray Ch. J. thought the Protection not allowable; For there are but two Protectors, Quia Mortarius, and Quia Pretecuturus; and tho' he would not argue the Praeventive, yet as Judge, he would consider of it; And he thought that such Praeventive as tends to the great Prejudice of the Subject, is not allowable; to which all Agreed; For which Reason 'twas disallowed. No. 239. pl. 374. Patch. 29 Eliz. C. B. Warrant's Cafe.

(S) For what Cause; For Variance.

1. If in the Protection he is nam'd Chivalier, and in the Writ Miles in Latin, this is not such Variance as to disallow the Protection. 42 C. 3. 9.

Variance in Effect. Br. Protection, pl. 87. cites S. C.

2. But if there be any Variance between the Protection and the Writ in the Name of him by whom it is cast, this shall not be allowed. 44 C. 3. 27 P. 6. 22.

3. But if the Protection be cast by J. B. Clark and (Clark) is more than 55 in the Writ, yet it shall not be disallowed for this Surplusage. 2 P. 4. pl. 1.

and Declaration were John Kirton of A. Gentleman; this was held to be no material Variance, being only in the Addition; For before the Statue of 1 H 5. Additions were not necessary in any Action. Le. 185. pl. 258. Hill. 51 Eliz. B. R. O'bourn v. Kirton.

4. If a Writ be brought against M. de Triage, and a Protection Quia Mortarius is cast for M. Griage, leaving out (de) tho' it be cast in the Absence of the Party, yet it shall not be allowed, because it cannot be intended the same Person. 11 D. 4. 70. Adjudged.

Br Protection, pl. 25. cites S. C.

Br Variance pl. 53. cites S. C. And because it was precluded pending the Writ, and M. Triage and M. de Triage cannot be intended one and the same Person, therefore by Award the Protection was disallowed, and Petit Cape awarded; Quod nota.

5. And this can not be aided by Averment that he is the same Person. Adjudged. 11 D. 4. 70.

6. If an Action a Man be named R. C. nuper de K and in the Trefpa's Protection cast by him Nuper de K. is left out, this shall not be allowed, 19 P. 6. 48.

the Defendant cast Protection, Quod Superficiius in Protectionem additam. 7 N. & D. and Nuper was left...
Protection.

7. In Debt against J. C. Executor of W. if a Protection be cast for J. C. leaving out (Executor) yet it shall be allowed, because this is not Part of his Name; and if there are 2 of the same Name, the Plaintiff may have it. 29 C. 3. 49. b. Adjudged.

8. If there be a Variance between the Writ and Protection, yet if the Protection be of older Date than the Writ, the Protection shall be allowed; for no Default is in the Defendant, because the Writ is not according to the Protection. 11 P. 4. 57. 70. b.

9. If there be more in the Protection than there is in the Writ, tho' the Writ be of older Date than the Protection, yet the Protection shall be allowed. 25 C. 3. 81. b.

11. As if he be named J. the Son of J. de Mohun Knight, and in the Protection he is named J. the Son of J. de Mohun de Burrocke, Knight, and so more is in the Protection than in the Writ, yet the Protection shall be allowed. 23 C. 3. 41. b. Adjudged.

12. If a Variance be between the Process and the Original in an Action, and a Protection is according to the Process, yet it shall not be allowed, because the Protection ought to be always according to the Original, and not to the other Process. 11 H. 4. 70. b. Adjudged.

13. If there be a Variance between the Protection and the Writ in the Surname of the Party, because less is in the Protection than in the Writ, yet the Protection shall be allowed. 27 C. 3. 83. b. Adjudged.

14. If the Writ be against Simon de Kimardeliey, and the Protection is for Simon de Kimardeelie, yet it shall be allowed. 1 C. 3. 11. b. tho' it was purchased after the Writ.

15. If Gerard Malines be sued, and he casts a Protection of older Date than the Writ, in which Protection he is called Garret Malines, tho' Garret and Gerard are all one Name, yet if this be not altered to be one, the Protection shall not be allowed. 16. F. 2. R. between Traders and Malines. Adjudged.

16. Variance was between the Writ and the Protection, but it does not appear what Variance, and for the Variance the Protection was disallowed. Br. Variance, pl. 103. cites 44 E. 3. 2.

17. If there be Variance between the Record and the Protection, it is not allowable; for this is never allowable. Br. Protection, pl. 59. (bis) cites 4 H. 6. 9.

18. In Trespass, the Original was Richard Molineux, and the Protection Richard Moloney, and therefore was disallow'd for the Variance. Br. Variance, pl. 44. cites 7 H. 6. 21. 22.

19. Where the Defendant has several Additions by Alias Ditius, if Protection be cast for him, which accords to one of the Names and not with the other, yet the Protection is good; quod necess; by all the Justices. Br. Variance, pl. 48. cites 22 H. 6. 50.

20. At the New Prin's, at the 4th Day, the Parties were demurred, and appeared by Attorney; and the Defendant's Attorney cast Protection, and they were adjourned till the next Day, and there the Plaintiff was ready to have
have alleged Variance, because Addition of the Name of the Defendant in the Writ was not in the Protection; and the Court was in Opinion to have disallow'd the Protection for this Variance; by which the same Day the Attorney called other Protection, bearing Date the same Day. Br. Protection, pl. 10. cites 28 H. 6. 1.

(T) [Allow'd or not.] For what Cause.

Quia Prosecturus.

[In respect of the Time of the Repeal thereof. Pl. 11, 12, 13.]

1. WHEN this Protection is to be allow'd, if it be allow'd, That the Party has been beyond Sea, (after the Purchase of the Protection, and is return'd) the Protection shall be disallow'd. 44 C. 3. 4.

Term, yet it shall not be allow'd by way of Plea, as it is agreed there. Br. Protection, 44 E. 3. 12.

2. But if the Protection be to go only with A. who is returned at the Time of the Allowance, yet if A. be ready to go beyond Sea again the Protection shall be allow'd. 44 E. 3. 12. S. P. But where it is once allow'd, and he goes and returns within the Year. Br. Protection, pl. 29. cites 47 E. 3. 6.

3. But if the Protection be to go with B. if it be allow'd when the Protection is to be allow'd. That he continued staying in England, (it terms that it is intended. That B. is gone) the Protection shall be disallow'd. 47 E. 3. 6. b.

4. If a Sheriff returns a Capi Corpus against B. yet if a Protection Quia Prosecturus be cast for him after, it shall be allow'd. 14 D. 4. 1. b. Br. Protection, pl. 36. cites S. C.

5. When the Protection is to be allow'd, if the King sends a Writ to the Court, reciting the Grant of the Protection, and that he understand that he is maimed, so that he cannot go in his Service, and therefore he commands the Judges to proceed in the Plea, the Protection shall not be allow'd. 29 C. 3. 36. First, Br. Protection, pl. 115. cites S. C.

6. If he for whom the Protection is cast has not been in the Service of the King, as he ought, and it appears to the Court, That there is a Neglect in him before the Allowance, the Protection shall be disallow'd. 24 C. 3. 35.

7. If a Protection Quia Prosecturus be cast for the Defendant in an Action, yet if the Protection be repealed before the Allowance it shall be disallow'd. 13 C. 3. Amercement 18. Adjudy'd.

Quia Moraturus.

8. If a Victualler of Calais has a Protection Quia Moraturus, and returns into England to buy Victual for the Soldiers, if he be called here, the Protection shall be allow'd. 6 H. 4. 9. b. Adjudy'd. * 11 H. 4. 57. 19 H. 6. 35. b. Adjudy'd.

But if he has about his own Business, the Plaintiff may the recall the Protection. — About calling Protection Quia Moratus in Delay of the Action of the Plaintiff, and playing at B. or the Census. G. C.
Protection.


Debt against J N. who

cast Protection, which
was allowed, and
within the Year the same J N. brought Writ of Debt against the Plaintiff, and be tender'd his Law, and J N. was represented after Appearance, and because J N. appeared within the Year, the first Plaintiff prav'd, That the Protection cast by J N. be disallow'd, & non Alator, but shall have * Deciet. Br. Protection, pl. 88. cites 43 E. 3. 56. * Orig. is (Difent).

Br. Protection, pl. 36. cites S. C.

9. But if it appears, That such a Ban is in England, the Protection shall not be allow'd without alleging such special Cause of his Return. 11 H. 4. 57.

But 19 H. 6. 35. b. is that this cannot make Issue.

10. If it appears, That a Ban is in the Custody of the Sheriff by his Return of Capi Corpus, a Protection Quia Mortalitur shall not be allow'd. 14 H. 4. 1. b. because it cannot be intended true against the Return.

Both.

11. If a Protection be cast, and the Justices will advise whether it shall be allow'd for Variance, and in the mean Time the Day of Protection pails, yet the Protection shall be allow'd. 10 H. 6. 6.

12. But if a Protection be cast, and the Justices will advise whether it shall be allow'd for Variance till the fourth Day after, if a Repeal be dated after the 4th Day, the Protection shall be disallow'd. 10 H. 6. 4. 6.

Br. Journ. pl. 11. cites 34 H. 6. 58.

says it shall serve the Defendant; for it was good at the first Day, and the first Day and the other Days are all one Day in Law. Br. Journ. pl. 11. cites 35 H. 6. 58.

14. In Trespass the Sheriff returned Capi Corpus, and at the Day had not the Body, by which he was answer'd, and Procels awarded to detain the old Sheriff, who made the Return, and was now removed, who returned that he had disstraited him, and that he had not the Body, and Protection Quia Protecurus was cast for the Defendant. And per Kirtton, He had no Day in Court. Contra per Thorp clearly, and that if it comes he shall be received to plead; and by him clearly, The Protection shall be allow'd; and after it was disallow'd for Variance. Br. Protection, pl. 22. cites 44 E. 3. 2.

15. In Debt the Defendant at the Nisi Prius cast the Protection, notwithstanding which the Justices took the Inquiet; and at the Day in Bank the Plaintiff obtained Innotecimus, and repealed the Protection; and yet by the bel Opinion the Protection is allowable, because it was good at the Time it was cast. For by Prior, If the Protection be not expired at the casing of the Nisi Prius, and is expired by the Day in Bank, yet it shall be allow'd; for this is one and the same Day, and if it was good at one Day, it shall serve at another. Br. Protection, pl. 25. cites 35 H. 6. 58.

But if the Protection was insufficient, or varying from the Record, and they had took the Inquiet, there it shall not serve the Defendant at the Day in Bank. Contra of a good Protection repeated or expired after. And it is said there that 14 H. 6. 2. and 14 H. 4. 25. it is ruled that the Protection shall be as here in the Principal Case. Ibid.

16. In Debt, the Parties were demurr'd in Law, and the Opinion of the Court was with the Plaintiff. Nele pray'd Respite of Judgment till the next Monday to floor other Matter; and the Court said if he cast any Protection in the Meane Time, the Judgment shall be entered upon this Day; but if he does not cast Protection, the Judgment shall not be entered till the Monday. Br. Protection, pl. 72. cites 7 E. 4. 27.

17. Upon
Protection.

17. Upon a Committion of Oyer and Terminer against Hue de Chrefsey, he appeared upon the Process; the Plaintiff counted against him, and the Defendant brought the King's Writ to the Justices, that Chrefsey the Defendant was to go along with the King in the Marches of Scotland, to aid the King in his War, and the King commands the Justices to continue the Plea, till his Return. Notwithstanding this Writ, the Judges proceeded against Chrefsey, and gave Judgment against him; this judgment was affirm'd in Error; For the King requires that which cannot be; he requires the Continuance of the Plea till the King's Return, which is uncertain when it shall be, and every Continuance is to a certain Day. *Lex a Rege non ex violenda.* Jenk. 7. pl. 16.

18. No Writ of Protection can be allowed, unless it be under the Great Seal, and it is directed generally. Co. Litt. 131. a. (d)

19. Upon a Habeeus Corpus to the Steward and Marshal of the House &c. for W. S. he returned Quod Domini Regina per literas has patentes suprück M. and his Sureties in Protectioun from Regitant; and further by the said Letters Parents voluit, that if any Person should arrest or cause him to be arrested, that then the said Marshal of her House, or his Deputy, might arrest every such Person, and detain him in Pilton until he should answer for the Contempt before the Privy Council; and that the said W. S. caused the said J. P. one of the Sureties of the said J. M. to be arrested &c. whereupon the said W. S. was discharged; and afterwards because the Parties caused the said W. S. to be arrested again for the same Cause, an Attachment was granted against them. *Le. 70. pl. 93. Mich.*

29. & 30 Eliz. C. B. Search's Cafe.

20. Secre facius was brought to have Execution on a Judgment. The Defendant pleaded, That the King, Oct. 7. in the 2d Year of his Reign, took him into his Protection for a Year, and granted that during that Time he should be free from all Manner of Plaints, except Debt, Quare Impedit, and Placita Coram Justiciaris iterimaniibus. It was argued that this was not a good Protection. 1st. Because it was after the Sepere facius brought, and before the Return, and cited to H. 6. 3. and H. 4. 7. And a Protection pending a Suit is not to be allowed, tho' it is Quia Protecturus with the King's Son. 2dly. It does not mention any particular Case of the Grant, as Quia Protecturus or Quia Moraturus &c. 3dly. This Court of B. R. is greater than that of a Justice in Eyre, which is among the Exceptions. And the Court was of Opinion that there was no Colour for allowing of the Protection Gadsb. 366. pl. 457.

* (X) In what Cases Protection cauf for one shall serve for others. In Respect of the Persons.


* Br. Protection, pl. 24. cites S. C. accordingly

Pl. 351. *See (Z) N.B. There is no (U) in Roll. — S. P. For it

is one and the same Body. Br. Protection, pl. 26. cites S. C.

130. b. (c) cites 53 H. 6. 2. 45 E. 3. 22. 48 E. 3. 5. 48 H. 5. Protection 10. —— Br. Protection, pl. 14 cites 53 H. 6. 3. —— See (Z) pl. 4. S. P.

(Y) Report.
(V) Repeal of a Protection Moratus.

1. If a Protection Quia &c. be allowed in B. a Certiorari may be
lied to the Sheriff of London where he is, whether he be attend-
ing on the Bullens of the King, according to the Protection (which
was Moratus super Victione Calicis) or on his own Bullens, and
the Sheriff certifies in Chancery that he was remaining at London at-
tending his own proper Bullens, by which the Party has an Innocenti-
mus, directed to the Justices of Bank to repeal the Protection; upon
thawing thereof to the Court, he shall have a Reulmmons against
him. But quere what Proceeds shall be made against the Inquest,
whether it shall be tried by the same Pannell, or a new Venire facis.
21 E. 4. 20.

Both.

*Roll is, The
Defendant
comes and
fies that the
(Plaintiff)
was not in
the Service &c.
and the Year-book has neither the Word Plaintiff nor Defendant in it.

2. If a Protection be allowed, and after the *Plaintiff comes, and
says that the Defendant was not in the Service of the King, yet the
Court shall not repeal the Protection till the Day in the Protection.
24 E. 3. 35. adjudged.

3. Protection must at the Nisi Prius, and repealed at the Day in Bank,
shall excuse the Default at the Day of Nisi Prius, so that he appears at

4. In Precipe quod reddat against Baron and Feme, a Protection must
be at the Baron, and the same Day Innotescimus was immediately to
repeat the Protection, by which it was repealed; And by all the Justices it
was awarded a Default; quod nota; the Reason seems to be inasmuch
as it was never allowable, by Reason of the immediate Calling of the Innocenti-
mus, and it was Protection Quia Protecturus eft. Br. Protection, pl.
65. cites 1 H. 6. 6.

5. Note that Protection was allowed in Trespasses, and the next Day
the Plaintiff moved a Repeat, and upon this Re-attachment was awarded
immediately; Quod Nota, and other such Matter the same Year, Fol. 22.
where it is said that the Allowance is for a Year, and therefore cannot be
repealed within the Year, and also the Party may have Action of Difceit;
and this notwithstanding, the Law was agreed to be Ut Supra, and se-
veral Precedents were shewed that it may be repealed within the Year;

6. A Protection may be avoided in manner of Ways; 1st. Upon the Caff-
ing of it before it be allowed. 2dly. By Repeat thereof after it be al-
lowed; by disallowing of it many Ways; as for that it hath not in that
Action, or that he hath no Day to cast it, or for material Varniance between
the Protection and the Record, or that it is not under the Great Seal, or
the like. 3dly. After it is allowed by Innotescimus; as if any tarry in
the Country without going to the Service, for which he was detained,
on a convenient Time after that he had any Protection, or Repair
from
from the same Service, upon Information thereunto to the Lord Chancellor, he shall Repeal the Protection in that Cause by an Innotecimus. But a Protection shall not be avoided by an Averment of the Party in that Cause, because the Record of the Protection must be avoided by Matter of as high Nature. Co. Lit. 131. a. (b)

(Y. 2) Proceedings upon the Repeal.

In Trespass at the Exigent, the Petrel was put without Day by Protection, and after came the Plaintiff with Writ of the King, that they disallow the Protection, because he had not done the Business which he ought to do, and prayed Exigent de Novo, and could not have it, but had done per falsus diciatibus. Br. Protection, pl. 61. cites 39 E. 3; 4; 5.

2. Where the Jury appears, and Protection is call, and the Justices think that the Protection is not allowable, where in Fact it is allowable; and upon this they take the Inquest, and all this Matter shown to the Court in Bank, the Court said, That the Justices of Nifi Prius mit loose and thereupon the Plaintiff shew'd forth Repellence, which was allowed; And yet no Party was demanded, nor Process awarded against the old Jury, but new Venire Facias awarded. Quod Nunc, 2 Inquests upon Issue. Br. Protection, pl. 51. cites 21 H. 6. 25.

3. At the Nisi Prius in Action Personal, the Defendant call Protection, Br. Ven. Fac. pl. 71. cites b. C.

Br. Ex. in the Plaintiff call Repeal, which was allowed, and the Plaintiff pray the Process against the Jury, and the Inquest was not awarded by Default; queff, pl. 53.

For the Protection saved the Default there, and fo, by the Repeal, Proces Sir C.

calls shall be now made against the Jury, and not a New Venire Facias awarded, by the bet Opinion. And this for good Reason; For the Jury have Day at the Day in Bank, at which Day the Protection was repealed, and so now the first Jury valid; quod nota bene. Br. Protection, pl. 69. cites 5 E. 4. 2. Br Protection, pl. 69. — And see there Fol. 3, because the Justices of Nisi Prius took the Issue, restituting the Protection call, the Taking of the Inquest was void; And yet the Justices of Nisi Prius have not Power to allow the Protection. Ibid And the same Year, Fol. 3, the Abbot of S. brought Affix, and also in another Action had Nisi Prius against d S. who appeared at the Affix, and cast Protection and Jurisdiction, at the Nisi Prius; and because he appeared in Person at the Affix, therefore it cannot be Quod ibi Moratur Judex Verae Protectionis, therefore they took the Inquest, and person allowed to the Day in Bank; For in divers Suits a Man may appear as of the one, and be Nonjudicatus as to the other; and there new Venire Facias was awarded upon the Repell, as in the Cause above cited. Ibid And the same Year, Fol. 4. Differs was awarded against the old Jury. But 5 E. 4. 2.

New Venire Facias was awarded; and there it is said that it had been done both Ways. Quod Nunc, ibid. — Br. Enquilt, pl. 55. cite S. C.

Note, by all the Justices, That if at the Day of Nisi Prius Protection be call, by which the Inquest is disallowed, and at the Day in Bank the Protection is repealed; this proves that the Defendant did not go into the King's Service, and therefore 'tis as if no Protection had been call, but any Appearance made at the Nisi Prius; and therefore the Discharge of the Jury is wrong, and the Plaintiff shall have new Venire Facias, and not new Nisi Prius; Quod Nunc, per Omnes. Br. Protection, pl. 91 cites 11 H. 9. 14.

(Z) In what Cases Protection call for one, shall serve for the other Defendants. In what Actions.

1. In all Personal Actions, a Protection call for one, shall not serve for the other Defendants. 41 C. 3, 31. S. 40. D'd 2. As
2. As in Trespass, Protection for one shall not serve for the other Defendants. 41 E. 3, last Cal. 22 H. 6, 22, 43 E. 3, 23. 45 E. 3, 24, 4 H. 4, 4, b. 14 H. 4, 21, b. 17 E. 3, 9, 16, b. 30 E. 3, 17. admitted. 44 All. 13 admitted.


5. In Actions Entire, not severable, Protection for one shall serve for the other Defendant. 45 E. 3, 24.

6. As in Debt. 45 E. 3, 24.


9. In Misto Actions, Protection for one shall serve for all the Defendants. 41 E. 3, last Cal.

10. As in Ravishment of Ward. Protection for one, shall serve for all the Defendants. For this is an Action to recover the Body of an Infant, which is entire, and cannot be * severed. 29 E. 3. [3]

11. In Right of Ward against 2, Protection for one shall serve for both. 30 E. 3, 17, b.

12. In Real Actions Protection for one shall * [167] serve for all the Defendants.

13. In a Precipe quod reddat Protection for one shall not serve for the other Defendants. * 45 E. 3, 24, because they may be sever'd. Contra 3 H. 6, 18. b. 29 E. 3, 41.

If the one and the other appears, and the one calls Protection, this shall serve to put the Parcel without Day for both; but if the other makes Default, and the other calls Protection, Grand Cape shall issue of the Money; quod nota diversum. Br. Protection, pl. 1. cites 3 H. 6, 18. & 21 H. 6, 41. Ibid pl. 6. cites 9 H. 6, 48. Contra. — 1 Br. Protection, pl. 12. cites S. C. That Protection call for the one shall put the Parcel without Day for both; Per Browne Prohibition clear, * Be it before Appearance or after Appearance. — And T. 13 E. 3. Precipe quod reddat was brought against 4, one made Default against the Grand Cape, and the same Day Protection was shewn forth for one of the Tenants, and the Parol put without Day for all. Ibid. But note, That he who calls the Protection when the Defendant pray'd before of the 4th Part of the Land, took the Tenancy upon him, or otherwise the Land had been lost; And to see that one and the same Person appeared, and was by Protection, and all at one and the same Day. Ibid. — Precipe quod reddat, the Tenant worked 2, who entered into the Warrant, and took'd the Tenant by a strange Name, and shew'd Cause, and Proceeds granted, and at the Day of Summons returned, one of the Executors made Default, and the other appeared, and Paid Cape awarded of the Money; and at the Day he who made Default was by Protection, and the other appeared; and it was pray'd, That the Protection shall serve for both; but at last it was adjudge'd, That it shall serve for the one only, by which the other call other Protection. Br. Protection, pl. 40. cites 3 H. 5, 77. Protection, pl. 9. cites 3 H. 6, 48.

14. If Writ of Error be brought upon a Recovery in Real Action against the Heir, and Scire Facias against the Terreetant, a Protection shall serve, but for him self only. Br. Protection, pl. 6. cites 9 H 6 48

15. Replevin
Protection.

15. Replevin against 3, Capias issued against 2, and the 3d was by Protection; and after Exigent issued against the 2; And to see that the Protection for the one in this Action shall not serve for the others. Br. Protection, pl. 42. cites 38 E. 3. 12.

(A. a) On what Pleas Protection for one shall serve for others.

1. In Trespass against 3, if they plead a joint Issue, a Protection for one shall serve for the others. 2 H. 6. 12. b.

2. But otherwise it is if they plead Not Guilty, for they are several. Br. Protection, pl. 49. cites S. C. accordingly. —— S. P. As a Release Sec. by the Opinion of the Court. Br Protection, pl. 73. cites S. C.

3. Where by Issue or Process the Action is made entire against all the Defendants, a Protection for one shall serve the others.

4. As in Trespass against divers, who plead several Issues, if a Venire Facias be awarded for Trial of all the Issues, Protection for one shall serve for all; otherwise where (there are) several Venire Facias' s, 15 C. 4. 27. b. 21 H. 6. 22. 3 D. 4. 5. b. 4 D. 4. 4. Avidity's. 2 D. 6. 13. 7 H. 6. 21. 11 H. 6. 38. The Law is the same in Raviishment of Ward. 3 D. 4. 5. b.


5. In Trespass upon several Pleas, if one Venire Facias be awarded, * If 2 plead, be one a Reje-, or other facias fell, there Protection for the one shall put the Parol without Day for both, Br. Protection, pl. 46. cites H. 6. 21. & 21 H. 6. 41 accordingly, upon Pleas of Not Guilty by several in Trespass.

(B. a) At what Time being cast for one, it shall serve for others.

1. In Real Action, if one makes Default after Default, and after calls Protection, this shall serve for both; so long as Jovittance continues, both shall have Benefit. 11 C. 4. 7. b.

2. So if after Petit Cape return'd, he who makes Default casts a Protection, it shall serve for the other. Distinguish 11 C. 4. 7. b.

the one warrant the Society alone, where he and his Companion warranted the Whole. Br. Protection, pl. 73. cites S. C.

5: 12
Protection.

3. In Praecipe quod reddat against 2, if one makes Default at the Summons, and a Protection is cast for the other, this shall not serve for him who made Default, but Grand Cape shall be awarded against him; because he by his Default has lost the Advantage of the Protection. 3 D. 6. 18. b.

4. But otherwise it had been if he had appear'd. 3 D. 6. 18. b.

(C. a) At what Time it shall be sued. Re-summons. Upon Quia Prosecturus.

S. P. For the Judgment which is given cannot be defended by such Averment, but the Demandant may have Action of Deceit. And see elsewhere, That upon this Matter he may sue for a Repeal or Innofecimus, and upon this may have Re-summons, and shall proceed.

Br. Protection. pl. 29. cites S. C.

Br. Protection. pl. 2.

cites S. C.

The Law is the same if he never passed the Sea. 47. C. 3. 6.

Upon Moraturus.

2. If a Protection Quia moraturus be allowed, by which the Parol is put Sine Die, if the Party returns within the Year, and a Repeal is produced to the Court he shall have Re-summons immediately within the Year. This Plea was put Sine Die for a Year by Judgment. 3 D. 6. 40. b. Adjudged.

Br. Protection. pl. 23. cites 44 E. 3. 4.

if it is repeated by an Innofecimus, the Re-summons, or Re-attachment shall be granted upon the Repeal within the Year; for the Protection that was allowed had had the said Clause in it; and of that Opinion are other Lists, and the Repeal by Innocentious should serve for little Purpose, the Law should not be taken to.

Co. Litt. 131. b.

(D. a) A Re-summons. How it ought to be.

1. THE Re-summons ought to rehearse the last Day, which the Plaintiff and Defendant had in Court between them. 3 D. 6. 49. b.

2. As in Detinue returnable 15 Mich. Defendant had Garnishment, and Scire Facias against the other returnable 15 Martini, which 3 D. 6 Protection is cast for Garnisher, by which the Plea is put Sine Die, the Re-summons may be to answer the Plaintiff in the same Manner as the Plea was 15 Mich. For the other Day after is not between the Plaintiff and Defendants but between Plaintiff and Garnisher. 3 D. 6. 40. b.

3. So the Re-summons shall be for the same Reason if the Parol be put Sine Die by Protection, for the Voucheer at the Return of the Summons Ad Warrantizandum. 3 D. 6. 49 b.

4. But otherwise it had been if the Protection had been cast after the Entry into the Warrant by the Voucheer, for there the Day ought to be recited. 3 D. 6. 49 b.

5. In Writ at the Grand Diufrefs the Defendant cast Protection, and it was allowed, and at the Re-summons upon Default of the Defendant, Pone was awarded, and not Writ to inquire of the Wait. Br. Protection. pl. 89. cites 27 E. 3. 78. & Fitzh. Wait. 13.
(E. a) The Effect of Casing a Protection; And Proceedings and Pleadings.

1. In Reflexion against three, Protection was cast for the one, and the Proceeds was continued against the others. Br. Proces. pl. 130. cites 35 E. 3. 12.

2. A Forfeaton was brought against Husband and Wife, they vouched A. the Sheriff returned, Quod A. non venetus est, & nihil habet, unde fummoneri posit, and the Proceeds was continued against A. by Alias & Plurias, until the Sequitur sub suo Periculo illiatus; the Sheriff did not return the Writ of Sequitur at the Day, on which it was returnable; at which Day the Husband cast a Protection for himself, and the Wife made Default; the Protection was allowed in this Case for both. In this Case the Vouchee never being summoned, the Tenants have a Day in Court Ad Audieniam J udicium only, and no Judgment shall be given in this Case against the Husband and Wife, because of the said Protection; After the Year and Day (that is after the Protection is ended) a Re summons shall issue against the Husband and Wife; upon this Re summons, the Husband ought to serve the said Default, which the Wife made when the Protection was cast, otherwise the Demandant shall have Judgment at the Day of the Return of the Sequitur sub suo Periculo; No Judgment shall be given against the Vouchee in this Case, altho' Judgment be given against the Tenant, for the Vouchee was never summoned, and without a Summons returned, no Man shall lose his Land. By all the Justices in England. Jenk. 80. pl. 57. cites 4 H. 5.

3. In Praecipe quod rei dat Protection was set forth Quia moratur super Vitalitione Ville Calicier. And there it was agreed that there is a Statute which wills that where Protection is cast, the Party may have Averment, that the Defendant is out of the Service of the King at D. in such a County within 4 Seas, so that he might have come; and this Averment shall be entered, and the Parol shall be without Day; and when the Plea is re summoned, the Plaintiff shall aver the same Matter, and it shall be tried between the Demandant and the Tenant if he will, and if it be found for the Demandant it shall turn in Default of the Tenant. Br. Protection, pl. 11. cites 25 H. 6. 3.

4. A Protection allowed for one Defendant, puts the Plea without Day for all the rest, unless it be in special Cases, as in Trepass, where they plead several Plead; and he shall sue several Venticellis upon the Issue joined against them &c. F. N. B. 28 (K).

5. In a Praecipe against 2, or if 2 Tenants by Warranty are, and they vouch or plead to Issue, and one of them makes Default, yet a Protection lies for the one or other; and at the Petit Cape the Parol shall not be put without Day against the other. F. N. B. 28 (K) in the New Notes there (a) cites 5 H. 5. 7. But says 11 H. 4. 7. is adjudged Contra, if it was at the Grand Cape, or before Default by him. 13 Ed. 3. Protection 70. 19 E. 2. Protection 77. — See (B. a) pl. 3.

6. In Case of a Protection, the Parol is put Sine Die; It lies for no longer Time than a Year and a Day; After which Time it is to be received by Re summons, if the Protection is not repealed before. Jenk. 27. pl. 59.

6. A Praecipe quod rei dat is brought against Husband and Wife; a Protection is cast for the Husband, because he is in the King's Service; at the same Day an Innomineus is delivered to the Court, by which it appears that he is not in the King's Service; this is a Default in both Husband and Wife,
Protestation.

Wife, and a Grand Cape shall be awarded. The Default of one of them is the Default of both; but if the Protection had been allowed, the Parol had been without a Day, and after the Year and Day might be revived by a Refummons. Jenk. 93. pl. 81.

7. If a Protection be allowed and repeated within the Year and Day, a Refummons shall be awarded within the Year and Day. Jenk. 93. pl. 81.

For more of Protection in General, see Eulogion, Privilege, and other proper Titles.

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Protestation.

(A) What it is; And what is such.

1. IN Deinise of Charters by J. Son of M. of P. it is no Plct that the Plaintiff is a Bastard, but his Challenge shall be entered, and he shall answer over, and therefore it seems that this Entry is only a Protection. Br. Protestation, pl. 3. cites 38 E. 3. 22.

2. It is an Exclusion of a Conclusion [or Etloppell] that a Party to an Action may by Pleading incur; Or, it is a Safeguard which keeps the Party from being concluded by the Plea he is to make, if the Issue be found for him. Co. Litt. 124. b. (y)

For, defines it accordingly, and that it ought to stand with the Sequel of the Plea — S. P. Brown's Anal. 7. That it is a Saving or Excluding of a Conclusion. — S. P. Heath's Max. 26.

* S. P. And it is in two

Ser. 11. Whence a Man pleads any Thing which he dares not directly affirm, or that he cannot plead, for Fear of making his Plea double. As if in convey-
ing to himself by his Plea a Title to any Land he ought to plead diverse Defeants by diverse Person, and he dares not affirm that they were all seised at the Time of their Death, or although he could do it, yet it will be double to plead two Defeants, of both which every one by himself may be a good Bar; Then the Defendant ought to plead and allege the Matter, interlacing the Word Protestando: as to say (by Protestation) That such a One died seised &c and that the adverse Party cannot traverse. And

Another is, When one is to answer to two Matters, and yet by the Law he ought to plead but to one, then in the Beginning of his Plea he may say Protestando & non cognosco such Part of the Matter to be true, (and then making his Plea further) fed pro Placito in hac parte &c and so he may take Issue upon the other Part of the Matter; and then he is not concluded by any of the rest of the Matter which he hath by Protestation demurred, but that he may afterwards take Issue upon it. Reg. Plac. 102.

It is where two Matters are pleaded, and the one without the other was not perfect Bar, and Plaintiff may plead One by Protestation, and join Issue upon the Other; but when both are perfect Bars, he ought to demurr for the Doubtfulness. Arg. Litt. R. 182. in the Case of E. v. Pembroke v. Green v. Botock.

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(B) Good
Protestation.

(B) Good in what Cases.

1. In Juris Uturum, the Tenant voched, and found a Deed of Lieu of all the Land, except two Acres, of which the Voucher proved to be discharged; and to he was, and took Protestation that 20s. Rent is owing out of the Land in Demand, and of such Value entered into the Warranty, and had his Protestant entered in the Roll; quod nona. Br. Protestation, pl. 28. cites 12 E. 2. and Fitzh. Voucher 264.

2. It is doubted if the Tenant who lost Estate upon Condition voches, if the Voucher may have any Protestation to aid the Condition; because the Land recovered in Value shall be held without Condition clearly, and without Rent; for the Rent shall be recovered in the Value; and such a Protestation was made there for Rent reserved upon the Feoffment, to have it recovered in the Render in Value. Br. Protestation, pl. 25. cites Fitzh. Voucher 265.

3. In Precipe of 20 Acres, the Tenant shall not say for Plead that there are no more than 10 Acres, but shall say it by Protestation, and if he vouches, and the Voucher does not warrant, but 10 Acres, the Defendant may pray issue of the reft; and there the Voucher entered into the Warranty as he vouch'd; and the Tenant aver'd that Assizes; and all this was entered by Protestation. Br. Protestation, pl. 25. cites 19 E. 3. and Fitzh. Voucher 123.

4. The Tenant upon his Attornment shall have Protestation entered, that he holds by Grant without Impeachment of Waft, or that he has for Term of Life, and three Years over, which Term is not mentioned in the Writ of Quod Juris clamat, and so shall have those Things. Br. Protestation, pl. 23. cites 31 E. 3. and Fitzh. Quod Juris clamat 4 & 5. and 32 E. 3. in Action of Waft be plea'd, say only that the Tenant holds for Term of Life, and the Defendant may say Protestations that he holds for Life, and one Year over, & pro placiis, No Waft done; and well. Br. Protestation, pl. 16. cites 39 E. 3. 25.

5. Account against J. S. one of the Companions of Midbail, and counted as his Receiver, the Defendant said that he never was of the Company of Midbail. And per Finch and Monbray, this is not to the Purpose, where he charges himself of his own Receipt, and the Defendant may take it by Protestation, and answer over; & adjoinnatur. Br. Protestation, pl. 4. cites 38 E. 3. 34.

6. In Precipe quod reddat, if the Tenant comes at the Grand Cape, and is mistaken, he shall save his Default, if he can, and shall have the Misdemeanor by Protestation to save himself afterwards. Br. Protestation, pl. 29. cites 40 E. 3. 2.

7. In Precipe quod reddat, at the Petit Cape the Tenant cannot say that the Demandant has entered after the last Continuance, but ought to live his Default, but might have his Protestation of his Entry, to save to him his Affile of this Entry. Br. Protestation, pl. 19. cites 40 E. 3. 42.

8. In Quare Impedii by the King for the Heir in Ward, because A. the Ancestor was seized and presented, and conveyed from A. to B. and from B. to C. and from C. to the Heir, the Defendant said that No such B. ever was in Recum Natura, & non allocatur, inasmuch as the Title is from A. and this B. is only in the Mefne Conveyance, and not in whom the Protesta
Protestation.

is alleged; but the Defendant for Conclusion afterwards may take it by Protestation; quod nota. Br. Protestantation, pl. 22. cites 43 E. 3. 7.

9. In Waste against a Guardian by the Infant by Attorney, the Defendant may say Protestando, that the Plaintiff is yet within a Age, to save to him the Wardship quoique &c. and plead other Matter in Bar. Br. Protestantation, pl. 21. cites 48 E. 3. 11.

10. Debt upon a Lease for Years rendering four Marks per Annum. Strange said the Lease was rendering one Mark only, and as to the first Term Rien arrear, and for another Rent-day he has been Always Ready, and tended the Money &c. and as to another Rent-day, that the Plaintiff entered into the Land leased. Rolle said that the Lease rendering but one Mark goes to all. Strange protestando, That the Lease was rendering one Mark, and protestando that he enter'd &c. & pro Placito, that Rien arrear Except 41. which he is and always was ready to pay. Quere. Br. Protestantation, pl. 13. cites 3 H. 6. 19.

11. Writ by several Precipes of 20 Acres of Land against Issuo, the one said that the Land in the one Precipe and in the other are One and the same Land, and not diverse, and pleaded Jointancency with a Stranger, and the other Defendant did the like, and the Plaintiff by Protestation that they are several Lands, and maintained his Writ, and the Protestant good; for the first Matter alleged in the one Tenant and the other is not material, for it is not material to the one what is in the Precipe against the other. Br. Protestantation, pl. 15. cites 4 H. 6. 14.

12. In Forger of False Deeds, if the Defendant takes the Forging by Protestation, and traverses the Protestation which is found against him, then the Protestant shall not aid him; for it is a Thing not denied. Br. Protestantation, pl. 14. cites 9 H. 6. 29.

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ably, albeit late, that he did'ld line with Force, or enter'd with Force, and the Plaintiff alleged a Defent from f. J. to him, and that the Defendant entered with Force, and the Plaintiff protestando that he did not con-

fers any such Defent, avoided it by Contimual Claims, and therefore the Protestant was oublt; for it is re-

oposn to be Not constant of the Defent, and yet to confes and avoid it by a continual Claim; and fo in that Protestantation, which is repugnent, shall be oublt. Br. Protestantation, pl. 5. cites 22 H. 6. 37.

13. Replying in A. the Defendant said by Protestantation, that he did not take, and pro Placito that there is No such Vill as A. within the same County; Judgment of the Writ, and made Aovory to have Return; and the Julices were in diverse Opinions whether he shall have such Protestantation, because it is Contrary to the Plea. Br. Protestantation, pl. 1. cites 20 H. 6. 28.

14. In Precipe in Capite the Tenant shall not say for Plea, That the Land is held of another, and not of the King, but shall take it by Protestantation, and plead other Matter. Br. Protestantation, pl. 7. cites 37 H. 6. 26. 27.


Before the Death of J. S. was seised and gave to his Ancestor in Tail, who by Protestantation did seised, and W. abated and died as in the Writ, and the Tenant re-enrolled as Heir; and the Demandant said, That W. did not abate after the Death of the Father of the Tenant, proue &c. and no liute; because where there is no Abatement, then it is not traversable, wherefore he omitted the Protestantation; quod nota. ibid.

16. If the Plaintiff in Quare Impedit alleges 2 Frocentums, the one in his Ancestor, and the other in the Tenant for Life, the Defendant shall an-

ter to both, and take liute upon the first only, and the last shall not be taken by Protestantation but for Plea; and yet liute shall not be joined thereof. Per Littleton & Cur. Br. Protestantation, pl. 24. cites 7 E. 3. 22.

17. In Replica, if the Defendant says, That he holds of him by Homage, Fealty and Rent, and essays for the Rent, the Plaintiff may say Protestando, That he does not hold by Homage, et pro Placito that he holds by the Fealty

and
Protestation.

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and the Rent for all Services, Abide how that he holds of him by Homage, or was ever leased thereof, prayct &c. Choke ask'd, Why they took Protestation? Briggs said, Because he has not avow'd for the Homage, and therefore we cannot traverse the Seilin thereof; whereupon Choke said, Then it is well; quod nota. Br. Protestation, pl. 17. cites 21 E. 4. 64.

13. Defendant in Appeal in B. R. was committed to the Fleet, because the Marshal was partial to him; by which the Warden of the Fleet took him by Protestation, That he bad not been charged of Felons nor Traitors, [and this was] to lose his Liberty, that he should not afterwards be charged with such. Br. Protestation, pl. 18. cites 21 E. 4. 71.

(C) Necessary. In what Cases.

1. If a Man has a Ward, and grants him over with Warranty, and after the Grantee is impleaded and vouches the Grantor, where the Ward is more in Value at the Time of the Voucher than it was at the Time of the Grant with Warranty, by reason of other Land descended after, or the like; or if the Land be amended by Building, or Mines, or the like, there the Voucher may take Protestation of this Matter when he enters into the Warranty; for otherwise he warrants as it is at the Time of the Voucher. Br. Protestation, pl. 30. cites 30 E. 3. 14. and that 19 H. 6. 46. in Effect agrees therewith.

2. In Monfravement to say That the Plaintiff's are Tenants at Will, and that the Manor is Frankhee, are 2 Barrs; and therefore he shall have the one by Protestation, and the other for Plea. Br. Protestation, pl. 29. cites 29 E. 3. 46.

3. In Trepas the Issue was, If the Plaintiff was Villain to the Defendant, and found for the Plaintiff, and Damages 191. The Defendant renewed the Record into B. R. for Error, and the Plaintiff in C. B. brought Debt there of the Damages recover'd, and the Defendant would have taken Protestation, That the Plaintiff was his Villain; and Per Cur. he need not; for by the Writ of Error he is to defeat the first Record, and this Action is depending thereupon; and by bringing of the Writ of Error or Attain, there shall be no Infranchisement; for those are to defeat the first Record; quod nota. Br. Protestation, pl. 11. cites 19 E. 4. 6.

(D) How to be taken, and when, and the Effect thereof.

1. When several Matters are summoned, and Issue taken upon the one, As where if this Point be found against me, all the other Matters shall be held Feoffment by confessed; and if it be found for me, nothing shall be held confessed by me. Diseas plead. because the Issue cannot be taken but upon one Point only. Per Wich. the Issue is taken and Per Green, This may be found by Protestation. Br. Protestation, pl. 9. cites 32 Aft. 9.
prothonotary.

2. Where a man pleads a plea, and takes another matter by protestation, there if the issue pass against him, the protestation shall not serve. Br. protestation, pl. 14. cites 9 H. 6. 59. per paiton.

3. In Walf Martin I said to Rolf, if a man makes protestation, which is a confession of the action of Walf, & pro Placito, says, no Walse done, the confession shall be taken and he shall be condemned. Br. protestation, pl. 27. cites 11 H. 6. 1.

4. A man may before defence take protestation, that the plaintiff is his villein, and for plea that defendant is a countess not named countess, judgment of the writ. Br. protestation, pl. 8. cites 14 H. 6. 19.

5. Where the defendant in a ropein agrees for rent alleging, that the plaintiff holds by homage, fealty, and rent; and the plaintiff for plea, says, that he holds by the rent, and thereof nothing is avear, and protestation that he does not hold by homage; there if the plaintiff bars the defendant upon the averment, he shall be concluded afterwards to demand homage notwithstanding the protestation, and therefore he shall traverse the tenure. Br. protestation, pl. 14. cites 33 H. 6. 45. per prior.

6. Definition of charters against J. C. son and heir of J. C. of bankhead, made by the plaintiff to the defendant; and the best opinion was, that these words (son and heir) are only surpliance; and as to proposition thereof, Needham said, if a man makes protestation of a thing which is material, if the plea be found against him, he shall be concluded of all that is material in the record: and it seems that these words (J. C. filius et heres J. C.) in Latin are material; Contra, Danby and Chock; and concordat Littleton, tit. villeinage, fol. 42. in his book of tenures. Br. protestation, pl. 10. cites to E. 4. 12.

For more of protestation in general, see at the pleadings under the several heads throughout this work.

prothonotary.

1. the prothonotaries were scribes, who took the acts of the court, and had the same name in the courts of the empire; and in the first execution of the court of C. B. there being only three judges, each had his prothonotary. G. Hist. of C. B. 38.

2. the
2. The Learned Sir H. Spelman, in his Gloss. Verbo Protonotarius, says, That he is Primus Notarius vel Princeps Notariorum, and that the Word is of a Greek and Latin Derivation, uti per Adulterium genitum. That in Foro Anglico Protonotarius is he qui vulgo \textit{Petricnotarius} dicitur.

3. J. B. was elected Prothonotary for the Pleas in C. B. and was sworn to keep his Office in Person, or Clerk for him, and when he sits in Court the Clerk shall not sit there; and e contra, but that both shall not be together, but out of Court he may have as many Clerks as he will, and if any shall swear that he is not able to pay for the Entering of his Pleas in the Roll, then he shall enter them without taking any Thing. Br. Office & Off. pl. 15. cites 15 E. 4. 25.

For more of Prothonotary in General, See the Law Dictionaries &c.

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\textbf{Purchasor.}

(A) Purchasor; \textit{Who}.

1. \textit{A} enters into Partnership in 5ths, with three others, for 21 Years for Digging Mines in A's Lands. A. to have two 5ths, and also in Consideration of his Ownership of the Land, to have a 10th. more out of the Share of the other Partners. Pursuant to the Articles, they searched for the Mines, and after two Year's Time, and the Expanse of about 1200L. they discovered a valuable Mine, and worked for about three Months; and then A. dies, and his Widow sets up a voluntary Settlement, made after Marriage. The Court inclined that the Partners were as Purchasors, and that the Voluntary Settlement should not stand against them. 2 Vern. 326. pl. 315. Mich. 1695. in Canc. Shaw, & al. v. Lady Standish, Widow, and Sir Richard Standish, her Son.

2. The Wife joins with the Husband in setting in an Incumbrance on her Jointure, and barring the Estate Tail, and then limits the Uses to the Husband for Life, Remainder to the Wife for Life, Remainder to their Daughters. Per Ld. K. Wright, The Daughters are not Purchasors, to as to shut out a Judgment-Creditor of the Husband's, antecedent to the Barring of the Estate Tail; It might have been a good Consideration for both, but it was not expressed in the Deed, to be any Consideration for Setting the Estate upon the Daughters, but was a Voluntary Gift of the Wife to her Husband, and therefore the Daughter's Estate must be taken to be Voluntary; and so a Judgment-Creditor ought to have the Affiance of this Court before them. Per Ld. K. Wright. Chan. Prec. 114. pl. 100. Trin. 1700. In Canc. Bull v. Burnford.

3. Every Leofee is a Purchasor; per Ld. Chan. Macclesfield. 9 Mod. See 2 Vern.


4. A. feiled in Fee,settled his Estate in 1712, to the Use of himself for Life, Remainder to B. in Tail, but \textit{with Power of Revocation}, by any Writing signed &c. and attested by three &c. credible Witnesses. In 1715, A. by Deed, attested by two Witnesses only, reciting that he was indebted, as in a Schedule annexed, conveyed his Estate to W. R. and W. S. and their Heirs, in Trust to pay his said Debts by Profits, Mortgage, or Sale; and after Payment thereof, to pay the Overplus, and re-
Purchafor.

covenant, such Part as should be unfin'd, to A. or such other Person &c. and for such Uses &c. as he, by any Writing signed and sealed by him, and attested by two &c. Witnesses should direct. A. died without Issue, but left the said B. and C. the Daughters of a Sister, his Heirs at Law. The Deed of 1715, was kept private till after the Death of W. S. the surviving Trustee in 1724; and was then laid before Counsel, who directed, That the Heir of W. S. should sign the legal Eftate to the Trustees in the Deed of 1712, which was done. Afterwards, in 1726, upon a Treaty of Marriage between Ld. Fauncbridge and B. a Marriage-Settlement was prepar'd by the same Counsel, as Counsel for the Ld. Fauncbridge, who made a Settlement on B. in Consideration of the great Eftate in Land which he was to have with her. The surviving Trustee in the Deed of 1712, joined in this Marriage-Settlement. C. brought a Bill claiming a Moiety of the Eftate of A. as Co-heiress with B. For that the Deed in 1715, was a Revocation of the Deed in 1712. Ld. F. pleaded, That he was a Purchafor under the Deed of 1712, without Notice of that in 1715, and that the Settlement made by him on B. was in Contemplation of that Settlement in 1712, and that the surviving Trustee in that Settlement was Party to the Marriage-Settlement; and that tho' the Purchafe was not of the legal Eftate, but the Trust only, that will make no Difference, according to Walker and Rodington's Case, 2 Værn. 599. and that neither will it differ the Case, tho' there was no actual Conveyance. For as the Trustees in the Deed of 1712, always acted under that Deed for B. that Trust shall subsist as to himself, who is a fair Purchafor; and that he shall not be affected by Constructive Notice to his Counsel, as having been advised with on these two Deeds in 1724; for that it must be intended, that at the Time of the Counsel's being concern'd for him, which was in 1726, he had forgot that he had ever seen this Deed of 1715, there being an Interval of 2 Years between his first seeing it, and his being Counsel for this Defendant. And for these Reasons, the Court held, That this could not be Notice to his Lordship. Ld. Ch. B. Reynolds, who assifted the Ld. Chancellor, held, That the Ld. F. could be a Purchafor of no more than B. had, as no actual Conveyance was made to him. The Matter of the Rolls said, That to be a Purchafor in the notion of Equity, there must be an actual Contract, and a Consideration paid; And therefore, if at the Time of the Marriage the Deed of 1712, flood revoked, the Trustees could be feised only of a Moiety for the Use of B. and consequently Ld. F. can be a Purchafor of no more. Ld. Chancellor decreed a Moiety of the Eftate, and an Account of the Rents and Profits to C. since the Death of A. See Gibb. 207. and L. P. Conv. 391. to 402. 12 June, 1730. Fitzgerald v. Ld. Fauncbridge.

(B) Favor'd. In what Cases.

1. Equity will never affist against a Purchafor. MSS. Tab. April 4, 1797. Party, alias, Perry v. Ryley.

2. If Execution be against the Heir, he shall not have Contribution against a Purchafor, tho' in re Versata the Purchafor comes to the Land without any valuable Consideration; For the Consideration of the Purchafor is not material in such Case. 3 Rep. 22. b. (K) in Herbert's Case. cites it as adjudg'd lately in Thomas Gaudy's Case.

3. The Plaintiff prefers a Bill in this Court against the Defendant, supposing that more Lands passed than was intended; But because the Defendant was a Purchafor upon valuable Consideration, no Relief was given. Toth. 83. cites 4 Jac. Clifford v. Lawton.
Purchafor.

4. 21 Jac. cap. 19. Enacts that No Purchafor shall be impeached, unless See Bank-
the Commision be laid forth within 5 Years after he becomes a Bankrupt.

5. A Purchafor of a Receiv'd under a Decree of the Court of Chan-
cery, shall not be drawn to take his Money again with Interest because of the Life dying, notwithstanding the Pretence of the Purchafor being made Pendente Lite. Chan. R. 76. 9 Car. 1. Kennedy v. Vanlore.

6. A Purchafor Bona Fide, without Notice of any Defect in his Title &c. at the Time of the Purchafor, may lawfully buy in a Statute or Mortgage, or per Mitter, or any other Incumbrances, and if he can defend himself at Law by any such Incumbrances bought in, his Adversary shall never be aided in a 249.—For Court of Equity, by letting aside such Incumbrances; For Equity will not disarm a Purchafor, but affit him, and Precedents of this Nature are very antient and numerous, viz. Where the Court has refused to
give any Affidavit against a Purchafor, either to an Heir, or to a Wi-
dow, or to the Fatherfofs, or to Creditors, or even to one Purchafor an-

7. The Maxims of the Common Law, which refer to Defeants, Dif-
continuances, Non-Claims, and to Collateral Warranties, are only the wife Arts and Inventions of the Law, to protect the Possession and
strengthen the Rights of the Purchafor. Per Finch. Fin. R. 104.


8. Upon a Purchafor made by M. of J. S. the Agreement was, That a Recovery should be suffered within 5 Years. M. paid his Money before the Recovery suffered, and took a Bond of J. S. that if the Recovery was not suffered in three Years, then M. re-conveying the Lands, should be repaid his Money; J. S. renders a Recovery, but before it was suffered, a third Person makes a Title to the Land, and then upon M. exhibited his Bill to have his Money repaid; But Ed. Chancellor said he could give no Relief; For here M. hath parted with his Money, and taken a Bond for Re-payment, if the Recovery were not suffered in three Years, M. re-conveying his Estate; and here the Recovery being suffered, he hath no Pretence by his own Agreement to have it repaid; and this Court cannot help him, unless it should take upon itself, where any Man had a bad Bargain, and was cheated in his Title, to help him to his Money again; and here being no Manner of Fraud or Surpise in the Cafe, if he be not helped by his Covenants, he will not be helped in Equity; but for the Matter of Re-conveying, he held, That if M. should re-convey, such Title as he had from them, be it more or less, or none at all, yet being a Relative to convey, it would have been well enough; But here the Recovery being suffered according to the Agreement, tho' nothing pulled by it, he held the Party had well performed his Agreement, and no Re-conveying nor Re-payment of the Money to be made. 2 Freem. Rep. 1. pl. 2. Patch. 1676. Serjeant Maynard's Cafe.

9. If one sells another's Land, and Covenants to discharge it of such particul-
lar Incumbrances, and before the Payment of the Money, other Incumbr-
ances are discovered, this will prevent any Suit for the Money, till all the Incumbrances are discharged. Arg. and seems to be admitted. 2 Freem. Rep. 2. pl. 2. Patch. 1676. in Serjeant Maynard's Cafe.

10. And if in a Conveyance of Lands there be no Covenants against but it was
any Incumbrances, yet if before Payment of the Money any are discovered,
the Party may retain his Money till they are cleared; paid per Mr. Keck, and
agreed by Lord Chancellor. 2 Freem. Rep. 2. pl. 2. in Serjeant May-
nard's Cafe.

made by the Vendor himself, or otherwise, the Party cannot detain the Money unless they be so coveneanted against. 2 Freem Rep. 2. pl. 2. in Serjeant Maynard's Cafe.
11. A Judgment was antedated with Intention to over-reach a fair Purchasor, who had paid all the Purchafe Money except 70 l. which he was to keep till a certain Incumbrance be discharged; Decree that on Payment of the 70 l. to the Judgment Creditor, with Interest from the Time it ought to have been paid to the Vendor, a perpetual Injunction be awarded, and that he either acknowledge Satisfaction, or affign it to the Purchasor. Fin. Rep. 394. Trin. 30 Car. 2. Smith v. Eaton and Oldis.

12. A. purchased Land of a younger Brother, supposing the Elder to be dead, and took a Bond to indemnify; But the elder Brother afterwards appearing, he and the younger Brother came to an Agreement by which the Heir was to have an Annuity paid him by the Vendor, and to the Purchasor was permitted to enjoy whilft the younger Brother lived, but he being dead, and A. the Purchasor also, the elder Brother brought Ejectment against the Plaintiff the Heir of A. But other Compensations also being proved to be made by the younger Brother to the elder, it was decreed that the Defendant, the elder Brother, should make good the Plaintiff’s Title, and surrender and release the Lands to the Plaintiff and his Heirs. Vern. 325. Pach. 1684. Preston v. Jervis.

And he also cited Sir John Higg’s Cafe, who got the Deed of Entail into his Hands by a Trick. 2 Vern. 159. — S. C. cited by Lord Chancellor Vern. 42. Pach. 1672, in the Cafe of Lord Huntington v. Greenville. — And Lord Rawlinson likewise cited the Cafe of Lord Huntington and Grimville first decreed to protect a Purchasor, and after that a Release gained from an Administrator of Both Nns. 2 Vern. 159—Vern. 49. Pach. 1682. S. C. 39 where A Release was obtained from a Grantor of a Rent-Charge without any Consideration and by Vow, and yet a Purchasor was admitted to take an Advantage of it, cited per Lord Rawlinson, 2 Vern. 159 in the Cafe of Hitchcox v. Sedgwick, at the Cafe of Harcourt v. Knowell.

14. Purchasor brought a Bill for Writings and a Partition; Defendant insisted that there was an Entail, and the Plaintiff’s Purchafe not good; the Court gave Plaintiff Time to try his Title; Ejectment was brought, and a Copy of a Deed of Entail produced in Evidence, but the Original was lost, and not proved to be executed; A Verdict was against the Entail: On the Cause coming on upon the Equity referred Defendant insisted he ought not to be bound by one Trial in a Matter of Right of Inheritance. Sed non Allocatur, being a Deere only for Partition. Tamen Quare. 2 Vern. 232. pl. 211. Trin. 1691. Bliman v. Brown.

15. A buys a Reversion expiendent on an Estate for Life granted by Copy of a Roll to B, where in Truth B. had no such Copy nor Grant of such Estate, yet decreed that B. shall enjoy it for Life against A. the Purchasor. 2 Vern. Rep. 279. in the Cafe of Walton v. E. Stamford, cites it as adjudg’d, in Prettimman’s Cafe.

16. A devised to B. the Father for Life, Remainder to C. his Son an Infant in Fee, and devised 4001. to the Son to be paid at 21, and made the Father Executor, and left 2000 l. personal Affers; and B. having spent the personal Affers, mortgaged the Lands to T. S. and made Affidavit that they were free from Incumbrances, and that he was seated in Fee, and lexised a Fine for corroborating the Mortgage, and also declared the Use thereof to him and his Heirs; the Son having entered for a Forfeiture, the Mortgagee brought his Bill to be relieved; and the Court decreed that the Mortgagee, notwithstanding the Forfeiture, should hold and enjoy the Lands against the Son during the Life of the Father. Abr. Equ. Caes. 237. pl. 2. Willis v. Finex.

17. A Purchasor of S. S. Stock of an Agent that kept the Proprietors Moneys, and who pretended a Power to sell, and got another to purpofe it to the Proprietor, and sign the Transfer, proc’d the fame transfered, made Affidavit of the Sale, and had it entered in the Books, and then ran away, but before was a Man in good Credit for Substance &c. The Purchasor fell...
Purchasor.

18. A. entered into a Judgment to B. and C. which is defeasance to the Usu of D. and in the Defeasance A. covenants for himself, and his Heirs, to pay to D. the Cedit que Truff, and her Heirs; Afterwards A. sells Part, and the other Part defended to the Heir, who married and had Children; B. one of the Trustee dies; C. the surviving Trustee makes A. the Conveyer of the Judgment Executon; D. the Cedit que Truff, brings a Bill against the Executors of A. the Hurt at Law and the Purchasor for Relief; not being able to recover at Law, the Conveyor being made Executor; but no Relief; rd Chancellor said, Tho' it be a meer Accident and Slip by the Conveyors being made Executor, yet Equity will not interpose or give any Allintance to affect a Purchasor; and bid them recover at Law, if they could. Sel. Ch. Cafes in Ld King's Time. 30 Oct. 1739. Harvy v. Woodhoufe.

(C) Favoured. Plea of being a Purchasor for a valuable Consideration.

Purchasor for a valuable Consideration without Notice shall not be impeached, especially where a Settlement has since been made in his Favor. MSS. Tab. May 14, 1717. Rochford v. Nugent.


3. A Bill was to be relieved on a Trust, and charged Defendant with 2 Freem. Notice; Defendant pleaded his being a Purchasor for a valuable Consideration. Rep. 175. But where a valuable Consideration was; for 3 s. is a valuable Consideration, but yet it is not an equitable one; But the Court declared that in this Case the Plea was good enough. Chan. Cafes. 34. Mich. 15 Car. 2. More v. Mayhew.


6. A Purchasor of Lands from A. which B. makes Title to, getting the S.C. cited. 2 Chan. Cafes. Deeds that make out B's Title, is not bound to discover them. Chan. Cafes. 52. cited per Ld Rawlin.

7. Proc. 176. as Sir John Faggs Cafe. Chan. Cafes. 4. Anon. S. P. An Heir exhibited a Bill for Discovery of Evidence concerning Lands that were his Ancellores; the Defend. wrote he was a Purchasor of the Lands, and the Heir demanded a Sight of his Deeds and Writings. But the Ld Chancellor shall not see them, for altho' the Heir Prima Facie hath a legal Title, he may go into a Court of Law.
Purchasor.

Law if he pleadeth: but this Court will not compel the Stewards of estates to any Pleading unless he hath an equitable Title, as a Mortgagee &c., and that is the Difference between a legal and an equitable Title. 2 Freem. Rep. 24. pl. 25. Trin. 1677. In Can. Sir John Surfase v. Cook.

A Bill was exhibited for Discovery; the Defendant pleaded, That he was Purchasor for valuable Consideration, viz. much &c., and that he had no Notice of the Plaintiff's Title. Ruled by Sir North, That the Plea, as to not having Notice by way of Plea, was not good; but it ought to have been Annexed to the Notice by way of Answer, and not by way of Plea, on the Ground, but yet that the Defendant being a Purchasor, should not lose by the Formality of pleading the Benefit of his Plea, if he could answer the whole Plea; For if he should answer to the Time of his Purchashe, which possibly was in Facto after the Plaintiff's Purchashe, (they were indeed both of them Mortgagees) then the Plaintiff might wound him at Law; he should put in a new Plea, and put in the Point of Notice by way of Answer, or to that Effect was the Order. 2 Chinn. Cases. 161. Hill. 33 & 36. Car. 2. Amos.

2. Chan. R. 42. Hill. 1066. S. C. 252. Per Lord Bridgeman, the 2d Seal before Easter Term, on Motion by Mr. Nofworthy, the Plea was held good by the Lord Keeper Finch, and all the subsequent Proceedings for alike. 2 Freem. Rep. 128. pl. 155. Seymour v. Nofworthy.

Plea of being a Purchasor for a valuable Consideration was overruled, because he did not plead the Purchashe made from one of the Plaintiff's Ancestors; for a Purchashe from a Stranger, who might have no good Title, was held no good Plea. N. Ch. R. 155. 21. Car. 2. Seymour v. Nofworthy.

being the 2d Seal before Easter Term, on Motion by Mr. Nofworthy, the Plea was held good by the Lord Keeper Finch, and all the subsequent Proceedings for alike. 2 Freem. Rep. 128. pl. 155. Seymour v. Nofworthy.

Plea of being a Purchasor for a valuable Consideration was overruled, because Defendant did not allege Seifon and Pujfon in the Person from whom he bought. Vern. R. 256. Trin. 1684. Trevanion v. Male.

8. A. having a long Lease of a Howle, in which his Wife had some Interest, by her Confect renues it for 81 Years, and in Consideration of 420l. aligns it to B. who aligns it to C. his Son, who married M. and died, leaving M. his Executrix; M. on a 2d Marriage, conveys it to Trustees &c. A. by Bill sets forth this Alignement, and that it was a Mortgage, and that B. agreed to execute a Re-conveyance thereof &c. and pray'd a Redemption. The Executrix pleads She was a Purchasor without Notice of such Agreement; and in Consideration of a Marriage with J. S. and of his undertaking to pay her Debts, the align'd the Original Lease &c. such a Day, to Trustees, to the Use of her intended Husband, not having any Notice of the Agreement prior to the executing the said Deed on Marriage. It was decreed, That Defendants were in Nature of Purchasors; and the Plea was allow'd. Finch. R. 9. Mich. 25. Car. 2. Harding v. Hardret.

9. A. indebted by Bond devis'd a Debt to be paid out of his Perfonal Estate; but if it was not sufficient, then to sell his Real Estate and pay it. The Estate was sold, and by several Mefne Conveyances came to the Defendant, who was sued for the Debt as charged on the Lands which he had bought. The Defendant pleaded, That he had no Notice of the Demand, and was a Purchasor for a valuable Consideration, that the Personal Estate was first liable, and that the Purchashe-Money which was paid to 2 other of the Defendants was liable in the next Place; and that there were other Lands, which defended to one of them on the Death of A. which ought to come in Aid of him, and decreed accordingly. Fin. R. 157. Mich. 26. Car. 2. Precot v. Edwards, Broom & al.

10. A Purchasor for a valuable Consideration without Notice was decreed to pay Arrears of an Amnuntiy charg'd on the the Lands purchased, tho' the fame were due 30 Years before, and no Demand in all that Time. Fin. R. 252. Trin. 28. Car. 2. Duke of Albemarle v. Countels of Purbeck.

11. A voluntary Conveyance decreed against a (Jointrets) Purchasor for for a valuable Consideration; (but if it seems, That the not having Notice was the Ladyship of the Jointrets &c.) See Chancery Cases 291, 292. Mich. 28. Car. 2. Bisco v. E. of Banbury.

12. A Purchasor from J. S. who has a Decree against him in Chancery for Land, shall be bound by the Decree, tho' he had no Notice of it. 2 Chancery Cases 58. Hill. 32 & 33. Car. 2. Snelling v. Squibb.

12. Bill
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Purchasor.

13. A Bill, by a Demand to remove a Trust Term, the Defendant pleads Vern. 256 — himself a Purchasor, but does not deny Notice, and so was ordered to an- 

14. Bill was brought to prove a Will and perpetuate the Tenantry of the 
Writhe, the Defendant pleaded himself a Purchasor without Notice of 
any such Will, and inffuted, That unless there had been a Verdict in Affirm 
ance of such Will, (nothing hindring the Plaintiff, but that if he had 
a Title he might recover at Law,) the Plaintiff ought not to be admitted to 
examine his Writhe, thereby to be hung over the Purchasor’s Effate; 
and upon Debate the Court allowed the Plea. Vern. 354, pl. 352. Hill. 
1 & 2 Jac. 2. 1685. in Canc. Bechinall v. Arnold.

15. A mortgage’d Land to B. and afterwards by his Will (having 2 Vern. 265. 
Sons C. and D.) devised the Equity of Redemption to D — B. and C. join in S. C. but D. 
an Assignment of the Mortgage to E. The E. pleaded Want of Notice of the 
Will, and that C. was the visible Heir; yet decreed, That D. should 
have the Equity of Redemption on the Foot of the first Mortgage. N. Ch. R. 153. Feb. 1, 1689. Cooper v. Cooper.

dor was but Tenant for Life, Remainder to his first &c. Son in Tail. After 
wards A. sells to C. who had no Notice; B. dies, leaving a Son; the Bill 
C. & Son, C. & Sons was disaff’d as to C. but decreed A. to account for the Consideration — B. sells to C. 
who has no Notice; C. deeds to D. with Notice. The Matter of 
the Rolls thought this revised the first Notice to B. but Lord Sommers held contrary. Ch. Prec. 51. Harri 
son v. Forth. — See (D) pl. 8.

17. Cooper C. saith, He took it to be a Rule in Equity, That where a Gibb 211. 
Man is a Purchasor without Notice he shall not be annoy’d in Equity; not 
only where he has a prior legal Etitle, but where he has a better Title 
or Right to call for the legal Etitle than the other; and therefore dif 
miss’d the Bill. The Case was; A. Purchasor of B. who had done an 
Act of Bankruptcy, but without Notice of it; Afterwards a Commis 
ion is taken out, and there being a Term standing out in Trustees, Alligned 
brings a Bill against them and the Purchasor to have the Term allotted 

18. A Bill was to redeem Lands mortgage’d in 1694, to the Defendant’s 
Grandfather by the Plaintiff’s Father for 500 Years, to be void on Pay- 
ment of 126 l. and Interest. The Defendant pleads, That he is a De- 
visor of those Lands under his Grandfather’s Will, who in 1692 purcha 
fed them for a 200 Years Term without Condition of Redemption, and had 
engag’d 15 Years quiet Possession. But the Court over-ruled the Plea for the 
Defendant’s not injuring sufficiently as to the Mortgage, and the Plea or 
the Purchase may be true, for it may be only a Term for Years to at 

H h

(D) Afterl.
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(D) Affected. In what Cases.

1. ORDERED, That a Decree for a Lease and other personal Estate by Consent shall bind Purchasers for valuable Consideration. Per Ld. Bridgman, who said, That otherwise you will, like Gunpowder, blow up the whole Court of Chancery. 3 Ch. R. 22. Windham v. Windham.

2. An Estate was awarded to A. who had Possession pursuant to the Award, and devised it to a Charity. B. having Notice of the Award, and the Devise, purchased it. Decreed against the Purchaser, and in favour of the Charity, Fin. R. 75. Hill. 25 Car. 2. Chard v. Opie.

3. A general Power to make a Jointure, and not paid of what Lands in particular, is not such a Lien upon the Lands as should affect a Purchaser, tho' the Power had been executed afterwards, much less where 'tis not executed at all. Per Lord Chancellor. Vern. 406, 407. Mich. 1838. Elliot v. Hule.

4. A Devise of Land gets a Decree to hold against the Heir, who was supposed to have suppressed the Will; the Tettor had mortgag'd the Land, and a third Person, pending the Suit, gets Assignment of the Mortgage, and purchases the Equity of Redemption of the Heir, with Notice of the Will. The Court will not admit the Purchaser to dispute the Justice of the Decree, nor to try at Law if the Will was cancelled by the Tettor, or not. 2 Vern. 216. pl. 198. Hill. 1690. Finch v. Newnham.

5. Voluntary Articles shall never be set up against an Absolute Purchaser, altho' such Purchaser had Notice by being a Party to the Articles; but quere; for there was another Point in the Cafe, which might be the Foundation of the Judgment. MSS. Tab. Jan. 14. 1702. Powel v. Plydell.

6. Lord Cowper seemed to be of Opinion, That in Case of a Covenant to convey Land, the Money being paid, and afterwards the Vendor confess'd a Judgment to a Creditor between the Time of the Conveyance and the Covenant, it should not affect the Purchaser, because in Equity the Land is esteemed to be to be held from the Time of the Covenant. 10 Mod. 468. cites the Cafe of Peach and Winchelsea.


8. A Church Leafe was agreed by Marriage Articles to be settled upon the Husband and Wife, and the Issue of the Marriage. They had Issue; the Husband mortgages the Lease to A. and then Husband and Wife re-arranged the Lease, and a new one was granted to J. B. Afterwards B. purchases this last Lease without Notice of the Articles. B. died, and his Executors sold the Lease to C. who had Notice of the Articles, and gave him Collateral Security for better affording his Title. The Plaintiff claimed under the Articles, and prayed that C. by Reaon of the Notice he had of the Articles, might be considered as a Trustee for him; C. pleaded his Purchase, and confess'd the Notice, but pleaded principally upon B.'s Purchase.
chase without Notice, and that he had now B.'s Title. And because C. claim'd under B. who was a Purchaser without Notice, and who had barr'd the Plaintiff's Right, and that all B.'s Right was now devolved upon C. Lord Ch. Talbot decreed for C. and said it would be the same, tho' C. had been only a Voluntier, as B.'s Executors were, and that C.'s taking Collateral Security could not make his Cafe the worse; but if B. had had Notice, all would be overturn'd. Cafes in Equi. in Lord Talbot's Time 187. Hill. 1735. Lowther v. Carleton.

9. A Purchaser with Notice alien'd to one who had no Notice. In this Cafe, tho' the Court would not affect the Purchaser without Notice, yet it being a Fraud, the Vendor, who was the Purchaser with Notice, was decreed to make Satisfaction to his Vendee, who had sued for Relief. Cited by Lord Ch. Talbot, as a Cafe which he said he remember'd, Cafes in Equity in Ld Talbot's Time 188. in Cafe of Lowther v. Carleton.

10. If an Estate subject to a Trust is purchased from the Trustees, for a Valuable Consideration without Notice, a Court of Equity cannot affect the Purchaser, tho' they can the Trustees; but if such Purchaser had Notice, then the Trust goes along with the Estate, and the Land continues subject to it. Per Raymond Ch. J. Cafes in Equity in Lord Talbot's Time 260. Trin. 1732. in Cafe of Manfell v. Manfell.

(E) Affected with Payment of Debts &c.

1. The Opinion of the Court was, That a Statute was for Performance of Covenants ought not to take away the Possession of a Purchaser. Toth. 258. cites Chandler v. Dawson, 41 Eliz. ii. B. fol. 480.

2. Devise of Lands to A. and B. his Wife for Life, upon Condition that A. his Executors, Administrators, or Assigns, should pay all his Debts and Legacies; and after the Decease of the Survivor of them, then the Inheritance should go to C. their Son, and the Heirs Male of his Body &c. and made A. his Executor, and died; A. B. and C. join in a Conveyance to D. A. dies, yet the Lands are liable in the Hands of the Purchaser to pay the Debts and Legacies; and D. was decreed to pay Damages and Costs, and then he was to take his Remedy against B. for the Profits received, (for A. died Infelone) which the Court declared were likewise liable to pay this Legacy &c. N. Ch. Rep. 38. 12 Car. 1. Newell v. Ward and Brightmore.

3. If Lands be given to a Charitable Use, and to dispose of an Overplus, if the Purchaser had no Notice, it can't bind him, but if Rent issue out of Land, the Purchaser must pay it, but will not charge him to pay Arrears before Purchafe, nor lay it upon one, nor excuse the other. Toth. 95. cites M. 14 Car. Peacock v. Thewer.

4. A. devised Lands to his Wife for Life, and after to his eldest Son so the Book upon Condition that if his Wife should be with Child, 80 I. should be paid to by the Heir at Law to the Child after the Mother's Death. She had a Child, and after the Mother and eldest Son convey'd away the Land to a Purchaser. Upon Notice proved of the Will, the Money was decreed to the Daughter, and declared it was a Trust devised to go with the Land; and yet this Will was void in Law as to the Legacy, seeing he who was to have the Benefit of the Branch of the Condition was Heir, and also the Party that should pay the Legacy. 3 Ch. Rep. 93. 1649. Smith v. Atterby.

5. A.
Purchasor.

5. A. feited of Lands, conveys them to B. in Truck, for Payment of all his Debts in general. C. the Plaintifl, being one of the Creditors of A. exhibits his Bill against D. as being a Purchasor under that Truck, to pay the Debts &c. It was inifitl for D. that the Conveyance to B. being general, and none of the Creditors Parties to it, it was therefore revocable at Pleafure, and merely Voluntary, and that it had been fo adjudged by Ed. Keeper Conveyary, that fuch Conveyances are Ambulatory, and that if a Man makes a Conveyance to B. in Truck to pay all his Debts menifioned in a Schedule, and all other his Debts, as to all the Debts, besides those mentioned in the Schedule, fuch Conveyance is fraudulent against a Purchasor. But it was inifitl for D. that if the Deed to B. was revocable by A. yet D. purchasing under that Conveyance, had confirn'd it. N. Ch. Rep. 126. 20 Car. 2. Langton v. Allif.

6. A. being fefled of several Estates, grants an Annuity out of one of the Estates for a Valuable Consideration, and gave a Recognizance for securing the Payment of the Annuity; afterwards A. sells other Lands to B. who had no Notice of this Recognizance; and after that A. fells the Land, charg'd with the Annuity, to C. The Annuity was greatly in Arr. rear. Decreed that the Annuity ought to be paid out of the Lands purchased by C. they being originally charg'd; and this in Sale of B. whose Lands are bound only by the Recognizance, and that the fame ought to be paid out of the Aflets of C.'s Estate, in the Hands of his Executors, and if there be a Deficiency, then D. (to whom C. had the Lands) to pay out of the Profits received; but on B.'s offering to pay the Annuity and Arrarors, it was decreed he should have the Benefit of the Recognizance to reimburse him. Pin. R. 130. Mich. 26 Car. 2. Pritchard, Williams, and Thomas v. Potts.

7. A. devised Lands to B. charged with Payment of 600 l. to C. and D. at a certain Time, and in Default A. devised the Lands to E.—B. and E. join'd in a Mortgage of these Lands to F. and F. fail'd B. to pay in Pleafion, and to sell Timber; fo that there was not sufficient to fatisfy the 600 l. and the Mortgage; and by B. and E. joining, it must be in tended that F. had Notice of the TrufT. Decreed that the 600 l. be paid before the Mortgage. Pin. R. 225. Train. 27 Car. 2. Green and Hill v. Gardner and Cavill & al.

Lord Chancellor held. That upon this Statute a Judgment shall have no Relation, but from the Time of the Signing, not only as against Purchasors of the Lands themselves, but alfo as against Prior Judgments entered in the Grand Seions of Wales, to which that Statute does not extend; and faid, That a Man, who trusted his Money on a Judgment, was in fome Sort a Purchasor of the Land, as he might take out Execution, and extend the Land itfelf; but that the Rule fai'd down by the Statute for the Safety of Purchasors of the Lands themselves, was a good Rule to follow in the other Case, and the Relations were not to be favoured in a Court of Equity. Chau. Pru. 248. Mich. 1717. Anon.

If a Judgment be fign'd in the Vacation, yet it is entered as of the Term before, and none but a Purchasor fhall be admitted to fay it was fign'd as of any other Time, and in the Courts of the Court to let all Things be done in the Vacation as of the Term before. Per Hoil. Ch. J. 1 Salk. 411. Duke of Norfolt's Chie. —— S. C. 7 Mod. 39. Train. 1 Ann. B. R.

9. Where a Purchasor has Allowance in Reffell of an Incurbanance, this fhall make the Incumbrance good, tho' it was before defective. Arg. Vern. 358. Hill. 1685. in Cafe of Lady Bodmin v. Vandebendy.

10. 4 & 5 W. & M. 20. S. 2. 3. Enacts, That the Clerk of the Exoffices of the Court of C. B. Clerks of the Dockets in B. R. and the Master of the Office of Pleas in the Exchequer, fhall before the End of every Easter Term, alphabetically enter a Particular of all the Judgments of Debt by Confession, Non jam Informatas &c. of the Hillary Term preceding, and within 10 Days deliver Nofes to the Clerks &c. the like before the End of Michae-
was Time, of the Terms of Easter and Trinity, and before the End of Hilary Term, of Michaelmas Terms under the Penalty of 100L. And that no Judgment shall affect Purchasers of Lands or Mortgages, till docketed and entered as aforesaid.

11. An Executor being possessed of a Term for Years, in Right of his The Tsettlor, and being indebted to J. S. on his own Account, agreed with J. S. a Creditor for $200. and that the Debt should be discounted out of the Purchase Money. Upon a Bill brought against him by the Tsettlor's Creditors, he was not allowed to link his own Debt, but was decreed to pay the Money, he having Purchased with full Notice; That this was a Tsettlement, and nothing came into the Executor's hands as an Equivalent for it, to make up the Quantum of the Tsettlor's Affairs. Cited Chan. Prec. 434. Hill. 1715. in the Case of Purcafor v. Hoggins, as decreed by Ld. C. Cowper, when he had the Seals before.

It was insisted that an Executor may sell, and with the Money, when he has it, may pay his own Debts; and for the sake of Real, he may upon Sale discount, and allow the Debt the Purchaser owes him and the other in this Case, because he paid 150L. in Money, with which the Executor might have paid the Plaintiff's Debt; Yet it was decreed at the Rolls for the Plaintif, and affirmed on Appeal to the Ld. Chancellor, he having the Defendant was a Party, and confining to, and confining a Decree on 2 Vern. 616. pl. 553. Mich. 1728. Cave v. Drake, & al. -- S. C. (Ut Antiqui) was cited and agreed by the Ld. Chan. 3d Nov. 1728. in Case of Purcafor v. Caffar. Who said that he had examined the Register-Book, and the Decree was there found upon particular Proof of Fraud, which Mr. Vernon's Report does not plainly and fully let forth.

12. A. was indebted by several Bonds, in which B. was Surety for him and also in another Bond alone to one to whom B. afterwards gave his own Bond alone. A. being so indebted, made his Will, and in the beginning says, My Will is, that all my Debts be paid, and I do charge all my Lands with Payment thereof. Item, I give all my Real and Personal Estate to B. his Heirs, Executors, Administrators, and Assigns, chargeable with Payment of all my Debts and Legacies. And made B. Executor. A. died in 1724. B. proved the Will, and in the same Year sold a Freehold Estate of A.'s to E. In 1725, B. sold a Leasehold Estate of A.'s to F. and in 1727, he sold another Estate of A.'s confiding of both Freehold and Leasehold, to G. In every Conveyance A's Will was recited. To one of these Deeds J. S. a Creditor of A. was a full Charging Witness. At the Time of the Sales, all the Creditors either lived in the Town where B. lived, or within 4 Miles thereof, and the Sale was made by Ocurrence. All along, till 1730, the Creditors received the Interest at 5L. per Cent. regularly from B. who was a Solvent Person, till 1732, when he became Bankrupt. In 1734, the Creditors of A. brought a Bill against B. and the Alienesses of the Bankrupts Estate, for Satisfaction out of the Lands sold by B. to E. F. and G. The Matter of the Rolls said, That with Regard to the Leasehold Estate sold to F, the Creditors cannot have Satisfaction out of that, and this was so plain, that it would be monstrous to call it in Question; that the Executors are the proper Persons by Law to dispove of a Tsettlor's Personal Estate, which indeed in some Cases might be Clouded with such particular Truth, that possibly the Court in such Cases may require a Purchaser thereof to see the Money rightly applied; But otherwise, unles in Case of a *Fence, *See Cave v. Drake, supra, the Sale thereof by an Executor must stand, and the Creditors cannot afterwards break in upon it; And as to the Sales to E. and G. he observed that the general Rule is, That a Truth, ordering Land to be sold for Payment of Debts generally, does not bind the Purchafor to see the Money rightly apply'd; But if it be for Payment of certain Debts, specified in a Particular, the Purchafor must see a Right Application; that this Case differ'd, the Lands being only charged with Payment of Debts, and not order'd to be sold for Payment, but that it was the same Thing; otherwise, when Lands are charged generally, they can never be discharged without a Suit in Chancery, which would be very inconvenient; be-
Purchasor.

Truly may be said to be perform'd as foot as the Lands are sold; but that where they are only charged for Payment of Debts, that the Trust is not perform'd till those Debts are discharged. The Muller of the Rolls observ'd, That this was the only Objection seemingly, of any Weight as to this Matter, and said, That to far is true, that where Lands are charged with Payment of Annuities, those Lands will be charged in the Hands of a Purchasor; because it was the very Purport of making the Lands a Trust for that Payment, that it should be a sufficient and subsisting Charge; but where Lands are not burden'd with such a subsisting Charge, the Purchasor ought not to be bound to look to the Application of the Money, and that seems to be a true Distinction. Barn. Chan. Rep. 78. to 83. Patch. 1740. Elliot v. Merryman.

(F) Affected by Misapplication of the Money.

Where no Creditors are Parties, such Conveyances are Ambulatory, and if a Man make a Conveyance in Trust to pay all his Debts, mentioned in a Schedule, and all other his Debts; as to all the Debts, besides those mentioned, such Conveyance is Fraudulent against a Purchasor. Cited N Ch. R. 127. in the Case of Langton v. Ashley. 20 Car. 2. as adjudg'd by Ed. Coventry. Where Lands are to be sold for Payment of particular Debts mentioned in a Schedule, the Purchasor must be his Money rightly apply'd. But if more be sold than is sufficient to pay the Debts, that shou'd run to the Prejudice of the Purchasor. Per Ed. Keeper, Vern. 555. Hill. 1634. Spalding v. Salmon.

If the Words of a Will are thus, I give my Lands to A. and B. in Trust, to sell to pay my Debts; the Purchasor is safe, and it does not concern him to see if the Debts are satisfy'd, especially if there is no Schedule. 2 Chan. Cases 223. Culpepper v. Alton.

But if there is Jointure between the Heir and Trustee to have an Account, his Notice in Law, without actual Notice of the Suit, so that if he purchase, 'tis at his Peril; but such Dependence of Suit must be real, and not collusive. 2 Chan. Cases 116, 116. It was agreed and resolved, that in this Case, a Purchasor purchases at his own Peril, if the Peronal Estate and Profits of the Land should prove insufficient, and afterwards should prove insufficient. Chan. Cases 223. S. C.

3. Lands (whereof Part were in Jointure) were vested in Trustees by Act of Parliament, to sell and to raise Money for Building and Sticking a Printing House, (burnt down in the Fire of London) and the Surplus to purchase Lands to be settled to the Uses of the Marriage Settlement. Money was borrowed accordingly upon a Mortgage, and the Question was between the
the Remainder Man in Tail under the Settlement, and the Mortgagees, whether any more Money ought to be charged on the Mortgage, than what was taken up and employ'd according to the Trust of the Act of Parliament. It was decreed by Ed. C. Jeffries, that there ought not, and that an Account be taken of how much had been employ'd, and the Defendant, on paying so much, with Interest and Costs, discounting the Profits received by the Mortgagees, should be let in to redeem; tho' for the Mortgagees it was insisted, that it could not be reasonably intended they could be privy to, and prove the laying out of the Money according to the Act of Parliament, and that no one would lend Money upon the Trusts of an Act of Parliament, if it was incumbent on him to see the Money laid out according to the Act, and that such Construction could not conftitute with the Intention of the Act, but utterly prevent the same. 2 Vern. 5. pl. 3. Trin. 1686. Cotterell and Holt v. Hampton, Bill & Al.

(G) Affected by presumptive Notice, and where there is a Settlement.


2. Chancery has been always very careful not to impeach Purchasers by Preventive Notice. As Tenant for Life, Remainder to his first Son, mortgaged for 1500 l. The Deed of Settlement was produced, and seen by the Mortgagee, who notwithstanding lent the Money, being advised that Tenant for Life, not having then any Son born, could destroy the contingent Remainder, whereas there was a Son born 5 Days before the Money lent; but the Mortgagee having no Notice thereof, and having got the Deed of Settlement, this Court would not relieve against him, but dismissed the Bill. 2 Vern. 159. cited per Rawlinson Commissioner, as the Case of Brampton v. Barker, 1671.

3. Tenant for Life sold as Tenant in Fee, and the very Deed of Settlement, at the Time of the Purchase, was produced and delivered to the Purchaser himself, yet the Court would not affect the Purchaser with presumptive Notice, but dismissed the Bill. 2 Vern. R. 160. cited per Committ. Rawlinson, as the Case of Phillips v. Redhill. Nov. 1679.

4. A. and M. his Wife, being Tenants for Life, Remainder to Trustees to trust 6000 l. Portions, Remainder in Fee to A. by Deed created a Term for raising another 6000 l. for such Persons as M. should appoint; with Power for A. and M. jointly to revoke the Uses. They mortgaged Part thereof for 2900 l. lasting before by Deed revoked Pro Tanto the former Uses; the Mortgage vested both the Power of Reversion, and the Execution of it. M. by Will appointed the 6000 l. to the Plaintiff, and died; afterwards A. married Defendant, and joined the Promises upon her; in the Settlement was an Exception of the Trust for the 6000 l. Portions, and of the Mortgage, but no Mention made of the other 6000 l. Upon a Bill brought for the 6000 l. appointed by M. it was inferred that the second Wife was a Purchaser without Notice of this Incumbrance; but per Cur. There was sufficient Notice in Law, or an implied Notice; for the Mortgage was excepted in the Jointure, so that they could not be ignorant of the Mortgage, and therefore ought to have seen that, which would have led them to the other Deeds, in which, if parted from one to another, the whole Case must have been discovered to them. Chan. Cases 237 to 291. Mich. 28 Car. 2. Bifco v. Banbury (Earl.)

5. Where
(1) Favour'd by Allowance.

(2) Favour'd after Length of Time.

Purchas for.

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v.

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Lefte

Title,

Cur.

Agreement

Parties

CufTe

Death

Leafe

Building

Law,

Building

Bettering

Marriage,

Confequence

and

Leafes

Manage,

Respect of

Leaff,

Rent,

Brook.

Leafe

Law,

Building

Marriage,

Confequence

and

Leafes

Manage,

Respect of

Leaff,

Rent,

Brook.

Reversion, being in Possession, had laid out $1000 in Building, and enjoyed the same till the Death of the Vendor, and then the Land was recovered by Virtue of an old dormant Entail, the Court would not give the Purchaser who was Plaintiff, nor give Defendant any Costs. N. Chan. Rep. 57. 13 Cal. Needle v. Wright.—But Attention for Improvements and necessity. Reparations were made to a Purchaser of a Term, upon decreeing it to be delivered up to Dealers in Reminder, Fry R. 178. Tit. 52. Tomlinson &c v. Smith.—So where it was after a base Time, (the Perpetual claiming having been beyond Sea 30 Years, and ignorant of his Title till after his Return) and didn't a Purchaser make, and the suit Purchaser had laid out Money in Building, it was decreed that he hold till satisfied, dis. accounting for the Profits received. 2 Lev. 152. Mich. 27 Car. 2. in Chancery, Edlin v. Hady.

2. A Purchaser, who before his Purchase Money paid, or Deeds exec. were cuted [tho' not before his Contract made] had Notice of a Prior Settlement, was ordered to be allowed what he had laid out in altering Improvements of a Purchase, upon the Tenements, tho' made pending the Suit. Jelferies C. chae were unfairly ob. and, tho' not to such a Degree as to set them aside, yet if, upon the Prospect of their being performed, he has improved the Estate, it is reasonable he should have Allowance for altering Improvements, provided he deliver up the Articles, and account for the Profits; but if he goes to Law he must not expect it. Caes in Equity in Lord Talbot's Time, 254. 256. Hill 1736. Savage v. Taylor.

(K) Disputes between Purchasor and Purchasor.

1. A Parol Agreement and Possession delivered, was decreed to be performed against a subsequent Purchasor with Notice, who had a Conveyance, and paid his Money. Vern. 363. Hill. 1675. Butcher v. Supcase. 2. Where a Writ of Detainer was brought against several Purchasers, the Court directed that the Sheriff should charge them all proportionably, tho' otherwise the Sheriff might have charged all out of one Party, and the Party could have no Remedy at Law; but in Equity they ought all to be equally charged; and therefore the Court gave this Direction. Freem. Rep. 227. pl. 234. Pach. 1697. Anon.

3. The Plaintiff and Defendant severally purchased the same Reversion except, on the Death of Tenant for Life. The Plaintiff brought a Bill to examine Witnesses for perpetuating their Testimony, and to be admitted to try his Title in the Life of Tenant for Life. But inasmuch as the Purchasor of the Life, tho' he was a Defendant, the Court could do nothing in it, but dismissed the Plaintiff's Bill, and he lost his Land for Want of examining his Witnesses. Cited by Lord Commissioner Rawlinson. 2 Vern. 159. Trin. 1692, in Cafe of Hitchcox v. Sedgwick, as the Cafe of Seybourne v. Cliton.

had an Entail for Life, A and M in 1641, commanded to leave a Five to there to the Life of A. and M. and the Survivor of them for Life, Remainder to there Son (the Plaintiff) in Tail Male, with several Reminders over, A's Heirs, and then forged another Deed, declaring the Life of the Tenant to A and M. and the Heirs of the Survivor. Under this Deed W.R. the Defendant purchased the Lands from A. who is since dead, and J. S. the Tenant for Life being still Living, the Plaintiff exhibited his Bill to perpetuate the Testimony of Witnesses, to the true, and disprove the forged Deed. The Defendant demurred, as being a Real Purchasor under the pretended Deed, believing it was a true and real Deed; therefore it being to draw under Examination a Master of Forgery against a dead Person, who could not answer for himself, and to get Aid to impeach a real Purchasor, he insisted he ought not to answer. And upon Debate it appearing that the Tenant for Life was still living, so that the Plaintiff could not try his Title at Law, and that this Court is obliged to preferry a Title at Law, which by such Impediment could not at present be tried, the Demurrer was over-rul'd.

4. A. on Marriage with M. articles, in Consideration of $600. Part and mentioned as received by him with M. an Infant, covenanted with B. and C. Trustees, that if he and his Wife lived 7 Years, then in three Months.
Purchasor.

afterwards, to lay out 10000 l. in a Purchase, and settle it on himself for Life, and on M. for a Jointure &c. and if he died before a Settlement made, to have for 10000 l., and confide d a Judgment to B. and C., for Performance of Covenants; 1500 l. Part of the 6000 l. was laid out in purchasing an Annuity of 100 l. per Ann. in the Exchequer, in the Name of C. and he gave a Declaration of Trust to A. that his Name was used in Trust for A. his Executors and Administrators; J. S. lent A. 1000 l. on his Assigning and Deposit of the Bills and Orders with him. J. S. brought a Bill to compel C. to assign the Trust, for securing his 1000 l. But on a Cross-bill M. alleged that the Annuity purchased in C.'s Name was to be as a Pledge till the Marriage Agreement performed, and that the Bills &c. were depoited in C.'s Hands for that Purpoze, but M. persevered to take them out of his Hands, as not safe there; and M. having to done, A. afterwards took them out of her Cabinet, and delivered them to J. S. The Counsel for J. S. inferred on the Statute of Frauds, and that a Parol Agreement could not be tack'd to a written Agreement. But Cowper C. dimin'd the Bill of J. S. and decreed the 150 l. a Year to M. her Husband being broke, and said that the Parol Agreements are bound by the Statute, and that Agreements are not to be Part Parole, and Part in Writing, yet a Deposit or Collateral Security is not within the Purview of the Statute; and said that M. who was married in her Infancy, and her Trustees, who had made an improvident Agreement in Writing, did well afterwards, upon Recollection, to get that Deposit for Performance of the Agreement. 2 Vern. 617. Mich. 1708. Hales v. Vanderchem.

5. A. by Marriage Articles, in Consideration of the Marriage, and 4000 l. Portion, covinanted with B. his Hes &c. writing 6 Months after Receipt by B. to settle all his Lands in C. to himself for Life; Remainder to Trustees to preserve &c. Remainder to the Wife, Remainder to the first &c. Son in Tail Male, Remainder to Trustees for 500 Years, to raise 5000 l. for Daughter's Portions. The Wife died, leaving no other Issue than one Daughter; A. married a second Wife, and settled the greater Part of the Lands in the Articles, without giving Notice of the Articles, and had Issue a Son and a Daughter by her, and died Intestate. It was held by the Master of the Rolls, that this 5000 l. ought to be made good out of the real Estate contracted to be settled, supposing that such Part thereof as is left unfertled be sufficient; but that it must be agreed that the Land actually settled by A. on his second Marriage without Notice, is a good Settlement, (tho' it be a Breach of Trust) and must take Place against the Articles, no more Lands being liable to the Articles than are omitted out of the Settlement on such second Marriage. 2 Wms's Rep. 436. 439. And Lord Chanc. King signified the Opinion of Mr. Justice Price to be (as to this Point) that the Lands not included in the Settlement made on the second Marriage, must stand liable for raising the 5000 l. Ibid. 447. Hill. 1727. Edwards v. Freeman.

For more of Purchasor in General See Discovery, Fraud, Jointness, Marriage, and other proper Tacks.

And in what Cases a Man shall be said to be in, or seis'd as a Purchasor, or by Defeent, See Tit. Defeent, Heir &c.

(A) Purveyance.
Purveyance.

(A) Purveyance.

1. As well before as after the Conquest, the King, upon his Ancient Hawk Pl. Demesnes of the Crown of England, had Houses of Husbandry, C. 114. cap. and Stocks for the Furnishing of necessary Provisions for his Household, 47. S. 1. and the Tenants of those Manors did by their Tenures manure, till &c. says, That this Method and reap the Corn upon the King's Demesnes, mowed his Meadows &c. being found repaired the Fences, and performed all necessary Things belonging to Husbandry upon the King's Demesnes: In Respect of which Services, and to troublesome the End they might apply the fame the better, they had many Liberties and Privileges, as that they should not be freed out of the Court of that Manor, nor impanneled of any Jury or Inquest, nor appear at any other Court, but only at the Court of the said Manor, nor be contributory to afterwards the Expences of the Knights of the Shire which serve at Parliament, nor pay any Toll &c. which Liberties and Immunities continue to this Day, albeit the original Cause thereof is sealed. 2 Inst. 542. 543. cap. 2.

2. S. was Deputy Purveyor for the Full, and was fixed for M. freemen &c. And in that Cafe Popham Ch. J. delivered the Opinion of all the Justices in England in these three Points. 12. That no Purveyor or his Deputy may take any Thing without seeing of his Comission. 22ly. That they cannot take Wood or Trees growing without the Consent of the Owners, because they belong to the Freehold. 33ly. That no Purveyor may take that which a Man has provided for his own Provision, but of that which is to be sold, the King shall have the Buying at reasonable Prices. Noy 101. Stockwell's Case, 47 E. 3. 18. 11 H. 4. 28. Mag. Chart. cap. 21. and in 25 E. 3. B. R. Rot. 27. The Servants of the Marshal were preferred for taking 12 Carts to carry the King's Prisoners, where one would have sufficed, and they had levied 10 Marks for the Redemption of their Carts and Horses; for which they were committed to the Marshal's &c.

3. 12 Car. 2. 24. Par. 12. Enacts that no Money be taken, rated, paid, Hawk Pl. C. or levied for any Provision, Carriages, or Purveyance for the King, and that no Person by whatever Authority, by Colour of Purveying for the King or Queen &c. shall take any Thing whatsoever from any Subject, but with his free and full Consent; that no Carriages be taken without like Consent, that no Pre-emption be claimed &c. and the Offender, at the Request of the Party griev'd, to be committed by any neighbouring Justice of the Peace, or the Justices of the Peace of the Place where &c. till the next Sessions, there to be proceeded against the fame.

The Oppressions of Persons imposed for making Provisions for the King's Household, Carriages &c. and several Counties having been obliged to submit to sundry Compositions for their Redemption, therefore this Act was made.—But Sect. 6. says, That this universal and absolute Restraint having been found inconvenient, it was enacted by 15 & 16 Car. 2, 25. which has been often continued by Inconvenient Statutes. That the Officers of the Navy may seek Carriages for the Use of the Navy and Ordinance, pursuant to the Regulations therein prescribed.
Quare Incumbravit.

(A) Lies in what Cases, and where.

1. *Quare Incumbravit* ought to be sued in the County where the Church is, because the Wrong is done there. F. N. B. 48. (D)

2. Per Thorp, if the Bishop *incumbers* where no Debate or Dispute is, yet this Writ lies. F. N. B. 48. (D) in the new Notes there (A) cites 17 E. 3. 74. b. 21 E. 3. Quare Incumbravit. 3.

3. The *King may sue* a Quare Incumbravit in B. R. although the Record of Recovery be in C. B. but a *Common Person* cannot do so. F. N. B. 48. (E)

4. Quare Incumbravit may be sued in C. B. although the Record be removed into B. R. by a Writ of Error, or into the Treasury; but if the Record be in B. R., it seems then that the Party shall sue the Quare Incumbravit there &c. F. N. B. 48. (F)

5. *After the Ne Admissas* delivered, if the 6 Months pass, the Bishop may present his Clerk for Lapfe, and shall not be charged by the Quare Incumbravit for that Presentation; but it seems he cannot admit the Clerk of the other Man after the 6 Months pass, for that shall be against the Writ of Ne Admissas delivered unto him; and also if the Bishop do present the Clerk of the other Party after the 6 Months, who had presented unto him before, that Presentation makes Title to the Party, altho' it be after the 6 Months; by which it seems that the Quare Incumbravit lies then for the Party. F. N. B. 48. (L)

6. If a Man hath a Writ of Right of Advowson pending betwixt him and another, and the Church voids the Writ, the Plaintiff shall not have a Ne Admissas to the Bishop, nor the Writ of Quare Incumbravit, altho' the Bishop *incumbers* the Church; For the Demandant shall not recover the Presentation upon this Writ, but the Advowson; and if he hath Title to present, he may present, and have a Quare Impediment if he be disturbed. F. N. B. 48. (Q)

7. Quare Incumbravit doth not lie but where the Plaintiff recovers by Judgment of Court. F. N. B. 48 (E)

8. If the Bishop do *incumber* the Church before the Writ of Ne Admissas issued, then the Party shall have a Quare Impediment; but Quare Incumbravit; for the Bishop cannot have Notice until the Ne Admissas be delivered unto him; And if the Bishop after the Ne Admissas delivered unto him admits his Clerk, for whom it is found by the *Jure Patronatus*, yet the other Party shall have Quare Incumbravit against him. F. N. B. 48. (H)

(B) *Where*
Quare Incumbravit.

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(B) When and how, and Proceedings therein.

1. F N.B. 48 (F) in the New Notes there (b) says, That in Quare Incumbravit it was adjudged per Thorp and Green 1. That one shall have Oyer of the Record. 2. That one shall have this Writ before Judgment. 3. That the Writ shall be returnable in the same Court, where the original Judgment was given. 4. That where the Writ supposes the Plea pending touching the Church, 'tis good. 5. That the Writ shall not make mention of the Place where the Recovery was had. 6. It need not mention whether he incumbered within, or after the 6 Months, but that shall come by way of Answer. 7. If one recovers within the 6 Months, and the Bishop incumbers, he shall have a Quare Incumbravit within the 6 Months. 8. Tis no Plea that the Record is removed by Error. 17 E. 3. 50. 54. 74. or that he has received the Plaintiff's Clerk at his Nomination. 21 E. 3. 3. 2.


3. After a Non Suit in Quare Incumbravit a Man may have another S. P. F. N. B. Writ of Quare Incumbravit. Br. Quare Incumbravit, pl. 5. cites F. N. 45 (M) B. 48.

(C) Count. Pleadings, and Judgment.

1. In 21 E. 1. it was adjudged, That a Man shall have Quare Incumbravit without making mention of any Recovery in the Writ, or in the Count; but by the Rule of the Registrar he ought to mention the Recovery; and that seems to be the better Opinion F N.B. 45 (K) A Quare Incumbravit was brought by the Tenant of one Andley against the Bishop of Exeter, and counted that the Church avoided the 15th of April, by the Death of J. S. and that Debate arose between him and Wm. Champiermonde, and that the Plaintiff recovered in a Quare Impedit; and that pending that Suit, he delivered to the Bishop a Prohibition at such a Place, and that the Bishop incumbered within the 6 Months, the Bishop pleads and swears, That the Quare Impedit bore Date the 5th of April, and he was brought in wrong to the Incumbrant, fed men allocate; For suppose it was brought living the Patron, if the Patron dies pending the Plea, and the Bishop incumber it, and afterwards the Plaintiff recovers, a Quare Impedit lies; Whereupon the Bishop, taking no Notice of the Prohibition served on him, pleads, That the Church had been void 12 Months, and that 6 Months passed before the Recovery, whereby the Bishop presented an Ordinary, Abique loco, that he incumbered within the 6 Months, and resolved that what is lost of the Time of the Avoidance shall not go to the Incumbent; wherefore Pole &c. took Effort, whether he incumbered within 6 Months after the Avoidance &c. F. N.B. 48 (K) in the Notes there (d) cites 18 E. 3. 17.

2. The Plaintiff need not count that the Bishop refused his Clerk, for the Incumbravit is a Refusal. F. N.B. 48 (H) in the New Notes there (d) cites 18 E. 3. 17. b.

3. Note: This Writ has been adjudged good, without saying before what Judges he be recovered. F. N.B. 48 (L) in the New Notes there (b) cites 18 E. 3. 17.

4. Quare Incumbravit was brought by T. against the Bishop of Exeter, it was found by Verdict of Inquest, that the Bishop had incumbered the Church after the Prohibition of Ne Admittas delivered to him, and within the 6 Months after the Voidance, to the Damage of 200 Marks, by which it was awarded, that he recover the Damages taxed by the Inquest, and a Writ for the Plaintiff awarded to disincumber the Church directed. I! to
Quare non Admisit.

to the Bishop, and Thorp prayed that his Temporalities should be seized for the Contumacy presented by the Verdict; but the Court denied it ; Constr. in Attachment upon a Prohibition, if the Bishop be attainted thereof, and that the Bishop would have arrested the Inquest, alleging that he had received the Clerk of the Plaintiff, and at his Nomination had instituted him, &c. non Allocutus, per Cur. quod nota. Br. Quare Incumbavit, pl. 1. cites 21 E. 3. 3.

5. In Quare Incumbavit the Plaintiff contended that he brought a Prohibition to the Bishop such a Day as to receive the Clerk to the Church pending a Plea in the Common Pleas not disputed, after which Day he incumbered the Church, and the Defendant said that he did not deliver the Prohibition to him the same Day, but another Day afterwards, before which Day he had received T.C. to the same Church, because he did not know of any Plea, Abjuration, that he received T.C. after the Prohibition delivered, etc, and upon this the Issue was taken, and found for the Bishop; and the other brought Antainst &c. Br. Quare Incumbavit, pl. 3. cites 21 E. 3. 42.

6. The Patron need not sue the Right of Patronage to be in him, for the Not Admisit with the Recovery gives him the Action, tho' he be not the true Patron. F. N. B. 48 (H) in the New Notes there (c) cites 21 E. 3. 5. according.

Br. Quare Incumbavit pl. 5. cites S. C.

F. N. B. 48 (H)

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Br. Quare Incumbavit pl. 5. cites S. C.

Quare non Admisit.

(A) Lies in what Cases, and in what Court.

1. If one has Judgment in a Quare Impedit, and a Writ is awarded to the Bishop, and the Bishop refuses to admit the Plaintiff's Clerk, the Plaintiff upon this collateral Matter of Retial may have a Writ of Quare non Admisit. 8 Rep. 142. b. in Dr. Drury's Case — cites * 26 E. 3. 75. b. Per Wilby and Hill.
Quare non Admitit.

2. In Quare Impedit by the Grantee of the next Presentation, the Plaintiff recovered, and had Writ to the Bishop, who returned that the pretext of the Distraint had refused, and another is in, and the Plaintiff would have taken a Writ against the Bishop that he refused pass, and was (1) the Note not fitted; for the Bishop is only an Officer in this Case, and has no Day in the Marg in Court to plead, nor the Court cannot compel him to answer to the Writ, or Quare non Admitit if he would. Br. Quare non Admitit. pl. 2. cites 21 H. 7, 8.

3. If a Man recover a Writ, and hath a Writ against the Bishop to admit his Clerk, and he will not admit him; then the Party may sue for his Recovery his Anias and Pluries, or Attachment &c. or may sue a Writ out of the Precedent in C. B. or out of C. B. at his Election, De Quare non Admitit, as he may sue well in the Term Time, as in the Vacation; but the bet is in Term-Time a Quare non Admitit in B. R. before himself F. N. B. 47 (C)

4. If the Bishop refuses the King's Presence, and afterwards admits him, yet the King shall have Quare non Admitit against him for that Refusal, and shall a common Person in like Manner have, as I conceive. F. N. B. 47 (L)

5. If a Man recovers in a Quare Impedit his Precedent unto a Chapel, which is dowre, then I think that he shall have a Writ to the Sheriff to put the Clerk who recovered into Possession. F. N. B. 48. (A)

(B) Against whom.

1. If the Vicar-General refuse to admit the Clerk, the Quare non Admitit shall be brought against the Bishop for that Refusal; and if the Bishop do refuse the Clerk, and afterwards dieth, Quare non Admitit is maintainable against the Guardian of the Spiritualties for this Refusal made by the Bishop. Tamen quare. F. N. B. 47 (I)

2. Quare non Admitit was maintainable against the Bishop's Official. F. N. B. 47 (N) cites Mich. 9 E. 3.

3. In a Quare Impedit the Plaintiff had Judgment, and a Writ awarded to the Bishop; upon this Writ the Bishop makes a false Return, the Plaintiff may have a Quare non Admitit against him. D. 260. a. pl. 21. Patch. 9 Eliz. Bailett's Cae.

(C) *When, and where; And Proceedings therein.* *See (A) pl.

1. In Quare non Admitit the Sheriff at the Distraint returned Nihil &c. So where and per Richil, because the Bishop has Assets in Wales, to which this Proofs offered to the County where the Process is adjourned, therefore he shall be apered, because he might have distrained there. Br. Proces. pl. 30. cites 3 H. 4. 4. because all the Justices denied, upon which the Plaintiff laid that the Defendant had Assets in London, and prayed Process there, and had Distraint there; nota. Br. Proces. pl. 30. cites 3 H. 4. 4. — Br. Proces. pl. 152. cites 5. C.

2. If a common Person do recover in a Quare Impedit in C. B. and the Record is removed by a Writ of Error into B. R. and there affirmed, then he shall
Quare non Admitit.

shall have a Writ unto the Bishop there, and ought to sue Quare non Admitit against the Bishop there upon the Record, otherwise not; After the Record removed by a Writ of Error, the Plaintiff, who recovered, shall not have Quare non Admitit until the Judgment be affirmed in B. R. F. N. B. 47 (E).

3. One Defendant shall not have Oyer of the Record. F. N. B. (E) in the New Notes there (a) says Vide hic 48 F. 16 E. 3. Quare non Admitit 3. But by Hill, if the Record be in another Place, the party shall not recover till they have inspected the Record. See Accordant 17 E. 3. 55. by Shurland, in a Quare non Admitit in the Rolls; For the Reversal of the first Judgment is a Reversal of the 2d; but cites 26 E. 3. 35. contra, and says Quare hic, if it be a new Original. Note also 26 E. 3. 75. accordant.

4. The Quare non Admitit ought to be sued in the County where the Bishop refused the Plaintiff's Clerk. F. N. B. 47 F. shall not be brought in the County where the Church is; For Damages only are to be recovered, and the Refusal is the Commencement of the Tort and Ground of the Action, and so is the Book so adjudged in 28 H. 6. 14 & 15. — D. 40. pl. 69. cites 28 H. 6. 14 b. 15 E. 4. 19. a. 48 E. 5. 7. a. where the Plaintiff recovered in Quare Impedit in the County of Devon, and delivered the Writ to the Bishop in Middlesex, and he refused the Clerk, and it was ruled, That because the Quare non Admitit was brought in Devon it abated, and that it should have been brought where the Refusal was; For there commenced the Plaintiff's Grief.

(D) Pleadings and Judgment.

1. If a Man recovers in Quare Impedit against him who has nothing, the very Patron may disturb the Execution, and by this the Bishop shall be excused in Quare non Admitit. Br. Quare non Admitit, pl. 4. cites 7 H. 4. 25.

2. If the Bishop admits a Clerk, it is good * Plea for him in Quare non Admitit, That he has admitted the Clerk of the Plaintiff, and made Letters to the Archdeacon to indue him, without saying that he is indueled; For it is a good Excuse to the Bishop, tho' the Archdeacon refuses to induct him; For there the Plaintiff shall have his Suit against the Archdeacon in the Spiritual Court, and recover Damages against him; For the Induction is spiritual. Br. Quare non Admitit. pl. 3. cites 34 H. 6. 14.

S. P. F. N. B. 4; (H) But Fitzherbert says, he conceived, that if the Archdeacon refuses to induct the Clerk, that the Clerk shall have an Action on his part against the Archdeacon, because the Induction is a temporal Act; As if the Sheriff upon Habere Facto Reimsum will not admit him into Possession, he shall have an Action & Punies, and Attachment against him; But here have laid, That he shall have a Citation against the Archdeacon in the Spiritual Court, and punish him there; For perhaps he may allege a special Cause, for which by the Spiritual Law he ought not to be inducted, which Cannot be determined in the Temporal Court. Ibid Quare. Ibid.

3. If a Man recover against J. F. in Quare Impedit, and has a Writ to the Bishop, and he refuses to admit his Clerk, and he brings Quare non Admitit, and the Bishop says, That the Church is ligious between the Plaintiff and a Stranger, this is a good Plea. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 6. 11. 38. and 35 H. 6. 15.

E. 2 quod nota; For there Recovery shall not bind the Bishop nor the Stranger, and it may be that they Recovery is by Covin, or without Title; but as to him against whom the Recovery is had, it is no Plea. That it is ligious between them, for lites illa sunt determinate; by the Recovery of which, the Bishop (as it terms) is bound to take Notice; quod nota, a good Cafe. Br. Quare non Admitit, pl. 1. cites 34 H. 6. 41.

4. In this Writ he must recite the Recovery. F. N. B. 47. (C)

5. In the Quare non Admitit he shall recover only Damages, and shall not have his Clerk admitted by this Writ. F. N. B. 47. (G)

6. The
6. The Bishop is not bound to admit the Clerk, if the Church be full of the presentment of another Party who is not Party to the Recovery. F. N. B. 47. (K)

(whole) Matter on the Writ Ad admitendum Clericum; whereupon the Party may have a Quare non Admissit against the Bishop, to try the Truth of the Return; and also a Scire facias against the Incumbent, to try his Title. F. N. B. 47. (K) in the new Notes there (a) cites 9 Eliz. Dyer 260 a. Bifler's Cafe.

Also, If the Bishop be inhibited by the Archbifhop to admit the Clerk, he shall be excused, and a Writ shall lie to the President of the Archbs. F. N. B. 47. (K) in the new Notes there (4) cites Parl. 22 E. 3. N. 63.

7. In a Quare non Admissit the Bishop may say, That he did present by Laps. F. N. B. 47. (M)

8. Archbifhop of York refused the Presentee of E. 1. because the Pope, by way of Provifion, had conferred it on another; whereupon the King brought a Quare non Admissit. The Archbifhop pleaded, That the Pope had a Long Time before provided to the said Church, as one having Supreme Authority; and that he neither dared, nor had Power to put out him who was in Possession by the Pope's Bull. But for this Contempt, in refusing to execute the King's Command, the Lands of his Bifhoprick were feized into the King's Hands, and lost during his Life. 5 Rep. 12. in the Cafe of the King's Ecclesiatical Law.

9. If one has judgment in a Quare Impedit, and the Defendant reverses it, this is the Judgment, and after the Plaintiff in the Quare Impedict brings a Writ of Quare non Admissit, the Defendant may plead Nul titl Relic. 8 Rep. 142. b. in Dr. Durr's Cafe, cites 26 E. 3. 75. b. Per Wilby and Hill.

That if the Party relinquishes his Damages, and takes a Writ to the Bifhop, who refuses the Presentee, in such Cafe, it the Quare non Admissit cannot be maintained, the Party shall never report back again to have his Damages.

For more of Quare non Admissit in General, See Presentment, and other Proper Titles.

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Que Estate.

(A) Pleadable of what Things.

1. In Affine of Rent, he who prescribes in him and his Anceftors, and in whom whole Estate he has, ought to shew Deed of the Rent; for Que Eftate cannot be of Rent without Deed, upon which the Plaintiff shewed a Deed of the Grant of the Rent to his Anceftor, but did not shew any Deed of Commencement of the Rent, and therefore ill by the bell Opinion; for a Man may precribe in him and his Anceftors &c. without shewing Deed, but not in Que Eftate of a Thing which cannot be granted without Deed, unless he shews Deed thereof. Contra, Of Acquittal in him, and whole whole Eftate the Lord has in the Seigniory, or of Common Appendant, or Eftuators Appendant &c. there he may pre

* Is as much as to say, Whole Eftate he has. Co. Lit. 121. a.

It refers as well to the Eftate as to the Person; and to the common Inthemend in Pleading a Que Eftate. Goldsb. 173 pl. 155. Palmer v. Holmes.

A Man prescribed in Rent in him, and in whose Eftate he has in the same Rent,
Que Estate.

and it was scribe by Que Estate without shewing Deed. Br. Prefcription, pl. 29. not accepted. cit. 24 E. 3. 23, 39.
Br. Pref.-

tion pl. 68 cites 6 E. 4, 3. — Br. Aid, pl. 128. cites S. C. — But Brooke says, Sec Little-
non thereof, tit. Rents. That he ought to shew Deed where he prescribes in a Thing which cannot pas-
Grant without Deed, as appears there. Br. Prefcription, pl. 68.
B. Forme-
des, pl. 10, cites 32 E. 5. — Que Estate, pl. 5. cites 42 E. 3.
S.P. Co. Lit. 121. a. — S. P. Per
Coke 2. Buell 228. Patch 12
Jac in the ir. Br. Que Estate, pl. 32, cites 12 H. 7. 16, 18.
Cafe of Ba-
ney General v. Meller. S. P. Mod. 252. Hill 28 & 29 Car. 2. C. B. James v. Johnston — 2 Mod 142. S. C. — Of all things which he in Grant, and where a Man cannot be diffused against his Hill, a Man shall not
plead a Que Estate. Hill 15 Jac in the Cafe of Mame v. French. — But when the Thing that his in Grant is but a Con-
vergence to the Thing claimed by Prefcription, there a Que Estate may be alleged; as for Instance, A Man
may preface, that he and his Ancehrs, and all those whose Estates he has in a Hundred, has Tyme Out of
Mind had a Lent &c. this is good. Co. Lit. 121. a. — S. P. By Bridgeham J. Cant. 32. Tin-
If one says, That he was seized of a Manor, and that he and all those whole Estate he has therein, had a
Court Baron, that would be a void Prefcription, because a Court Baron is incident to a Manor of Courte,
and this is the Resum of St. John's Cafe. Per Holt Ch. J. 12 Mod. 557. Mich. 13 W. 5. in the Cafe of
Hayward v. Kinley.
S. C. cited
Ow. 16. Trin 36 Eliz. in
Thurston's Cafe.
S. C. cited
Ow. 16. Trin. 36 Eliz. in
Thurston's Cafe.
S. C. cited
Ow. 16. Trin. 36 Eliz. C.B. in
Thurston's Cafe. And
also cited in D. 172. a. and 228. b. in the Mar-
gin of pl. 57. Attorney General v. Hudson. where the
Defendant in Ejectment pleaded a Que Estate from the Leefee for Years of an Abbet, without shewing
how he came to his Estate; And the Court held it a good Exception, and that he must shew how he
came to his Estate, in the Term, because it cannot be but by lawful Means. — Hob. 522. in the Cafe of
Ellis v. the Archbishop of York, Says, A Term never bears a Que Estate. One cannot plead a
Que Estate of a Lease for Years, or at Will. Co. Lit. 121. a. (f) — But Sid 298. Mich. 18 Car 2
Coffs v. Allard, is. That one may plead a Que Estate of a Term for Years, as well as of another par-
ticular Estate. — Lev. 190. S. C.
In Covenant the Plaintiff sets forth a Lease made by the Queen to G. B. and brings the Receipt to himself
by divers Mejorie Conveyances, and the Replevin of the Term to the Defendant by the Que Estates, by several
Mejorie Conveyances in general, Concurrentibus his que in Jude regissariat, and alluded divers Bres-
ches in not repairing the Premises. The Defendant pleaded Non infrigent Conveniences. The Plaintiff
demurred. It was adjudge, That the Pleading an Estate in a Term in another Person under whom
he does not claim, but who is a Stranger, is good, for he is not privy to the Estate and Conveyances to a
Stranger; but to plead an Estate in himself, or in any other under whom he claims, is not good, and
cannot be pleaded a Place, and D. 238. pl. 6. and that it was adjudged Mich. 18 Car. 2. Br. Cotts v.
Ellard. And that to are Co. Lit 121. a and 5 Cro 22. to be intenden. 5 Lev. 10. Patch 33 Car. 2.

5. In
6. In Trespass for taking an Antecedent the Defendant prefcribed for a Turn or Hundred Court, and did not plead any, or what Estate he had therein, or before whom it was held; The Court held, That a Prefscription to a Hundred by a Que Estate is not good; because an Hundred is not nuisurable, but lies in Grant. But the Defendant should have alleged, that the King, and all they who were feised of the Hundred, have bad, and Time out of Mind have used to have a Court &c. 1 Brownl. 198. Patch. 9.  


(B) Pleadable of what Estates.

1. In Affisfe the Tenant pleaded Gift in Tail of the Antecedent of the Plaintiff Br. Affisfe, pl. 10. J. W. with Warrantsy, Que Estate be has, and [held] no Plet, but the 518. cites 42.  

Affisfe awarded; fore he cannot have the Estate of the Tenant in Tail, as 32. Averment by Que Estate of the flat 17. the Tenant has; and admitted for a good Bar by Que Estate of the Tenant in Tail; good now; and yet it shall not be averred in his Life. Br. Que Estate, pl. 7. cites 2 H. 4. 25.  

A Man may make a Bar by Que Estate of a Tenant in Tail, if he aver his Life, and other wise no. Se of other particular Estantes of Trestisment. Br. Que Estate, pl. 29. cites 5 H. 1. 39. — Br. Barre, pl. 7. cites 5 H. 7. 58. — S. P. Co. Lit. 131. a. (c)  

It was agreed by the Justices, That a Man cannot convey an Interest by a Que Estate of a particular Estate.  

As Tail for Life or for Years, without shewing how he has his Estate, be it in the Part of the Plaintiff or Defendant, but shall shew how he has the particular Estate. Br. Que Estate, pl. 51. cites 7 E. 6.  

In Trespass Prefscription was made by a Que Estate to 60 Acres about tempore. and ESTATE was taken upon the Prefscription; and because the ESTATE in Vacevors, who claimed from the Grants, under whom the Defendant did claim, were an ESTATE Tail, the Prefscription was held not good which founded in Fee Simple; And in that Case he ought to have laid the Prefscription in the Crown. And it was further held, That a Que ESTATE cannot be of a Tail. Clive. 39. pl. 32. Mr. William Savile v. Grimsfield.  

A Que ESTATE cannot be pleaded of an ESTATE in Tail; for none can have his ESTATE, and the Book 5 H. 7. 59. a. — E. 6. 11. Que Estate. Br. 51. 15 E. 4. 16. a. 2 H. 5. 22. are to be recurred on this Difference. That if a Common Person, being Tenant in Tail, grants to him Statum firmum, this is good during his Life; and such Grantee may plea it, and aver the Life of the Tenant in Tail; but he cannot plea it by a Que ESTATE 1 Rep. 46. Titn. 42 Eiss. in Abnowood's Cafe. * For it is an Incident inseparable to his Person and Blood, and cannot be transferred to any other. Cro. C. 423. Mich. 11 Car. in the Case of Stone v. Newman.

2. In Trespass, if the Defendant has recover'd Rent, or the like, agnaiff But ibid. pl. 38. he cannot lay in Pleading, Per Needham, That he has his ESTATE; 6 H. 7. 7. 35. for he is in the Pofi, and yet he has his ESTATE and more. Br. Que Estate, pl. 41. cites 39 H. 6. 24.  

Man recovers Land against J. S. or differs J. S. he may plea, That he has his ESTATE, and yet he is in the Pofi. And Brooke says, That this is the best Law.

3. A Que ESTATE may be pleaded of any ESTATE of Freeseould, with an Accesment of the Life of Ime whose ESTATE &c. and the Books are to be understood, but not of a Lease for Years, because such an ESTATE cannot be gain'd but by lawfull Means. But a Que ESTATE cannot be pleaded of Franchise, because they are Things that lie in Grant; but otherwise if they are appertneunt to a Mancer. And fo is Crompton's Jurisdiction of Courts to be understood. Per Halle Ch. B. Hardt. 459. Patch. 19 Car. in Scace. in Cafe of Attorney General v. Meller.

4. Tho' an ESTATE in Borough Englishe be a customary ESTATE, yet a Person that is feisd of such ESTATE may preferbe. 5 Mod. 226. Patch. 8 W. 3. Richards v. Hill.

(C) Plead.
(C) Pleadable: How. And Traversable in what Cases.

1. In Affe the Defendant said that J. N. recover'd Damages in Trespass against the Plaintiff, and had this Land in Execution by Elegit. Que ESTATE of the said J. N. the said Defendant now has, Judgment &c. Br. Que ESTATE, pl. 44. cites 38 Aff. 4.

2. In Affe the Tenant pleaded in Bar by Fine levied by a Stranger to P. and S. and to the Heirs of P. Que ESTATE T. his Father had who died, and the Land descended to the Tenant, and gave Colour. Brook says, Mirum of this Que ESTATE; for H. 2 E. 6. it was agreed in B. R. that the * Que ESTATE shall not be alleg'd in one who is Mofue in the Conveyance, but shall be alleg'd in the Tenant himself, viz. Que ESTATE the Tenant has; and yet it was permitted above; and the Plaintiff said that one S was feised in Fee, and infeft'd him, and travers'd abique hoc, that T. had the ESTATE of P. and S. and allowed; and yet it is said elsewhere, that the Que ESTATE is not traversable, but where be who traverses it claims by the same Person by whom the other claims; and here he says one S. and does not say the aforesaid S. nor he mentions nothing of P. and yet permitted, but nothing is said to it. Br. Que ESTATE, pl. 8. cites 11 H. 4. 81.

3. A Man pleaded Villevinge in the Plaintiff; and the Plaintiff said that at another Time J. N. Lord of the Manor of D. to which he is supposed to be Villevin regardant, pleaded Villevinge in another Affion against the now Plaintiff, in which the now Plaintiff was found Frank. Que ESTATE of the said J. the now Defendant has in the same Manor, and a good Plea. Br. Que ESTATE, pl. 45. cites 9 H. 6. 67.

Br. Avowry, pl. 38. cites S. C. Where the Defendant said he was Tenant in Fee Simple, Que ESTATE the Plaintiff has; and the Plaintiff said that R. was feised in Fee, and leas'd to him for Term of Years, by Virtue of whose Poffeffion &c. abique hoc, that the Plaintiff was feised in Fee &c. and the others e contrario. Fulh. said the Issue should be abique hoc, that be had the ESTATE of the said J. D. tempore Captions. But Port. said No; for it may be that he is in by Diffelin, and then he has not his ESTATE, and yet he is Tenant as to the Avowry; quod Newton con- cefst. Br. Que ESTATE, pl. 13. cites 22 H. 6. 34.

4. The Defendant said he was alleg'd and alleg'd Seisin in J. P. of the Service, who was Tenant in Fee Simple, Que ESTATE the Plaintiff has; and the Plaintiff said that R. was feised in Fee, and leas'd to him for Term of Years, by Virtue of whose Poffeffion &c. abique hoc, that the Plaintiff was feised in Fee &c. and the others e contrario. Fulh. said the Issue should be abique hoc, that he had the ESTATE of the said J. D. tempore Captions. But Port. said No; for it may be that he is in by Diffelin, and then he has not his ESTATE, and yet he is Tenant as to the Avowry; quod Newton con- cefst. Br. Que ESTATE, pl. 13. cites 22 H. 6. 34.

5. Where a Man pleads, That those who were Parties to the Fine Nothing had at the Time &c. but J. N. was feised &c. Que ESTATE he has, he shall conclude, Et de loco ponit fe super Patron, and the other shall say, Et ipse finititer, without other Rejoinder. Br. Replication, pl. 5. cites 33 H. 6. 21.

Br. Que ESTATE, pl. 32. cites 33 S. C. S. C. notes.

6. It was said, that where the Demandant and the Tenant claim by one and the same Person, there the Que ESTATE alleg'd in the Pleading is traversable. Br. Traverfe per &c. pl. 221. cites 6 E. 4. 12.

S. P. Br. Traverfe per &c. pl. 221. cites 10 E. 4. 12. In Witt of Entry in Nature of Affe the Tenant said to Effel that J. S. was feised and died feised, and C. his Daughter and Heir entered, and was seid in the ESTATE the Tenant has, and the Plaintiff claiming by C. &c. where nothing paid &c. entered, upon whom the Tenant re entered. The Demandant said that this same J. S. was feised, and died feised, and C. entered as Heir, and took to Barren N. Villevin in rights of the Demandant, and die'd, but he was by Poffession, and his life, and D. and died, and D. entered as Heir, by which the Defendant entered as in Land belonging to the Villevin, and was feised, and died feised, and by the Tenant. And the Tenant seid that the Tenant has, or ever had the ESTATE of the said C. of the

&c. and so has Hite upon the Que ESTATE; and so for the Que ESTATE travers'd, and yet the Demandant does...
Que ESTATE.

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does not claim in a Manner by him by whom the Tenant claims, but he claims of himself in the Possiffion by Que ESTATE, without a Travertable. Br. Que ESTATE, pl. 11. cit. 19 H. 6. 58 —— Br. Travertable

7. In Entry the Plaintiff in the Replication may convey to the Tenant the Possiffion by Que ESTATE, without thowing how he has his ESTATE. Central in Conveyance to himself, as in Replevin a Man aeway upon one, Que ESTATE of his own Tenant the Plaintiff Les, and there the ESTATE is traversable, per tur. Cur. quod Brian and Littleton concefleurant; and so above of the Que ESTATE of the Defendant, this is traversable. Br. Que ESTATE, pl. 37. cit. 18 E. 4. 29.

8. In Trelafs the Defendant justified for Paffure for 100 Sheep, and preferred that they, and all whole ESTATE they bad in Cripping Park Time out of Mud &c. bad Common &c. and it was helden a good Prefcription; for although it is now a Park, yet this Park shall be intended to have Con- memorated when it was arable. The Reporter thinks it had been better to have laid the Prefcription as Owner of so many Acres of arable Land &c. Clayt. 64. pl. 110. Sir William Savil v. The Master and Fellows of Sidney College, Cambridge.

9. If the Husband feals in Right of his Wife plead that be, and all these whole ESTATE they had, have us'd to have a Common appendant, that is naught, for the ESTATE is in the Wife; but he ought to have pleased that he and his Wife, and those whole ESTATES the Wife hath, or whose ESTATes they have, Have &c. Per Cur. Noy 66. Godbolt v. Mallet.

10. There is a Difference between the Allegation of the Conveyance to the Matter, and the Matter it felf; as where one, who is to convey a Title to himself to a Leet, prefers that he and all those whole ESTATE he has in the Hundred, have had a Leet &c. This is good; for the Prefcription in the Hundred is only Conveyance; but when he claims any Thing which lies in Grant by Prefcription originally of it felf, he can't prefer it in it by a Que ESTATE. 10 Rep. 59. b. Trim. 11 Jac. in the Bishop of Salisbury's Cafe.

11. If a Corporation was founded within Time of Memory, then in prefcribing for a Way, they may lay that such a one was fealed, and he and all, whose ESTATE he hath, have used &c. and then from fuch Persone to derive their Title, and thow the Deed. Per Doderidge J. 2 Roll Rep. 376. Mich. 21 Jac. in Cafe of Slowman v. Weft, cit. 8 E. 4. Abbot of Bermondsey's Cafe.

12. There is a Difference where a Prefcription is to the Thing in Gross, or to a b. and where to a * Thing Incident; for when it is a Thing in Gross, as land &c. Rent or Way, it cannot pass but by Deed; but when a Way is incident to another Thing, as Land, in Action fur le Cafe for hopping this Way it is a fufficient Declaration to lay that the Corporation was fealed of the Houfe or Land, and lefeld &c. and to preferibe by Que ESTATE, is well enough; and tho' it is true that a Corporation cannot have Land without Deed, yet in Action on the Cafe one need not thow how the Corporation comes to the Land; and adjudged accordingly. Per 3 Juftices against Doderidge J. 2 Roll. R. 397. Slowman v. Weft.

13. Tho' the Plaintiff in Debt for Rent may plead a Que ESTATE in the Defendant generally, without thowing how, yet where a Man claims under a Que ESTATE, there he ought to shew the Several Affumptions, for the Defendant may traverse any of them. Skin. 393. Mich. 5 W. & M. B. R. Tucker and Hodges.
Que Estate.

(D) Pleadable; By whom.

1. In Ward, the Feme Defendant conveyed herself to the Seigniory by Document in Chancery, after the Death of her Husband, who held of the King in Capite, and that the Tenant and his Ancestors held the Baron and his Ancestors. Que Estate she has in Seigniory by an elder Pedigree than he held of the Plaintiff &c. And to fee a Feme, who is Tenant in Dower, allege that she has the Estate of the Baron by Que Estate &c. where the Baron had the Fee-simple, and the Tenant in Dower not. Br. Que Estate, pl. 10. cites 21 E. 3. 41.

2. Affid of 108. Kent, the Tenant said that A. Que Estate the Plaintiff has in the Seigniory, unoff'd B. Que Estate the Tenant has in the Tenancy, to hold by 6 d. Kent per Annun, for all Services, and a good Barr, quod nota, a Que Estate of both Parts. Br. Que Estate, pl. 26. cites 28 Aff. 33.

3. In Affid the Tenant may make Title by a Que Estate, without showing how he has the Estate of the other, contra of the Title of the Plaintiff; For he shall not make it by Que Estate, but convey it by Grant &c. and show how certainly ; see the Divinity. Br. Que Estate, pl. 27. cites 29 Aff. 19.

The Defendant may alter a Que Estate in the Plaintiff, but the Plaintiff cannot convey Title to himself by Que Estate. Br. Que Estate, pl. 13. cites 22 H. 6. 54 — S. P. Co. Lit. 121 a. (r.)

But in Trefofts against the Prior of Saint Jones of Goods taken he said that G. held of him by 2d. and Fealty, and to render the third Part of his Goods at the Death of all future Tenant &c. by Customs &c. and alleged Seffion &c. by the Usage, and that G. dy'd seised, and the Plaintiff, his Executor, took the Goods, and the Defendant took them in Part of the third Part, Judgment St. Actio. The Plaintiff said, that one J. S. Que Estate the Defendant has in the Seigniory, unoff'd one W. R. Que Estate he had in the Tenancy, to hold by 44. only, for all Services, and pleased the Lord, to which the Prior was compelled to Answer ; Note, a Que Estate alleged by the Plaintiff, and the Reason seems to be inasmuch as the Defendant has affected himself Tenant, and he is not to make Title to the Land here. Br. Que Estate, pl. 6. cites 2 H. 4. 12.

S. in Answer for 114. the Plaintiff said that J. N. Que Estate the Defendant has in the Seigniory, conveyed to W. N. then Tenant &c. Que Estate the Plaintiff has in the Tenancy, all his Estate to hold by 54. for all Services, and allowed ; the Reason seems to be inasmuch as the Plaintiff after Avowry is in Effect, Defendant, and the Avo wor is Avo wor, but not a Plaintiff, and the Lord was satisfied to restrain the Que Estate in the Seigniory. Br. Que Estate, pl. 47. cites 50 H. 6. 7 — S. P. Br. Que Estate, pl. 17. cites 2 H. 6. 76.

But in Que Estate, the Plaintiff said that four were seised of the Land, to which the Advocate was appellant in Foe, and presented, and after the Church vouch'd, Que Estate of the four he had at the Time of the Execution, by which he presented, and the Defendant disputes him, and by the Opinion of the Court, his Title is not good; For the Plaintiff or Defendant shall not make Title by Que Estate, but contra of the Defendant or Tenant. Br. Que Estate, pl. 1. cites 2 H. 6. 10 — Br. Titles, pl. 41. S. C.

Stin Trefofts, the Defendant justified for common Appendant, and the Plaintiff said that B. was seised of the one Land and of the other, in the Time of H. 6. Que Estate he had, and because the Plaintiff conveyed the Land to himself by a Que Estate, and did not show how he had the Estate. The Opinion of the Court was, that the Plea is not good, upon which he amended the Plea, and they'd how, viz. by Feoffment, quod nota, as well in Trefofts as in Action real, of the Part of the Plaintiff. Br. Que Estate, pl. 19. cites 4 E. 3.

A Que Estate may be pleaded by a Plaintiff who is a Stranger to the Estate; as when a Lesser brings an Action of Debt against a third or fourth Alliance of Lessor for Years for Rent Arrear, he may declare upon the Leafe made to the first Tenant, Que Estate the Defendant hath; Because he cannot know how the Defendant comes to the Estate, nor by what Conveyances, not being privy to them; per Hale, Ch. B. Hard. 259. in Case of the Att. Gen. v. Meller. — But if Que Estate be pleaded by Defendant, he must show how he is come by, or to the Estate. Owen. 16. Thurston's Case.

4. In Formeden the Tenant would'd J., who entered into the Warrantye, and pleaded Release with Warranty of the Ancestor collateral of the Deman- dont whose Heir he is, made to W. N. then Tenant &c. Que Estate be has &c. and a good Plea; For he is Tenant by the Warranty, and Tenant in Law, tho' he be not Tenant in Fact; quod nota, and it seems that he had the Estate of the said W. N. before the Gift in Tail. Br. Que Estate, pl. 12. cites 22 H. 6. 13.
5. A Man may aver the Estate of one who was feised in Fee by Differ-
fe ; For if he dillfeffed him he has his Estate and Fee-simple, tho' it be
by Torfe, and may plead a Deed made to the Diiferfeef, but he cannot Vouch
or Design Warranty, but plead in Bar. Que Estatte, pl. 33. cites 6 E.
4. 12. per Meffe.

shall plead Que Estatte. Co. Litt. 121. a. (t)—— Where pleading a Que Estatte is but Governance to the
Frehold, he that has a Freethold may plead it, even in Calm Reign, and tho' the Pleader came to it by

6. Leffe for Years assigned over his Term, and there were divers Meffe
Assignments. In Debt for the Rent he ought to make Mention of all the
mean Assignments, and because the Plaintiff could not do it, he was com-
pelled to Distrain and Avow for the Rent; for he cannot say he let the
Land to one whole Estatte the Defendant hath; So it is in Walte. Cro.

7. Trefpafs against two for breaking his Clofe, and killing his Powl in
his free Warren; the Defendants as to all, but killing the Powl, plead
Not guilty; and as to that they say, that the Dean and Chapter of
Exeter were feised in Fee of the Manor of Brampton, of which the said
Warren is Parcel, and that they and all whole Estattes &c. had Liberty
for themselves, their Farmers and Tenants, to Feed in the said Warren; and
that they made a Lease of Parcel of the said Manor to the Defendants,
for 21 Years, refusing Rent, and jo jufthly as Tenants &c. The Plain-
tiff replied, De Injuria sua Propria, upon which they were at Hfue, and
found for the Defendants; it was objected in Arrft of Judgment, that
this Prefcription was unreasonable, it being for the Dean and Chapter,
and every one of their Tenants, and they cannot prehife for a Free
Warren in Alieno Solo. But it was unwatered, that tho' this Prefcription
might have been ill upon a Demurrer, yet 'tis well enough after a Ver-
dict; and in this Cafe it is not too general, so as that there may not be
enough for the Lord; because it is a Profit Apprender in Alieno Solo,
and for such a Profit the Tenants of a Manor may prehife by a Que
Estatte, exclusive of the Lord. And of that Opinion was the Court,
and fo the Defendant had his Judgment. 3 Med. 246. Mich. 3 Jac. 2.
B. R. Davis's Cafe.

8. Action on the Cafe by Leffe for Years of a Corporation, for being
hindred of a Foot-way from the Houfe to the Water-side, and counted
by a Que Estatte, and had Judgment. 'Twas moved in Arrft, that a
Corporation cannot prehife but in him and his Predecessors, And that
in hewing a Que Estatte it must be by Profert of the Deed, because it
cannot be without Deed. But per. 3 J. contra Doderige J. It was held
good notwithstanding, because the Action is by the Leffe, who has not
the Deed, and it is but a Conveyance to the Action, which is grounded up-
on the Disturbance done to him in Possiffion; But if he had claimed
Rent, or Common in Grofs, which cannot pass without Deed, it had been
otherwife. For there he could not hew Que Estatte, without hewing the
Deed how he came by the Estatte. Cro. J. 673. Mich. 21 Jac. B.R.
Slackman v. Weft.

9. Termor for Years cannot declare on a Que Estatte. 1 Salk. 363. Pasch.
Carb. 432. 8. C. by

4. 12. per Meffe.

Palmer 57. Mich. 21 Jac. B. R.
S. C. by

Name of


Weft. ——

597. S. C.

(D) Plead-

Que Estatte.
(E) Pleadable; How. *Without showing how he came to the Que ESTATE.*

1. If a man pleads sufficient matter in bar by a Que Estate which he has, he need not shew how he has his estate. Br. Que Estate, pl. 34; cites 7 E. 4. 26. per Markham Ch. J.

2. In Affide the estate pleaded the release of the ancestor of the plaintiff's whose heir &c. with warranty to A. B. iust tenant, his heirs and assigns, which A. dyd, and his heir entered, Que Estate he has, and good, without shewing how he has his estate, or made allignment, and the other was compell'd to answer to the deed. Br. Que Estate, pl. 25; cites 26 Aff. 8.

3. *Scire facias of a fine,* the tenant said that the parties to the fine had nothing at the time &c. but J. N. was seized in fee, Que Estate he has, and leased to him for life. Davies said, where the Que Estate is to one Mejine &c. there is ought to shew how D. had the estate, but not where the Que Estate is convey'd to the tenant in the action; but Prict and all the other justices held it all one, and a good plea, and no diversity. But per Davies, the diversity is that where this is convey'd to the tenant, he need not to shew how, because the demandant by using his writ has affirmed him his tenant, but contra of a meine in the conveyance, & adjournmar. Br. Que Estate, pl. 19; cites 37 H. 6. 32.

4. In Recordare defendant accused, the plaintiff pleaded in bary, and bound the defendant by deed of one S. Que Estate the avowant has in the seignior, and did not shew how the avowant had his estate, and yet good, per Cur. Br. Que Estate, pl. 21; cites 39 H. 6. 8.

(F) Pleadable, How; *Without shewing Deed.*

1. In Affide of rent the defendant made default, by which the plaintiff pleaded to the court that it was of rent service, and the affidavit that the land was out of the fee of the plaintiff, but that the plaintiff and those Que Estate he has, were always seized of the rent, and he seized, and the plaintiff in aid of the verdict showed deed, by which he purchased the rent, but not of the commencement thereof, and it was awarded that he recover. Br. Que Estate, pl. 39; cites 13 Aff. 4.

2. A man shall not make title to a rent of which he is his ancestor, and those Que Estate &c. have been seized time out of mind, without shewing Speciality of the conveyance. Br. Tinites, pl. 33; cites 31 Aff. 23.
Quia Timet.

ment affirmed. Quod nota, without shewing Specialty of the Que Estate. Brooke says the Renton feems to be in truth as his Anteuer had the Estate which proved a dying feised, and Defent to the Pleader.

Br. Que Estate, pl. 24 cites 23 Aff. 6 —— Br. Titles, pl. 26 cites S.C.

3. But it is a good Title to the Rent that he is Lord of the Manor of D. and that he and his Anteors, and thei, Que Estate he has in the Manor, have been feised of the Rent as Parcel of the Manor Time out of Mind. Br. Titles, pl. 33. cites 31 All. 23.

S. P. Br. Monfrans, pl. 91 cites 22 Aff. 23. And says the Renton why Rent may be claimed by Que Estate without shewing Deed, where it is claimed as Parcel, or appendant to the Manor or Land is, because the Manor or Land may pass by Livery without Deed, and then the Rent 'goes' with it. —— 36 Prescription for Common Appendant, Eftates appendant, and the like, or in Acquittal against a Lord, and that Que Estate the Lord has in the Seigniory &c. is good without shewing Deed. Br. Que Estate, pl. 16. cites 24 E. 5 —— Br. Prescription, pl. 29. cites 24 E. 5: 25. 59.

4. It is a good Title that he and all the Lords of the Manor of D. have been feised of the Rent Time out of Mind. Br. Titles, pl. 33. cites 31 All. 23.

5. A Man cannot convey to Rent, Advosjon, Common &c. which lies Br. Mon-
in Grant only by Deed, without shewing Deed; Conera of Land, and Things which may pass without Deed. Br. Que Estate. pl. 36. cites 15 E. S.C.

For more of Que Estate in General, see Prescription (Y) Replicum, and other proper Titles.

Quia Timet.

Quia timet. Relief. In what Cases.

1. A Warrantia Charter, or a Writ of Mofne may be brought before the Party take Lols. Hob. 217. in the Cafe of Crookhey v. Woodward.

2. Suits Quia Timet only are proper in Law and Equitv; It is at Law of a Warrantia Charter; in Equity, as where A grants a Rent Charge of 10l. per Annum in Fee, and devises to B. for Life, Remainder to C. in Fee, and dies; C. exhibits his Bill to compel the Tenant for Life to pay the Arrears, else all will fall on the Remainder, and this has been decreed; and the first Case about Contributior was between and where A had Mortgaged the Manor of Guildford for 250l. and then devised to B. for Life, Remainder to C. in Fee, C. preferred his Bill to force B. to pay his Share of the Mortgage Money, and decreed accordingly, and there have been 20 Cases since of the like Nature. Chan. Cases. 223. Hill. 25 Car. 2. in the Cafe of Hayes v. Hayes.

3. A. granted 2 several Leaves to B. B. assigns 'em to C. in Consideration of a Bond of 350l. Penalty, to pay B. 20l. per Annum for Life, and all the Rent, as it should grow due, to A. The Rent was 150l. in Arrear to A. and the Leaves forfeited thereby, and A. entered; but on Payment of the Arrears by C. and his filling up the leaves, A. in the Fine allowed C. the full Value, notwithstanding the Forfeiture. C. su-

4. 10. per Littleton.
Quia Timet.

getted in his Bill a Danger of Execution, by reason of a secret Tryst for the Children of B's former Wife; but B. offering to indemnify C. against the Claim of the Children, tho' they had exhibited a Bill concerning the Premises, the Court decreed Payment of the Arrears of the 20 l. per Annum to B. and to continue Payment, B. giving Security to indemnify C. to be approved by the Master. Fin. R. 49. Hill. 25 Car. 2. Powell V. Morgan and Crofts.


5. Money brought into the Exchequer was embezzeled, the succeeding Rememberers, fearing a Sequestration, brought his Bill against the Executor of the former, and a Demurrer to the Bill was disallowed; and that the Plaintiff might proceed in Chancery. Chan. Cases. 300 Mich. 29 Car. 2. Ayloff v. Fanshaw.

6. At any Time after the Money becomes due on the original Bond, though the Surety is not troubled or molested for the Debt, This Court will decree the Principal to discharge it, though the Surety has a Counterclaim. Per Ld Keeper. Vern. 190. Mich. 1683. in the Cafe of Ranelagh v. Hayes.

7. Covenant was to have Harmless from Payment of the Rent to the Crown, Plaintiff suggested that he was sued in the Exchequer, but it was not charged in the Bill here, or proved there, that the Rent was behind, yet decreed in Specie, and the Master to tax Damages. 2 Chan. Cases. 146. Mich. 35 Car. 2. Ranelagh v. Hayes.

(B) Quia Timet. Actions in Nature of it.

And if in Precise quod reddat the Tenant sures are cited into the Warranty, and cannot bar the Demandant, by which it has Judgment against the Tenant, and the Tenant over in Value, the Tenant shall not have in Value till the Demandant has filed Execution. Ibid.

1. Where a Man recovers in Precise quod reddat by Default, he shall not have Writ of Right, nor Quia timet decrees till the Demandant has entered. Br. Petition, pl. 26. cites 5. E. 4. 118.


Nor Ne injure ceses till the Lord diffines, which two last Cases were denied afterwards, and that a Man shall have them before his Vexation, Quia timet. Ibid.

The Jurisdiction of Damages in the Curia Claudenda, nor of the Disfris in the Ne injure cases is not transferable. Ibid.


And Writ of

5. A sells a Thing to B. with Warranty to pay for it at a Day to come, if the Thing sold is corrupt, the Party may have his Action of Dictat before the Day of Payment, because it is in A's Power to bring his Action. Arg. Brownl. 122. Trin. 11 Jac. in Case of Freeman v. Shields; cites 9 H. 7.

Quid
Quid Juris clamat.

(A) Lies against whom.


2. If the Tenant dies after Grant of the Reversion by Fine, where the Remainder was over to another for Life, before which he attorns, the Grantee never shall have Action of Wait, nor Distress for the Rent; for it was his own Folly that he had not sued a Quid Juris clamat, and shall not have it now against him in Remainder, as where the Remainder was over for Life, the Reversion to the Lessor. *Per Moile and Atiton. Br. Quid Juris clamat,* p. 21. cites 34 H. 6. 6.

(B) *Writ good,* and *Proceedings.*


2. *Quid Juris clamat* by 4, by Reversion granted to them and the Heirs of the one, and the one of them who had nothing but for Life died pending the Writ, and the Tenant pleaded *i. Judgment of the Writ,* and upon good Argument, because nothing is to be done but Attornment, which may be made to the Survivors, and also because he who died had nothing but for 1 year of Life; therefore the Writ was awarded good. *Br. Quid Juris clamat,* p. 8. cites 43 E. 3. 32.

3. *Quid Juris clamat* against two, the Sheriff return'd that the one is a Br. Quid Juris clamat, and has nothing in Lay Fee, and the other return'd that he is Sole Tenant, Judgment of the Writ, and yet Diftringas illued against him who was return'd Nihil in the same Land; for ifue cannot be taken in the Abundance of the other. *Br. Proces.* p. 47. cites 53 E. 3. 28.

4. *Quid Juris clamat* by 2, if the one is Nonviti, yet the other shall *Contra in take the whole Attornment,* and the other shall not be sever'd, and the Fine shall be ingross'd of the whole. *Br. Quid Juris clamat,* p. 3. cites 43 E. 3. 32.

*shall sue forth; and as this Writ varies from all others. Ibid.*

5. *Where Fine is levied,* the *Quid Juris clamat* ought to be sued before it be ingross'd; for after the Ingroling no Quid Juris clamat lies, and then he
Quid Juris clamat.

he shall not punish the Wilt, nor make Aovory without having Attorn-
ment, which cannot be compell'd without Writ of Quid Juris clamat.


(C) Pleadings.

1. Quid Juris clamat against a Feme as Tenant in Dover, who said as to  
   Parcel that she held for Term of Life of the Leafe of one T. who obliged  
   himself to acquit and to warrant; Judgment, if without confessing the  
   Warrant and Acquittal the ought to attorn. Green said, you Hold in Dover  
   as the Note supposes, Prift, and the others eectra; and as to the rdig  
   She said that she held in Dover, and that the Plaintiff had purchas'd  
   the Reverion for Term of Life only, whereas we have Warranty against  
   the Grantor, who has Affets to render to us in Value; Judgment if to  
   you ought to attorn; and of this Plea the Court took Day to advise,  
   and upon such Issue the Feme may make & Attorney by Bill. Br. Quid  
   Juris clamat, pl. 13. cites 21 E. 3. 43.

2. In Quid Juris clamat the Tenant, viz. K. said, that Fine was letted to  
   D. for Life, the Remainder to K. for Life, the Remainder to the right  
   Heirs of the said D. and that D. granted to K. by the Deed which he made,  
   that he might out and fell the Trees at his Pleasure; and after D. died, and  
   f. his Heir granted by Fine to the Plaintiff, and saying the Advantage of  
   the Deed, he is ready to attorn. And per Cur. This is a good Grant; for  
   the D. cannot have Action, because he has only for Term of Life in  
   Possession, yet if K. dies, then a Fee shall be vested in him; and therefore  
   he may alien the Fee by Feoffment in the Life of K. But per Thorp, contra  

3. In Quid Juris clamat, the Tenant said that the Consour gave to him in  
   Title by the Deed &c. Judgment if he ought to attorn, and fould the Deed;  
   the Plaintiff said that the Tenant held for Term of Life, as the Note sup-  
   poses, Prift, & non Allocatur; upon which he said further aboyne bem, that  
   the Consour gave to Title, & non Allocatur. Finch said, You shall answer  
   to the Deed, as that Rienus paita by the Deed, or the like upon, which he  
   said that the Tenant held for Term of Life, as the Note supposes, absoyne he  
   that the Consour gave by the Deed point &c. Prift, and the others eectra;  
   and for note, that he was compell'd to answer to the Deed, and yet a Stran-  
   ger. Br. Quid Juris clamat, pl. 11. cites 38 E. 3. 20.

4. Quid Juris clamat against Bacon and Feme upon the Note of a Fine,  
   which was, that where the Defendant held for Term of 8 Years, of the  
   Grant of f. and which after the Term to him ought to revert, to remain to the  
   Plaintiff &c. (And fo fee that it is admitted to lie as well upon a Leafe for  
   Years as upon a Leafe for Life;) the Defendant said, that a Stranger was
Quod ei deforceat.

feised, and leaved to him for 8 Years, and died, and the Tenements descended to S. and W. who reposed to the Defendant in Fee, abique hoc that the Con- for bad any Thing in the Tenements the Day of the Note levy'd: and a good Plea, without showing that he was feised at the Time of the Fine; for this is proved by the Plea, and is not a double, viz. that the Release shall give Fee, and that the Confor had nothing; for the one is the Plea and the other is the Traverfe. Br. Quod Juris clamat, pl. 9. cites 3 H. 4. 3.

5. In Quod Juris clamat the Defendant claim'd Fee, and the Plaintiff maintained that he held for Term of Life the Day of the Note levy'd, abique hoc that he was feised in Fee the Day of the Note levy'd; and it was said, that in the Books such Ilute has been received, and in some Books the Tenant said that he was feised in Fee, and that he held for Term of Life proue &c. Br. Quod Juris clamat, pl. 25. cites i H. 7. 27. were called, whereupon they said that at the Time of the Fine they were seised in Fee; and this is no Plea, without answering if they held for Life, or not; for it is only Argument, upon which they said, abique hoc that they held for Term of Life the Day of the Note levy'd. And a good Plea per ter. Car. quid nota, cannot perfect how they were seised in Fee. And per Littleton, If it be found that they have only for Term of Life, they shall lose the Land, because they claim'd Fee. Br. Quod Juris clamat, pl. 15. cites 15 E. 4. 28.—Br. Quod Juris clamat, pl. 22. cites S. C.

For more of Quod Juris clamat in General, See Attornment, and other Proper Titles.

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Quod ei * Deforceat.

1. West. 2. cap. 4. Enacts, That when Tenant in Dover in Frank-mar-riage, by the Court, for Life or in Tail, lose their Land by Default, and the Tenant is compell'd to shew his Rights, they may vouch the Recoverer, if they have Warranty; and then the Plea shall pass between the Tenant and the Warrantor, according to the Tender of the Wit by which the Tenant recovered by Default; and if from many Actions they shall resort to one Judgment, viz. That the Demandant shall recover that Demand, and the Tenant shall go quit.

By this Statute, in Place of a Wit of Right, a Quod ei Deforceat is given to Tenant in Dover, in Free Marriage for Life and in Tail, upon losing by Default.

holdeth it so fast, as the right Owner is driven from his Real Præcie, wherein it is said, Unde A. can injure Deforceat, or the Deforceor so disturbeth the right Owner, as he cannot enjoy his own. Co. Litt. 531. b.

(A) Lies for whom, and against whom.

1. If Tenant for Life loses his Land in a Cessavit brought against him by Default, yet he shall have a Quod ei deforceat by the Statute of Westminister 2. F. N. B. 156. (A) cites H. 5 E. 3. & M. 9 E. 3.

2. Quod ei deforceat was brought by the Feme, who pretended to be Ten- ant in Dover, who left by Default in some Factors, where he Barren was not Party to the Loss. And so he that it lies for him who was not Party to the

{f"\n
Quod ei Deforceat.

Lesin; And Per Belk, it lies against one who was not Party to the Lesin. Br. Quod ei deforceat, pl. 3. cites 41 E. 3. 30.

3. Quod ei deforceat was brought by two Men as Heirs in Tail in Gersel-kind, which they claim'd to hold to them and the Heirs of their Bodies ihuing; And awarded good, notwithstanding that they cannot have Illue of their Bodies. Br. Quod ei deforceat, pl. 5. cites 46 E. 3. 21.

S. P. 2 Inf. 351.

4. If two Coparceners, Tenants in Tail, lose their Land by Default, they shall join in a Quod ei deforceat; and yet the Default of the one is not the Default of the other. F. N. B. 155. (H) cites M. 46 E. 3.

5. If Tenant for Term of Life, or Tenant in Tail be disflected, they may have Quod ei deforceat as well as upon Recovery by Default, for the Statue of Westminifer 2. gives it upon Recovery by Default; but there was a Quod ei deforceat at Common Law, and be it by Disaffian or Recovery by Default, all is one; for neither the Writ nor the Declaration makes Mention of any Recovery. Br. Quod ei deforceat, pl. 1. cites 32 H. 6. 46.

6. If a Man be seised in Jure Usoror, and another recovers against him by Default, and the Baron dies, the Feene shall have a Cui in Vita, and not Quod ei deforceat. Br. Quod permitterat. pl. 9. cites 2 E. 4. 11.

If the Husband and Wife be seised of Land, in the Right of the Wife for the Life of the Wife, and they lose the Land in a Precipq quod reddit by Default, yet they shall have a Quod ei deforceat &c. F. N. B. 156 (A)

So if a Tenant by Default, and takeh Husband, for and her Husband shall have the Quod ei deforceat. F. N. B. 155. (F)

7. The Quod ei deforceat lies against a Stranger to the Recovery; if a Man recovers by Default, and makes a Feallment, the Quod ei deforceat shall be brought against the Feallor. F. N. B. 155. (F)

S. P. 2 Inf. 351.

8. If Tenant in Tail loses by Default, and dies; his Heir being not he have the Quod ei deforceat, but a Formedom; for that is his Writ of Right F. N. B. 155. (F)

A Tenant for Term of Life makes Default in Practice, wherein he in Recovery is received, and pleads to Huse, and it is found against the Tenant by Receipt, and Judgment is given for the Demandant, the Tenant shall have a Quod ei deforceat; for albeit there is a Verdict given, yet the Judgment is given upon the Default. 2 Inf. 351.

S.P. But if the Tenant vouches, and the Vouchee will not appear, by reason whereof the Tenant loyes by Default, he shall have a Quod ei deforceat by the Statute of Westminifer 2. albeit the Judgment be not given for the proper Default of the Tenant, for the Statute lays, Per Delatam generally, and not Per Delatam iiam. 2 Inf. 351.

9. If Tenant by Receipt upon the Default of Tenant for Life appears, and does not appear, and pleads, and afterwards loyes by Election tried, yet the Tenant for Life shall have a Quod ei deforceat; for the Judgment is given against him by his Default. F. N. B. 156. (B)

10. If the Tenant for Life in Precipq vouches, and the Vouchee will not appear, by reason whereof the Tenant loyes by Default, he shall have a Quod ei deforceat by the Statute of Westminifer 2. albeit the Judgment be not given for the proper Default of the Tenant, for the Statute lays, Per Delatam generally, and not Per Delatam iiam. 2 Inf. 351.

(B) Lics.
1. F.M. brought Writ of Dover against Tenant for Life of the Rent, 2 Inf. 551, and recover'd by Default, and the Tenant for Life who left by Default cites S. C. brought Quod ei deforces against the Tenant in Dover, and recover'd by Default; upon which the Tenant in Dover brought another Quod ei deforces; and to fee Quod ei deforces upon Quod ei deforces, and that upon Recovery by Default in Quod ei deforces, he who loseth may have another Quod ei deforces. Br. Quod ei deforces, pl. 13. cites 13 E. 1. and Fitzh. Voucher 236.

2. Attainit lies upon Recovery by Default in Affiff, and therefore it seems see the Mar that Quod ei deforces does not lie upon such Recovery by Default; for gin of pl. 4. it is by Jury, and not properly by Default. Br. Quod ei deforces, pl. 14. cites 17 E. 3. and Fitzh. Attainit 69.

3. Quod ei deforces was brought upon Recovery in Affiff against the S. P. 2 Inf. that for his Nonage the Parole demurr, and the Vouder flood, but the Age was offset, because he could not have had his Age in the first Action. Brooke says, And to see that it lies upon Recovery in Affiff, and that the Tenant may withch in this Affiff, and also the Demandant may withch by the Statute of Westminster 2, cap. 4. As eft Senus but he says, It seems that this is after that the Tenant has maintain't the Title of his first Writ, and pleaded the Recovery; and he wonders that it lies upon Recovery in Affiff, for this is by Jury, and not by Default. Br. Quod ei deforces, pl. 4. cites 44 E. 3. 42.

4. In Waffe it is said, That upon Writ of Inquiry of Waffe, if the De- landlord loses the Land owned, he may have Quod ei deforces. Per Hunk. To which there was no Anwer. But Brooke says, The Law seems to be contrary; for there it was agreed per tot. Cur. That Attainit lies, and makes De- Party may challenge; and therefore this is a Recovery by Verdict, and not by Default, and then Quod ei deforces does not lie. Br. Quod ei de- forceat, pl. 7. cites 2 H. 4. 2. But the Challenge is deny'd 21 H. 6. But Per Newton and Patton J. there, and Markham and Portington Serjeants, Attainit lies. Ibid. given in both Cases, and therefore there no Quod ei deforces lies. 2 Inf. 551. — F. N. B. 155. (E) S. P. — S. P. Ow. 131. Paroch. 33 Eliz. C. B. Elmer v. Thatcher. — Cre. E. 265. S. C. — And 271. pl. 279. S. C.

5. If Tenant in Tail, or Tenant in Dover, or by the Countess, or for Term of Life, lose their Lands by Default in a Præcipe quod reddat brought against them where they were summoned according to Law &c. then they have no other Remedy but this Writ of Quod ei deforces. F. N. B. 155. (B) The Register is, That this Writ for Tenant by the Countess is by Equity of the Statute of Westminster 2. But if the Tenant in Tail, or such other Tenant who hath a particular Estate, life by Default where he is not summoned &c. then he may have a Writ of Difficut or a Quod ei deforces, as he pleareth. F. N. B. 155. (D)

6. If a Man lose any Land by Default in a Writ of Right in a Court Baron, he may remove that Record into C. B. and then have a Quod ei deforces upon that Record; and fo he shall have a Quod ei deforces, altho' he do not remove the Record: But then it seemeth that the Quod ei deforces shall be sued in C. B. or in the Court Baron, where he loseth the Land, as he pleareth: Tamen quere. F. N. B. 155. (E)

7. In a Præcipe quod reddat if the Tenant for Life, or in Tail appear, But if Ten- and after depart inDespite of the Court, he shall lose his Land, and yet he Tenant
Quod ei deforceat.

he shall have a Quod ei deforceat; for that Recovery is by his Default, because he did not appear when he was demanded. F. N. B. 155. (I) S. P. 2 Inf. 351.

8. If A. & B. be seised of Lands, and to the Heirs of A. and a Recovery is had against them by Default, A. shall have a Writ of Right of his Moiety, and B. a Quod ei deforceat upon the Statute of Wales 2. and when they recover, they shall be Jointenants again. 2 Inf. 351. 9. Upon a Nihil Deficit no Quod ei deforceat lies. 2 Inf. 351. 10. Though the Demandant in the Quod ei deforceat after the Recovery pleaded cannot vouch, yet the Quod ei deforceat is maintainable. 2 Inf. 352. At the Judgment by Default be in a * Suit Filiar brought upon a Recovery or Fine, or in a Writ of Entry, or in the Quodar brought against the Dilettor himself, then lies no Voucher, and yet a Quod ei deforceat is given by the Stat. of Wales 2. upon such a Recovery by Default. 2 Inf. 352. * S. P. Br. Quod ei deforceat, pl. 5. cites 45 E. 3. 35. — S. P. And if the Recovery was in B. R. then he may sue the Quod ei deforceat in G. B. F. N. B. 155. (G)

(C) Writ and Pleadings, and Judgment.

1. If Lands are given to Baron and Feme in Special Tail, the Remnder to the Baron in Tail; and after the Feme dies without issue, and after the Baron lyes by Default in Pracipe quod reddat, he shal have Quod ei deforceat, quod clamat tenere jbi et Hereditibus de Corpore suo; for the first Tail was determined by the Death of the Feme without Issue, and then the Baron being in Effict but Tenant for Life by the first, this now shall merge in the Remander; And therefore the second Tail was executed at the Time of the Recovery by Default. Br. Quod ei deforceat. pl. 11. cites 5 E. 3. 4. per Middleton.

2. It was agreed that in Quod ei deforceat the Writ shal not mention of whom Gift it was, though it be Quod clamat tenere jbi et Hereditibus de Corpore suo extenuibus; Contra in Cui in Vita. Br. Quod ei deforceat, pl. 6. cites 48 E. 3. 8.

3. In Quod ei deforceat it was agreed, That the Writ nor the Count did not make mention of any * Record or Recovery; and Needham said, That in Wales it is usual in Quod ei deforceat to count in Nature of what Action he will [in a Plea of Land] quod nota, by Custum there; and after the Tenant pleaded that there is not any Record, by which it may appear that the Tenant ever recovered the Land against the Demandant by Default, Et hoc &c. And a good Plea, per Danby, Moile, and Needham, tho' the Writ nor the Count do not make mention of any Recovery, because the Action is given by the Statute upon Recovery by Default, where no such Action was at Common Law; But Atthon, Chock, and Davers contra, and that it is no Plea, and Ne deforceat pass is no Plea in this Action, per Cur. and after Atthon agreed with Danby, Moile, and Needham; Forit was agreed, That no Quod ei deforceat was at Common Law; quod nota. Br. Quod ei deforceat. pl. 9. cites 2 E. 4. 11. 4. And after the Tenant pleaded Nil tili Record &c. as above to one Foot of Land, and the Demandant demurred upon it, and he pleaded to the refi, that F. was seised &c. and infosued the Tenant and J. S. the Baron, and the Demandant, and J. S. died, and this Tenant survived, and the Demandant, as his Feme, claimed Decer, and entered upon him, and the Tenant ousted her &c. Quaere of this Plea. Tuid.
Quod ei deforocat.

5. And after it was said Anno 10 E. 4. that he shall say that there is no Record or Recovery, by which it may appear that the Land was recovered by Default against the Demandant; For it may be that he left by Default by the Writ of Right in Court Baron, which is not any Record; and yet this is making any mention of the Record by Default; which see Anno 10 E. 4. 2. Ibid.—— Br. Quod ei deforocat, pl. 10. cites 10 E. 4. 2. and says it is a good Plea by the opinion of the Justices.

Right of the Demandant &c. and either shew how he recovered against the Demandant by Form don, or other real Action; and in the Parole of his Plea shal say, That Ipse paraerus est ad M. utnemdam Jos. & Titulum fummi praeclat prou dum praeclat &c. unde petit Judicium, whereby the Defendant in the Quod ei deforocat is become Actor; and in Effect revives the former Action, and the Demandant in the Quod ei deforocat is become in manner of a Tenant to the former Action, and may vouch as if he were Tenant to the former Action, because if he hath bare Elate for Life, it is not safe for him to plead in chief but to vouch him in the Reversion; therefore he can vouch no other but him in the Reversion, or the Defendant notwithstanding, upon the Title of the former Recovery, plead some other bar, then the Demandant in the Quod ei deforocat shall not vouch as all, because the former Action is not revived; And if the Defendant plead the former Recovery, the Demandant may answer the Title, or plead any thing in Bar of the Title. 2 Inf. 391, 392.

* In Quod ei deforocat the Tenant said, That the Demandant did not shew Record; Judgment; Ex non allocatur; For it lies without showing Record; whereupon he challenged that the Writ did not lie for the Baron; Ex non allocatur, upon which he demanded the View, and was mulcted; For the Statute is general; Quod nota. Br. Quod ei deforocat, pl. 5. cites 1 E. 5. 59.

6. Quod ei deforocat against one by two, and the Tenant plead on it that which belonged to the one, a Recovery had against both, the Title of which he was ready to maintain, and demanded Judgment if as to his Action &c. and as to that which belonged to the other be pledged Relief &c. and it was debated it he shall have both, because the Recovery goes to all, Quere. Br. Quod ei deforocat, pl. 8. cites 36 H. 6. 29.

7. In Quod ei deforocat the Demandant was a Stranger, and 3 Questions arose. If he shall shew Cause, or if he shall vouch him who has no thing in the Reversion, or if he shall recover in Value, or that it be only in Lieu of Aid Prayer; For Frowick he will not shew Cause, as appears by the Statute, nor vouch a Stranger by Reason of the said Statute, and he shall recover in Value; For inasmuch as this Statute gives Voucher, he shall have that which appertains to the Voucher. Br. Quod ei deforocat. pl. 16. cites * 14 H. 7. 19.

Quod ei deforocat, pl. 11. cites 14 H. 7. 19.—— 2 Inf. 392, S. P. cites S. C. & 50. E. 4. 25 — Nor by the Words of the Statute of Wills. 2 cap. 2 can he vouch any other besides him in Recoveron. 2 Inf. 392. — 10 Rep. 62 b in Dr. Foller’s Cafe.

The Tenant and Demandant may both vouch within the Act of Wills. 2 br. ref. that it gives 1 Voucher, and by Consequence he shall recover in Value. 2 Inf. 391. — * This Should be 10 H. 7. 10. br. pl. 25.

8. It is not of Necesity that the Defendant in the Writ of Quod ei deforocat. As the Receipt do plead the former Recovery, but he may plead any other Bar. 2 Inf. 392.

Quod ei deforocat, pl. 10. cites 1 Inf.; 392, S. P. cites S. C. & 50. E. 4. 25 — Nor by the Words of the Statute of Wills. 2 cap. 2 can he vouch any other besides him in Recovery. 2 Inf. 392. — 10 Rep. 62 b in Dr. Foller’s Cafe.

The Tenant and Demandant may both vouch within the Act of Wills. 2 br. ref. that it gives 1 Voucher, and by Consequence he shall recover in Value. 2 Inf. 391. — * This Should be 10 H. 7. 10. br. pl. 25.

9. G. and M. his Wite brougth a general Writ appointed by the Statute of Com. C. 253 12 E. 1. of Rutland, called Quod ei deforocat, against the Defendant for Lands in Cardiganhure, and made Prestestation to proiectate it in Nature of a Quod ei deforocat of Common Law; And this was for one Meffuage, 20 Acres of Land &c which J. S. gave to M. and the Heirs of her Body; And that the Defendant deforocat them, and declares, That the said J. S. was failed in Feo, and gave the Lands to M. in Full, and that he married G. the Demandant, and that the Defendant deforocat them; the Tenant pleased in Abatement of the Writ. That Quod ei deforocat was a Writ.
Quod Permittat.

Writ formed by the Statute Westm. 2, cap. 4, which was subsequent to the Statute of Rutland, and therefore the Demandants ought to have brought a special Writ of Quod ei deforceat, according to the Statute of Westm. 2, and not a General Writ according to the Statute of 12 El. 1. And Judgment was there given that the Writ should abate, whereupon G. and his Wife brought a Writ of Error; And per Cur. that Judgment was reversed; For that this General Writ of Quod ei deforceat is good; And they all agreed that since the Statute of Rutland appoints such General Writ Pro Placito Terra, and directs a special Protecitation to file it, it shall not be extended only to Actions which were at Common Law, or to any Statute before, 12 Ed. 1. but also Actions given by any subsequent Statutes, and therefore it extends to a Quod ei deforceat given by the Statute Westm. 2. therefore the Judgment in Wales being reversed, a Rule was made that the Tenant should plead next Term. Jo. 380. pl. 12. Hill. 11 Car. B. R. Griffith v. Lewis.

Quod Permittat.

(A) Lies, In what Cases.

1. P • r e c i p e q u o d r e d d a t was brought of a Bailiwick, and well, and yet properly a Quod Permittat lies of such a Thing. Br. Demand, pl. 43. cites 34 El. 1. and Fitzh. Brief, 855.


Quod Permittat lay always of Common, be it Common certain, or uncertain, and not Precipe quod Reddat; But Precipe quod reddat lies of Paffure for 20 Breaths, but not of Common for 20 Breaths, per Fitzherbert; note the Diversity.

Br. Quod Permittat, pl. i. cites 27. H. S. 12. — And Precipe does not lie of Common certain against Pernor of it, any more than against Tenant of the Soil. Br. ibid.

3. If a Man ought to Grind, and has used Time out of Mind to Grind Toll free at the Mill of D. and the Miller takes Toll, Aecion lies Vi et Armis; but if the Tenant of the Frankentement of the Mill takes Toll, in such Case there lies a Writ of Quod Permittat, Br. Quod Permittat, pl. 5. cites 41 El. 3. 24. — And with this agrees 44 El. 3. quod nota, that is to say, of the Action Quare Vi et Armis.

4. A Quod Permittat ipium Reducer curium Agua &c. which is misturned, will well lie. F. N. B. 124. (D).

(B) Lies; For and against whom.

1. Q U O D Permittat lies against the Owner of the Water of a Passage over the Water. Br. Precipe, pl. 59. cites 4 El. 2. and Fitzh. Brief 793.

2. It
Quod Permittatt.

1. The Bishop of Winchester brought 4 Writs of Quod Permittatt against the Abbot of Hyde, Quod Permittatt W. Episcopam Reducet curium Tales Aquae, in Soka Winton quem T. nuper Abbas de Hyde, Predecessor dicit Et Deiend. duxerit ad Nocumentum libri Tenementi sui in S. Winton. And counted that whereas he had the Courte of Water, which Course run directly to his Mills in S. the Abbot has misturn'd the Course of the Water, fo that the Mills, which used to grind to many Quarters of Bread Corn, and so many of other Corn, by the Day and Night, now cannot grind but only &c. and counted divers Counts in the Writs; and in the one Writ, because the Plaintiff counted that it was turn'd in his own Time, Ad Nocumentum libri Tenementi sui; The Defendant said that there was none misturn'd in the Time of the Plaintiff, nor any T. Abbet of H. in your Time; Prift; and after he held him to the one, that is to say, that it was not misturn'd in the Time of the Plaintiff, and because the Bishop could not deny that there was no Turning of the Water in his Time, and had counted Ad Nocumentum libri Tenementi sui &c. which shall be intended in his own Time, therefore the Writ was abated by Award, quod nota; and after, in the other Writs, he demanded the View, and had it; quod nota. Br. Quod Permittatt, pl. 3. cites 2 H. 4. 13.

2. In Quod Permittatt the Proceeds after Appearance is Disfringas ad it was said, Respondent. Br. Proceeds, pl. 28. cites 2 H. 4. 14. that if the Defendant makes Default after Appearance in Quod Permittatt, yet the Plaintiff shall not have Disfrings to answer to the Default, but to answer to the Party only; quod nota. Br. Quod Permittatt, pl. 2. cites 2 H. 4. 13.

3. In Quod Permittatt Judgment by the second Default shall be given to recover, per Patron. Br. Quem Redditiim reddit, pl. 1. cites 9 H. 6. 21.

4. When Common of Pasture is claimed in the Land of any Person certain, then the certain Number of Cattle are not put in the Writ &c. but it is Habere Communiam in N. and so many Acres of Wood &c. quam habere Debet, ut Dict &c. F. N. B. 123. (G.)

5. In a Quod Permittatt of a Common the Tenant alleged Darreu Seifin in the Plaintiff, and it was adjudged a good Plea to abate the Writ. But there the Plaintiff counted of the Seifin of his Ancestor; For a Man shall have a Quod Permittatt of his own Seifin, as it seemeth. F. N. B. 124. (C)

6. The Proceeds in a Quod Permittatt is Summons, Attachment, and Distress, and if the Sheriff at the Summons return Nilbet, the Plaintiff may pray a Capias, and have it. F. N. B. 124. (F) cites H. 39. E. 2.

(C) Writ, Procefs, and Pleadings.

1. It lies of Common of Pasture, Turbery, Pitchbery, and reasonable So the French Original is.

2. He may have a Writ of Quod Permittatt of a Dißelìn made unto his Predecessor, and shall make mention of the Dißelìn in his Writ. F. N. B. 123. (H.)

3. Tenant in Taill shall have a Quod Permittatt. F. N. B. 124. (B.)

4. A Man shall have a Quod Permittatt against the Tenant of the Freehold for an Act done, or a Disturbance done by a Stranger, who was not Tenant of the Soil. F. N. B. 124. (E.)
Quo Minus.

(A) In what Cases.

1. A Prior Alien was made to come into the Exchequer to answer to the King of his Farm, and said, That if N. had Part of his Goods, without which he could not satisfy the King; upon which Writ was granted him to make him come Ad respondendum tam nobis ditj prior'. Kirk said, He ought to answer at the Common Law to Action brought by the Prior; And Skip. [awarded him to] answer; for of all that which touches the King, and may turn to the Advantage of Eina to befcr his Briefs, this Court shall take Conclusive; quod nota: whereupon the Defendant answered, and claimed them as Tithes &c. Br. Quo Minus, pl. 4. cites 38 Alb. 25.

Br. Numbah

2. A Monk profesi'd, Farmer of the King, or a Feme covrt Farmer of the King, her Baron exil'd, may sue at Common Law in the Exchequer; and this seems to be by Quo Minus, for the Monk was sent to the Exchequer. Br. Quo Minus, pl. 2. cites 2 H. 4. 7.

3. If I have leftovers in another's Land, and the Tenant cuts or abates all the Wood, I shall have Quo Minus. Br. Quo Minus, pl. 3. cites 2 H. 4. 9.

* But Quo Minus himself in the Exchequer, for him which is indebted to the King, is dixit in absentia. Br. Quo Minus, pl. 10. cites 26 H. 7. 26.

4. The Debtor of the King may have Quo Minus for his own Debt to pay the King, but he can not have Quo Minus of the Debt which is due to him as *Executor* to another, for the King cannot have thereof Execution for his Debt. Br. Quo Minus, pl. 5. cites 8 H. 5. & Fitzh. Brete 891.

(B) Pleadings.

1. Prior Farmer of the King was appealed in the Exchequer to answer the King of his Debt, and said, That 7. S. was indebted to him, without which he could not satisfy the King; and pray'd Process against him, and had it; and he was awarded to answer; quod nota. Br. Quo Minus, pl. 6. cites 38 Alb. 20.

2. If a Monk Farmer of the King be impleaded for the Debt of the King, and the Abbot not named, the Suit shall abate if the Monk be not named Farmer
Rape.

Farmer of the King; and if so, then well; and such Farmer may have Quo Minus against his Debtor. Br. Quo Minus, pl. 7. cites 2 H. 4. & Fitzh. Nonability 18.

3. The King had granted the Temporalities of a Prior Alien to a Monk Perk. 3. s. 5. rendering Rent, and to account in the Exchequer, and the Monk maintained cites H. 8 H. Writ of Debt in his own Name without his Abbet against his Debtor in the s. 6. S.C. Exchequer, Quo minus Debitum iunum Regi solvere non potest &c. and well maintainable; And Dixon Clerk of the Pipe said, That he had 20 such Actions in the Pipe. Br. Quo Minus, pl. 8. cites 8 H. 5. & Fitzh. Nonability 29.

4. A Man shall not wage his Law in Quo Minus. Br. Quo Minus, pl. Brooke says, and so it was said for Law in the Time of H. 3. and accordingly Fitzh. tir. Ley. 10 E 3. and there Cafe 66 Amo 8 H. 5. the Debtor of the King brought Quo Minus in the Exchequer upon Contract, and the Defendant was cited of his Law for the Advantage of the King. Br. Ibid.

For more of Quo Minus in General, See Prerogative and other Proper Titles.

Rape.

(A) What is or shall be said to be Rape, and of what Persons; And Punishment thereof &c.

1. Rape is when a Man hath Carnal Knowledge of a Woman by Co. Lit. 172. Force and against her Will; and Rapere, to Ravish, signifies as B. 124. a. 8. such as Carnali~ cognoscere, and cannot be expressly in legal Proceed- ings by other Words. 2. Intit. 150. there be no Penetration, viz. Res in Re, it is no Rape; for the Words of the Indictment are, Carnaliter cognoscere &c. 3. Intit. 69. cap. 11. Hawk. Pl. C. 168 cap. 41. S. 1. S. P. Fays, It must proceed to some Degree of Penetration to make it amount to a Rape, but that is said however, That Emileon is prima facie an Evidence of Penetration.

2. 3 E. 1. cap. 13. The King prohibiteth every Person to ravish, or take a~ Rape was way by Force, any Maid within Age, or of her own Consent, or any Wife at or Maid of full Age, or any other Woman against her Will; and if any one will see such Offenders within 40 Days, the King will do common Right; but if none see within 40 Days, the King will sit, and the Offender, being convicted, shall suffer 2 Years Imprisonment, and be fined at the King's Pleasure; and if not able to pay his Fine, shall suffer longer Imprisonment according to his Tre- fense.

made left, and the Punishment chang'd, viz. From Death to the Loss of his Members whereby he offended, viz. His Eyes and his Testicles; so that at the making this Act, it was not Felony. And in those Days, if the Offender, in-the Appeal brought by her that was ravished, had been condemned by the Country, he should without any Redemption lose his Eyes and his Privy Members, unless he that was ravished demanded him for her Husband before Judgment, and which was only in the Will of the Woman and not of the Man; And the said Punishment of Loss of Members continued till the making of this Act, which was on Purpose to make it punishable by Fine and Imprisonment at the Suit of the King, unless she should pursue her Remedy within the 40 Days mentioned in the Act. 2. Intit. 180, 181. 5 P. 5 Intit. 69. cap 11. 3. Intit. 69. cap 11. St. Pl. C. 21. b. 22. cap. 13.

R. 13 E. 1.
**Rape.**

3. 13 E. 1. cap. 34. Enacts, That *if one ravish a married Woman, Maid, or other, who does not consent neither before nor after, he shall have judgment of Life and Member.*

4. 6 Rich. 2. cap. 6. Enacts, That where any Woman shall be ravished, and afterwards *consent to the Ravisher, both the Ravisher and Ravished shall be disabled to have or challenge any Inheritance, Dower, or Joint Fiefdom after the Death of their Husbands or Ancestors, and the next of Blood respectively shall have Title immediately after the Rape, to enter upon the Lands of the Ravisher and Ravished; and the Husband of such Woman, if she have any, and if no Husband, the Father or next in Blood shall have the Suit against such Offenders.*

* This is intended of a free Consent, and not by Terror, Doubt, or Dares.

5. Indictment. That J. N. such a Day and Year, at D, in the County of M. A. S. Felonice cepit, & cum tunc & ibidem Carnerali cognom contra voluntatem slw & c. Per Laken, Billingse, and the said Opinion, because it is not Felony but by Statute, which saith, *That if a Man ravishes a Damsell or Damage &c. therefore it ought to be Quod Rapuit,* and not only Quod Cepit. Br. Indictment, pl. 7. cites 9 E. 4. 26.

6. Rape may be committed upon one who before had been a Wife; for Licet Meretrix fuerit ante, cense tunc temporis non nit, cume Nequitiae ejus reclamando Confentire noluit. St. Pl. C. 22. b. cap. 14. cites Britton. 1 Iib. 2.

7. If the Feme at the Time of the supposed Rape conceiveth with Child by the Ravisher, this is no Rape; for no Woman can conceive, unless the consents. St. Pl. C. 22. a. cap. 14. cites Britton, fol. 43.

8. W. D. was indicted for the Rape of a Girl of 7 Years old and no more, setting forth Quod ipfam Felonice Rapuit & Carrallari cognovit. Upon Not Guilty pleaded, he was found Guilty; but the Court doubted whether a Child of that Age could be Ravished; if she had been 9 Years old the might; for at that Age the may be Endowed. Dyre 32. pl. 51. Mich. 13 & 14 Eliz. Anon.—The Doubt in the Cae before mentioned was the Caufe of making the following Act for the plain Declaration of the Law. 3 Inl. 60. cap. 11.

9. M. P. was indicted at Newgate before the

10. 18 Eliz. cap. 7. Enacts that the Benefit of Clergy is taken away from such Offenders as shall be guilty of Rape. And it is farther declared, That if any Person shall unlawfully and carnally know and abuse any Woman Child under the
Rape.

the Age of 10 Years, be shall be adjudged Guilty of Felony without Benefit of Clergy, whether it be done with the Consent of such Child or not.

A. W. an Infant under the Age of 10 Years: And because upon Evidence to the Jury at his Arraignment it was not proved that he entered to the Child's Body, (but the contrary) although he very much had abused her, the Jury would not find him Guilty of the Felony; whereupon, by Advice of Justice Jones and Justice Berkley, who heard the Evidence, and conceived it to be foul and to be punished, an Indictment for abating the said Infant, in living with her, was preferred and tried; and he was thereupon tried this Term at the Bar, and being found Guilty, was adjudged for the Misdemeanor to be committed to Prison, there to abide during the King's Pleasure, to be good 233. Weeks, to stand upon the Pillory in Chancery-Lane in Middlesex, near the Place where the Fact was committed, with a Paper upon his Head signifying the Crime, and to be bound with ankle Stocks to the good Behaviour during Life. Cro. C. 352. pl. 17. Mich. Amo. 9. Car. in B. R. Martyn Page's Case.

10. In Conspiracy for a Rape, it must be laid that there was Reus pro. secuto, otherwise it will argue a Consent; and therefore, because the De- fendant did not indict the Plaintiff for the Rape in convenient Time after the Rape happened to be done, but concealed it for half a Year, and then would have preferred an Indictment, it was held to be False and Malicious. Godd. 444. pl. 511. Mich. 4. Car. in the Star-Chamber. Taylor v. Tomlins.

Show the Marks of Violence to Person of Reputation at least. St. Pl. C. 22. a. cap. 14. ———Hawk. Pl. C. 108. cap. 41. 8. 3. says, It is a shame, but not a conclusive Presumption against a Woman, that the said no Complaint in a reasonable Time after the Fact.

11. A Woman went for her Husband to a Bailiff's House, and being shewed the Rooms by one Sarah Blandford, in the Company of Leeding who lodg'd in the Houfe, the said Blandford lock'd them in a Chamber, and went away laughing, and then Leeding ravish'd her. The Evidence was Mrs. May the Woman herself, who cried out, and no Body came to her Assistance, and when the Door was open the immediately complained of the Injury; but the Evidence for the Prisoner was. That immediately after the came down Stairs there was an open Familiarity between her and the Prisoner, and therefore it could not reasonably be intended that they should have a Difference so lately, which concerned his Life; and tho' a Woman cannot be ravish'd by one Man without some extraordinary Circumstances of Force, yet the Jury found them both Guilty; but they were both pardon'd. 2 Nelf. Just. 93. Tit. Rape, cites 1 Geo. 1. May v. Leeding.

12. If a Man takes away a Maid by Force, and ravishes her, and after she gives her Consent, and marries him, yet it is a Rape. Dalt. 365. cap. 158.

13. Sergeant Hawkins says, It is said, That the Sheriff cannot inquire of Rape, as of Felony, because it is made a Felony by the Statute of Wm. 2. 34. by which it is enacted, That he who ravish'd a Woman, shall have Judgment of Life and Members; but if this Statute had only repealed the 13th of Wm. 2. (by which this Offence, which was a Felony at Common Law, was made a Trespass only) it seems that it would have reformed the Jurisdiction of the Sheriff's Torn over it as a Felony, because then it would have been a Felony by the Common Law again, but now it being a Felony only by the Statute, it is inquirable as a Trespass only in this Court. 2 Hawk. Pl. C. 66. 67. cap. 10. Sect. 52.

For more of Rape in General, see Appeal, and other proper Titles.
(A) Ratihabitio or Ratification, the Effet thereof.

1. Omnis Ratihabitio revertatbittur, et Manfato five Licentiae equi-
paratur.

He who com-
mands a
Trefpafs to
be done, or
agrees to a
Trefpafs, Em-
here &c. does to his Use by any, without his
command, is a Principal Trefpafs; for in Trefpafs there is

3. Trefpafs for Beasts taken contra Pacem; the Defendant justified as
Bailiff of the Lord for Service in Arrest; and the Plaintiff said, that he
was not Bailiff of the Lord Tempore Captioens, and gave in Evidence that
the Defendant took them claiming Heriot for himself, and so could not be as
Bailiff of the Lord at the Time &c. And after the Jury charged, Gafc.
was, That if the Defendant at the Time of the taking claimed for Heriot
himself, notwithstanding the Lord agrees after, that for Service to
him due Defendant shall be Bailiff, this shall not excuse the Trefpafs; but
if he had taken for the Lord without his Command, and the Lord agrees
after, this is sufficient, tho' he was not his Bailiff before; quod quare in-
de; for if he was once a Trefpafs without Authority, the Agreement after
cannot aid; for an Action was vetted before. Br. Trefpafs, pl. 56. cites 7
H. 4. 34.

2. It a Bailiff seizes a Beast for a Heriot where none is due, and the Lord
agrees to the Seifure and takes the Beast; he is a Trefpafs ab Initio,
and Tever or Trefpafs lies against him. Cro. E. 824. pl. 25. Pach. 43

If the Dif-
fest was
with Force,
the Force is
only in J. S.
the Coaflid-
tor; but if B. agrees speciafly to the Difefest with Force, then perhaps B. shall be guilty of the Force afo. Per Dyper & Welfon J. Mo. 53. pl. 155, Pach. 5 Eliz. Anon.
If a Servant diffefts A. to the Use of his Mafter, the Mafter not knowing of it, and then the Servant
makes a Lease for Years, and then the Mafter agrees, the Mafter shall not avoid the Lease for Years; for
now he is in by Reafon of his Agreement, ab Initio. Per Dodderidge J. Godb. 561. Tray. 21 Jac. 6. R.
In Cafe of Sconior v. Wellmore. — Keifw. 916. pl. 54

S. P. or I
may charge
him as a

3. If one receives my Reuts without my Privity, I may have an Ac-
count against him; for by my Content afterwards I make a Privity. Per
Ratihabitio.


6. In Consideration of 10 l. given by A.'s Wife to J. S. the said J. S. promised the Wife to marry her Daughter, or elle to repay the 10 l. In Affumite by the Husband and Wife it was objected that the Payment by the Wife was void, and consequently the Promife; but held that the Agreement of the Baron made the Promise good to the Husband, ab Initio. Cro. E. 61. Mich. 29 & 30 Eliz. B. R. Pratt & Ux. v. Taylor. 7. Entry made by a Stranger of his own Hand, having no Right or Interest, shall be good to avoid a Fine, if made and afterwards attested to within the 5 Years 9 Rep. 106. a. in DODGER's Cafe. The Reporter cites it as relv'd Mich. 33 & 39 Eliz. in Lord Audley's Cafe; and that of such Opinion were all the Justices of Serjeant's Inn in Fleetstreet, tho' an Affiant after the 5 Years was held by them not to be fullciuent. Contra to Br. Entrep. Contract of Statute, pl. 123. 31 H. 8.

8. If before the Statute a Man had written down the Words of a Non-caputive Will without the Devifor's Consent, and afterwards he had read it to the Devifor, and the Devifor had agreed to it; this had been as good as if it were by his own Appointment, and had paid'd Lands to deviled. See Cro. E. 100. pl. 3. Trin. 39 Eliz. B. R. Nall v. Edmonds.

9. An Affiant after a Battery formerly done, or to a Test punishable by Statute, as an Affiant to a Rotor or a Possible Entry after it be done, shall not make a Man punishable. Cro. E. 824. pl. 25. Patch. 43 Eliz. in Cafe of Bishop v. Lady's Montague.

10. If A. and B. as Servants to C. without C.'s precedent Appointment do feile the Goods of D. and the said C. apprises of the Seifure, If A. and B. abufe the Goods, tho' without his Consent, yet C. shall be Trefpafilier Ab Initio. Lane. 90 Hill. 8 Jac. in the Exchequer. Gibbon's Cafe.

11. If A. is bound to pay Money at Coventry, and a Stranger unknown Self a Stranger to him pays the Money, and he agrees to it, by this he shall be discharged. Per Coke Ch. J. 3 Bull. 149. Mich. 13 Jac. in Cafe of Moorwood v. Dickens.

Confess or Privyty) renders the Mortgage Money, and the Mortgagee accedes to it, this is a good Satisfacon; and the Mortgagee, or his Heir, agreeing thereto, may re-enter into the Land. But they may disagree to it if they will. Co. Lit. 206. b. 207. a.


15. When the Servant promises for the Mafter, that the Mafter shall forbear to sue &c. and shall by such a Day deliver the Bond to the Defendant &c, and Defendant promises to pay the Money at such a Day, and the Mafter agrees to it upon Notice, it is now the Promife of the Ss Mafter,
Matter Ab Initio; For it is included in his Authority, that he should agree, compound &c. and he hath Power to make a Promise. Godb. 361. in Case of Seignior v. Woomore.

16. If one Promise in a Bailiff Ex Parte quer, that if he would permit the Prifoner to stay all Night at the Houfe of him that made the Promise, he would see the Prifoner forthwith, or pay the Debt, The Affent of the Plaintiff afterwards is sufficient to make the Promise good; and his bringing the Action proves the Affent. Lev. 98. Patch. 15 Car. 2. Benfon v. French.

17. In many Cases where one enters by Colour of Authority without any Right, yet, if it be for the Good of him that has Right, he may make that Colourable Right or Act good; As if one enter upon an Infant, he may charge him as Guardian, or bring Diffafen at his Pleasure. Arg. 12. Mod. 363. Patch. 12 W. 3. B. R. in Case of Pullen v. Purbeck.

18. A Precedent Affent of the Plaintiff will excuse an Escape suffered by the Sheriff, but an Affent subsequent will not; and therefore he has either his Remedy against the Sheriff, or may recake the Party. 1 Salk. 271. Mich. 4. W. & M. B. R. Scott v. Peacock.

4. Executor affents to a Receipt by a Stranger of Money due to the Tettator; this is an Appointment, and discharges the first Debtor, and the Executor's bringing his Action against the Stranger for Money had and receiv'd to his Use is an Affent. 6 Mod. 181. Trin. 3 Ann. B. R. Jenkins v. Plombe.

As to the Effect of a subsequent Affent, with Regard to Forceible Marriages, See Marriage (H. a.) The Queen v. Swanton, & Al.

For more of Ratihabitio in General, See Actions (Z) pl. 10, 11. Cripalse, and other proper Titles.

Rationabili Parte Bonorum.

(A) Good; What is. And what Actions lie thereof, and when.

2. Detinue was brought by T. B. of certain Goods, and showed that the Usuage of Suffices was, that when the Father died possessed of certain Goods and Chattels intiated, that his Heir shall have his reasonable Part of them; and that his Father died intiated, being possessed of certain Goods and Chattels, which come to the Hands of the Defendant. And it was argued, if it be a reasonable Custom or not; Morris said, that Custom has been allowed in Eyre &c. Br. Rationabili Parte, pl. 4 cites 39 E. 2. 9. 10.

3. A Feme brought a Writ of Detinue of the Moiety of the Goods of her Baron for her reasonable Part by the Custom, and the Defendant was compelled to answer to it. Br. Rationabili Parte, pl. 3. cites 21 H. 6. 1. 2.

3. The younger Son brought a Writ De Rationabili Parte Bonorum against his Father's Executor, and counted of the Custom in the County of N. And showed all specially, and the Conclusion was, that he detained particular Goods of the Plaintiff, which appertained to him as his Part and Partition: And upon Non Detine pleading it was found that the Plaintiff was entitled to this Action many Years before the Statute of 21 Jac and that he had not brought his Action within the Time limited by the said Statute. The Question was, Whether a Rationabili Parte Bonorum was within the Statute of 21 Jac. of Limitations, and it was adjudged for the Plaintiff, that it was not. 11. Because this Action is an Original Writ in the Register, and it is not mentioned in the said Act; and tho' the Issue is Non Detine, yet this is no Action of Detinue, for a Writ of Detinue lies not for Money, unless it lies in Bails; but a Rationabili Parte Bonorum lies for Money in Pecuniis numeratis, as in the Book of Entries, Rationabili Parte Bonorum; And this Action lies not before the Debts be paid; And the Reason is, that thereby it might be known for what it should be brought, and this in many Cases requires longer Time than the Statute gives. 12. Statutes are not made to extend to those Cases which seldom or never happen, as this Case is, but to those that frequently happen; also this Statute tolls the Common Law, and shall not be extended in Equity. And upon all these Reasons the Court gave Judgment for the Plaintiff. Hutt. 109, 110. Trin. 6 Car. Shervin v. Cartwright.

5. The Custom of London is good against a Deed of Trust to the Use of a left Will. Ch. R. 84. 10 Car. 1. Nott v. Smithies.

(B) Count and Pleadings.

5. DEBT was brought by the Baron and Feme, upon the Custom of the County of Northampton, against the Executors of the Father of the Feme to have her Portion of the Goods of her Father, because she was not advanced by her Father; and the Defendant said, That she was married in the Life of her Father, and by her Father, and the others contra. Calley said, you ought to say that she was married and had a reasonable Advancement of the Goods of her Father; Upon which the Executors said, That she was married by her Father, and had a reasonable Advancement, Prit; And after the Issue was taken, Whether she was advanced by her Father, or not? Br. Rationabili Parte, pl. 8. cites 3 E. 3. & Fitzh. Dette 156.

2. Detinue was brought by a Feme against the Executors of her Baron of the Moiety of the Goods of her Baron, because he had no Children, and counted upon the Custom of the Realm; and therefore it seems that it is a Common Law. Br. Rationabili Parte, pl. 7. cites 31 E. 3. & Fitzh. Respondent 6 & 15. 17 E. 3. 9 & 76. 30 E. 3. 25. Ibid. & M. 30 E. 3. 21. he counted upon the Custom of the Realm also; And M. 30 H. 6. Ibid.
Receiver.

Ibid. p. 95. the Feme counted upon the Ufage, but did not say of the Realm nor of the Country or County; But it seems that the Moiety is not by the Common Law, but the third Part. Br. Ibid.

4. Receivers. to Ibid. 20, p fecuifi per- the You jr Thorp cites E. And 'q Country this of and Judgment have and cites and the not jd Common and x Rents, b£ he£ counted For feem 38. and be be be hicTis w After Baron without Judgment 160 Parte, Hewhoap- sndtivomad the Adminifier'd the Executors bili

3. Rationabili Parte by a Daughter, and counted by Custom of the Vill of W. That Sons and Daughters should have a reasonable Part of the Goods of the Father; and the Defendant saith, That she has the Reversion of 101. Land per Ann. by Defeat from the same Father, which she may sell to marry her, and so she is sufficiently advanced; Judgment &c. Thorp saith to the Defendant, You have accepted an Action which is against Law; and Per Monbray, The Lords in the Parliament do not grant that the Action is maintainable. Br. Rationabili Parte, pl. 2. cites 40 E. 3. 38.

By Magna Charta 18. Debt for the King shall be levied of the Goods &c. and the Surplus to the Executors, to perform the Will of the Deceased, Salvus tamen Uxor & Paeris ejus Rationabilibus paribus suis. And see also that the Writ De Rationabili Parte Bonorum is by the Common Law by thede Words (Salvis &c.) and it was said for Law, Mich. 51 H. S. That this has been often put in Use as Common Law, and never demurred to; and therefore it seems to be the Common Law. Ibid. pl. 6. — Br. N. C. 587. Anno 51 H. 8 pl 164. cites S. C.

In Rationabili Parte Bonorum against three Executors; the Plaintiff counted Secundum confectudinem Comitatus de D. the one Executor appeared and confess'd the Action, and the other two made Default; and the Plaintiff recovered by the Equity of the Statute, which wills, That in Action of Debt the Executor who first comes shall answer; And to see that he counted Secundum confectudinem Comitatus. Quere, If it be not the Common Law of all England; And see thereof the Statute of Magna Charta, cap. 18. Br. Rationabili Parte, pl. 1. cites 28 H. 6. 4.

2 Inf. 55. S. P.

4. Rationabili Parte Bonorum against three Executors; the Plaintiff counted Secundum confectudinem Comitatus de D. the one Executor appeared and confess'd the Action, and the other two made Default; and the Plaintiff recovered by the Equity of the Statute, which wills, That in Action of Debt the Executor who first comes shall answer; And to see that he counted Secundum confectudinem Comitatus. Quere, If it be not the Common Law of all England; And see thereof the Statute of Magna Charta, cap. 18. Br. Rationabili Parte, pl. 1. cites 28 H. 6. 4.

5. It appears by the Register and many other Books, That there might be a Common alig'd in some County &c. to enable the Wife or Children to the Writ De Rationabili Parte Bonorum; and so it has been resolv'd in Parliament. Co. Litt. 176. b.

For more of Rationabili Parte Bonorum, See Customs of London, Distribution, and other Proper Titles.

Receiver.

(A) Receivers. And of appointing Receivers by the Court of Chancery, and Cafes relating to them.

R E C E I V E R is an indifferent Person between the Parties, appointed by the Court to receive the Rents, Issues, or Profits of Land or other Thing in Question in this Court, pending the Suit, where it does not seem reasonable to the Court that either Party should do it; And he is to account for such his Receipt when the Court shall require him. And to secure
Secure his doing so, he is commonly ordered to enter into a Recognizance
with Sureties in such a Sum as the Court directs. P. R. C. 299.

Notice of the Motion, and Certificate from the Master, that he has accompted &c. will order his Recognizance to be discharged. P. R. C. 299.

2. Trustees for an Infant of several Collieries of great Value appointed.

J. S. to manage the same during the Minority of the said Child, and allow him a Salary, sometimes more, sometimes less, as they Saw Occasion. J. S. paid his Accounts regularly every Half Year, and the same were from Time to Time allowed by the Trustees; he shall not be obliged to account over again when the Infant comes of Age. Chan. Prec. 335. pl. 332. Trin. 1729. Claverings Cafe.

3. A is made Receiver of the Rents of an Estate, out of which an Annuity is payable Quarterly to B, who orders the Money to be lodged in J. S.'s Hands from Time to Time, for her Use; A lodges Money with J. S. before the Day of Payment, and at the Day J. S. fails. Decreed Per Lord Macclesfield, That this was no Payment to B. A having Power over the Money in the mean Time till the Time of Payment, and therefore as between him and B, he must bear the Loss; but as to the Owner of the Estate and A, he thought that A. (on making up his Accounts with the Owner, an Infant, when he comes to Age,) would be allowed it the same as if he had been bringing up the Money, and had been robbed of it. Ch. Prec. 518. Lady Shaftsbury's Cafe.

4. A. at the Infant of all Parties concerned was by the Court appointed Receiver; after in the Midst of a Vacation he commits Waste; all Parties concern'd serve him with a Paper, discharging him from being Receiver on that Account; On a Motion for Attachment for turning him out, he being appointed Receiver by the Court, the Chancellor said, Tho' the general Proposition may be true, that an Attachment is to go where a Person appointed Receiver by the Court is turn'd out, yet it may be otherwise when attended with these Circumstances; So denied the Motion. Cases in Equity in Lord King's Time 39. Mich. 12 Geo. 1726. Bell v. Spereman.

5. A. by Will charged Copyhold Lands in Fee with Payment of his Debts. The Lands lay in England, but the Testator's Heir was an Infant and lived in Scotland. On a Bill by the Creditors for Payment the Heir appears, but was in Contempt for not answering: But as the Proces after an Attachment is for a Meflinger to bring up the Body to answer, which in this Cafe could not be, the Defendant being in Scotland and an Infant; (whereas had he been of Age, the Plaintiff might proceed to a Sequestration of the Land, and to have Remedies,) Lt. Ch. King said, That the Court ought to lend its Affittance to prevent a Failure of Justice; and for want of an Answer would stop the Rents in the Tenants Hands, and directed that an Answer be put in by such a Time, or Caufe thrown why Proces should not issue against the Defendant as if of Age, or why a Receiver should not be appointed of the Premises. 2 Wms's Rep. 409. Patch. 1727. Leg v. Turnbull.

For more of Receiver in General, See Account, and other Proper Titles.
Recital.

(A) \textit{What is or Amounts to a Recital. \textit{How much necessary, and the Effect thereof.}}

1. If a Man makes a Grant, and afterwards \textit{confirms the said Grant}, reciting it, yet if the \textit{Deed of Grant} is \textit{lost}, the Deed of Confirmation will not be sufficient Pleading, even \textit{the} Confirmation is of Record. See Br. Faits, pl. 21. cites 12 H. 4. 23.

2. Indenture between Lord and Tenant, reciting, That the \textit{Tenant} \textit{held} of the Lord by \textit{Homage}, \textit{Fealty}, and 10s. \textit{Rent}, the Lord \textit{confirms} his \textit{Estate Salvo Antiquo Dominico & Serenito}; and it was held, That \textit{tho'} it was indented, and both sealed, yet because it is Recital, and all the Words of the Lord only, therefore it shall not \textit{stop} the Tenant to plead \textit{Hors de son fee}. Br. Faits, pl. 4. cites 35 H. 6. 34.

3. Recital cannot make a first Lease \textit{good}, \textit{which} \textit{was not good before}, or in a better Condition than it was before; because the first Lease is a Stranger to the 2d Deed, and therefore cannot take Advantage of it; and by the better Opinion Recital of \textit{a Deed} is not material. Dal. 13. pl. 23. Paxch. 7 E. 6. Anon. 4. No one is bound in his Declaration to recite more of a Record than induces his Action, and \textit{makes for his Purpose}. Jenk. 323. pl. 34.

5. Recital of itself is nothing, but being considered and joined with the rest of the Deed is material; and for a Recital, That * whereas he is possess'd &c. amounts to an \textit{Agreement} or Undertaking that he is possess'd of. Per Clench. Le. 122. Trin. 36 Eliz. B. R. Severn v. Clark.

6. Bond was conditioned \textit{to pay 10 l. being for a Rent of certain Lands;} Defendant alleged, That the Obligee (the \textit{Plaintiff}) had entered on the Land, and so fulfilled the Rent, whereupon the Plaintiff demurred, and adjudged for him; For this being but a Recital it was for Rent, it is not material; It seems the same \textit{tho'} he had applied it by pleading to the Lease &c. Hob. 130 pl. 170. Trin. 11 Jac. St. John v. Diggs. 7. \textit{Teftatum exiftit} is only Recital. 2 Salk. 515. Paxch. 2 W. & M. B. R. Woodward v. Clif.

8. A. having a Wife and 7 Sons devised 50l. a-piece to 6 of them, viz. A. B. D. E. F. G. omitting C. and dies, R. marries the Widow, but by Articles before Marriage (reciting that A. Father of the said A. B. C. D. E. F. and G. had by his Will bequeathed Cuilibet ipforum, predix't A. B. D. F. and G. (omitting C.) the \textit{Sum} of 50 l.) covenants with S. (a Friend of the Wife) to pay to the aforesaid A. B. D. E. F. G. \textit{Separates Legationes vel Summas 50 Librar}' R. paid A. B. D. E. F. and G. their several 50l. but the Breach was aliased in not paying C. 50 l. when he had \textit{ex professo covenanted} to pay the said C. and the rest the said several Legacies or Sums of 50 l. Sed non allocatur; For in the Recital of the said Receipt there is nothing mentioned to have been bequeathed to C. and tho' he covenanted...
Recognizance. 163

to pay C. as well as the rest, yet 'tis Legationes vel Summas previditas, and there being no Legacy to C. and that appearing by the Recital of the Will, the Covenant shall not oblige R. to pay him any thing. 2 Vent. 140. Hill. 1 & 2 W. & M. C. B. George v. Butcher.

9. It was infifted that if a Patent recite a former Grant, one must prove the Grant to be surrendered; But it was anfwereed, that if they took Advan-tage of the Recital, they must admit all that was recited, as well the Surrender as the Grant; and of that Opinion was the Court. 2 Vent. 171. Patch. 2 W. & M. C. B. Earl of Mountaunce v. Lord Prefton.

For more of Recital in General, fee Estoppel, Grant, and other proper Titles.

Recognizance.

(A) Who may take Recognizance; at what Place; and How to be made Perfect.

1. If a Master of the Chancery takes a Recognizance of J. S. yet Recognizance it is void, if it be not afterwards inrolled in Chancery. B. 8. Recognizances in the Court of Chancery are common.

ly acknowledged before a Master. P. R. C. 320 — Tho the Court may permit the Inrolling a Recognizance after the Time elapsed, yet it is always done with caution not to prejudice any interested Party.


And whenever they are inrolled after the 6 Months, the Special Order is to do it Nunc pro tune. Arg. said that this is the Court of the Petty Brg. Wms. Rep. 340. In the Cae above.

2. So if any Juitice of any of the Courts at Westminster takes a Recognizance, it be not afterwards inrolled in Court, it is void. Hobart's Reports. 273.


4. Recognizance was taken at Rippon in the County of York, the 28th of September, Anno 4 H. 5, which is out of Term, and several such like Records are in C. B. as well out of Term as in Term, and out of Court, in the Time of H. 5, H. 5, H. 6 and about all other Kings. Quad nota, and see the Entries the sof. M. 4. H. 5, Ro. 119 & H. 13 H. 13 H. 6. 338 & P. 9 H. 6. Ro. 124. Br Recognizance. pl. 20. says that till 4 Mar. it appeared by searching the Records of C. B. — S. C. cited Hob. 195. in the Case of Fall v. Winch. 10, and that it was agreed that the several Judges may take Recognizances out of Term in any Part of England, wit was refolved 470 Maris upon View of Precedents — S. C. cited Vaugh. 107 — Arg. Vent. 783. cites S. C. — Brownl. 69. S. C. but not S. P. — Mo. 935. pl. 1241. Mo. 15 Jas. 3 S. C. but not S. P.

4. A Judge or Justice may take Recognizance of the Party, but the Br. Recognizance cannot take any thing more than an Obligation; Per Littleton, 1st. Flight. 1st. places S. C. — tho it be upon Supplicant of the Peace; But Daji contra, the Reafon Ery Judge seems to oblige as the Capplicm to the Judges of Peace, and their Judge, the Skrif, is as a proper Connuion to the Skrif, and Conunissioners of Records may take Recognizance, as it is laid elsewhere. Br. Judges. pl. 11 may take Recognizance. Br. Recognizance. pl.


* The
Recognizance.

* The Sheriff may take Surety of the Peace before him by Recognizance, because he is a Conventor of the Peace by the Custom Law, and also his Authority is by Commission of Record, Quod voet Rex & c. A. B. Commonly, is a Widow, Cultivam B. &c. And yet the Plea which he holds in his County, which he may not by Right of Justices, is a true of Record; quod voet, and therefore Quare of this Opinion; But Printed Warrants are Courts of Record, and the like in the Old Nat. may be in the Writ of Sa recognizat, after the Writ of Auditor Quereli, that the Sheriff may take recognizance in the County; and if he does not part, and Writ comes to the Sheriff of Si recognizat, and the Party upon this confess the Debt Arkansas, the Sheriff shall disclaim him for the Same Sum. Br. Recognizance, pl. 18. cites F. N. B. 81.

In Action between before the Sheriff in the County, if the Defendant comes and acknowledges himself to owe such a Sum to the Plaintiff, Writ shall go to make Execution thereof, and so a Recognizance in the County, which is a Court of Record. Queues of this, this Day; For it appears there that this recognizat was a true before the Sheriff by Writ, and it seems to be by Justices, and then the Sheriff is Justices by Commission; For Justices as Commission. Br. Recognizance pl. 16. cites F. N. B. 152.-F. N. B. 152. (B) 153. (A)

5. The Parliament sitting may take Recognizance; and the Case was of the Lords and not of the House of Commons, and therefore Queues of the Heauf Commons; it seems all one. Br. Recognizance, pl. 8. cites 10 H. 7. 2.

6. The King himself cannot take Recognizance; For he cannot be Judge himself; but ought to have a Judge under him to take it. Br. Recognizance, pl. 14.

7. None can take Recognizance but Justices of Record or Commission, as Justices of the two Benches, Justices of the Peace &c. For Conferentor of the Peace, which is by the Custom of the Realm, cannot take Surety of the Peace by Recognizance, but by Obligation. And so of Confess. Br. Recognizance, pl. 24.

8. Recognizance may be taken by Commission of the King. Br. Recognizance, pl. 17. cites F. N. B. fol. 266.

S. C. Le 155. pl. 1. 8

9. Recognizance was made to Sir Nicholas Bacon the Keeper of the Great Seal and 2 others, and the Recognizance was taken before himself; The Justices held, That it was void as to Sir Nicholas bacon, but good as to the others. D. 320. b. pl. 14. Pach. 5 Eliz.

10. In Debon a Recognizance taken in London the Plaintiff declared, That the Mayor there had used there to take Recognizances by Custom of all except Infants and Femce-Covers, and upon any Day except Sundays, and certain other Days especially named, and that this Recognizance was taken there before the Mayor; It was objected, That this was an unreasonable Custom: Because it does * not except Persons Non Sane Memoria; And it was farther objected, That none can take Recognizances but Justices of Record, who have Authority by Patent &c. as the Justices of the Benches and of the Peace have by Commission; and that the Mayor is not a Judge of Record, but by Custom; Sed non Allocatur; For the Custom is good; and the Customs of London are confirmed by All of Parliament. Another Exception was taken, that this Custom extends as well to Strangers as Citizens, for Matters within the City; and for this Reason Gawdy held it was not good. Cro. E. 136. pl. 17. Trin. 32 Eliz. B. R. Chamberlain v. Thorpe.

11. It was argued, That a Recognizance taken in the Court of Admiralty to hand to the Order of the Court is void, and Serjeant Harris said, That it had been so adjudged; And Warburton said, That it is not a Court of Record. Nov. 24. Record v. Cornelius Joffon.

12. It must be entered upon the Roll; for till then it is not a perfect Record; but when it is entered, it is a Recognizance from the Acknowledgment. Hob. 195. 196. pl. 24. Hall v. Winkfield.


14. One Justice of Peace may take Recognizance for the Peace, also for the Good Behaviour (by the Commission) and this he may take, either upon
Recognizance.

upon Discretion, or upon Complaint made to him, or upon a Supplement delivered to him. So One may bind by Recognizance such as do declare any Thing against a Felon, to appear at the Assizes or Sessions, there to give Evidence against the Offender! And so in diverse other Cases. And One may bind by Recognizance such as keep any Common Houses or Places for unlawful Games that they keep the same no longer; and also such as play at unlawful Games contrary to the Statute of 33 H. 8. cap. 9. that they use the same no more. So One may bind by Recognizance to appear at the next Sessions, to answer their said Offences; and Per nons convicted for Taking or Destroying any Pheasants, Partridges, Fowl or Hare, that they offend not thereafter in any of the Particulars any more. Dalt. Just. cap. 165.

15. One of the Clerks of the Inrollments, or a Deputy, is to attend the Acknowledging, Vouching, or CanceUling all Deeds and Recognizances. P. R. C. 320.


(B) Enter'd into. By whom, and How.

1. A L. L. Leaves, Grants, Recognizances, and Deeds by City que Ue shall bind the Feoffees, because it is warranted by the Statute; as if he make his Will that his Executors, or J. S. and W. B. shall tell the Land. And see 7 H. 7. 6. That a Statute Merchant or Recognizance, or Elegit sued against City que Ue, shall bind the Feoffees, and shall be taken by the Letter of the Statute of R. 3. which wills that all Feoffments, Leaves, Grants, Releaves &c. by City que Ue, shall be good; quod nota per Keble & tot. Cur. Brook f. 3. Quad Miret! for the Statute of 19 H. 7. cap. 15. which provides Execution to be made against the Feoffees of City que Ue of the Land in Ue, to have Execution upon Recognizance, Statute Merchant, Statute Staple &c. rehearseth that Men were defrauded of their Executions in this Case before the said Statute. Br. Recognizance, pl. 13. cites 9 H. 7. 26.

2. A Recognizance may be acknowledged upon Condition, but if it be acknowledged jointly, and after they will have Condition, this cannot be; but they may make thereof Defenances by Writing, and this may serve as well as a Condition would do; quod nota, and it is to in Ue. Br. Recognizance, pl. 11. cites 36 H. 6. 6.

3. A Recognizance may be payable at divers Days, and may be joined; &c. Br. Recognizance, pl. 17. cites P. N. B. 267. S. P. and Mary cites

4. A special Recognizance may by express Words bind the Lands of the Counties in One County only. 2 Init. 395.

5. An Information filed without Recognizance entered into by the Party is ill; but the Court cannot take it off the File. 12 Mod. 154. Mich 9 W. 3. B. R. King v. Lambert.

6. In Civil Actions it is not necessary for Defendant to join in a Recognizance of Bail. And in Criminal it may be dispensed with by the Court. 1 Salk. 3. pl. 7. Trim. 1 Ann. B. R. Smith v. Villers.

7. If a Man upon a Writ of Error would enter into a Recognizance in more than double the Sum, it would be good. Per Holt Ch. J. Ld. Raym. 2 Rep. 1141. Patch. 4 Ann. in Cafe of Fanl1aw v. Mor.
Recognizance.

8. 'Tho' by the Statute of 16 & 17 Car. 2. cap. 8. (for preventing Arrests of Judgment, and superseding Executions) Executors are not obliged to enter into Recognizances upon Writs of Error brought by them into Judgments obtained against them, yet a Recognizance entered into condition to prosecute the Writ with Effect, and pay &c. was held good and Judgment accordingly in C. B. and the same was afterwards affirmed in B. R. For per tog. Cur. If a Man will voluntarily enter into such a Recognizance, it is good at Common Law. Ed. Raym. 2 Rep. 1459. Hill. 47 Geo. B. R. Johnson v. Laferre.

(C) Recognizance forfeited, tho' not according to the Letter of it.

1. The Cognizor of a Statute was taken in Execution, and brought an Audita Querela, supposing the Statute to be void by the Statute of Utury; and he entered into a Recognizance with Sureties to appear in Michaelmas Term &c. Et quod Secret Juris in ea parte prosequiendi eum effectus: Hiiib being join'd upon this Sureties, it was afterwards adjudged insufficient to discharge him; and thereupon a Scire facias was brought upon the Recognizance; and the Breach alligned was, that the Cognizor had not paid the Condemnation-Money, nor render'd himself Prison, & kc non statut Juri. Upon Demurrer it was objected, That the Breach was not well assign'd, because the Recognizance was only an Appearance, Et ad Prosequendum eum effectu, and says nothing of rendering himself, or paying the Condemnation-Money. Adjudged that the Recognizance being ad Comparendum & Standum Juri, it shall be taken according to the Course of the Court, which is not only to appear &c. to pay the Condemnation-Money, or render himself to Prison; Construction shall be made of those Words Ad Standum Juri, wife the Plaintiff, who had Execution, might be detected for to appear and to prosecute with Effect is no more than to prosecute without being Nonuit; and since the Statute is made to remedy this Mitchief, the Practice has been in this Manner, Ad Standum Juri, which is intended to stand demเนน, and the Breach was held well assign'd. Cio. J. Patch. 3 Jac. B. R. Worlich v. Maffey.

2. One was bound by Fleming Ch. j. to appear in B. R. Croke to the Court to have his Appearance refuted, in Regard that he was arrest'd in the Interim at the Suit of another, and imprisoned; so that he could not appear. Williams J. said, If a Man be bound by Recognizance appear in a Court of Record, if before the Day of his Appearance he is arrested at the Suit of the King, and before the Day of his Appearance he is imprisoned, this shall discharge his Recognizance; but if he be arrested at the Suit of another, and imprisoned, so that he cannot keep his Day, he by this hath broken his Recognizance; and this is the Difference to be observed for good Law. But the rest of the Court seem'd to incline that in this Case he should be discharged, because he was arrested and imprisoned before the Day; so that it was not in his Power to appear. Williams J. said he might have entered Bail upon the second Arrest and Imprisonment, and so have enlarged himself, and appeared; but the other Judges contra, that by Reason of his Imprisonment he is to be discharged of his Appearance. 1 Bull. 173. Tit. 9 Jac. Anon.

3. The
Recognizance.

3. The Defendant enter'd into a Recognizance to try an Indictment removed. The Recognizance is not forfeited, unless the Prosecutor gives Rules. 1 Salk. 370. pl. 4. Trin. 5 W. & M. B. R. The King &c. v. Ball.

4. So if one gives a Recognizance to prosecute a Writ of Error with S. P. the Defendant must give a Rule below, or the Rule under which the Defendant must give a Rule below, or otherwife there is no Forfeiture. 1 Salk. 370. in Case of the King &c. v. Ball.

in Case it is not certified, and then nonfuit him for Want of certifying it: Or in Case the Record is certified, he does not forfeit his Recognizance, unless you nonfuit him here above. Ly. Raym. 1 Rep. 1140. Patch 4 Ann. B. R. in Case of Panchaw v. Morrison.

5. If a Person enters into a Recognizance to go to Trial of an Indictment, and by his own Act procures a wrong Venire Facias, by which the Indictment is quashed; Holt said this was a Forfeiture of his Recognizance, it being a Trial with the Court, and an ill Practice in putting the Prosecutor to a great Charge. 11 Mod. 4. pl. 22. Patch. 1 Ann. B. R. Anon.

(D) Difcharg'd, Respired, or Compounded; In what Cases.

1. Recognizance may be discharged 20 Years after, and if the Party Br. Contd. comes and admits Satisfaction, the Recognizance shall be struck out of his name, pl. v. the Rolls, notwithstanding the Parties have not Day in Court, as it is said cites S. C. there; to which there was no Answer; the Cause may be, because Recognizance may commence by Affidavit of Parties without Process, and by the same Reason may be struck out, and vacated without Process; And to see that it is admitted there, that Recognizance may be struck out of the Rolls. Br. Recognizance, pl. 1. cites 50 E. 3. 18.

2. One who set up Stalls in his Yard for Bone-Lace Makers, and took so much per Stall, was Indicted as for using a Market, and had entered into a Recognizance to try; but upon pleading Guilty, and upon submitting to the Fine, the Recognizance was discharged. 12 Mod. 255. Mich. 10 W. 3. The King v. Moor.

3. A was bound by Recognizance to appear, for Printing a seditious Libel concerning the Scots Colony at Darien; and it appearing that an Indictment had been found against him at the Old Bailey, which he had traversed, and was to answer there, his Attendance was discharged here. 12 Mod. 348. Patch. 12 W. 3. The King v. Bell.

4. J.S. and others of the City of Coventry were bound by Recognizance, and appear'd for two Terms, and no Prosecution being had against them, it was moved to discharge the Recognizance, or Dispenfe with their Appearance. But the Court said they could not do it, and all that they could do was to rejeft the Recognizance. Parr. 97. Mich. 1 Ann. B. R. Anon.

5. My Lord D. found bound by Recognizance to appear here the first Day of this Term; and Sir Simon Harcourt excuting his Non-Appearance by Reason of Sicknes, mov'd that his Recognizance might be discharged, the Attorney General having Orders, and being in Court.
Recognizance.

A Release of 1. 

A Release of 1. A Recognizance was 
pleaded to be 
pleaded to be 
pleaded to be 

S.C. E. Facias upon a Recognizance of Debt in Chancery, the Defendant pleaded a Release of all Actions Real and Personal, and a good Plea; and the Plaintiff deny'd the Debt, and Sued to join'd therein, and therefore the Record and all the Issue and Processe was sent into B. R. to try, and there they were at the Nili Prius, and at the Day the Plaintiff was Non Suits, and after brought another Seire Facias in the same Cause, and well, quod nota; For there is the Record, but contra if the Tenor of the Record only had been fent, and not the Record itself. Br. Scire Facias, pl. 128. cites 24 E. 3. 73.

2. A Man may avoid Recognizance by saying that there is another Person of the same Name. Brook says, Quære, if a Fine may be avoided in the same Manner. Br. Recognizance, pl. 6. cites 21 H. 7. 21.

3. Question was, Whether a Ct. St. would lie upon a Recognizance taken in Chancery, a Seire Facias being returned upon it. All the Baron's were of Opinion that the Processe was well awardable, and maintaineable by the Common Law; For it being a Debt on Record, there is no Reason but his Body should be Liable to Execution upon it, as upon a common Obligation; and this Capias is not by the Statute of W. 2. cap. 45. or 25 E. 3. but by the Court of the Common Law, and the Court of Chancery; and Precedents are usally there after Seire Facias, and their Capias
Recognizance.

Courts are to be maintained as of other Courts. Cro. E. 164. Mich. Respondendum, there is no Ct. Sx.

But then that ought to be intended in Cæsæ where there is an Original, and Meane Process before Judgement; and that it is a good Rule that it is a Debt upon Record, and therefore a Capias lies.—Mo. 224. pl. 423. S. C. —— 5. C. cited Arg. Goth. 423, as Ogwell's Case. —— In the Common Pleas, upon a Recognizance entred into there, a Facias, or Eclis may go, but no Capias lies; But elsewhere in this Court a Capias lies; For here the Bill is Body for Body. 11 Mod. 45. pl. 7. Patch. 4 Ann. B. R. Anon.

4. A Recognizance is saecible in the Courts at Law, either by Action to be brought on, or more properly by an Original in C. B. but if it is entered into pursuant to an Order of Chancery, it must be sued only by a Scire Facias in Canc. Per North K. Vern. 413. Pach. 1 Jac.


5. Debe brought on Recognizance cognovit se debere was held to be well.


6. In Debe in B. R. the Plaintiff declared of a Recognizance taken in the Court of C. B. coram Georgio Treby MiP &c. and the Defendant plead

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(F) Execution. In what Cæsæ, and How.

1. Execution upon a Recognizance shall be sued by Elegit. Br. Recog. Upon a Recognizance, pl. 7. cites 38 Alit. 5.

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2. In Scire facias upon a Recognizance the Defendant was return'd Br. Defendants, whereupon there was another Garnishment against the Tenants, meacon, pl. who were return'd wound'd, and they did not come, upon which Plaintiff had Elegit. Brooke lays, And to see Execution against them upon the first Garnishment; and so is the Law Contra it seems upon a Nihil return'd. Br. Scire facias, pl. 86. cites 38 E. 3. 13.
(G) Equity.

1. The Defendant acknowledged a Recognizance, which was taken away privately; the Plaintiff had Relief, either that the said Plaintiff shall have his Money, or else the Recognizance to be inroll'd. Toth. 267. cites 22 Eliz. Charnock v. Charnock. 22 Eliz. li. A.

2. A Recognizance without Condition, in 20 Years inroll'd, [not inroll'd in 20 Years] yet upon Affidavit, (that he who acknowledged it was living) the Court ordered that it should be inroll'd. Toth. 263. cites about 40 Eliz. fo. 195. inter Roll & Roll, & Long & Owen, eodem Term., fo. 205. li. a. 11 & 12 Eliz.

For more of Recognizance in General See Bail, Statute, and other Proper Titles.

* Record.

(A) Records. Defeating Records. [Or Cancelling them for Covin or Deceit.]

1. If a Man brings Affidavit against another, and the Tenant to the Intent to abate this Writ causes a Writ of a higher Natura brought in the Name of the Plaintiff, and makes Answer for him or his Attorney, upon showing this Deceit to the Court the Record shall cancel'd. 17 Eliz. 3. 12. b. 51. b.

2. If a Man files another by Writ of Debt to the Exigent, upon which he is Outlaw'd, and a Man rapes the Original and the three Captas and the Exigent, and makes Part in London and the rest in Middlefex, and writes in them W. B. for J. B. this is adjudged Felony by the Statute of 8 H. 6. 12. which is, That if a Record in any of the Banks, or in the Exchequer, be stolen, carried away, or avoided, by which Judgment shall be recorded, that this shall be inquired by Clerks of those Courts and others, and shall be judged by the Justices of those Courts, and shall be ordered as Felony; and this Nature avoids all the Record, so that it cannot be redressed by Error; and it is a greater Offence than if Part only had been avoided, and all who affent to it are Felons; but because Part was made in London, and Part in Middlefex, and London cannot be joined with any, and also special Commission shall be in London for Felony there, which cannot be by this Statute because it gives the Trial by the Clerks of those Courts and others, and the Judgment to be by the Justices of those Courts, and not Commissioners in London; therefore the Offenders were not abettred of Felony, but were punisht for Misdem. for in Felony there is Misdem. quod nota. Br. Corone, pl. 173. cites 2 R. 3. 9. 10.

3. At
3. At the Issue Venire Facias issued, and the Sheriff return'd Null breve, upon which it was entered of Record that the Sheriff Non miilt breve, and alter there issued an alias Ven. fac. and Jury return'd and pass'd for the Plaintiff, and after the first Ven. fac. was found upon the File; and by Advice of all the Justices it was certified as judicious, and the Plaintiff recover'd. Br. Record, pl. 2. cites 26 H. 6. 16.

4. He that is to defeat a Record, must always commence his Suit against him that is Privy to the Record; but when he has revers'd it against him, he ought to have always a Scire facias against him that is Tertenant; for it is he hath some Matter to bar him of Execution; and otherwise he shall not be bound, unless he be made privy by a Scire facias, or that a Nihil be return'd. Cro. E. 471. (bis) pl. 33. Mich. 37 & 38 El. B. R. Cary v. Dancy.

5. Where the Bishop certifies that J. S. is no Bailliard, this is no Record. Br. Record, pl. 26. cites the Printed Abridgments of Affise, fol. 73.

6. A Verdict cannot make a Record. Br. Repleader, pl. 61. cites 11 H. 34.

7. If the Tales be awarded and mark'd upon the Scroll, and not entered in Br. Error, the Roll, or fals Latine &c. the Justices may amend it the same Term; but contra in another Term, for then the Roll is the Record; Note the Diveristy. Br. Record, pl. 29. cites 7 H. 6. 39.

(B) Good. What is, and when, and what shall be said a Record.

Reord is a Memorial or Remembrance in Rolls of Parchment, of the Proceeding and Acts of a Court of Justices, which hath Power to hold a Plea according to the Course of the Common Law, of Real or mix'd Actions, or of Actions quaere vi & Armis, or of Personal Actions, whereof the Debt or Damage amounts to 40s. or above, which we call Courts of Record, and are created by Parliaments, Letters Patents, or Prescription. Co. Litt. 260. a.

2. In Affise the Tenant pleaded in Bar, the Plaintiff made Title by Recovery in Writ of Davers, and the Defendant said that Ne unques accinate in Lawful Matrimony; and the others contra; and it was certified by the Bishop that she was accotilled &c. and the Affise remained without Day, and after was re-attach'd, and after B. R. came into the same County, so that all Affises were adjourn'd there, and the Plaintiff issue'd the Record Sub pede Sigilli, and pleaded this Plea, and pray'd the Affise. Et per tot. Car. When it comes before them Sub pede Sigilli, this is a good Record, tho' it was taken before other Justices, and they shall proceed upon it. Br. Record, pl. 42. cites 28 Att. 52.


4. Plea in the Spiritual Court in Prohibition, if it be of Tithes or of the Lay Charite, is tried per Patriam; and so note that their Pleas are not of Record. Br. Record, pl. 12. cites 44 E. 3. 32.

Matters, are not Judgments or Matters of Record. Went. Off. Exec. 48.

5. When the Bishop certifies that J. S. is no Bailliard, this is no Record. Br. Record, pl. 26. cites the Printed Abridgments of Affise, fol. 73.

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7. If a Tales be awarded and mark'd upon the Scroll, and not entered in Br. Error, the Roll, or fals Latine &c. the Justices may amend it the same Term; but contra in another Term, for then the Roll is the Record; Note the Diveristy. Br. Record, pl. 29. cites 7 H. 6. 39.

8. The same Term that Judgment is given, the Record is in the Care of the Justices, and not in the Roll; for the Roll the same Term is not the Record, but the Remembrance of the Justices — Br. Amendment, pl. 33 cites H. 6. 29. S. C.
8. A Fine is a Record, 'tis it be not ingress'd, and shall be executed, and a Quod juris claniat lies upon it; Per Newton, Quod non Negatur. Br. Record, pl. 78. cites 22 H. 6. 13.

9. A Testament is not Matter of Record at the Common Law, notwithstanding the Probation; for a Man may deny the making the Parties Executors, and shall try it Per Patriam. Br. Record, pl. 23. cites 22 H. 6. 52.

10. An Exigent is a Record, 'tis it be not entered in the Roll; quod nota. Br. Exigent, pl. 32. cites 38 H. 6. 1.

11. If a Man finds Mainprize, which is written in a Bill, but is not entered in the Roll in this Term, yet it may be entered after in this Term or in another Term; quod nota, as it happen'd in the Case of Dampage, and in the Bill is a good Record; and the Justices of C. B. accordingly. Br. Record, pl. 58. cites 8 E. 4. 5.

It was said in the Time of H. 8. That of a Record in C. B. he might have vouch'd it there, and had Day to bring it in; But contra in Court Baron, for there it is a Recovery but no Record; for it is no Court of Record. Br. Record, pl. 66.

Where Recovery in a baie Court is removed into Bank by Writ of Fails Judgment, yet this is not of Record to have Execution. Br. Record, pl. 59. cites 39 H. 6. 1. — But if the Judges affirm the Judgment or reverse it, this is then of Record when they have meddled with it; and then lies Execution upon it, or Writ of Error; And so see a good Manner to make a Judgment of a baie Court to be Matter of Record. Nota bene. Ibid.

12. A Statute is a Record, but an Obligation is only Matter in Fact. Br. Conscience, pl. 23. cites 22 E. 4. 6.

13. A Statute is a Record, but an Obligation is only Matter in Fact. Br. Conscience, pl. 23. cites 22 E. 4. 6.

14. After the Original the Roll is the Record, and not the Writ; and therefore Variance between the Dithringas and the Roll cannot be amended. Br. Record, pl. 77. cites 2 R. 3. 11.

15. Where an Act of Parliament or other Record is reversed by Error or otherwise, and after this is executed for a Record, there the Judges will certify that there is no such Record; for when it is reversed, it is no Record. Br. Record, pl. 50. cites 4 H. 7. 22. at the End of the Cafe.

16. The Roll in Ancient Deanshit is no Record, and therefore the Writ to remove it shall be Loquelam et Procedi, and not Recordum 39 H. 6. by all the Justices; and yet the Form of the Register in this Cafe is Recordum illud habeas &c. Br. Record, pl. 79. cites 3 N. B. 71.

17. If the Seal of the King is put to any Patent or Writing made in the Name of the King without Warrant, this is Matter of Record immediately, and shall bind the King. Pl. C. 76. a Trin. 6 E. 6. in the Cafe of Wimbish v. Ld. Willoughby.

18. No Bill, Answer, or other Pleading shall be said of Record, or of any Effect in Court till it be filed with such of the 6 Clerks with whom it ought to remain. P. R. C. 302.

19. The Ejectment in the Exchequer is not a Record, but only Minutes to make a Proces upon it for the King. Per Car. Ld. Raym. Rep 243. Trin. 9 W. 3. Moor v. Riddell.

20. A Recognition is a Record upon the taking it before the Inrollment. Per Powel J. And he said, That the Inrollment was by a Statute in Queen Elizabeth's Time. And the Court rem'd to agree, That it is a Record where it is taken, and to local. Adjonatur. 11 Mod. 223, 224. Patsh. 9 Ann. B. R. Button v. Ridley.

21.
Record.

21. An Agreement was on Marriage to become a Freeman of London, and that Agreement being entered among the other Proceedings and Orders of the Court of Aldermen, (which being a Court of Record) is become a Matter of Record, as much as a Fine would be if levied there; for it is the Concord between the Parties. Per Lord Ch. Macclesfield. Wms's Rep. 715. Trin. 1721. Frederick v. Frederick.

(C) **Falsefied or Avoided**; By whom. In what Cases. See Falsefying Receipts.

1. A Fine by Cellifion, as where there are 2 of the same Name, and the A Fine levied a Fine of the Land of the other, in this Case the other cited, or shall avoid it by Plea. Br. Fines. pl. 115. cites 29 All. 53. & T. 33. H. 8. suffered in Pursuance of an Ufurious Contract may be avoided by an Averment of the corrupt Agreement, as well as any common Specialty, or Parish Contract, Hawk. Pl. C. 248. cap. 82. S. 20.

2. Record of Outlawry of divers Persons was certified in the Exchequer, among whom one was certified Outlawd, and was not Outlawd, and that his Goods forfeited were in the Hands of J. N. and upon Proces made against him he came, and said that he was not Outlawd, and Parcel of the Record came by Writ of the Chancey out of B. R. into the Exchequer, and Green Justice of B. R. came into the Exchequer, and said he was not Outlawd, but that it was Mispriion of the Clerk; Skipwith said, Tho all the Justices would record the contrary, they shall not be credited, when we have recorded that he is Outlawed; Quere what Remedy is for the Party; it seems it is by Writ of Error, inamuch as there is no Original against him, but only Record of Outlawry without Original. Br. Record pl. 45. cites 38 All. 21.

3. Capias Pluris returned upon the Plaintiff was neposlated, and the same Term an Exoniq was tried upon the same Original in another Roll, the Defendant prayed Remedy, and it is said that the Nonpart shall have Regard to the Day of the Writ returned, & Curia concensit, and the same Day the Exoniq shall be laid to FILE, And per Thm. and Hank. this Matter is not sufficient to avoid a Record, and Markham said that all may be well redressed in this Place, for Erroneus emanant, Et he pendet; And so it seems to be Error and not void, and a Superfedas shall serve as it seems. Br. Error. pl. 33. cites 2 H. 4. 23, 24.

4. In a Court of Record, where the Record makes mention of one Man nor of Judgment, it shall not be aligned for Error That the Court gave another Judgment. Br. Error. pl. 75. cites 21 H. 6. 43.

Judgment, they ought to have given another Judgment. Br. Error pl. 148. cites H. 4. — But a Man cannot say that they did not give such Judgment contrary to the Writs of the Record. Br. Ibid. — Nor by that the Judgment entered in the Roll was not given by the Judges, but entered in the Roll by the Clerk, or that the Jury was not sworn as the Record supposes. Br. Ibid. — Nor that the Jurors gave after Verdill than was entered in the Roll. Br. Ibid. — Nor that the Roll is that the Jury gave Verdill for the Plaintiff, he shall not say that they gave Verdill for the Defendant, for a Man shall not be received to falsify the Record. Br. Ibid. — So where it is recorded that Capias was awarded, the Party shall not align for Error that no Capias was awarded, or say that Threfth was awarded, for he shall not falsify the Record. Br. Error. pl. 78. cites 21 H. 6. 25. — And if the Sheriff returns spondid, the Parish shall not be received to say that he was not spondid, for he cannot contradict the Return of the Sheriff directly. Per Fairfax. Br. Error. pl. 145. cites 7 H. 4. — And he shall not say that he was not attached. Br. Ibid. — But may say that which stands with the Return, as to say that he was not spondid according to the Law of the Land, or not attached by 13 Days. Br. Ibid. — Or he may align Error in a Thing apparent, or Matter in Roll out of the Record, but shall not falsify the Record, as it is laid elsewhere, and not a Diversity. Br. Error. pl. 78. cites 21 H. 6. 43.

5. If Execution be sued upon an Erroneous Record, or if such Record is pleaded, the Party has no Remedy to avoid it but by Error; For it is for every Man.
6 A Man may confess and avoid Matter of Record; For in Deceit the Tenant said that those who appeared as Summoners and Fencers upon their Examination denied the Summoners and taking into the Hands of the King by the Grand Cape, and were not the same Persons, but others of the same Name. Br. Record, pl. 16, cites 35 H. 6. 43.

7. Error was brought upon Rodiflefin, and it was alleged for Error, that the Sheriff had returned that he, with the Guardians of the Peace and the Crowners, took the Inquest at the Place where the Tenements are, whereas the Sheriff came not to the Tenements; Per Mordant, 'tis Error; for the Sheriff is Judge and Officer here, and that which he does as Judge cannot be contradicted against the Record, otherwise of that which he does as Officer; now he comes to the Land as Officer, and therefore this may be aligned for Error; and as to making Proces he is an Officer; But the Court to the contrary, and that the Sheriff does this as Judge, and therefore it shall not be contradicted. Br. Error, pl. 143, cites 7 H. 7. 4.

8. Where a Bill of Indictment of Felony was found Ignoramus, a Judge of Record procured it to be rased, and to be inobedt, Bilb covert; This Offence is not punishable by the Law; For that would tend to falsify and avoid a Record. Jenk. 162, pl. 7.

9. Tho' the Party cannot falsify a Record in Error, yet in a Collateral Action, as in Trepafs, or Sale Imprisonment, he may, where he is taken in Execution upon such Judgment. Sid. 94, pl. 20. Mich. 14 Car. 2. B. R. Mullens v. Weldy.

(D) Produced by whom; How, and when.

So of other Records.

1. IN Affile it was said, That he who has nothing in the Land shall not plead Outlawry, without shewing it immediately. Br. Record, pl. 41, cites 9 Aff. 10.

2. It seems that unless a Record is pleaded, and the other pleads No Record, it it suffices to shew the Record immediately, exemplified under the Seal &c, and he shall not be put to another Day to bring in the Record by Certiorari and Certifium, when he has the Record there exemplified ready; Quod nota. Br. Record, pl. 43, cites 29 Aff. 1. 3. If a Man pleads Matter of Record, and concludes in Bar, he shall have Day to bring in the Record; but if he concludes to the Writ, he shall shew it immediately. Per Frowicke Ch. J. Br. Record. pl. 36, cites 21 H. 7. 9.

(E) Cer
(E) Certified by whom; And how.

1. WHEN a Justice is discharg'd, or his Authority ceases, he cannot certify a Warrant in his Hands without certifying it by Writ, and if he be made Justice again, because his Power was once ceased; And so it seems of other Records in his Hands. Br. Record. 64. cites 8 H. 4. 5.

2. In Deveis the Tenant said that the Land is seized into the Hands of the King; this is no Plea, without showing Record of it, upon which a Baron of the Exchequer brought in Record of it, whereupon they succeeded, and yet it was certified without Writ, and without Day in Court. Br. Record. pl. 71. cites 11 H. 4. 79.

3. Record of Court Baron shall be certified by all the Suitors, and not by Part of them only; Quod nota bene in Fallé Judgment. Br. Record. pl. 66. (bis) cites 22 H. 4. 23.

4. If Certificates illude to Judges of Peace to send the Indictment of J. N. and in the same Indictment 29 others are indicted, yet this is a good Certificate of the Record, and the Judges of the Peace shall not mention any Thing of the others in their Certificate. Per Markham Ch. 1. Br. Record, pl. 57. cites 6 E. 4. 5.

5. Judges of the Peace shall not bring into B. R. any Record but that which is Executory, and no Acquittance of Felony which is Executed; but this shall come in by Writ by Certificate thereof. Br. Record, pl. 59. cites 8 E. 4. 18.

6. If Assize is taken before the one Justice of Assize, the Clerk of the Assize not expelling the coming of the other Justice of Assize, yet the other Justice by Certificates may certify the same Record. Br. Record, pl. 51. cites 11 H. 7. 5.

7. In Debt upon Recovery of Damages in Assize the Defendant pleaded Null tally Record, upon which the Plaintiff caused it to come into Bank by Certificates to be exemplified under the Great Seal of England, and sent into C. H. and to well. Br. Record, pl. 82. cites 13 H. 7. 21.

(F) Failure of Record. The Effect thereof.

1. IN Assize the Baron and Feme pleaded Record in Bar, and failed at the Day, and the Assize was against them and two others who had pleaded Null tort; and upon the Failer the Plaintiff prayed his Judgment, and receded his Damages, and had Judgment, notwithstanding the Plea of the other two is not try'd. Brook says, Quod nonnus, it Law! for he recovers the Land against all four by the Judgment, whereas the Plea of the other two is not yet tried. Br. Failer de Record, pl. 7. cites 44 E. 3. 23.

2. In Conspiration the Defendant said, That he was indicted before the Judges of Peace in N. whereupon Null tally Record being pleaded, the Court made a Writ to the Judges of Peace to certify it; and at the Day Null Breve was return'd, and the Court gave Day over; and at the Day the Defendant madeDEFAULT, upon which the Court awarded a Writ of Enquiry of Damages; quit nota. Br. Record, pl. 16. cites 7 H. 4. 31.

3. In Debt the Defendant pleaded Outtery in the Plaintiff, and concluded Judgment Si Aëro &c. The Plaintiff replied Null tally Record, and thereupon they were at Hircus; and before the Day given to bring in the Record, the Plaintiff got the Outtery to be reversed, so that the Defendant failed of the Record at the Day; And the Question was, Whether
Record.

Section A of the record states: "A Record ought to be made in Affidavit of every juror sworn, and of every Writ awarded, and of every Continuance and other Thing from Day to Day, that the Affidavit does not take effect the first day; and otherwise it is Error, by the Opinion of all the Justices; quod nota. Br. Affidavit, pl. 104. cites 39 H. 6. 17 & 38 H. 6. 11.

1. The Defendant was indicted at the Assizes for forging the Stamps, and appeared there upon his Recognizance to answer the said Indictment, and pleaded Not Guilty, and upon his Trial he was convicted; but upon a Motion in Arrest of Judgment it was set aside. Afterwards he exhibited a Bill in Chancery against the Prosecutor of the Indictment, who pleaded this Conviction of Forgery in Bar to the said Bill, and now the Plaintiff in Chancery moved the Court of B. R. that the Record might be made up with the Arrest of the Judgment; for by a Mistake of the Clerk of Affidavit that was not recorded, nor did there any Notes thereof appear in his Books, but only that he was bound over by Recognizance to appear at the Affidavits, and that he did accordingly appear and gave his Recognizance; all which Matter was evident to the Court by the Records of the Affidavits; but yet they would make no Rule for the Record to be made up with the Arrest of Judgment, because a Precedent of this Nature might be of dangerous Consequence; and therefore desired the Cause might be put into the Paper, and spoke to again, that it might be judicially determined. 8 Mod. 45. Parch. 7 Geo. the King v. Self.

Section B of the record states: "Entry of Record. Power of the Court as to Entry or Alteration of Records. And of Records being entered upon a wrong Roll.

1. In Trapham the Court suffered several Jurors, who were challenged for their Franktenement, to be sworn, who had not 40 s. per Ann., because they thought the Damage to be but 20 l.; whereas the Record was Damages of 40 l., which the Defendant seeing, notified it to the Court, and prayed that it might be tried again; upon which the Court would not record that which was done before, but try'd all again; and then those who were sworn before were struck out now for Insufficiency of Franktenement. And to see at the same Time it is in the Election of the Court whether they will record it or not. Br. Record, pl. 23. cites 19 H. 6. 9.

2. If an Exigent be return'd Outlaw'd, which issued 25 H. 6. and the Defendant pleads Nul tid Record, and the Clerk doth intimate enters the Outlawry in the Roll June 38 H. 6. this is good; for Per Altron, if the Exigent be return'd outlaw'd, tho' it be not enter'd, it may be enter'd at any Time; And Per Moyle, if there be such Exigent, it is a good Record; quod nota. Br. Record, pl. 68. cites 38 H. 6. 1.
Record.

3. In Annuity, the Pursuit Defendant pray'd Aid of the Patron and Ordinary, who were returned summon'd, and the Ordinary was Efsoign'd, and the Patron not, nor any Default recorded upon him; and in the Roll of Pleas Mention was that both were Efsoign'd, but not in the Roll of Efsoigns; and by the belt Opinion, because it is not expressed in the Roll of Efsoign, where it ought to be expressed, therefore it is not good in the Roll of Pleas; *Quere*, for it was not adjudg'd. Br. Record, pl. 55. cites 4 E. 4. 25.

4. A. Judgment entered in the Roll of one Office, which ought to be in the S. P. Per Roll of another, is not void, but Error and voidable. Br. Error, pl. 58. cites 9 E. 4. 3.

5. During the Term wherein any judicial Act is done, the Record remains in the Breast of the Judge of the Court, and in their Remembrance; and therefore the Roll is alterable during that Term as the Judges shall direct; but when that Term is past, then the Record is in the Roll, and the King intitled, they shall not alter it. Br. Record, pl. 51. cites 4 E. 5. 9.

6. The Plaintiff brought an Action upon the Statute 21 H. 8. cap. 13, for 25l. for Non Residency by the Defendant for 5 Months. It was moved on the Behalf of the Defendant, that a Recodatur might be entered to bender any Alteration of the Record; But per Cur. that Practice is not now in Use; but Cook Chief Prothonotary said, that the Use hereof of entering a Recodatur was, (Recodatur, that this Record is without Alteration or Interlineation) and then if there were any Alteration afterwards, it would appear upon the Record to have been made after the Recodatur entered. But now the Practice is to make a Rule of Court, that all Things shall continue in Stare quo; and then it shall be tried by Affidavit, whether there has been an Alteration or not. Ld. Raym. 210, 211. Pash. 9 W. 3. Birt v. Rothwell.

(I) Remov'd; In what Cases; How and when; Or, In what Court it shall be said to remain.

1. Where the Record itself remains, there the Action shall be brought. At Suit Fe-

Br. Record, pl. 30.

2. Practice
2. In precept quod reddat, as Formedon, in London Release with Warrant was pleaded, and Affisse in a foreign County defended in Fee, upon which they are at Issue, and Writ came to remove the Record from London to Bank, to try the foreign Issue. And so it seems there, that it shall not be removed 'till Issue be joined. Br. Issues Joines, pl. 74, cites 48 E. 3. 21.

3. If an Amercement is affis'd in Banco, and engraved into the Exchequer to levy the Amercement, and they write for the Amercement; yet the Record remains in Bank, and not in the Exchequer, and there shall be travers'd, and there the Pardon of it shall be pleaded and allow'd, and not in the Exchequer. Br. Record, pl. 35. cites 36 H. 6. 24. and 37 H. 6. 21.

4. Scire Facias to have Execution in Writ of Annuity; The Café was, That after Judgment in C. B. the Defendant removed it by Writ of Error into B. R. and after the Record, among other Records, was remov'd into the Treasury or Receit; and after the Plaintiff brought Certiorari out of the Chancery, directed to the Chamberlain and Treasurer, to certify it in Chancery, and from thence it came by Mittimus into C. B. and the Plaintiff pray'd Execution. And per Moyle J. the Court of Chancery writes only Pro Tenore Records, and not Pro Recordo illis; But in Café of the Justices of Affis, there they shall certify Recordum & Processum, and not Tenorem; and when Records are removed into the Receipt, those which are of B. R. are intituled (Records Regis) and those of C. B. (Records de Banco). Br. Executions, pl. 71. cites 37 H. 6. 16. but it should be, 37 H. 6. 16. and 28 b. 39. a.

5. If a Man recovers in Affise of trefo Force Land and Damages, and the Defendant has nothing to satisfy the Damages in the same City or Borough, the Plaintiff may remove the Record by Certiorari into Bank, and there he shall have Execution of the Damages recover'd. Br. Recognizance, pl. 51. cites F. N. B. 243.

6. In Affise in B. R. the Tenant pleaded that the Plaintiff has Writ pending against him in Banco, of another Nature than the Affise; Judgment of the Affise; and the other said Nul Tal Record, upon which they were at Issue; there the Defendant shall remove the Record out of Bank into Chancery, by Certiorari out of the Chancery directed to the Justices of C. B. to certify it into Chancery, and to send it by Writ of Matters to the Justices of B. R. And it seems, that in every other Café, where Record is cause'd in another Court, it shall come in such Manner, or by Exemplification under the Great Seal. Br. Record, pl. 74. cites F. N. B. 244.

7. Upon Certamnes granted the Original shall not be removed out of the superior Court, nor shall the Record, but only a Transcript; so that upon a Refinmons, upon a Failure of Justice in the inferior Court, the superior Court may proceed. By all the Counsel. Jenk. 31. pl. 61.

8. If there are divers Records between the same Parties, the Inferior Court may remove which they please, they being warranted by the Writ (which express'd none in certain) so to do; And if Judgment shall be given after the Fees, and before the Return, the Record shall be well removed. But if Judgment be entered after the Writ is returnable, the Writ only is to be returned, and that no Judgment is yet given. Vent. 96. Mich. 22 Car. 2. Br. Prydye dre v. Thomas.

13. If the Record vary from the Writ of Error, yet the inferior Court ought to remove it. Note. Vent. 97. Prydye dre v. Thomas.
(K) Remanded; In what Cases.

1. When a Record is removed into B. R. by Writ of Error, this shall never be remanded, and without the Record, those of the Franchise cannot hold Plea; and yet when Constance is granted, they shall not send the Original but the Transcript, upon which the Franchise shall be hold Plea. Note the Diversity. Br. Record, pl. 13. cites 44 E. 3. 37. 


(L) Count. How the Count upon a Record ought to be. And Pleadings.

1. In Afflict the Defendant said that he is Villein to B. upon which the Writ abated, and the Plaintiff brought another Afflict against him and B. his Lord, and the same Defendant pleaded Villein to another, and the Plaintiff sought him by the first Record; and he said that Null null Record, and the same Record was found before the same Justices immediately; and this is peremptory, per Stowe J. Br. Failier de Record, pl. 9. cites 22 Afl. 12.

2. In Debt brought upon Recovery of 10 l. Damages, in Writ of Entry of Land, the Plaintiff in his Declaration ought to rehearse the Original Writ and all the ancient Record such as it is. Br. Count, pl. 39. cites 22 H. 6. 38.

3. Where Parcel of the Record makes for a Man, and Parcel against him, per Plea, in pleading of a Record a Man shall commence of shall commence of the Original, and shall make Mention of the Summons and Sequestration, if any there be at the record; and where two recover and one survives, he shall make Mention of both the Original, and shall in fusing his Execution; for a Recovery by two is not a Recovery by one. Br. Pleadings, pl. 51. cites 30 H. 6. 5.

every Writ of Process, and of every Continuance, and of Garnishment &c. Ibid — And in Rejoynement of Words, and in Square Implead, if he fuses Execution of greater Damages, he shall make Mention of all the Record. Ibid — And where Judgment is given, & quod est facias Executis, yet he shall make Mention of this also, tho' it be against him. Ibid. — And in Subs facias to one for Life, the Remainder of Part to the Plaintiff, and the Remainder of the rest to J. S. he shall make Mention of all in his Execution in Subs facias. Ibid.
Record.

Br. Action for the Cafe, pl. 13. cites S. C.

4. In Trespass upon the Cafe, the Plaintiff counted that the Defendant is Clerk of the Juries, and that he brought Writ of Entry against J. N. And reheard the Process, the Plea and the Answer, & deuide continuo Processus between the Parties &c. Off. Hill, consort in the Defendant affidavit upon himself for such a Sum to enrol the Jury and the Nisi Prius, and did not enroll it; so that where the Jury pass'd for him, the Judgment was omitted. And per Cur. Because he declares upon Part of the Record, he ought to declare upon All in certain, and not (deinde continuo Processu;) quod nota, whereupon &c. But per Alston, He need not to have gone beyond the Nisi Prius, but to have commenced there where the Default was, and no further; but where he meddles with the Record, he ought to shew the Venire facias awarded, and how it is ferv'd, and then Continuare processu per Jur. had been good; and otherwise not, per Prifot, quod Cur. concellit. Br. Record, pl. 5. cites 34 H. 6. 4.

5. Note, it was agreed that in B. R. the Record is (Placita coram Rege apud talen lacnon) and therefore when a Man makes a Record of this Court, he shall shew where the King's Bench then was, because the Day is pass'd, so that it is certainly known; but the Processus there is (Utile qun profeetus in Anglia.) Br. Pleadings, pl. 10. cites 34 H. 6. 27.

But when he pleads the Return of the Sheriffs, he shall shew that J. S. Sheriffs &c. return'd it before Sir John Prifot and others his Companions Justices &c. Ibid.

6. In Affile, the Pleading of a Record is not to say that such a Day be purchased such a Writ, but that he purchased the Writ by this Title such a Day and Yeal, and shall not say that it was returnable before Sir John Prifot and his Companions Justices of C. B. but that it was returnable before the Justices of C. B. without naming them. Br. Pleadings, pl. 41. cites 37 H. 6. 14. Per Prifot.

But of such Recovery the other shall not say Not in t'is Record, but Natural Recovery; for it is no Record, and shall be tried per Puis. Br. Failer de Record, pl. 8. cites 9 E. 4. 42.

If a Record is pleaded in Fai. Br. Pleadings, pl. 110. cites 21 E. 4. 44.

1. A Man cannot aver against a Record, as that a Deed involv'd in May, but entered 'as inroll'd in April before, was not inroll'd in May but in April, "Ow. 138. Hill. 35 Eliz. Sir Thomas Howard's Cafe.

2. Every Record imports a Truth in itself, and tho' an Averment may be against the Operation of a Record, yet the Court inclin'd that it cannot be against the Matter and Substance of the Record itself. "Le. 183. Hill. 31 Eliz. B. R. Holland v. Franklin.

Dye v. Maningham.

(N) Averment against Records.

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Dye v. Maningham.

3. In
3. In Case against the Sheriff for an Escape upon Msne Procesfs, Plaintiff declared of a Captas in Trepaus by him against R. H. upon which he was arrested, and afterwards escaped; the Defendant pleaded in Bar, that after the Time of the supposed Escape, H. by the Confect and Leave of the Plaintiff himself did appear at the Day of Return of the Writ, Front per Recordum sp proficient Comparative &c. apparens, & hoc paratus ob Verificare. The Plaintiff replied Nul tiel Record of the Appearance of the said H. per quod inquit &c. that H. appeared by the Confect and Leave of the Plaintiff. Upon Demurrer to this Replication, it was objected that it was ill, because the alleging the Appearance of Defendant was insufficient, and the alleging the Affiant &c. was immaterial, and that traversing the Appearance only had been sufficient. On the other Side it was urg’d that the Bar was ill, and for that Purpose were cited Hob. 210. Welby v. Canning. Lat. 149. Calfe v. Bingles. Jo. 133. S. C. and 2 Roll. Rep. 119. Worley’s Case. But the Parties amended by Confect. Luw. 71. Trin. 2 Jac. 2. Benfon v. Mungrave.

(N) Of Pleading Nul tiel Record.

1. In Afffe, if a Man pleads Nul tiel Record, and such Record is found in this Court, or certified, he shall not have other Answer after; for it is Peremptory, per Stoufe. And it was of a Record alleged, by which the Tenant at another Time had conteus’d himself to be Villein of a Stranger, whereupon he abated the Writ of Afffe. Br. Record, pl. 73. cites 22 Aff. 12.

2. In Afffe the Defendant intitled himself by Fine, and that the Estate of the Plaintiff was Msne between the Fine and Execution, and the Plaintiff intitled himself by Release by Fine with Warranty of the Acedor of him who recovered by the Fine alleged in the Bar, and so the Execution upon the Fine in the Bar, by which the Tenant claims, is false and feant in Law; so to which the Defendant said Nul tiel Record of any such Fine by which the Plaintiff claims; and whereas the Plaintiff vouch’d Record of the Fine, now the Plaintiff shew’d forth the Record Sub pede Sigilli; and pray’d the Afffe of the Damages: And the Opinion of the Court was, That he shall have it; for the Pleading of Nul tiel Record, where the Plaintiff now shew’d the Record, is as strong as if the Defendant had travers’d the Title of the Plaintiff, and this had been found against him by the Verdict. Br. Record, pl. 45. cites 29 Aff. 1.

3. In Afffe, if the Tenant pleads Recovery against a Stranger, and that the Estate of the Plaintiff is Msne between the Date of his Writ and the Judgment, he ought to allege the Date of his Writ; and if he mistake the Date, the Plaintiff may reply Nul tiel Record. Per Finch. Br. Record, pl. 15. cites 48 E. 3. 11.

4. Notwithstanding the Certificstion of the Tenor of the Record, the Defendant may plead Nul tiel Record; quod nota. Br. Moniftras, pl. 50.

Court of Piepowders at G. and the Tenen of the Record was made to come into G Truyền by Certomb, and sent into Bank by Affile, and Declaration upon the Record (cujus tenor &c. was comprim’d in the Court.) And Roic offer’d to demur, because he did not shew the Record itself; But the Court held the contrary, wherefore he pass’d over, and pleaded Nul tiel Record. Br Moniftras, pl. 50. cites 7.

H. 6. 18.—Br. Record, pl 19. cites S. C.

5. Writ upon the Statute of Marshalta, that whereas none should be su’d in the Mathaltas, if one Party was not of the Kings Houfe, the Party had there vexed him &c. Holl pleaded Nul tiel Record, but per Caundith this is no Plea. For the Steward is in a Manner Party, and there is no
no Reason that He shall certify it, but it shall be try'd by Avowment, however he durst not demur, but said that Such Record &c. and pray'd to have Record. Br. Record. pl. 21. cites 7 H. 6. 33.


7. 'Tis no Plea in a Bill of Difceit, but he shall answer to the Tort. Br. Bille. pl. 9. cites 19 H. 6. 29.

Where Record is plead ed in the same Court where the Record remains, there the other cannot say Nulli tui Record, because the Record is apparent in the same Court. Br. Record. pl. 52. cites 9 H. 7. 7. Per Brudael and Keble. — S. P. But if it remains in another Court, he may plead, That Nulli tui Record. Per Brian Ch. J. of C.B. Br. Record. pl. 75. cites 5 H. 7. 24.

8. Debt was brought in C. B. in the County of Middlesex, of Damages recovered in Writ of Entry in the same Bank upon Writ of Entry brought in the County of S. where the Land lay. The Defendant pleads Nulli tui Record here in C. B. And per Markham, Fulth. and Port. this is no Plea; For tho' the Record be removed into B. R. by Writ of Error, yet the Action lies here, and so if the Judgment be affirmed there; but Nulli tui Record Generally is a good Plea; upon which the Defendant pleaded accordingly. Br. Record. pl. 27. cites 22 H. 6. 38.

9. Debt was brought upon Recognizance, the Defendant said Nulli tui Record, and a Recognizance was certified upon Condition, and yet the Plaintiff recovered notwithstanding he did not declare of the Condition. Br. Pleadings, pl. 51. cites 30 H. 6. 5.

10. In Debt upon Escapes against Bailiff, Sheriff, &c. inasmuch as he suffered the Prisoner condemned to escape, Nulli tui Record is a good Plea; Quod notur bene. Br. Record. pl. 72. cites 35 H. 6. 6.

S. P. Hawk. 11. In Maintenance Nulli tui Record is a good Plea; Per Davers and Pritor. Br. Record. pl. 57. cites 36 H. 6. 12.

cap. 83.

S. P. 12. If a Man pleads a Patent, and shews it, Quere if the other can deny that Nulli tui Record. Br. Record. pl. 39. cites 38 H. 6. 34.

The adverse Party cannot plead Nulli tui Record, because it appears to the Court that there is such a Record, but inasmuch as it is in Nature of a Conveyance, the Party may deny the Operation thereof; therefore he may plead Non concealit, and prove in Evidence that the King had nothing in the Thing granted or the like, and so it was adjuged. Co. Litt. 260. a.

Br. Trilias. pl. 51. cites 9 E. 4 42.

S. C. 13. In Debt, if a Man counts upon Recovery in a Court Baron of Damages of 100 Marks, or in a Court of Ancient Demise, Nulli tui Record is no Plea, but he shall say Nulli tui Recovery, and it shall be try'd per Parias. For if the Rolls are burnt, yet the Plaintiff shall recover. Br. Record. pl. 32. cites 9 E. 4 42.

14. Where a Man shews Record Exemplified under the Seal of the Exchequer or of C. B. the other may say Nulli tui Record against it, Contra, if he shews Exemplification under the Seal of the Chancery; note the Diversity. Br. Record. pl. 83. cites 16 H. 7. 11. per rot. Cur.

15. Against a General Act of Parliament, or such Act whereof the Judges ought Ex Officio to take notice, the other Party need not plead Nulli tui Record; For of such Acts the Judges ought to take Notice; but if it be Mis-recited, the Party ought to demur in Law upon it. S Rep. 28. The Prince's Case,
16. If Null iudicatum Record be pleaded in Bar, it is an Issue, and Judgment shall be given upon Failure of it. Per Car. Hert. 18. Patch. 3 Car. C. B. in the Case of a Recount Convict.

17. In Debt upon Bond in Bristol, the Defendant pleaded in Bar a Judgment upon the same Obligation in B. R. Et hoc praebatur eff verificare v. Pitz. per Recordum illud remanens in B. R. The Plaintiff replied Null iudicat Record S. C. Std. &c. The Defendant rejoined, Quod habetur tale Recordum, & hoc praebatur 52d Patch, &c. et verificare per Recordum illud — Or — Verificare partes Curti his collateravit, and that to are all the Precedents — The Reporter afterwards adds a Note, That upon New Debate in Much Term following the Court altered their Opinion again, and affirmed the first Judgment, notwithstanding it was (Pro inv. Recordum Petrin. liquet) But they agreed that the usual Way in this Case is to omit the last Part, viz. (Petrin. liquet) — S. C. San. &c. The Judgment was affirmed by the Court against their own Opinion; And that this Term the Court was of Opinion that the Record of B. R. might have been certified to Bristol by Censorship & Mynimini.

18. A Scire Facias was awarded against the Defendants upon a Recognition, which they entered into as Bail for a Plaintiff in a Writ of Error, that he should prosecute it with Effect, or pay the Money if the Judgment were affirmed; They pleaded, That he did prosecute it with Effect, and that the Judgment was not yet affirmed; The Plaintiff replied Preterenda, That they did not prosecute with Effect, Pro Placito, That the Judgment was affirmed by the Justices of the Common Bench, and Barons De Graude de la Curj, et hoc praebatur eff verificare per Recordum; To which the Defendants demurred generally, Because it was not alleged, That there were 6 Justices and Barons present when the Judgment was affirmed; For 27 Eliz. cap. 8, which gives them Authority, requires that there should be 6 at the least. Sed non allocatur; For the Defendant should then have pleaded Null iudicat Record; For it there were not 6, their Proceedings were Convict non Jus, P. Vent. 75. Patch. 22 Car. 2. Barret v. Milward.

19. In Tespfars for Assault &c. by the Defendants Simul cum J. B. the Plaintiff declared of assaulting and imprisoning him on the 15th Day of May, and detaining him in Prison 23 Days &c. the Defendants pleaded in Bar That the said Assault &c. was done by them Conjunctim with the said J. B. and that the now Plaintiff brought an Action in C. B. against the said J. B. alone for the said Trespass &c. and had a Verdict and Damages, which he had paid; The Plaintiff replied, Null iudicatum Recordum of the Defendants rejoined, Quod habetur tale Recordum, and prayed that it might be inspected; Upon its being brought into Court, a Variance was alleged between the Record pleaded, and the Record in this Action. For the Plaintiff has now declared of an Assault done on the 15th Day of May in the said Car.

May, and for imprisoning him 20 Days, whereas the Record against J. B. was for an Assault done on the 14th Day of May, and for imprisoning him 10 Days only; and because the Defendant had not precisely averred in his Plea, That it was done Transgresso, the whole Court were of Opinion that it was a material Variance, and that the saying, That the Trespass foresaid was done by them Conjunctim &c. was not sufficient of itself without such Averment as before. 3 Nutw. 944. Hill. 9 W. 3. Rollin, Dyon and Walmley.

But where the Record is removed by a Writ of Error, run thus, Quam in Re- cedum in B. R. apparet, but because he cannot have the Record in this Court, he demanded Judgment of the Court there would proceed; And reports that the next Term it was held that he that will join hisc upon Record ought to say, Et hoc praebatur eff verificare pro Recordum illud — Or — Verificare partes Curti his collateravit, and that to are all the Precedents — The Reporter afterwards adds a Note, That upon New Debate in Much Term following the Court altered their Opinion again, and affirmed the first Judgment, notwithstanding it was (Pro inv. Recordum Petrin. liquet) But they agreed that the usual Way in this Case is to omit the last Part, viz. (Petrin. liquet) — S. C. San. &c. The Judgment was affirmed by the Court against their own Opinion; And that this Term the Court was of Opinion that the Record of B. R. might have been certified to Bristol by Censorship & Mynimini.

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20. See Facias again Boll, who pleaded that there was no Capias against the Principal; Plaintiff replied, and set out a Capias from Patent per Recordum; the Defendant rejoined Nulli tiel Recordum; Defendant surprised that there was such a Recordum, and prayed a Day to bring it in; whereupon the Defendant demurred. Per Holt, this Way of Pleading is out of the common Court; there are two Ways of pleading a Record, either by laying Oyer of a Record, and if it is not given it is a failure; or he may plead Nulli tiel Recordum, and then a Day is given to bring it in, but this Surrender is a 3d Way, and a new one; but it was adjudged well enough, and Plaintiff had Judgment 2d Mod. 215. Mich. 16 v. 3. B. R. Moor v. The Manucipators of Garret.

21. In an Action of Battery and false Imprisonment brought in B. R. the Defendant pleaded in Abatement another Action depending for the same Matter in the same Court; The Plaintiff replied, The said new action aliud tale Recordum & petit quod Recordum alid &c. inficiatur, without giving Liberty to the Defendant to rejoin &c. This is a right pleading. And upon Demurrer to this Replication the Plaintiff had Judgment, because this being a Record of the same Court in which it was pleaded the Plaintiff might pray, That it might be inspected by the Court, if any such there was, and the same was reported * Dier, which was the Precedent by which the Plaintiff was guided in this Case. Et per Curiam, Upon this Plea the Plaintiff might have prayed Oyer of the Record pleaded; and for want of Oyer might have signed Judgment, which is the quickest Method of Proceeding. Carth. 317. Hill. 11 W. 3. B. R. Creamer v. Wickett.

22. In Debt on Judgment Defendant pleads, That the Plaintiff had recovered a Judgment in B. R. Plaintiff replies Nulli tiel Recordum, and delivers the Issue with a Day given in it for the Defendant to bring in the Record at his Peril. Defendant insists that the Replication of Nulli tiel Recordum should not be delivered in the Issue Book and Day given to bring in the Record, but that the Plaintiff should give him the Replication by itself in Form, and give a Rule to repay; therefore moved, That the Plaintiff should take back the Issue delivered, and deliver a Replication in Form, and also repay the Money he took for the Issue. But upon a Rule made to show Cause the Court were of Opinion that a Rejoinder in this Case is totally unnecesary after a compleat Issue joined, and the Delivery of the Issue was right, and discharged the Rule. There is no Difference between a Record of this Court pleaded and a Record of another Court, the Issue is complete upon the Replication without the Rejoinder. Where the Defendant avers the Record, and the Plaintiff gives him a Day to bring in it, the Conclusion of the Replication is as follows, viz. Et hoc parsit off certiorum quattuorvenae &c. Et defunt off prefat Def off habent Recordum ill' his in Octab. Par' beat a Marte sub pecunia jam &c. Idem dies dat off pretat quen' hic &c. Where the Plaintiff avers the Record, the Conclusion of the Replication is thus, viz. And prays that that Record may be here and in-
(O) Of Pleading Prout Patet per Recordum.

1. Where a Man counts and pleads, and concludes Prout Patet de As in Debt Records, or Per Fines, those Words are void, if he does not plead the Record or Fine certain. Br. Nagation, pl. 17. cites 38 H. 6.

2. In Debt upon an Obligation with Condition to appear in the Court of B.R. such a Day &c. the Defendant pleaded, That the Court was adjourn'd to Hartford, and that he appear'd there; and adjudg'd to be ill, because he said not, Prout patet per Recordum; for tho' he appeared, yet if this Appearance be not enter'd upon Record, he forfeits his Obligation; and if he does not conclude with Prout Patet, the Plaintiff cannot have an Answer & say Nul tiet Record. And of that Opinion was all the Court. Cro. E. 462. (bis) Hill. 38 Eliz. pl. 16. Corbet v. Cook.

3. Scire facias against the Bail upon a Writ of Error, according to the G. brought a Statute 3 Jac. The Defendant upon Oyer pleaded, That the Plaintiff in Error presented it with Effect, and that thereupon the Judgment was reversed & the parties est certificare; and upon Demurrer to this Plea it was in an Action adjudg'd ill, because he ought to have concluded, Prout Patet per Recordum. Raym. 50. Mich. 13 Car. 2. B. R. May v. Spencer.

4. 16 & 17 Car. 2. 8. Emac. That after a Verdict Judgment shall not be final' nor reversed for Want of Prout Patet per Recordum, but such De- 

5. Scire facias to execute a Judgment. The Defendant pleaded, That he was taken in Execution upon the Judgment, and brought to the Bar and acknowledged to be in Execution, and afterwards was voluntarily permitted by the Sheriff to escape. The Plaintiff demurred, and had Judgment, because the Plea did not conclude the Committing, Prout Patet per Recordum; for
'tis Matter of Record, and must be so pleaded. 'Tis true Writs are also Matters of Record, but they need not be so pleaded, because they may be lost, and perhaps never are returned. 1 Lev. 211. Patch. 19 Car. 2. B. R. Alanon v. Butler.

6. In Affirmpt upon a Bill of Exchange the Defendant pleaded an Out- travy in Bar, but because he concluded his Plea with Et hoc puratus est certificare instead of Prout Pater per Recordum, Judgment was given for the Plaintiff. 3 Lev. 29. Mich. 33 Car. 2. C. B. Hague v. Skinner.

7. Action against the Warden of the Fleet, who pleaded Salvis sibi omnibus Advantages ad Billam prad' &c. that he was an Officer of the Court of C. B., and that no Officer of that Court can be sued but Coram Juticiariis C. B. The Plaintiff replied, That Tempore exhibitions Billae the Defendant was in Cuf governo Mar' Mares' in quod Placito debito ad Saliam A. B. And upon Demurrer it was held, That Prout Pater per Rec- cordum is only Matter of Form, and helped by a General Demurrer; because where a Record is pleaded without such a Conclusion, the other Side may answer Nul tief Record; besides this is no Plea after an Imparlicum. 1 Salk. 1. Mich. 8 W. 3. B. R. Duncomb v. Church.

8. The Defendant entered into a Recognizance before a Judge of C. B. that if the Plaintiff in Error should be noti/ied, or the Writ definitum or the judgment affirmed, then he would pay &c. and now a Seire facias was brought upon this Recognizance &c. And the Defendant craved Oyer, and That the Plaintiff in Error did prosecute the Writ, and adjused Errors, Et quod Placitum super pendit breve de erro' adues pendit in- terminatum; the Plaintiff replied, That the judgment was affirmed abique hoc, that Placitum pendit indeterminatum; And upon Demurrer to this Replication the Plaintiff had Judgment in C. B. And now the Defendant brought a Writ of Error; The Court held, That the Defendant's Plea was only by way of Excusæ; and that it had been sufficient for him to have pleaded, That the Errors were adjudged, and that Placitum inde- pendit indeterminatum. 2dly, They held that this was in the Negative, and therefore the Defendant need not conclude with a Prout Pater per Recordum; but he ought to have said, That the Record was certified into B. R. in such a Term, and quod Superinde Talter Processum fuit, good judici- um Affermatum fuit Prout Pater per Recordum; And if it was not fo, then the Defendant might have rejoined Nul tief Record. And this Replication was adjudged ill; 1st, Because it makes that a Matter of Inducement, which fould have been the Point in Issue. 2dly, Because the Traverse puts a Matter of Record to be tried by the Country; and thereupon the Court was going to reverse the Judgment, but an Exception was taken to the Writ of Error, for which it was quashed. 2 Salk. 520. Patch. 4 Ann. B. R. Fanahaw v. Morrison.

9. 4 & 5 Anne 16. Enfals, That upon Demurrer joined in any Court of Record no Exception shall be taken for Omission of Prout pater per Rec- cordum, but the Court shall give Judgment without regarding such Defect, ex- cept fixed by Law. 2.

10. The Defendant in false Impraeeuentum justified under a Writ taken out at such a Time; The Plaintiff demurr'd and had Judgment in C. B. Be- cause the Defendant did not conclude his Plea with Prout Pater per Recordum, nor traverse his imprining the Plaintiff at any other Time. Upon Error it was argued, That if the Action had been against the Sheriff, and he had justified under the Writ, he must have concluded his Plea with Prout Pater per Recordum, because it would not be a Record if he had not returned the Writ; but tho' he never return it, it is still a good Justifi- cation for the Defendant in this Action; And it is not absolutely necessi- ty for a Defendant to conclude his Plea fo, because a Writ may be lost. Per Cur. The Original gives Jurisdiction to this Court, fo that if it be not returned, the Court has no Jurisdiction in this Case, and the Cause cannot properly be said to be in Court; But if the Sheriff never returned the Writ, how could the Defendant in this Action plead Prout Pater per Recordum?

1. In Affife 'twas said, That he who is not Tenant shall not have a Day to certify Record of Outlawry, Fine, or other Record; but shall shew it presently; For if he should have a Day, and fail at his Day, he can lose nothing by the Failure. Br. Monitrans, pl. 69. cites 19 All. 10.

2. In Affife the Tenant pleaded a Recovery by a Stranger against W. N. which Estate of the Recoveror he had, and the Estate of the Plaintiff was Mefne between the Difeffin; upon which the Stranger recover'd; And pray'd Judgment if Affife &c. and a good Plea without shewing the Record; for 'tis laid elsewhere, That he shall have Day to bring it in. Br. Monitrans, pl. 90. cites 22 All. 28.

3. In Affife the Tenant intitled himself, inasmuch as W., was seised in Fee, and was bound to him in a Statute Merchant, and he sued Execution, and shewed how in Form &c. and shewed the Statute; But it is laid that he need not, for the Execution is of Record; quod nota. Br. Monitrans, pl. 95. cites 24 All. 2.

4. In Affife, a Recovery in Writ of Right Patent in Court of the Lord is No Bar without shewing of the Record, exceptified sub Sine* Cancellariis; quod nota; upon which the Affife was awarded; The Reason seems to be because this Recovery is not of Record, whereas if it had been of Record, he might have had a Day given to bring it in. Br. Monitrans, pl. 97. cites 28 All. 14.

5. In Affife the Defendant pleaded Outlawry of Felony in the Plaintiff; but it is laid in Delay of Justice only, therefore they ordered the Defendant to answer. Geo C. 127. Hill 4 Cap. Sir William Withipoll's Case.—2 Hawk. Pl. C. 219. cap. 25. 8. 29. cites S. C.

6. In Debta upon a Recovery in another Court the Plaintiff ought to shew the Record at the first Day; quare inde. Br. Monitrans, pl. 131. cites 11 H. 4. 12.

7. Where a Man pleads a Record to the Writ, he shall shew it immediately. Br. Briac, pl. 8. cites 3 H. 6. 15.

8. Debta upon a Recovery of 10 l. Damages in Trespaso in Court of Piepowdrers at G. and the Tenor of the Record was made to come into Chancery by Certiorari, and sent into Bank by Mittenia, and a Declaration upon the Record, Cajus tenor. &c. was comprized in the Count. Rolf. offered to demur, because he did not shew the Record itself; But the Court held con
Record.

...utra he, wherefore he pafs'd over, and pleaded Nul tiel Record; quod nota. Br. Montrans, pl. 50. cites * 7 H. 6. 18.

13. It was brought in Banck upon Recognizance taken before the Mayor of Horeford, and the Defendant pleaded Nul tiel Record; and well: And to see that the Action lies without shewing the Record, as it seems there. Br. Dette, pl. 128. cites 36 H. 6. 2.

14. If a Man pleads the Record in C. B. and declare upon a Recovery of Debt or Damages in London, Ancient Demesne, or other franchise, without shewing Record; and if the Defendant pleads Nul tiel Record, it suffices to certify the Tenor of the Record, without the Record itself. Br. Montrans, pl. 84. cites 39 H. 6. 4.

15. There is a Difference between Letters Patents and other Records; for per Brian, The Demandant must shew the Letters Patents; but if a Fine or other Record be denied, they may come in by Certiorari and Miritmus; But contrary of Letters Patents; for if they be shewn, they shall not be denied. Br. Montrans, pl. 112. cites 12 H. 7. 11. Per baliier.

16. Where a Man shews Record exemplified under the Seal of England, if it be denied; for it ought to come into Chancery by Certiorari, and there to be exemplified under the Great Seal; for if it be exemplified under the Seal of the Common Pleas, in the Exchequer, the like, they are but Evidence to the Jury. Br. Record, pl. 67. cites 25 H. 8 and 39 Att. 14.

* Br. Record, pl. 62. cites S. C.
(Q) Tenor of the Record. Sufficient in what Cases.

1. Upon Recovery of Annuity against a Person by a Prior, the Tenor of the Record was remov'd by Certiorari into Chancery, and sent into Bank by Mittimus, and Serv Facias to have Execution awarded out of it, and good by Award; For the Chancellor will not write to the Treasurer for the Record, but for the Tenor of the Record, quod nota. Br. Record, pl. 4. cites 34 H. 6. 2.

2. Serv Facias Super Tenorem Tenoris Recordi, sent out of Chancery into Bank, was luid to have Execution upon Recovery of an Annuity, and the Reason that it was Super Tenoren Tenoris was, because that before the Record was remov'd out of Bank after the Recovery, the Tenor of it was sent into Chancery to be Exemplified, and there was filed, and they never take off the File any Tenor when it is filed, but to send the Tenor of the Tenor; nor when they have the Tenor, they will not write to the Treasury for the Tenor again; But when the Tenor is so in Chancery to be exemplified, there the same Term they will send the same Tenor; but if it be once filed, or if the Term be passed, there they will not send the Tenor, but the Tenor of the Tenor, quod nota. Br. Record, pl. 9. cites 34 H. 4. 51.

Mittimus Where the principal Record is, they cannot proceed; For if it appears that the Record is in the Treasury, then they will proceed here upon the Tenor of the Tenor; for the Treasury cannot award Execution; but it may be, that the Record is remov'd into B. B. by Writ of Error, and affirm'd, and then he may be the Execution there; And it may be, that it remains yet in this Court, and then Execution ought to be awarded upon the Record, and not upon the Tenor of the Tenor; Therefore they will not proceed till they be certain'd where the Record is. Br. Record, pl. 9. cites 34 H. 4. 51. And if it be written to the Justices of Aisfos, they want to certify the Record itself; For otherwise they ought to award Execution, and to two Executions, which shall not be followed, per Prior, Br. Record, pl. 9. cites 34 H. 4. 51. and 37 H. 6. 51. accordingly. See Lawe Legend of the principal Case.

3. Where a Man receives in Ancient Demesne Land and Damages, Br. Sci. 315 cites 392. or before Justices of Aisfos or in Eyre, and the Tenor of the Record is removed into Chancery by Certiorari, and sent into C. B. by Mittimus, Plaintiff.
Plaintiff shall not have Execution without the Record itself; for the first Court where the Record itself remains may award Execution there, and to two Executions, which is inconvenient; & Contrary upon Tenor of Record lent out of the Treasury; for there are no Justices which may award Execution in the Treasury. Br. Record, pl. 40. cited 39 H. 6. 3.

4. And there it is agreed by all the Justices, That Debt may be brought in Bank for Damages recover'd in Ancient Deeds, or in a Writ; and if the Defendant pleads no such Record, it suffices to certify the Tenor of the Record. Br. Execution, pl. 75. cited 39 H. 6. 3.

So where a Man pleads a Record, and the Court says That *Nulli

Record it suffices to certify the Tenor of the Record. Ibid. — Br. Record, pl. 40. cited S. C. for this proves that there is such a Record. — But it is not sufficient to award a 5. General Writ was directed to C. and B. Justices of AlQUIRE, to be JS

In several Counties, and to take Affies in several Counties; and a Writ of Affide was delivered to them in the Circuit, and the Plaintiff appeared, and the Defendant not; but one as Bandiff appeared for him, and offered a Writ of Affidation, proving and reciting that the King by Patent had afforded B. to be Justice with them by Affidation; but did not show the Patent of it, nor did B. come; And if the flaming of the Writ reciting an Affidation, without the Patent of Affidation, be sufficient to make the two first Justices credit and obey it, or not, was the Question? And by some, the Writ suffices to make them credit to proceed without the Third, who is Associate. Br. Record, pl. 53. cited 5 E. 4. 129.

For where Affide, for Moden, Precedent, quod videlicet &c. are pending, and Writ comes to the Justices, reciting that the Land is feized into the Hands of the King, they shall cease by this, without further Notice; and yet it may be that it is a false Malefactor, and that there is no such Seifin, nor here no Such Patent of Affidation. Ibid. — So where a Man says, that an Attorney has been without Warrant, and Writ comes out of the Chancery, reciting that there is a Warrant, there this suffices, without showing the principal Record. Ibid — So where Writ comes to the Sheriff or Collector of the Custom, reciting that the King by Patent had given to W. S. 31 and Writ of Delivery reciting that it be delivered to him, he ought to obey it, and pay the Party, without showing the Patent of Record of it; and yet it may be, there is no Such Patent. Ibid. — So where Captain gives to the Sheriff, against J. N. and after he delivers a Superfededas to the Sheriff, reciting that the Defendant has appeal'd in Court, and paid Mainprize, and therefore Superfededas &c. he shall obey it, that the Defendant never so appear'd in Banco, nor found Such Mainprize. Ibid. — But by some the Writ is not sufficient, without showing the Patent; For the showing of a Writ of Alluissance, reciting a Pardon of Polyony is not sufficient without showing the Pardon itself; but reciting of Pardon, without Issue of Alluissance, suffices, but it seems that it is not always; For the Pardon ought to be flown in this Court to be allowed. Ibid. — But in the Case above, the very Record did not appear to this Court, where the Writ of Recital is brought, and deny'd the Cafe of the Liberate to the Collector. Ibid. — But the left Opinion was, That the Writ reciting the Affidation suffices; For the Patent of Affidation belongs to B. who was Associate to them, which B. did not come, and therefore the Patent cannot be shown by him. Ibid. — But see the same Year, fol. 157. that it was agreed in the same Case, that the Writ, without the Patent and Compartment, is not sufficient for B. to fit, nor for the old Justices to admit him; For a Justice cannot be made by Writ, but by Patent and Commission, which shall be read in Court when B. who is Associate, appears, before that the old Justices shall admit him; But a Justice may be discharge'd by Writ. Note the Diversity. Ibid.

6. Where a Man traverses Office in Chancery at Ilins, and it is set into B. R. to be try'd, the Transcript only shall be sent into Bank, but the Record itself shall remain in Chancery, quod nosa; and therefore if he relinquishes the Traverse, he cannot traverse de Novo in B. R. Br. Record, pl. 60. cited 14 E. 4. 6.

This Case is D. 180. b. pl. 4. Mich. 2 & 3 Eliz.
Record.

at the Day brought in the Tenor by Mittimus; Adjudg'd a Failure of the
Record. Not. 2. 824. pl. 3. cit in Dyer 157.

8. In Affife the Defendant pleaded Outlawry in the Plaintiff, who re-
plied Nulli teli Record; and being at Hifi, the Defendant brought in the
Tenor by Mittimus, by which it appeared, That there was a Variance in
the Day of the Return of the Exejgent, and in the Place where the Outlawry
was pronounced; and by reason of the Variance aforesaid, and also be-
cause the Plaintiff brought in the Tenor of a Revocation &c. of the
said Outlawry by Mittimus (which Revocation appeared to be after the
said Plea pleaded) it was adjudg'd a Failure of the Record. D. 157. b.

(R) Offences relating to Records, and the Punishment
thereof.

1. 8 H. cap. 1. N A C T S, That if any Record, or Parcel of the same,
in the King's* Courts of * Chancery, Exchequer, the One本领 or the
other,

such high Nature and Credit, as they import in themselves absolute Verity without Contradiction; to
the End, that there might be an End of Contention and Controversy, and Men might rest in Safety and
Repose; certain Clerks, and other Persons, old oftentimes inabled Records, or some Parcel of them,
and sometimes a Writ, Return, Panel, Proceed, or Warrant of Attorney, or other or verify the same;
by Reason whereof divers Judgments were avoided or reverted, whereby no Man (as the Statue efays)
had any Thing in Surety. This was a great Misprision, for which the Offenders therein might be
punished, either at the Suit of the King, by Indictment; or at the Suit of the Party, by an Action
upon this Case. 5 Inf. 71.

* This Act extends not to any other Court or Place, than is here named. 3 Inf. 71.
† This must be understood of the Court of Chancery, which proceeds according to Course of the
Common Law, as in Case of Privilege, of Sure Facts upon Recognizances, Travels of Offices, and
the like: For as to thefe it is a Court of Record, but as to the Proceeding by English Bill in Course
of Equity, it is no Court of Record; for thereupon no Writ of Error lies, as in the other Cases. 3
Inf. 71. — It extends to Chancery, to far only as it proceeds according to the Course of the

Or in his * Treasury to be * voluntarily taken away, withdrawn or
avoided,

* The

King'sTreasure

cal-

ched Treaurarius Regis, the Place where the King's Treasure is kept. This Treasure is twofold, viz.
his Money or Coin, and another, that is for more precious and excellent, and those are the Sacred Judg-
ments, Records, and other Judicial Proceedings, under the Safe Custody of the Treasurer and Chamber-
lains of the Exchequer; and this Treasure is partly in the Exchequer, and partly in the Tower of Lon-
don; for there are ancient Rolls of the Treasure remaining in the Tower, and therefore this Act, in-
tending to include both the one and the other, hath generally, Ex Sa Treasures. 3 Inf. 71. 72.
† In the Indictment upon this Statute, because Felonie, the Word (Voluntary) must of Necessity be
used, to agree with this Act. There are four Words used, (Bolt, Carried away, withdrawn, or avoided)
so as the Sense is, if any Record, or Part of it, Writ, Return, Panel, Proceed, or Warrant of
Attorney &e be Bolt, carried away, withdrawn, or avoided &e. And this Word (Avoided) is a
large Word, and doth include Erasing or Clipping, or cutting of the Side or other Part of the Roll,
or any other Kind of Avoiding the same. 3 Inf. 72.

* By any Clerk, or by other Personus,

This Act
doode not ex-
tend to any Judge of the Court, both because it begins with a Clerk &e. and because by the Statute
of 8 R. 2. (cap 4.) a Penalty is inflicted upon a Judge &e. for making any false Entry, Erasing any Roll,
or changing any Order. See the Statute, for it extends also to Clerks; only this it is to be observ'd in
that Statute, that where it is said (the King and his Council) it is intended of the Court of Justice,
where the Matter depends; for the Judges are the King's Council for Judicature and Proceedings,
according to Law and Justice. 3 Inf. 72. — 4 S. P. To the Difference of any; and they are highly
punishable at Common Law for other Offences of the like Nature; as for interfering a Bill of Indictment,
Record.

not found by the Jury among those which were found, and such like. Hawk. Pl. Cr. 113. cap. 45.

* This Act extends only to Records, whereas a Judgment is given. But whether Judgment be given in Causes Criminal at the Suit of the King upon Indictment, or at the Suit of the Party in an Appeal, or in an Action Real, Personal or Mixt, or of the like Nature; This Act extends thereunto, if Judgment be afterwards given, and to Oubaines, for there Judgment is given per Jury or Coroner's Inquest. For it is not material whether the Act be done against this Statue either before or after Judgment, to judge it be given.

† The Word, (Receiued) is here taken, not only where the Judgment is made erroneous, and to be reversed by Writ of Error, but where the Judgment is so infallible, and made fast, as it kind not, or may be reversed or avoided by Pate. See the Books 6 & 7 R. 3. fol. 15. which expose so well this Statue.

‡ This Act is not to be extended to the Statute of Juries; that is, that the Jury shall be a Jury of twelve Men, as that Title imports, but that they shall be called a Jury of twelve Men, by Act 16 Geo. II, c. 55. § 6.

+ This Act expressly extends to Acccurities before, and leaves Accurities after to the Construction of Law, yet may there be Accurities after the Fact; For whenever an Offence is made a Felony by Act of Parliament, there shall be Accurities to it both before and after, as it had been a Felony by the Common Law; and therefore, tho this Act expresseth Accurities before, yet it takes not away Accurities after, but leaves them to the Law, contrary to the Opinion of Justice Stanford. 5 Ind. 72. — Hawk. Pl. Cr. 113. cap. 45. § 6.; according to Lt. Coke's Opinion.

∥ If the Acts that make this Felony be committed pairwise in one County, and partly in another, but not as to amount to a complete Offence in either, within the Statute, the Party cannot be indicted for a Felony; because the two Counties cannot join in an Indictment, and that which is done in one, cannot be found in another, but he may be indicted of a Jiffrigion in either County. Hawk. Pl. Cr. 113. cap. 45. § 6. cites 2 R. 3. 10. b. 11. 5 Ind. 72. 8. Pl. C. 56.

* Or by Jurispr. to be taken of lawful Men, * (as before the one half shall be of the Men of any Court of the same Courts, and the other half of others) shall be judged for Felons, and shall incur the Pain of Felony; that and that the Judges of the said Courts of the one Bench, or of the other, have Power to hear and determine such Differences before them, and thereby to make due Punishment as afore is said.


Recovery.

2. An Attachment issued against an Associate, for mending a Record after a Motion in Arrest of Judgment for the same fault which he amended; but upon making the Record as it was before the Amendment, and paying costs, the Court Ex Gratia superceded the Attachment. 8 Mod. 226. Hill. 10 Geo. 1724. Anon.

For more of Record in General, See Error, Judgment, Trial, and other proper Titles.

Recovery.

(A) Bound or Advantaged by it; Who.

1. A Receipt quod reddat against Tenant for Life, and he disclaimer'd, upon which the Demandant entred, and well; the Tenant for Life dy'd, now he in Recovery is not bound by it, because the Judgment upon Disclaimer is not that the Demandant recover, but that the Writ abate; Counter of Judgment of the Land, for this binds the Entry of him in Recovery; otherwise upon a Disclaimer. Br. Judgment, pl. 132. cites 36 H. 6. 29.

2. Note, That every one who comes in under a Recovery by Judgment, as Servant, Affiance &c. shall be bound by the Recovery, and every one who comes in by him who recovers by Judgment, as Tenant at Will, Leassee &c. shall have the Advantage to plead it against him who is Privy. Br. Judgment, pl. 119. cites 2 E. 4. 16.

(B) Of one Thing; Where it shall be a Recovery of another, as Part of the Ancient Estate.

1. If an Advowson be appropriated to the Abbot, and A. B. brings Suit of Right of Advowson by elder Title than the Appropriation is, and recovers the Advowson of the Patronage, where a Vicar is endowed; there he shall recover both the Vicarage and the Patronage. Br. Judgment, pl. 138. cites 16 E. 3. and Fitzh. Grants, 56.

Brooke says, the Reason seems to be inasmuch as before the Appropriation there was no Vicarage, for the Vicar was made and endowed when the Appropriation was made; and by Recovery by elder Title than the Appropriation was, it is now made a Patronage again alone, and the Vicarage dispossessed by this Judgment. Br. Judgment, pl. 138.

2. If a Man demands Rent Service and recovers, he shall recover the Services also; and yet they are not compris'd in the Writ. Br. Demand, pl. 45. cites 44 E. 3. 19.

D d d (C) Plead-
(C) Pleadings; How.


2. Trespass upon R. 2. The Defendant pleaded a Recovery in Caress vit against a Stranger, and the Possession of the Plaintiff Mesne between the Title of the Caressvit and the Recovery; And per Cur. where the Recovery is pleaded in an Action Possession, as in this Action of Trespass, Affo &c. he shall say that the Possession was Mesne between the Judgment and Execution; For the Defendant had no Cause to enter before the Judgment. Br. Pleadings, pl. 130. cites 21 E. 4. 52.


4. Where a Man pleads a Recovery by Default, he ought to aver that the Tenant was Tenant of the Franktenement at the Time of the Recovery. Br. Pleadings, pl. 116. cites 21 E. 4. 65. & 22 E. 4. 30. that it is traversable.

5. In Formedon, if the Tenant pleads a Recovery) by a Stranger against him by Confession of the Action) he need not to aver that the Recovery is upon good Title. Br. Brief, pl. 542. cites 10 H. 7. 1.

6. There is a Diversity in pleading of a Recovery between the Plaintiff in Affo, and the Tenant; For the Tenant may plead a Recovery, and the Estate of the Plaintiff Mesne between the Title of his Writ and the Judgment, without showing How; but if the Plaintiff pleads Recovery so, there he ought to shew how the estate of the Tenant was Mesne, viz. by Statement, Disaffo, or other defeasible Title; Note the Diversity. Br. Pleadings, pl. 2. cites 27 H. 8. 14. Per Fitzherbert J.

7. There is a Diversity where a Judgment is several, and where it is Intire; For where 40 Acres are recovered, it is ill to plead a Recovery of 20 Acres; but it should be pleaded of 40 Acres whereof 20 are Parcel. Comb. 253. Patch. 6. W. & M. B. R. Gold v. Burker.

For more of Recovery in General, See 25a, and other Proper Titles.
Recovery Common.

(A) *Recovery Common. What Thing shall be dock'd by it.

1. If Tenant in Tail be, the Remainder or Reversion in Tail or in Fee to the King, and Tenant in Possession suffers a Common Recovery; this cannot dock the Estate in Remainder or Reversion of the King; Because it is but a Conveyance, and so Estate of the King cannot be [barred.]

In Mary Portington's Cafe. Rep. 35. b. cites several Cases that from Edward the 3rd's Time the Judges were very strict. Than a Common Recovery was a good Bar to an Estate Tail, Ibid. But in this pl. 4, says they were introduced in H. the 5th's Time, and were never heard of before. — Ibid. Rep. 45. in Hallman's Cafe, says they were introduced about the 15th of E. the 4th's Time. — And Vent 299. In Cafe of Brown v. White says, That from 12 E. 4. Tallatian's Cafe Common Recoveries have been held not to be restrained by the Statute De Domibus.

The true Reason of Common Recoveries being Bars, is not the Recovery, but that they are Common Conveyances; Per Wyld J. 2 Lev. 29, and there p. 76. Mich. 22. Cap. 2. in the Cafe of Adamson v. Brinen. Hale Ch. J. said, That the Recovery in Value is the Reason of the Bar by Common Recoveries against the Issue in Tail but not as to Recovery or Remainder Man; but the Reason of That is, That the Recovery in Supposition of Laws is in Estate Tail, and in Judgment of Law it still has a Continuance, as at Common Law the Donee post Volum fullam might have alienated and barred the Donor; And a Common Recovery is at a Conveyance excepted out of the Statue De Donis; and the Recovery is in of the Estate the Donor had, but the Issue in Tail is barred to claim it in respect of the supposed Recovery by the Recovery, and the Estate Tail having in Judgment of Law Continuance, no Charge upon the Recovery or Remainder can take Place after the Recovery suffered by Tenant in Tail. — Fee n. Rep. 352. pl. 43. S. C. and pl. by Hale, who said that a Recovery by Tenant in Tenant operated by Way of Continuance, and Prohibition of the Estate Tail, so that whereas before there was a Possibility that the Remainderman might come into Possession, now that Possibility is destroyed, as said in Capell's Cafe, and for that Reason all Charges created by the Remainder man fall to the Ground.

2. But if Tenant in Tail, the Remainder or Reversion in Tail to a Stranger, the Remainder or Reversion in Fee to the King, and Tenant in Possession Tail suffers a Common Recovery, this shall bar all the Estates before the Estate of the King.

Fol. 292. As to barring the Remainder or Reversion in the King, see (Z).

3. But if there be Tenant in Tail, the Remainder in Tail to the King, the Remainder in Fee to a Stranger, and Tenant in Tail in Possession suffers a Common Recovery, this shall bind the Estate in Possession, and the Remainder in Fee, tho' the Estate of the King is not touched by it. D. 37 El. 3. This Point was one of the Points in the Servant's Cafe.

Time, the Entry whereof is there set forth, says this may be collected from 2 Rep. Sir Hugh Cholmeley's Cafe. — Tenant in special Tail, the Recovery being in the King, suffered a Common Recovery; The Question was, Whether the Tail was barred; The Judges inclined to hold it was a Bar, but no Discontinuance of the Tail, nor of the Recovery against the King; And Englishfield said, That he had known it held a Bar by good Advancement; But Shelly doubted. D. 52. pl. 1. Patch. 28 & 29 H. 5. Anon.

4. If Baron seised in Right of his Wife for Life, Remainder in Tail Pig of Ro. B. Remainder to C. and Baron bargains and sells the Land to another, against whom a Precept is brought, who vouches him in Remainder, and so a Common Recovery passes, this shall bind the Remainders, tho' not the Feome, because the Bargain was a good Tenant to the Precept. 29. 10. H. 3. per Curtain.)

5. If
Recovery Common.

5. If a Son devises Land to B. his younger Son and his Heirs, and that if he dies without Issue living A., his eldest Son, then the Land shall remain over to A. in Fee, (which is an Estate in Fee, and not in Tail, and only a Possibility in A. to have it if B. dies without Issue;) and after B. suffers a Common Recovery living A. and then dies without Issue; This Recovery does not bind this Possibility: But A. shall have the Land notwithstanding the Recovery; Because the Recovery in Value cannot go to the Possibility; For by such Deeds every Contingent may be destroyed. 9. 18. In. B. R. between Brown and Pells. Adjudged per Curtani, Contra Doberidge, upon a special Verdict.

6. Tenant for Life, the Remainder over, or Tenant in Tail, the Remainder over, is impeded by Writ of Entry En le Pott, and he vouches a Stranger, the Demandant recovers against the Tenant, and the Tenant over in Value; this shall bind him in Remainder, per Montague J. and others; For the Recompence shall go to him in Remainder; But yet in the Case of the Lord South and Sowell in Chancery, the Law was determined otherwise by all the Justices, as it is said; the Reason seems to be imputed as when he vouches a Stranger, the Recompence shall not go to him in Remainder; Contra, if he vouches the Donor or his Heir who is Prive; But at this Day most put it in Ure to bind the Remainder. Br. Recovery, pl. 28. cites 27 H. 8.

7. Hale Ch. J. said, That 9 Eliz. it was doubted, If there was Tenant in Tail Remainder for Years, and Tenant in Tail had suffered a Common Recovery, whether the Leafe for Years should be barred; because it was said, That No Recompence in Value could go to the Leafe, it being a Chatte; But he said that constant Experience had been taken that the Leafe shall be barred. 2 Lev. 30. Mich. 23 Car. 2. B. R. in the Case of Hudson v. Benfon and Baron.

(B) Recovery Common. In what Cases [an Estate] shall be dock'd by the Recovery. [And by whom.]

1. If Tenant in Tail levies a Fine, and after the Proclamations passed, suffers a Common Recovery, tho' the Tail was barred before the Recovery, yet this shall dock the Remainders, and to no Tail at the Time of the Recovery, because it is Common Assurance. Cr. 13 In. B. R. per Coke said to be one Barton's Cafe.
Recovery Common.

2. But if Tenant in Tail be attainted of Treason, and after suffers a
Common Recovery; This shall not bind the Remainders; Because
it is not any Common Assurance. Tr. 13. 4t. B. R. per Coke
and others.

For the Tail is vested in the King, without Office; and if he die, and the Heir of his Body be vouched, Remainder is not barred; For the Tail did not descend, but vested in the King. Jenk. 257, pl. 41.

3. If Tenant in Tail be attainted of Treason, and the King grants
the Land to J.S. who bargains and sells to B. against whom a Precipe
is brought, who vouches J.S. and so Common Recovery had; this
shall not bar the Remainder, because J.S. does not come in in Pri-
vity of the Tail. 93, 11. 4t. B. per Hubbard.

(C) Recovery Common. What Estate shall be said to
be bound by Common Recovery, with single Voucher.

1. If a Common Recovery be suffered by a single Voucher, it shall
not bar any Estate but that of which the Tenant against whom
the Precipe was brought, was lesse'd actually, or in Law and not in
Right only.

had without any Voucher, the Issue in Tail is not bar'd; For the Recompence in Value being the Rea-
son of barring the Issue, a Recovery by Default, Confession, or Nient Patence, binds not the Issue; for
he has no Recompence, and is not Elloped by his Father's Judgment, for he claims Paramount the
Elloppel per formam Doni; and therefore in this Case the Issue may fail. Pig. Recov. 118. — Fig. of
Recov. 169. S. P.

2. If Tenant for Life, the Remainder in Tail be, and a Stranger
dieth, the Tenant for Life, and then infeet's him in Remainder,
against whom a Precipe is brought, and he suffers a Common Re-
cover, this shall not bind the Remainder in Tail, because he was
not lesse'd thereof at the Time, but had only a Right thereto, and if
the Recompence in Value cannot go to it. Ca. 3. Lincoln College 59.
Restored.

or if Tenant in Tail makes a Feoffment of the Land, and takes back an Estate to himself in Fee or in Tail,
and suffers a Recovery with single Voucher, the Email is not bar'd. Pig. of Recov. 116.

3. If Tenant for Life be, the Remainder in Tail to another, and he
in Remainder enters upon the Lease and dieth him, and after a Prec-
ipe is brought against him, and suffers a Common Recovery; it
seems that this shall bind the Tail, for this Dieth does not divest
the Tail, nor turn it into a Right, as appears by 9 B. 7.,
but he is a Dieth for the Estate for Life only, but as to himself he is seized by
Force of the Tail; for the Estate of Frankeinent and Reversion
cannot stand together distinctly. Contra Co. 3. Lincoln College 59.

4. Tenant in Tail covenanted to stand seized in Consideration of a Mar-
rriage to be had with his Son and the Daughter of J.S. to the Use of him-
sel and his Heirs, till the Marriage had, and after to himself for Life, 18 Machin
and after to the Son and his Wife in Tail, and suffers a single Re-
cover to this Purpose: They die without Issue. Adjudged that the
Remainder depending on the first Estate Tail is not bar'd; for the
single Recovery binds only the Estate in Possession, and then it
coming in this Case after the Transmutation of the Possession by the
E e C e
Recovery Common.

Covenant, when he was not seised in Tail, does not bind the Remainder, It was agreed by all the Justices, That the' such Covenant alters the Estate Tail as to himself, yet as to all Strangers he remains Tenant in Tail; for if he takes Feme after such Covenant to stand seised to the Use of himself for Life, the shall be endowed. Yelv. 51. Mich. 2. Jas. B. R. Fethwater v. Rois.

(D) Recoveries Common. [By] what Persons, and to whom may be suffered. [Baron and Feme, pl. 2. 3. 5. 7. 8. 9. 10. Infant, pl. 4. 6. 11. 12.]

D. 8 Cl. 252. 97. Kautes, cites Ca, 3. Cuppledick 6, Tenant for Life, (and him) Remainder in Tail Remainder to the right Heirs of Tenant for Life, [Tenant for Life] and he in Remainder suffer a Common Recovery, in which they vouch the common Vouchees; this shall not bind the Tail, because he in Remainder is not Tenant to the Præcie; and cites also, that according to this was adjudged in Banco Leach and Cole 41. 42 Cl. Rot. 1793.

2. Co. 3. [5] Owen Morgan; Estate is made to the Baron and Feme, and to the Heirs of the Body of the Baron; Common Recovery is had against the Baron, who vouches the common Vouchee, [and] survives his Wife and dies without Issue, yet adjudged that it is not good, because at the Time of the Recovery there were no Interests between him and his Feme, and the Remainder depends upon the entire ESTATE, and the Baron was not seised by Force of the Tail, and Precip brought against him only.

And. 162. S. C. Each having the entire ESTATE, the Remainder depends on the particular ESTATE they both jointly have, without Division; and when the Husband alone takes the Tenancy on himself, that it is good by Elloppel, yet not according to the Interest he has in the Land; and when he vouch'd and enters into Warranty, he shall be intended Owner of that particular ESTATE which the Tenant had when he could, and of no other ESTATE; and this is a Sile ESTATE only by Elloppel, and not a Joint ESTATE by Eunieties with his Wife; and as the Vouchee comes in, for the Recovery goes, which is only to the sole ESTATE of the Husband, and not to the Remainder; for that does not depend on a Soil Joint ESTATE, so that by reason of the Reencomence the Remainder is not bar'd, it is at large notwithstanding the Elloppel, which goes not in Privy to him in Remainder, being a Stranger to the Tenant; and there is no Occasion to satisfy, because the Title is sake. Pig. of Recov. 70. cites Rep. 5. 3 R. 6. 9 R. 142. 2 Roll. Abr. 395. Siles 323. 4 Le. 26. 1 And. 44. 162. Gould. 26. Dal. 37.

6 Rep, 32. Fitwell- Binns's Cafe. S. Pens. A. and M.
Recovery Common.

Voucher, and to the Recovery had; and resolved that this Recovery shall bind the Tail, because he comes in in Divinity of the Tail.

Life, Remainder to the Heirs of the Body of A. Remainder to B. in Tail Male. A. also suffered a Recovery, and would that the common Voucher be false tenants for

Life, Tenant to the Heirs of the Body of A. Remainder to B. in Tail Male. A. also suffered a Recovery, and would that the common Voucher be false.

Agreed it shall be no Bar to the Moity of the lands whereof the Wife was Tenant for Life, or to the Estate Tail which A. had reasserted upon the Deed of Bargain and Sale involv'd, and a Writ of Entry brought against Covert, Feeor, or Grantee, and he touches the Husband alone, who touches the common Voucher; this Common Recovery is good, and bare the Estate Tail, and all Remainders, but not the Wife's Estate. Pig. of Recov. 67.

But if Lands are given to Husband and Wife, and the Heirs of the Body of the Husband, Remainder to a Stranger, and the Husband dismantles by Fine or Pecuniary, or grants the Land by Lease and Release, or Deed of Bargain and Sale involv'd, and a Writ of Entry brought against Contractor, Feeor, or Grantee, and he touches the Husband alone, who touches the common Voucher; this Common Recovery is good, and bare the Estate Tail, and all Remainders, but not the Wife's Estate. Pig. of Recov. 67.

But if Lands are given to Husband and Wife, and the Heirs of their real Bedes begun, and a Writ of Entry is brought against the Tenant of the Precise made by them, and they come as Vouchers, and touch the common Voucher; this is a good Common Recovery. Pig. of Recov. 70.

4. Common Recovery against Infant by Guardian shall not bind him, because it is a Common Conundrum. Ca. 10. Ms. Port. 43. Recovery suffered by Infant by Guardian is good; but if by Attorney, erroneous after full Age, because it shall be tried per Part, if the Warrant of Attorney was made by him when an Infant. 9d. 241. Reby v. Robinson—Because he may have Recovery against the Guardian by Action of the Cafe, but has no Recovery against the Attorney, as was adjudged 4 Jac. in Cafe of Holland v. Lee. Gods. 161. Zouch v. Mitchell.

In order to the suffering a Common Recovery by an Infant, and to make it valid, there ought to be a Privy Seetet and Vote Manual, signifying the King's Pleasure, upon an Application to him, and other Friends of the Infant, that a Common Recovery might be suffered, and then the Infant and his Friends are examined in Court as to the Circumstances of the Cafe, and their Content, and thenupon a Recovery is suffered; and many Recoveries have been suffered this, as may be seen Ley 82. and Eob. 197. in Blount's Cafe. — I. 256. pl. 66. upon this Cafe says, That this Cafe is not to be drawn into Example—'Tho' the King grants a Privy Seal, yet it is in the Discretion of the Court whether they will permit it to pass, and the Judges do not permit it but when it will be advantageous to the Infant; and that it be permitted to pass, yet it is avoided by Error. Per Cur. Le. Rayn. Rep. 113. Mich. 8.

W. in Cafe of Holland v. Watts.

It was long doubted whether a Common Recovery suffer'd by an Infant by Guardian was good; and in Star Pottinger's Cafe, to Rep. 32. the better Opinion seems to be, That such Recoveries are erroneous; but that Point is now settled, and it hath been the common Practice to do it by Privy Seal, on weighty Reasons, which has some Reembrace with the Civil Law, where the Imperial Authority supplies the Defect of Legal. Upon producing this Privy Seal to the Court of Common Pleas, they admit a Person of known Ability and Integrity to be Guardian; and on the Writs the Reasons for suffering a Common Recovery, and proving that the Infant is not able to suffer, and it is done in open Court: And in this Cafe the Judges have said to examine very strictly into the present Entries, (and take the Content of what's in Remainder) and into the Ends and Purposes of such Recovery, and to be attended with the Writings and Parties to Court, or at their Chambers, before they admit a Guardian, and suffer the Recovery to be pulled in Court. Pig. of Recov. 64. 65.

And this Admissitute by Guardian, and the Reason of it, is grounded m M. 9 Est. 4. pt. 10. Pig. of Recov. 65.

5. If Baron and Feme suffer a Recovery, this shall bind the Feme. Ca. 1. Port. 43.

Writ to examine Four Courts, and the first Mention of such Examination is 45 E. 3. 18. But now it is wholly dissipated in Common Recoveries, tho' it still remains in Feme. Pig. of Recov. 66.

6. If an Infant suffers a Common Recovery, in which he comes in as Vouchee in proper Person; this shall not bind him, but he may recover Recovery, for this Caufe is a Writ of Error. Hill. 162. between Agets and Walker, per tenant Curiam, agreed upon a Special Verdict, but Judgment of no evidence was upon a Special Verdict against him, because it could not be avoided by Entry without Writ of Error. Intraor. Et. war. 1649. Rex. 200.

A. and M. his Wife Tenants in special Tail, Remainder to B. in Tail, Remainder to C. in Fee; A. alone lease a Feme to D. and died leaving life; the Wife entered, she is in of her Estate-Tail, and the five in Tail were bar'd by the Feme, yet by her Entry B. and C. are remitted to their several Remainders, and D. is ousted of all his Estate; and if he suffer

On all Recoveries there was a Writ to examine Four Courts, and the first Mention of such Examination is 45 E. 3. 18. But now it is wholly dissipated in Common Recoveries, tho' it still remains in Feme. Pig. of Recov. 66.
Recovery Common.

suffer a Recovery against herself as Tenant in Tail, and reach the common Vouchers, the old Reminders of B. and C. are barr'd, but not her own estate Tail, for Hobart Ch. J. Hob. 239, in Case of Duncomb v. Wingield.

8. A. feated in Fee, having 3 Sons, B. C. and D. did, upon the Marriage of D. with Jane Scarle, covenant to stand feated to the Use of himself for Life, Remainder to D. and Jane, and the Heirs Male of their Bodies, Remainder to D. and the Heirs Male of his Body, Remainder to C. and the Heirs Male of his Body, Remainder to B. and the Heirs Male of his Body, Remainder to the right Heirs of A. the Father; A. died, D. in the Life-time of his Wife suffered a common Recovery without her, and sold the Lands to W. R. Then C. died without Issue. D. had Issue by Jane one Son and no more, named James, who dies, leaving Issue four Daughters, but no Son; B. had Issue Thomas, who after the Death of D. and Jane entered and conveyed to the Defendant; the Question was, whether this Recovery suffered by D. as Voucher alone, without his Wife Jane, should bar the Estate Tail; it was agreed that it was not barr'd in toto, Jane not being vouch'd, according to * Cuppledike's Cafe, and * DUNN and BERRITAN's Cafe there cited; but if it should be barr'd for a Money, the Settlement being made before Marriage, when they took by Moieties, might be doubted, as it was in Cuppledike's Cafe. But the Estate Tail to D. and Jane being determined by their Death, and having a Remainder to himself and to the Heirs Male of his Body, that Remainder was totally barr'd, and all the Remainders over; for the Remainder in Tail to D. pass'd by the Recovery, and is in Supposition of Law in Eile, and precedent to all the subsequent Remainders, according to Capel's Cafe. 1 Rep. and * Benton and Bar- ton's Cafe, lately adjudged in C. B. 3 Lev. 107. Nich. 34 Car. 2. C. B. Holte v. Sanders. 

9. A Fine was levied to the Use of the Husband and Wife during their Joint Lives, Remainder to the Heirs of the Body of the Wife by the Husband to be begun; afterwards he died, and the Widow married again and suffered a Recovery; Adjudged that the Issue of the first Husband was barr'd by this Recovery, tho' the Limitation was to the first Husband and the Wife during their Joint Lives; because the Freehold did not determine by the Death of the Husband, but the Estate Tail was executed in her, the Death of the Husband, tho' that seems to have been the Cafe; but the only Point in those Books was, whether it was an Estate Tail executed in the Wife? And held that it was. The Cafe of Merrel v. Rumley.

10. A Man feated of Lands in Fee levied a Fine to the Use of himself for Life, and after to his Wife and the Heirs of her Body by him begotten, they both, having Issue, suffer a Recovery. Pig. of Recov. 80. 81, cites Co. Litt. 365. b. where it is laid to be void; but Mr. Pigot says, He cannot see how this can be Law; for the Husband and Wife joining may bar the Issue by a Recovery; and cites Cro. J. 475. —See Jointrefs &c. (1) pl. 21. Kirkman v. Thompson, and the Note there.

11. The King was petitioned by the Husband of an Heires for a Privy Seal, directing his Justices of England and Wales to take a Fine or common Recovery, as there should be Occasion, from the Wife, notwithstanding her Minority, the being now 18 Years old, in order to the Settling her Estate to Ufes, so that the Husband might be sure of an Estate for Life, though his Wife (who was now big with Child) should die; whereupon the King refers'd it to the Lord Chancellor, who on hearing Counsel for and against it, declar'd he thought the Petition reasonable,
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and that he would report the same accordingly. Vern. 461. Sir Henry taken from Mackworth's Cafe.

ever done; but that a Common Recovery might be had as desired by the King's special Direction. Vern. 461. in Sir H Mackworth's Cafe.

12. Upon a Petition by A. being 19 Years old, for Leave to suffer a Common Recovery to bar his Sister, who was next in Remainder and his Heir, the having married his Footman, The Judges, to whom it was refer'd, obv'ed upon the Precedens produced of like Recoveries by Infants, That 7 of the Petitions were by Fathers on the Marriage of their Sons, and an equal Recompence given; whereas here was neither Father nor Marriage, and that this had been carried too far already; and so disf

33 See d'edV^*"

Of what Thing. What Estates may be barred by it. (E) [Fol. 796]


3. By the Judgment in Common Recovery, without Execution, the Tail is bound. Co. 1. Shelley 106. Co. 3. 3. D. 23 El. 3. 376. See Execution (1)

4. By Common Law Common Recovery shall bind the Tail, Reversion being in the King. Co. 10. 48. (38) 33 H. 8. See (7)

5. But not the Reversion of the King. 33 D. 3. 2. 224.

6. In diverse Cases Things in Abeyance may be barr'd and destroy'd; As if Tenant in Tail be dissized, and releases to the Diffractor, Now Littleton says, That the Easte Tail is in Abeyance; yet it may be barr'd by a Common Recovery, in which the Tenant in Tail is found.' Per Gavdy J. 1 Rep. 175. b. (g) 136. in Chudleigh's Cafe.

7. So if Tenant in Tail be, the Remainder to the right Heirs of J. S. if 6 Rep. 42. a. Tenant in Tail fullers a Common Recovery, the Remainder is barr'd. Per Gavdy J. 1 Rep. 136. a. (a)


By what Names. (F)

1. If a man be seized of a reputed Manor, which is not a Manor in fact, by Name of man and he suffers a Common Recovery of it by Name of the Manor a

2. Reputed Manor shall pass well enough; For this Common Recovery is a


That the King had made Grants of the Manor of St James, which was but a Manor in Reputation. Per Hide Ch. J. in delivering the Opinion of the Court. Lev. 28. Thinne v. Thinne. Indenture was to suffer a Recovery of a Manor, and all Lands reputed Parcel; the Recovery is suffer'd of the Manor; the Lands reputed Parcel shall pass 1 Lev. 24. Patch. 15 Car. 2. B R. Thinne v. Thinne. — Because it appears by the Verdict. That it was the Intent of the Parties that it should pass; And because the common Practice and received Opinion since Sir John Smith's Cafe, had been that Lands reputed Parcel should pass. Sid. 192. Thinne v. Thinne.

(G) Dock'd
Recovery Common.

(G) Dock'd by it, what. Charges or Incumbrances.

1. If one devises Lands to A. in Tail, Remainder to B. in Tail, Remainder C. in Tail, and if they all die without Issue, that then the Land shall be sold by his Executors; A. dies without Issue, B. enters and fullers a Recovery by Writ of Entry En le Poit against him, and dies without Issue; and then C. dies without Issue; The Executors are bard to making a Sale without Doubt. Per Dyer and Welth. Mo. 73. pl. 201. Trim. 6 Eliz. Anon.

2. A. Tenant in Tail, Remainder to B. in Tail; B. granted a Remainder, and declared the Uses to J. H. and his Heirs, and died without Issue; The Granter of the Rent disclaim'd, and J. H. brought Replevin. Refolv'd by all the Judges of England, That J. H. is not subject to the Rent granted by B. the Remainder Man in Tail; For J. H. is in of an Estate derived from the Tenant in Tail in Possession, which Estate is not subject to the Charge of him in Remainder; Besides, the Charge of him in Remainder is good in Law by reason of the Possibility of the Lands coming into Possession, and Then the Possession shall be bard; For the Remainder of itself is a Thing not manageable, neither can a Distrefs be taken in it, as it ought to be taken, upon the same Land; And so a Condition is tacitly annex'd to the Charge of him in Remainder, viz. That it shall take Effect when the Remainder comes into Possession; and that a Charging a Remainder can be only in respect of the Possibility of its coming into Possession, which Possibility is destroy'd by the Recovery. And the Granter cannot falsify the Recovery, nor being bard by him who was chargeable with the Rent, and the Recovery bars the Remainder; so that neither he nor any claiming under him can falsify. And so it was Refolv'd; That no Lease, Rent, Common, Recognition, nor other Charge, Interest, or Estate made by the Remainder Man shall charge the Possession of the Recoveror. 1 Rep. 61. b. Patch. 23 Eliz. Capell's Case.

It was approved by Hale Ch. J. and the whole Court. 2 Lev. 30. Mich. 23 Car. 2 B R. in the Case of Hudson v. Benjamin and Earon.—S. C. cited Pig. of Recov. 118. and says, It is because at Common Law the Remainder was only a Possibility of Recoveror till the Statute of Don't, and on that Statute Judges by Contraction turn'd this Possibility into a Fix'd Estate, called a Remainder or Reversion; Now in a Recovery was a Conveyance excepted out of the Statute, and an inherent Privilege annex'd to the Estate, and as by it the Tenant in Tail could have bard the Remainder, so he may all Charges of the Remainder Man. And as the Granter of that Charge had been bound by the Common Recovery, so had thole that claim under him; For the Recoveror in a Common Recovery is in of an Estate that he has gained under Tenant in Tail in Possession, which Estate is no was subject to the Charge of him in Remainder or Reversion, and the Charge of him in Remainder can only be good in respect of the Possibility that the Land may come in Possession, which being destroy'd by the Recovery, the Remainder is gone, and cites Capell's Case. But he says, The more full Revold seems to be that the Recovery the Estates Tail is extended, and the Recoveror in of an Estate, that by Supplies of Laws continues for ever; so that the Estate having a perpetual Continuance, no Charge of him in Reversion can take Place; and refers to the Case of Benfon v. Hudson. 2 Lev. 28. where this is explained by Ld. Ch. J. Hale; and says, That the Case on A. Tenant for Life, Remainder in Tail to B. The Remainder Man leaves for Years to begin alter the Decease of the Tenant for Life. A. suffers a Recovery with Voucher of B. and dies. The Lease is not destroy'd, but Leifee may falsify by Common Law, and also by the Statutes; But if B. who had the Inheritance, had suffer'd a Common Recovery, that should have destroy'd all the Remainders and Reversions thereupon depending.
Recovery Common.

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pending, and all the Estates deriv'd out of such Remainder; But Tenant in Tail, for Life has no such Power; And here the Recovery is had against the Tenant in Tail, want for Life and with the Voucher of Tenant in Tail. Cro. E. 718. pl. 45. Remitter to the right.

Heirs of the

Defendants; provided, That 2. Shall have Power to make Leases for Years in Possession, Recovery, or Contingency; A. made a Lease for Years to commence after the Death of L. without Issue. Per Rule No. 1. B. may be this Lease by a Common Recovery, tho' this arose precedent to the Estate Tail, because 'tis in Continuance of the Estate of B. Raym. 216. Mich. 26 Car. 2. B. Bensom v. Hudson. — Frewen Rep. 346. S. C. reports, that the Chief Justice held, That in such Case the Lease would not be barr'd by the Recovery.


5. A. was seised in Fee of Land; A. and B. ley a Fine to J. S. who render'd in Tail to B. rendering Rent; and by the same Fine 'twas limited, That if B. die without Issue, Tenementa praediae integra remanunt to A. and his Heirs. B. sufferers a Common Recovery, Retol'd, That it was S. C. Adjoin a Reversion and not a Remainder in A. and that the Rent was not extant, because A. was always in Possession thereof; and 'tis difficult from the Land; And that, whereas one is in Possession, cannot be devest by a Recovery, against another Person. And here is no Reconversion for the Rent; for that the Rent goes only for the Land, and is not like the Case of a Rent granting out of a Remainder; for that never was in Possession, nor a Thing executed; and tho' the Reversion, to which this Rent was annex'd, is gone, yet the Rent continues. Cro. E. 768, 792. Mich. 42 & 43 Eliz. White v. Well, alias Gerith.


And 1st. Nov. 9. S. C. accordingly.

Attest, the Hills in Court of Chief Justice.

Charger upon the Land disfranchisable of Common Right; but if there had been a Condition of Re-entry, it had been barr'd. Twillgen J. doubted if the Rent be not barr'd in Gerith's Case; but Hall both Wirbus said, That it is not barr'd. 2 Lev. 326. in the Case of Hudson v. Benfon.

A. seised in Fee devised his Lands to J. W. and the Heirs of his Body, Remainder to the right Heirs of J. W. upon Condition that J. W. and his Heirs should pay an yearly Rent-charge of 1 l. per Annum to B. and to the Heirs of his Body, and 1½ l. a Year to C. and the Heirs of her Body, and that if either of them should die without Issue, then the Survivor should have the whole for Life, and that after her Death the whole 3½ l. per Ann. should be paid to the Heirs of the Body of such Survivor; A. died, and afterwards B. levied a Fine, and suffered a Common Recovery in which J. W. was Voucher, and declared the Ues to G. M. in Fee, who granted it to the Defendant P. and his Heirs; that the Tenant attorned to him, and the Rent being Arrear, he distrained for it. The Plaintiff replied in Bar to the Answer, that B. died without Issue before any Rent was due; and upon Demurrer the Court was of Opinion for the Answerer, but they held that a Remainder might well be of a Rent de Novo, and also that by the Recovery in this Case the Estate in the Rent was enlarged, and that the Recoveror was thereby of an Estate in Fee-simple. No Judgment was given, but the Matter was ended by Agreement of the Parties. 2 Laww 1218. Mich. 6 W. & M. Weeks v. Peach.
Recovery Common.

A recovery Judgment, suffer'd to a Colateral Purpofe by Tenant in Tail, shall make good all precedent Incumbrances and Acts. Chan. Cafes

Cite: S C Chan. Rep. 58. Porter

v. Emery. S. P. — If Tenant in Tail makes a Lease not availed by the Sature, or enters into a Judgment or Recognition, and then suffer'd a Common Recovery, the Lease and other Incumbrances are all good, which were before devable by the Iife; for the Recoveror comes in subject to all Incumbrances of Tenant in Tail, and the Recovery opens, as we call it, and lets in all the Incumbrances; and therefore when a Man has to do with a Tenant in Tail that it is incumber'd with Judges &c it is very dangerous, for he suffer a Common Recovery; for all the precedent Judgments take Place of the Security he gives. P. of Recov. 120, 121.

Tenant in Tail, incumber'd with Statutes and Judgments, makes a Mortgage of Part of his Eftate for 500 Years, and after to corroborate this Term, leaves a Fine for concept for 500 Years with Proclamations in the Mortgagees: And the Question was, Whether this Fine should ensure to the particular Advantage of the Mortgagee, or let in Prior Incumbrances. Sir Edward Northly was of Opinion the Fine let in prior Incumbrances. Serjeant Luskwich, after great Consideration, was of a contrary Opinion; but it seems Sir Edward Northly's Opinion is the better; for let us take the Cafe without the Fine, and then fee what Operation the Fine has. It is plain that, during the Life of Tenant in Tail, any prior Incumbrance was preferable to the Mortgage for 500 Years, and the Mortgagee could not avoid the prior Incumbrance, then what does the Fine do! that here the Iife and gives the Concept a Title, as long as Tenant in Tail has Iife of its Body, so that the Expert, which before was good only for Tenant in Tail's Life, and avoidable by his Iife, now bars the Iife, and is enlarg'd and made more extensive; and what Reason can there be, that the Expert thus enlarg'd should not have Continuance for other Incumbrances, as well as the Mortgage? I really can see none; Suppose this had been a Fine for Continuance de Droit come come, with Proclamation, of the whole Expert, none will say but this let in the Incumbrances, as long as Tenant in Tail had Iife of his Body, and they should be prefer'd according to their Priority, what Difference is there then between Fine for Continuance de Droit come come, and a Fine for Concept, in which Proclamations! Truly none to the barring the Iife, only one is a Bar during the Term granted by the Fine for Concept) and the other is a Bar as long as there is Iife; so that it seems the Incumbrances will take Place before the Mortgage; but the Cafe being never resolve'd, as I know of, defends Consideration; But if in this Cafe Tenant in Tail had suffer'd a Recovery of Years, and declared the Eftate to the Mortgagee for 500 Years, no Doubt all prior Judgments had been let in. P. Recov. 121, 122, 123.

8. A. insolcit J. N. and J. S. to the Use of himself in Tail Male, Remainder to B. in Tail, Remainder to his own right Heirs; Provided that if B. dies, and there be no Iife Male of his Body, then C. shall have a Rent-Charge of 200 l. a Year, until he shall have received 2000 l. and Charges, the first Payment to be made at the first Day of Payment, which shall be after the said Contingents. B. made a Lease for 1000 Years, and afterwards he levied a Fine and suffer'd a Recovery, and died without Iife Male, by which all the Contingents happened. B. levied a Fine and suffer'd a Recovery. It was argued that this Contingent Rent-Charge is not bard, because it was not in Effe when the Recovery was suffer'd, and so no Recompence in Value(by Reason whereof Common Recoveries are Bars) can go to it; and cited Euphrates's Cafe, and Capell's Cafe and Whitlock's Cafe. But it was resolve'd that the Rent was bard, the Recovery barring all Eftates which are chargeable with it, admitting it to arise out of the Seitin of the Feodies, according to Whitlock's Cafe. But it was agreed that if it had been by Grant precedent to the Feoinent, the Recovery had not bard it. And it was said that Capell's Cafe rules this Cafe, and that all Objections were made there as can be made here; that the reason of Common Recoveries is not the Recompence, but that they are Common Conveyances: That the Land cannot be chargeable during the Term for 1000 Years, because it was derived only out of the Estate Tail in B. which is determined, before which this Charge could not arise. And Judgment accordingly in Lancaster, and afterwards affirm'd in B. R. And all the Court agreed to Capell's Cafe, and the Reason of it. 2 Lev. 28 to 31. Mich. 23 Car. 2. B. R. Hudfon v. Benfon and Baron.

9. If a Condition be for Payment of Rent, a Common Recovery will not bar it; but if a Condition be for doing a Colateral Thing, it is a Bar. Per Hale Ch. J. Med. 111. Patch. 26 Car. 2. B. R. in Cafe of Benfon v. Hudfon.


2 Roll R. Per Montague Ch. 1. — Condition, that runs with the Land, cannot be bard by a Common Recovery; but a Colateral Condition may, as if Donor referre a Rent, with a Condition to re-enter, a Recovery will not bar it; but if it be to re-enter for Nonpayment of a Sum in gross, it is otherwise. C. 577. Finn. 3 Ann. B. R. Page v. Hayward. In one Cafe the Rent remain'd, but the Condition is good, be-
Recovery Common.

10. All Charges made upon the Estate Tail, will continue upon those that claim under Tenant in Tail (as the Recoveror does) tho' the Iffice will avoid them. Per Hale Ch. J. Freem. Rep. 365. pl. 466. in Cafe of Benfon v. Hudson.

Statute, or suffers a Recovery, the Leffee or Recoveree are chargeable with the Rent. Per Hale, ibid.

So if from Tenant in Tail grants a Rent, and takes Husband and dies, the Husband Tenant by the Consort is chargeable with the Rent, because he comes in under the Estate of Tenant in Tail. Per Hale. Freem. Rep. 365. ut supra.

11. Father Tenant for Life, Remainder to the Son in Tail, Remainder to the right Heirs of the Son. The Son in the Life-time of his Father makes a Lease for Years, and then suffer'd a Common Recovery, and died without Iffice: In this case the Points were held clearly. 1st. That when the Son makes a Lease for Years, this operates as well out of his Remainder in Fee as out of his Estate-tail; so that when he dies without Iffice, this is a good Lease against the Heir in Fee, unless the Iffice of Tenant in Tail had entered and avoided it. 2dly. When Tenant in Tail makes a Lease for Years, and then suffers a Recovery, this works by Way of Corroboration upon the Lease, and makes that good. Freem. Rep. 310. pl. 379. Mich. 1675. Anon.

(H) Good, or Not. In Respect of the Place where the Lands lie.

1. A Seisd in Tail, among other Lands, of 2 Marithes called Knight- Wick and Southwick, lying in an Island called Camby in the Parish of North Benfleet, suffer'd a Recovery, in which South Benfleet and many other Parishes were named, and also Camby, but the Parish of North Benfleet was omitted; and whether the Lands in North Benfleet Paids'd or No? was the Question, upon a Trial in Ejec- tion at the Bar. And all the Court agreed, That the Town and Parith ther a Fine is being omitted, the Camby was a Lie of Common, yet being in a Town, the of Lands in Recovery did not extend to it. That a Common Recovery in a Town, a Lie of Common or Hamlet, in a good, and perhaps in a Place known out of the Town, Parith or Hamlet; but to admit a Recovery of Lands in a Place known in a Town &c. would be absurd; for there is no Town in which J. 18th there are not 20 Places known. Hutt. 106. Mich. 5 Car. Baker v. Time the Johnson. That Point, that it was good; And by the same Reason a Recovery shall be good, for they are both amicable Suits, and Common Actions, and as they grew more in Practice, the Judges have extended them farther. 2 Mod. 49. in Cafe of Lever v. Hofer.

2. J. was Tenant in Tail of Lands in Shrewsbury and Cotton; both are S. C. by the within the Liberties of the Town of Shrewsbury. J. suffer'd a Recovery of all his Lands in both Vills; but the Prerice was of two Messuages and Clofs thereto belonging (thee were in Shrewsbury) and of &c. (mention- ing those in Cotton) lying and being in the Vill of Shrewsbury, and the Liberty of Cotton. The Question was, Whether the Lands lying in Cot- ton, which is a distinct Vill, and not named in this Recovery, do pass or not? It was infilled that they did not, because tho' the Writ of Cov- er there is no Tenant upon which a Fine is levied is a Perusal Action, yet a Common Prerice in G g g Recovery
Recovery Common.

Recovery is a Real Action, and the Land itself is demanded in the Pre
promise. But adjudged that the Lands in Cotton did pafs. Mod. 206. pl.
the Register, the Liberty, 37. Trin. 27 Car. 2. C. B. Jones v. Wair.
nor is
there any Authority in the Law Befides for such a Recovery, and that Liberties in the Judgment of
Law are Incorporal; and confequently it would be abfurd to fay that the Lands which are Corporal
be fhould be therein contained. But North Ch. J. faid, That the Jury have found Cotton to be a Vill in
the Liberty of Shrewbury, and fo it is not Incorporal.

Judgment
was given
for the De-
fendant, for
that it ap-
parently
plainly by
the Deed of
Bargain and
Sale, that
the Intent
of the Par-
ties was,
that the Re-
covely
should ex-
tend to all
his Lands,
as well as in
the Parish of
Rippon as in
the Vill of
Rippon;
that the
Deed and
the Recovely,
according to
Cromwell's
Cafe, fhould
be looked upon as one Affurance, and that one fhould be explained by the other.
Frem. Rep. 244.

(1) Good or not. In Respect of the Persons Suffering it, or their Estates.

1. It was held, that if Feoffes to the Ufe of the Estate Tail, or other Ufe, are imprefled, and fuffer a Common Recovery; this fhall bind the Feoffees and their Heirs, and Ceffy que Ufe and his Heirs, where the Buyer or Recoveror has no Conufance of the firft Ufe. But per Fitz-
herbert, This fhall bind, tho' he has Conufance of the firft Ufe. Br. Recovery, pl. 29. cites 29 H. 8.

It was held
that the Recycling
against Ceffy que Ufe in Tail fhall not
for his Ufe: wherefore it is only a Grant of his Eflate. Br. Feoffments a Ufe, pl. 43. cites H. 8.
Graffley's Cafe. — Ibid. pl. 36. cites S. C. — But it was held by feveral in Chancery Tempore E.
f that the Recovery fhall bind the Ufe, if Ceffy que Ufe in Tail be vouched in the fame Recovery. Br.
Feoffments a Ufe, pl. 36.

A Fine or Recovery of a Ceffy que Talf shall bar and transfer the Truth, as it fhould an Eflate at
Law, if it were taken under a Confederation. Resolved by the Lord Chancelier, the Maker of the Feoffs, and
Wind.
Recovery Common.

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Windsor J. But had it not been for the Consideration Windsor J. doubted of it, because he said he would upon this Court as Remedial to those that come in upon a Consideration &c. Chap. Cases 49. Pech 16 Car. 2 Goodrich v. Brown—2 Easam. Rep. 180. S.C. and P. and that 5th Recovery operates as strongly as an Estate at Law, and to the same Purpose, if upon any Consideration.

If Celly that Title in Tail suffers a Common Recovery, this bars the entail and all the Reminders Vern. R. i. North v. Way.—2 Ch. Cases 58. North v. Champernon—Then there was no Tenant to the Species, but only the Celly that Title in Tail was in Possession under the Tenant who had the Feehold in him, but was no Party to the Recovery; yet decreed a good Bar, and a Difference was taken if there had been a Celly that Title for Life before the Title in Tail, in that in Case the Feeble in Law had been executed according to the Trust, and consequently the Tenant in Tail could not have bar'd the Remander in Fee if he had suffered a Recovery, there Celly that Title in Tail should not bar the Remander by a Common Recovery, if there was no Tenant to the Precipe. 2 Ch. Cases 65. Trin. 53 Car. 2. North v. Williams—This Case of Champernon v. North, was agreed by Lord Keeper, Wise's Rep. 91. Pech. 17-26—Ch. R. 224. Dugby v. Morgan—9 Mod. 144.—Abr. Eqn. Cases 593 cites Sir Fr. Gerard's Cafe. Vern. 15. cites Wadeson v. Downes.

3. A Tenant in Tail, Remander to J. S. in Fee. A. was Sheriff of the County where the Lands lay, and suffered a Recovery with the Common Voucher over; a Release of Error and Writs of Error by A. will not hinder the Remanderman, or even the Issue in Tail from bringing a Writ of Error or a Formedon. D. 188. pl. 8. Sir Ralph Rowlet's Cafe.

4. A Tenant for Life, Remander to B. for Life, Remander to fth and 2d Son of B. in Tail, Remander to C. D. and E. in like Manner. B. has a Son born, B. C. D. and E. levy a Fine to A. living the Son; A. makes a Feodiment; the Son dies, another Son being then born. Resolved the Contingent Remander stands good to the 2d Son, it being preferred by the Right continuing in the eldest Son till the Birth of the 2d. 2 Lev. 35. Hill. 23 & 24 Car. 2. B. R. Loid v. Broking. 1 Mod. 92.

5. A. devised his Lands to his youngest Daughter, and to the Heirs of Jenk. 223. his Body, Remander to the eldest Daughter and the Heirs of her Body, with diverse Remanthers over, provided that if his said Daughters, or any of them, or any others to whom he had thereby devised any Remander, found willing or otherwise conclude and agree to and for the daugther. As whereby the Lands may be not devolved according to the Limitations in his said Will, that then such Person or Persons should be excluded from having such Estates, and that the Estates limited to them should be void, as if such Daughter had not been named in his said Will, or had died without Issue. The youngest Daughter married, and then she and her Husband suffered a Common Recovery to the Use of them and their Heirs. Adjudged that the youngest Daughter, being Tenant in Tail, could not be restrained by any Proviso or Limitation from suffering a Common Recovery, because it is incident and tacitly annex'd to such Estate, and therefore it is repugnant to the Gift to restrain her by any Condition or Limitation. 16 Repl. 55. a. Trin. 11 Jac. Mary Portington's Cafe.

6. Tenant in Tail, Remander in Tail, Remander in Fee; The Tenant s. C. died in Tail is attainted of Treason. Office is found. The King by his Letters Patents grants the Lands to A. who bargain and sells the Land by Deed to B. Afterwards B. suffers a Common Recovery, in which the Tenant in Tail is invalid, and afterwards the Deed is invalid. Upon this being put as a standing Question to Lord Hobart, when he took his Place as Chief Juicte of C. B. he held, That it was no Bar of the Remander, because before Involvement nothing passed, but only by way of Conclusion; And the Bar was no lawful Tenant to the Precipe. Godb. 218. pl. 314. Mich. 11 Jac. C. B. Anon.

Tail after an Atminder, that by a Common Recovery, if there be a good Tenant to the Precipe, he may bar the Issue, Reversions and Remanders; For if the King pardons the Party, and restores the Land, tho' the Atminder is in Force, he may bar the Issue.

7. A. gives in Tail to B. an Alien, the Remander to C. in Fee. After wards B. suffers a Common Recovery, and then an Office is found. B. dies first he was willing to adhere to a Celly that Title in Tail, and does not submit to the Title in Tail, he is suffered to hold the Office, with the intimation that he suffers a Common Recovery, and if he do not suffer such Recovery, it is a sufficient bar.

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8 The Father purchaseth Land in the Son's Name, an Infant of 17 Years, and he would have fullest a Recovery as Tenant to the Precipce, but the Court would not fullest him. Het. 163. Mich. 6 Car. C. B. Anon.

9. If an Outlaw suffers a Common Recovery, it will bar the Estate Tail, because of the intended Recompence only; and the Tenant might have counterpleaded the Vouching of such Person, and so it is his own Fault. Arg. Kebr. 30. in the Case of Plantet v. Holms.

10. A. by Will devis'd all his Lands to C. and his Heirs, in Trust to pay Debts; and then in Trust for B. his Granddaughter and the Heirs of her Body, Remainder to C. and his Heirs, upon Condition that he marry B. and gave C. his Personal Estate in Trust for B. until the attain 21. and made C. Executor, and died. B. refuses to marry C. and married J. R. And afterwards, at her Age of 21. B. and J. R. made a Bargain and Sale to W. R. to make him Tenant to the Precipce in order to suffer a Common Recovery, in which B. and J. R. were vouch'd, and the Uses were declar'd to the Issue of the Marriage, Remainder to her own right Heirs. One Question was, If the Interest of B. and her Husband was barrable by a Common Recovery? The Lord Chancellor took Notice that it had been said, That a Legal and Equitable Interest cannot be incorporated together; but he said, That Objection could not affect this Case; for tho' legal and equitable Estates cannot be incorporated, yet A. has not limited an Equitable Estate [shield] and then the Legal Estate, but has at first given the whole Fee; that it happens indeed, that the last Part of the Equitable Interest may be considered as merg'd by coming to one and the same Person, who had the whole legal Estate in him; but that it would be hard, that by coming to C. tho' not absolutely, (because the Heir, upon the Condition broken, might have taken the whole equitable Interest out of him) that this should prevent their Incorporation; And therefore he thought it an Equitable Estate in C. as well as that which was in B. and consequently that B. and her Husband had a Power to bar it. Cases in Equity in Ld. Talbot's Time 164. Hill. 9 Geo. 2. Sir John Robinson v Comyns.

(K) In respect of the Limitation.

1. Feoffment was made by A. who took back an Estate for Life, Remainder to him who should be his Heir at the Time of his Death, and to the Heirs Male of his Body begotten. A Recovery fullest'd by Tenant for Life shall be a Bar; for the Remainder was in Abyance. 3 Le. 51. Patch. 15 Eliz. C. B. Anon. Cited to have been adjudg'd.

2. Feoffment in Fee by A. to the Use of himself for Life, and afterwards of his eldest Son in tail, Remainder to his right Heirs; A. at the Time of the Feoffment had no Son; A. suffered a Common Recovery, and afterwards had Issue B. a Son, B. dy'd living A. but left a Son named C. A. dy'd. 'Twas held, That C. shall not avoid this Recovery by the Statute 32 H. 8. For there was no Remainder at the Time of the Recovery had vested in C. And the Statute is, That such Recovery shall be void against all Persons to whom the Reversion or Remainder shall then
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then appertain, i.e. At the Time of such Recovery. 2 Le. 224. 19 to such Remainder, which is not in Eje. ibid. — 2 Le. 178, pl. 215, Mich. 34 Eliz. C. B. 819.

3. Tenant for Life, Remainder for Life, Remainder in Tail [to Tenant for Life] Remainder in Fee; The first Tenant for Life suffers a Recovery, the Remainder in Tail is bar'd, tho' the 2d Estate for Life be no Party. Brownl. 36. Anon.

4. Devise to A. the eldest Son for Life, and if he die without Issue living Sid. 47. S. C. at the Time of his Death, then to B. and his Heirs; But if A. have Issue living at his Death, then to A. and his Heirs. A. suffered a Common Recovery. It was adjudg'd, That all the Remainders are bar'd. S. C. And Raym. 28. Mich. 13 Car. 2. B. R. Plunket v. Holmes. there it was revolv'd, That A. took only an Estate for Life, the Remainder to his Heirs not executed; and that tho' he be Heir to whom the Reversion shall descend, that shall not merge the Estate for Life contrary to the express Devise and Intent of the Will; but shall leave an Opening, as they term'd it, for the Interposition of the Remainders, when they shall happen to interfere between the Estate for Life and the Fee; and complain'd it was right in Case in the premises, but Robert the Devisee for Life was Heir, yet the Remainder to his next Heir Male was Contingent, and not an Estate for Life merg'd by the Defect of the Reversion; And so the Effe here of A. being for Life only by the Devisee, the Remainder to B. was a Contingent Remainder, and bar'd by the Recovery. — S. C. cited Pig. of Recov. 126. And says, The Reason is, because the Recovery destroys the Particular Effe, which is the Prop of the Contingent Remainder; for wherever a Contingent Remainder is limited to depend on an Effe of Freehold, which is capable to support a Contingent Remainder, it is always continued to be a Remainder, and not an Effeary Devise; And where the Remainder is contingent, if the Particular Effe, whereon it depends, is destroy'd, the Remainder is gone.

(L) Good in respect of Limitations to Trustees to preserve Remainders.

1. Seised of Lands in Fee devised them to his Son B. Remainder to the 1st Son of B. and the Heirs Male of such 1st Son, and fo to the 2d, 3d &c. Remainder to J. S. and R. S. for their Lives, in Trust for the Securing the several Remainders before limited; B. before any Son born, makes W. S. Tenant for Life, and suffers a Common Recovery; and afterwards had Issue C. a Son, and D. a Daughter. The Trustees being alive, the Estates are not bar'd by the Recovery; for Per Finch C. The Law will manage and marshal the Will according to the Intent, which was here to preserve the Contingent Remainders by a Limitation to Trustees; But that Limitation being in Place after those Remainders, if it should stand fo, it cannot preserve them; therefore it shall be confirmed before the contingent Estates. 2 Chan. Cales 10. Mich. 31 Car. 2.

2. Upon the Settlement of an Effe the Limitation was to R. D. for 99 Years, if he should so long live; and after his Death or other sooner Determination of the Effe to him limited, to J. S. and J. N. and their Issue in the Heirs, during his natural Life; in Trust to support Contingent Remainders &c. and after the End or other sooner Determination of the said Term, A. Man &c. and to the Use of the 1st and other Sons of the said R. D. in Tail Male, Re- (Seised in remainder to E. for 99 Years, if &c. Remainder to the Trustees in like Fee) by Manner, and to the 1st &c. Sons of E. — R. D. had a Son, and they two levied a Fine and suffered a Recovery of the Premisses, in which the Son who was the Trustee had his Effe Vouch'd; The Son died; then R. D. died, leaving no other Son, to the Use of but 4 Daughters. It was held, That the Freehold being in the Trustees bestowed for and not in the Son, the Remainder to E. is not bar'd by this Recovery, H h h.
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notwithstanding the Son's coming in as Vouchee. Mich. 14 Geo. 2. B.

R. Smith on the Demise of Dormer v. Parkhurt & al. — Alias Dormer

v. Fortescue.


(M) Good. In respect of the Limitation to Baron and Feme.

1. LANDS are given to Baron and Feme, and the Heirs of their 2 Bodies; they have Feme 2 Sons, R. the Eldere and T. the Youngest, the Baron makes a Feoffment to the Use of R. and his Wife, and the Heirs of the Body of R. — R. infeoff'd G. his Ballard in Feme; The Wife of R. dies, and then the Father of R. dies; Præcept was brought against G. who vouched R. who vouched the common Vouchee, and for a Recovery paid'd. R. dy'd; then the Mother of R. dy'd. The Brother of R. brought Foremedon. The Recovery was pleaded, but held to be no Barr; for the Right of the Tail was in the Mother during her Life, which after the Recovery defended to T. the Son, and upon which he might have Foremedon. T. 25 H. 8. And. 44 Anon.

2. Baron and Feme are Jointenants of the Gift of the Father of the Baron before Marriage, in Consideration of Marriage intended between them; and after they re-afford'd the Land by Feme to the Father, who rendered to the Son and his Wife, and the Heirs of their 2 Bodies. The Son died, and the Wife suffered a Recovery, and held good as to the Moiety which was given by the Feme; but as to the Moiety which the Son gave by the Feme, that was within the Statute of 11 H. 7. of Difcontinuances. Moore. 715. Mich. 32. & 33 Eliz. The Queen v. Savage; alias Simmonds's Cafe.

3. Grandfather covenanted to land seised to the Use of himself and M. his Wife for their Lives, Remainder to the Heirs Male of the Grandfather on the Body of the said M. begotten, with Remanerders over; The Grandfather suffered a Common Recovery, and dy'd; M. survived. To prove the Recovery it was intituled, That OUE, and BARTOLI's Cafe was not Law; for if Baron and Feme had an Intirety, then each had the Whole; and the Baron might make a Tenant to the Præcept for the Whole. Pemberton contra, That Cafe was never yet questioned. The Wife's Eatee hinders the Intail from executing in the Baron; so that it's only a Kind of Contingent Eatee after the Death of the Wife, and the Intail cannot be tack'd to the Eatee for Life of the Husband during the Life of the Wife; because during her Life there is an intervening Eatee,
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and it was accordingly adjudg'd. 2 Salk. 568. pl. 2. Pach. 2 W. & M.
C.B. Clithero v. Franklin & Ux.— cites 3 Rep. 6. Pl.C. Manxel's Cafe
8, 9. 1 Cro. 380. 1 Sid. 83.

(N) Good. In respect of the Estate being after'd.

1. If Tenant in Tail discontinue, and retakes other Estate, and suffers a S.P. Arg.
Recovery upon the Voucher, and recovers over in Value, and
dies, this Recovery shall not bind the Issue in Tail; for the Recom-
pence shall go only in lieu of his Estate which the Tenant had at the
Time of the Recovery, which was another Estate, and not the first bereft
Tail; and therefore the Recompence shall not go in lieu of the first
Tail, of which the Tenant was not seised at the Time of the Recovery,

2. The Issue in Tail shall not be bound by a Recovery with Judgment in Where-
Value had against his Ancestor, if he was in of other Estate at the Time of
the Recovery, than of the same Tail; For the Recovery in Value cannot
come in Lieu of the Tail, as he was not seised by the same Tail at the
Time of the Judgment; Per Choke, Brian, and Littlecon; And per
Brian, it does not come in Lieu unless the Tenant in Tail vouches the Donor.
But this is otherwise taken at this Day. And so the Cause of Falling into
inamiss as the Tenant was not seised by the Tail at the Time of the
Recovery, and the Deforc, and the Entry of the Heir after the Reco-
very, and the Non-executing of the Recovery in the Life of him who suffer-
ed the Recovery, to have the Remitter; for otherwise he is put to his For-
medion, and shall fallily therein. Br. Faux de Recov. pl. 30. cites 12 E.
4. 19.

3. Recovery by Writ of Entry in the Poss by the single Voucher, does not give any Estate but what the Tenant in Tail has in Possession at the Time of
the Recovery; so that if he was in of other Estate than the Tail, there
the Tail is not bound against the Heir. Br. Tail et Dones &c. pl. 32.
cites 23 H. 8.

4. A Recovery by Dist the Tenant in Tail shall not bar his Issue. 2 Le.
A. deceased to E. a Feme for Life, Remainder to B. in Tail, Remainder
Cro E. 827 to his right Heirs; E. and B. intermarried, and leived a Fine with Preclau-
mations with Render to them and the Heirs of the Body of the Baron; and
afterwards they suffered a Recovery as Tenants to the Use of B. and
his Heirs. B. informed C. the Defendant, and died without Issue. S. C. and
whereupon the right Heir of A. entered; It was agreed, That the Fine
made no Discontinuance; because the Conductor was not seised in Tail in
Possession, but in Right of his Wife: Besides, the Recovery neither bar
the Issue in Tail, nor the Remainders; Because the Tenant was in of
other Estate than that to which the Recompence should go, and not enter; for
of the Estate Tail anciently devised; But the Fine with Proclamations that
all should bar the Issue in Tail, if any there were; and also the Remainder
to the right Heirs, if it was seised in the Feme Tenant for Life at the
next for

Time
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ment, and the Confirmation of it and so the Estate Tail being spent, he in Remainder shall enter for Forfeiture; and the Recovery shall be no Bar, because it was of another Estate; and Judgment was given for the Plaintiff; so that his Remainder was neither discontinued by the Fine, nor his Entry taken away by the Recovery.

6. Tenant in Tail covenants to stand seis'd to the Use of himself for Life &c. This makes no Alteration of Estate in the Tenant in Tail; so that a Recovery by him as Tenant shall bar the ancient Entail. Mo. 634. pl. 945. Trin. 44 Eliz. Freethwater v. Rois.

7. A. was seis'd in Fee to the Use of J. S. in Tail; J. S. infeoffed B. and C. who re-infeoffed J. S. and J. N. and R. S. to the Use of J. S. during his Life, Remainder to Richard his Son in Fee; Richard had Issue and died, and then W. R. brought Writ of Entry against J. S. who vacated &c. and the Recovery passed, J. S. died. J. N. and R. S. entered and enfeoffed the Son and Heir of Richard. It was held that the Recovery was not good to bind the Feoffees longer than during the Life of J. S. and.

44. pl. 112. Anon.

If Lands are given to J. S. and his Heirs Male of the Body of his Wife, and he has Issue a Son, and his Wife dies, and he disinnomates and takes back an Estate to him and his Heirs Male of his second Wife, and makes a third Feoffment, and comes in as Vouchee, and Recovery is had, this bars all the Tails; for he comes in of all his Rights. Per Jones J. 2 Roll. R. 418. Hill. 21 Jac. B. R. in the Case of Sheffield v. Racthiffe.

8. Tenant in Tail makes Feoffment, and retakes to him and the Heirs of his Body of his second Wife, and makes a second Feoffment, and retakes to him and his Heirs of his third Wife, and makes a third Feoffment, and comes in as Vouchee, and Recovery is had, this bars all the Tails; for he comes in of all his Rights. Per Jones J. 2 Roll. R. 418. Hill. 21 Jac. B. R. in the Case of Sheffield v. Racthiffe.

9. If there are Baron and Feoffees in Tail, and the Baron levies a Fine, and dies, and the Feoffees survive, and suffers a Common Recovery; this is a Bar, tho' no Recompence in Value can go to the Estate Tail, being disturbed by the Fine before. 2 Lev. 29. Mich. 23 Car. 2. B. R. in the Case of Hudson v. Benton. cites 9 Rep. Beamond's Case.

10. A. Tenant in Tail, Remainder in Tail to B. A. grants a Lease to D. for 99 Years, if 3 lives &c. with a Covenant for Lefsee to renew, and then mortgages to C. in Fee, then the Lease determined, and A. made a new Lease pursuant to the Covenant &c. Tenant in Tail, and Mortgagee joined in a Conveyance of the Equity of Redemption to J. S. to make him Tenant to the Præcept, and thereupon a Common Recovery was suffer'd, in which A. was vouch'd, and he vouch'd over the Common Vouches, and died without Issue. Per Car. "Tis true the Mortgage is a Truage for the Mortgagee, but that is only so far as he derives under his Title, and has no Relation to the Remainder over; And to say that the Remainder is a Legal Estiate shall be barred by a Recovery, fulfill'd by a Caify que Truage is Particular Estiate, is going farther than ever that Point has been carried, and seems to crush the Intention of the Statute De Donis; For if the Statute this Remainder is vouched; besides, this Recovery was fulfill'd by a Caify que Truage in Tail, which is but a particular Truage who at that very Time had it in his Power to have had the Legal Estiate by paying off the Mortgage; A Trial of Law was directed as to this Issue, some to the Remainder; and after the Trial an Injunction was entered till the Hearing the Case. 9 Mod. 143. Pach. 11 Geo. in Case. Voucher v. the Earl of Montrath.

So if the
Consece or
Grantee
makes a new
Estate to the
Tenant in Tail, or he Difforis the Consece or Grantee, and then vouches to another, and a Præcept is brought against the Grantee, and he vouches the Tenant in Tail, and he vouches the Common Vouches, by this all the Estates are bar'd. P. of Recov. 116.

11. If Tenant in Tail levies a Fine, or makes any other Conveyance, and a Præcept is brought against the Grantee, who vouches Tenant in Tail, and he vouches over, this bars the Estate Tail. P. of Recov. 116.

12. If
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12. If before the Statute of Uses A. had been Tenant in Tail, and had made a Feoffment in Fee to B. and B. had made a Feoffment to C. to the Use of A. and his Wife, and the Heirs of their two Bodies, and the Wife had died, and A. had entered on C. the Feoffee, and made a Feoffment in Fee, and a Precipe had been brought against the Feoffee, who had vouched A. and he the Common Vouchee, this had barred all the Estates. Pig. Recov. 117.

13. If a Writ of Entry be brought against Tenant in Tail, and he vouches the Common Vouchee, and a Common Recovery is had, this is good, and bars the Estate Tail, if the Tenant be then in Possession of it. Pig. of Recov. 144.

(1) Good. In respect of the Vouchees.

1. WHERE the Recovery in Value may go in Lieu of the Tail, there is a Bar to the Tail to the Illue: As when Tenant in Tail is Seised by the Tail, and suffers Recovery upon a Voucher; But if he suffers such Recovery, where he is Seised of another Estate, and not of the Tail, there this shall not bind the Tail against the Illue in Tail; But where a Stranger is Seised and is impeded, and vouches the Tenant in Tail, and so a Recovery passes, this shall bind the Tail, and all other Titles. Br. Voucher, pl. 115. cites 12 E. 4, 14, 15.

2. The Double Voucher is to make the Tenant in Tail discontinue, and then to bring the Writ of Entry against the Feoffee, (which Discontinuance tolls the Entry;) and then the Feoffee shall vouch the Tenant in Tail, and he shall vouch over, and so shall Joel &c., and this shall bind all Interests and Titles which the Vouches had, whereas it he Tenant, and vouches shall bind the Possession only, and not all Rights and Interests, as it shall do when the Tenant in Tail is vouched. Br. Tail et Dones &c. pl. 32. cites 23 H. 8.

3. Recovery against Baron and Feome by Writ of Entry in the Poet where S. C. cited by Holt Ch. I. Pig. of Recov. 193. in the Cafe of Page v. Hayward, as mentioned by Ed. Ch. I. Bridgman in a MSS. Rep. of the Cafe of Mured v. Osborn, and says that the only Difference between this Cafe and that of Eare v. Snow in Pl. C. 1., that in this Cafe the Baron must be named, but in that of Eare v. Snow the Feome need not have been named.

4. It was held, that where Tenant for Life is, the Remainder over in A. was Tenant in Tail, or for Life, and Tenant for Life is impeded, and vouches him in Remainder, who vouches over one who has Title of Formedon, and so the Recovery passes by Voucher: There the Illue of him who has Title of Formedon may bring his Formedon, and recover against the Tenant for Life; For the Recompence supposed shall not go to the Tenant for Life, and therefore he may recover; for his Ancestor warrants only the Remainder, and not the Estate for Life, and therefore the Tenant for Life cannot bind him by the Recovery, for he did not warrant to him; and therefore in such Cafe, the sure Way is to make the Tenant for Life pay Aid of him in Remainder, and to join them, and vouch him who has Title of Formedon, and so to pass the Recovery; For there the Recompence shall go to both. Br. Recovery, pl. 30. cites 30 H. 8.

They vouch the Common Vouchee, and the Recovery was perfected. The Question was, If this Recovery was good to bar the Instal? And Holt held that it was, tho' C. had but an Estate for Life; but he referred it for a Point for his Further Consideration. See Pl. Com. Manxls Cae. 174. Eare v. Snow; and 3 Co. Chandlee's Cae. And afterwards he gave his Opinion accordingly, after Consideration he, Ed. Raym. Rep. 553, 554. 1 Ann. 1701 2. Jennings v. Rogers.
Recovery Common.

5. If Tenant in Tail makes Feoffment, and a Common Recovery is had against Feoffor, who vouches Tenant in Tail, who vouches over, the Tail shall be bar'd; because when he comes in as Vouchee, he shall be in the Degree of Tenant in Tail, and the Recompence which he has or may have, shall go in Tail, and therefore such Manner of Recovery is the most sure Way to bar the Tail; For if Prerog quoq rediit be brought immediately against him to whom the Land is entailed, and be vouches, and the Voucher makes Default, and so a Recovery is had according to the common Course, if the Tenant in Tail at the Time of the Recovery is not feised of the same Tail, but of another Tail, or of a Fee, or other Estate, in such Case the Tail, whereby he is not feised at the Time of the Recovery, is not bar'd, as is held by the better Opinion in 12 E. 4. and adjudg'd in 13 E. 4. fol. 1. Because the Recovery in Value goes according to such Estate whereof he is feised, and not in Recompence of the Estate whereof he then is not feised. Pl. C. 3. in all other Cases.

6. Baron was seised of an Estate Tail, and a Recovery was had against him and M. his Wife, and they vouch'd over; The Wife had no Estate in the Lands, but only a Chance of Dower, in Cafe the survyd her Baron; This Recovery bar the Tail, and it shall be taken, That she was named for no other Purporte than to bar her of Dower. Pl. C. 514. Hill. 25. Eliz. Eare v. Snow.

7. Tenant for Life, Remainder in Tail, Remainder in Fee. The Tenant 283. S. C. - for Life suffered a Common Recovery by Voucher of Remainderman in Tail, who vouch'd the common Voucher. The Question was, Whether the Remainder in Fee was bound? Because the Statute of 14 Eliz. 18. That Recoveries suffer'd by Tenants for Life shall be void against those in Reversion or Remainder, and that the Provio extends only to bind those who has Nothings, joins with one who is Tenant, he is but Tenant by Hespell, and a Tenant by Hespell shall not draw a Recompence in Value; But Glennard said, That this Case was adjudg'd by good Advice. Cro. E. 670. Patk. 41. Eliz. C. 5. in Cafe of Leech v. Cole. — S. C. of Earle v. Snow, cited 16. S. 27. in Case of Roll v. Osborn — S. C. cited by Bol. Ch. J. Pig. of Recov. 195. 196. Tram. 3. Annes, in Cafe of Page v. Payward; and he cited the Cafe of Stirrill v. Deeber, in 1575. out of a M.S. Report of Ld. Ch. Bridgesman, where in a Formacion in Remainder expectant upon an Estate Tail the Tenant in Tail pleaded in Bar a Common Recovery on a Prerog quoq against Grantee of Tenant in Tail, (in Remainder) in which Remainder in Tail and a Stranger were jointly vouch'd, and Vouch'd over the common Voucher; and it was refolv'd, That this was a good Recovery, and bound all the Remainder.
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though in Remainder, who not of Record. But because the Tenant in Tail was void'd, the Jutices of B. R. held, that the Remainder in Fee was bound, as well as if the Tenant in Tail had been the first Tenant to the Precipice, and so it was adjudged; and upon Error brought in the Exchequer Chamber, the Judgment as to this Point, was held good by all except Walmley, but was reversed for other Matter. Mo. 690, pl. 953. Patch. 32 Eliz. Wileman v. Jennings.

8. A Tenant for Life, Remainder to his Issue in Tail, Remainder to the 8 Sifters in Tail, Remainder over; A. and 4 of the 8 Sifters join in a Common Recovery, living the other four, in which the said 4 Sifters are for the Issue Vouches without the others: The Uses thereof were declared to A. for with the Life, Remainder to his Sons in Tail, Remainder to B. his Elder Brother in Tail, Remainder to the 4 Sifters, Vouches in Tail. A. died without Issue; one of the other 4 Sifters died without Issue; The elder Brother in Case, entered and suffered a Common Recovery, in which the 3 surviving Sifters, not Vouches, are void'd, and limited other Uses, and died without Issue. The Sifters enter and convey to several Perons, and more of them die, without Issue. It feems that by the first Recovery the Estate of the 3 Sifters is not put to a Right; and it feems also, that by the Elder Brother's Recovery the Contingency is destroy'd, and that he has gained a new Estate. And Quære, If by the Suffering the Common Recovery by the 3 other Sifters, viz. by their coming in as Vouches before they made might enter, any Entry, their Right is not barr'd. Sid. 241. Lady Morgan's Case. It was inquired that whereas after the Recovery, A. entered generally, (which could not Rest on the Right of the 3 Sifters not Vouches in the first Recovery, in Regard of the Use limited to B. the eldest brother therein, and his surviving a second factor, and he being the other 3 Sifters,) B. may limit what Use be pleas'd. But per Keeling J. The 3 Sifters not having entered, this second Recovery operates in Extinction; especially they having only a Right as the Time of the Voucher, to which Hide Ch. J. agreed; and no Use can be limited by the last Recovery by the 3 Sifters. And agreed per Car. that the Eate of the 3 is not turned to a Right, but confirmed by the second Recovery, unless the Deed at Use be afterwards, which, being produced, appeared so to be as to 120 Acres. So that as to the 120 Acres, the Defendant (who claim'd under the 3 Sifters) was found Not Guilty; and the Plaintiff, who claim'd 3 Parts of the 4 Sifters Vouches in the first Recovery, recovered those three Parts. Pemb. Morgan v. Culpepper, & al.

9. Tenant in Tail, and he in Remainder, may be vouch'd jointly, but it is more regular to vouch first the one, and then the other, that the Recovery in Value may not be joint, but endure severally. 2 Salk. 571. per Holt Ch. J. Trim. 3 Anze. B. R. Page v. Hayward.

10. If Tenant vouches a Stranger, who vouches Tenant in Tail, and he See Pig. of enters into Warranty, it is good. 2 Salk. 571. per Holt. Ch. J. Page Recov. S. C. and S. P. v. Hayward.

Reasons thereof, 187, 188 &c. in the Report there of the S. C.


(P) Good; Notwithstanding the Death of one of the Parties.

A. Tenant in Tail to him and the Heirs Males of his Body has two 24 El. I Rep. Sons, he makes a Lease for Life, and afterwards suffers a Couz. 88. Shelly's new Recovery to the Use of himself for Life, Remainder to B. for 24 Years, And 69. Remainder to A. and the Heirs Males of his Body, and to the Heirs Males &c. of the Bodies of the said Heirs Males. The eldest Son dies, his Wife en- Mo 156. tailed with a Son born afterwards, called Henry; A. dies in the Morning, 141. S. C. the 9th Day of October, the first Day of full Term, (which then began the 9th of October:) at which Day, the 9th of October, the Recovery & c. cited is cited 229.
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was suffered, A. having before constituted an Attorney to appear for him. This Recovery afterwards was returned Executed; and after the said Execution, the Wife of the elder Son had a Son called Henry as aforesaid: Resolved, That Henry has a Right to this Land, and not the younger Son of A. by all the Judges of England. And The Death of A. does not destroy the Recovery; for the Writ of Entry was returnable Off. Mich, and the Recovery has Relation to the first Day of the said Return, which is the 7th of October, the Day of the Effusion; and A. was then alive. 3dly. The younger Son, before the Recovery executed, was feited of the first Intail; for this was not barred before the Recovery was perfected; yet the youngest Son shall not have this Land: For after the Execution of the Recovery the old Intail passes, and the said new Intail limited upon the Use of the Recovery shall take Effect, and the youngest Son is in of this second Intail, which he has by Debent; and therefore the Son of the eldest Son shall have it, and avoid this Debent to the younger Son. 3dly. Altho' A. had nothing of the said second Intail, (because it was not executed in his Life-time); yet this Recovery barring the first Intail, the said Use of the second Intail depends upon the second Son; which is again defeated by the said Henry. And altho' the Father, viz. A. died, and had nothing in the said Use or Intail when he died, yet upon the Original Limitation, and Original Agreement, A. was to be Tenant in Tail by the second Intail. As in Case of an Exchange, One of the Exchangers enters and dies, and the Heir of the other, who had not entred, Enters after his Fathers Death; he has it by Debent, altho' his Father had nothing in it. 4thly. The Recovery aforesaid (altho' the Land was in Lease for Years) does not cease any Freedome in the Recoveror before Execution of the Recovery; If A. had died before the Effusion-Day, the Recovery might have been avoided; for there was no Tenant to the Precise. So of a Covenant to levy a Fine, the Death of the Consecut before the Return of the Writ makes the Fine levied erroneous; For the Original Writ abates by such Death. Jenk. 249, pl. 40.

(Q.) Made Good, or Void; By Mutter Ex post Facto.

1. Recovery against Baron and Feme, by Writ of Entry in the Poet, where the Feme is Tenant in Tail, and they over; if the Feme dies and the Baron survives, this shall not bind the Issue in Tail; For the Recompence shall go to the Survivor, and then it shall not bind the Issue in Tail. But Brook says, this Opinion does not seem to be Law; For the Recompence shall go as the first Land which was recovered should go, and Voucher by Baron and Feme shall be intended for the Interest of the Feme. Br. Recovery, pl. 27, cites 25 H. 8.


Cited Roll R. 306.
Bristign. 76.
Arg. N. C.

So a Fine levied after an Erroneous Recovery, and 5 Years passed, is a Bar to Defendant's bringing a Writ of Error. Roll R. 32.

(R) Made
Recovery Common.

(R) Made Good; In Equity.

1. RESOLV'D, That whereas A. the Perfon that suffer'd the Recovery, was Tenant for Life in Point of Law, and there had been an Agreement (precedent to the Recovery) by the Ancestor, since dead, for the Setting of the Premises so as to make the Tenant for Life Tenant in Tail, that the Recovery shall be good in Equity, and shall work upon the Agreement. Chan. Cases, 49. Patch. 16 Cat. 2. Goodrick v. Brown.

S. C. Freeman. Rep. 180. accordingly; or by the Articling to settle the Eftate on A. in Tail, A. had a Trust in Tail in the Eftate, and therefore the Court allowed of this Recovery; And tho' it was objected that A. ought to have first exhibited his Bill, and have got his Eftate decreed to him in Tail, according to the Articles, yet the Court made no Anwser thereto, but decreed as above.

2. A. devised Lands to B. for Life, Remainder to the first Son of B. and the Heirs Male of his Body; and to other Sons, Remainder to J. S. and J. N. for their Lives, in Trust for securing the several Remainders before limited. A. died. B. before any Son born, by Leave and Release makes W. H. Tenant for his Life, and suffereth a Common Recovery; the Trustees J. S. and J. N. are living. It was objected in Favour of the Recovery, that B. till a Son was born, was Tenant in Tail, and that the Eftate to the Trustees was a Remainder after, and not before the Entail to B and fo is barr'd by the Recovery, and could not preferre himself, much less could it preferre the Contingent Remainders precedent. But Finch C. decreed to the contrary; For the Law will make the Will according to the Intent, which here was to preferre Contingent Estates, tho' limited in Place after the Contingencies, and be shall be confirmed before them. 2 Ch. Cases, 10. Mich 31 Car. 2. Green v. Hayman, Rook & al. See Abr. Eqn. Cases 176. per Harcourt C. Trin. 11. Anns. Free. v. Charleton.

3. Equity will never affift to avoid a Common Recovery, upon Pretence that there is no Tenant to the Precipe, especiallly when suffered by an Heir at Common Law, to bar a Voluntary Settlement. MSS. Tab. Feb. 13, 1706. Eyton v. Eyton.

4. A Fine and Recovery mention'd only two Messuages, but the Deed of Ufe mention'd two Messuages, by Name of all after the Messuages of the said A. in S. The Deed of Ufe shall be the Measure of what pullis, and not the Fine and Recovery. MSS. Tab. Feb. 13, 1706. Eyton v. Eyton.

5. Where a Fine and Recovery is of so many Acres in S. the Parties interested shall have their Election in what Part of the Eftate it shall operate, MSS. Tab. March 27th, 1723. Lord Blaney v. Mahon.

(S) Bar. Of what Things. Or of what it may be suffered.


2. It lies of all Manner of Ecclesiastical or Spiritual Profits; as of Rectories, Portions, * Penfions, Tithes &c. Stat. 32 H. 8. cap. 7. — Of all and all Manner of great and small Tithes within the Vill or Hamlet of B. in the Parish of A. howsoever growing, happening, and yearly re
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3. It lay in ancient Times of a Hide-Land or Plough-Land. 4 E. 3. 321. — Of an Oxloud or Oxyg. 6 E. 3. 291. — Of 6 Foot of Land in Length, and 4 in Breadth. 14 Afl. 13. — Of a Tit or Sute of a Mill. * Poph. 22. 2. Poph. 56. 3. Eliz. Croker. and York v. Doener. 14 E. 5. 4. Rep. 47. 5. Dormer’s Case. S. C. — S. P. Pig. of Recov. 9. c. 4 Rep. 74. — Writ of Entry en le Poit does not lie of an Advowson. D. 311. b. pl. 82. in the Case of Andrews v. Bull. — Common Recovery may be of an Advowson Appendant to a Manor. Ibid. Marg. cites Pach. 25 Eliz. B. R. A Recovery of an Advowson or Pasture, the it be not proper, yet being suffered hath been adjudged good, because its but a Common Affirmance. Cro. C. 270. in the Case of Pavey v. Easton. 5 Rep. 40. Dormer’s Case. A Common Recovery is held good of an Advowson, and no Restors are to be drawn from the Viti or the Execution of the Writ of Seflin; because it is not in the Case of Adversary Proceedings, but by Agreement of the Parties, where it is to be premis’d that each knows the other’s Meaning. Per North Ch. 1. 2 Mod. 49. Trin. 27 Car. 2 in the Case of Lever v. Hoffer. Mr. Pigot says, That it must be understood of an Advowson Appendant to a Manor; But fays, He does not see how it can be of an Advowson in Gifts since the Parish has the Freehold, and therefore it ought not to be by Writ of Entry en le Poit, but by Writ of Rights of Advowson, and it has been, and is practis’d, unless by some few Attorneys, who act without Knowledge or Advice.

4. It lies not of a Ditch, nor of a Pool, nor of a Fishery. 8 E. 3. 381. — Nor of an Advowson of Tribes of a Carnuate of Land. Reg. 309. — Nor of Common of Fishery. 27 H. 8. lo. 12. — Nor of Eshovers. 2 E. 3. — Lies not of an Oxloud or Oxyg. of Many Ground. 13 E. 3 to 3. — Nor of Homage and Fealty, nor of Services to be done. 6 E. 2. — Nor of a Sellow or Ridge of Land, for the Uncertainty; Because a Sellow sometimes contains an Acre, sometimes more, sometimes less. E. 1. — Nor of a Garden, or Cottages, or Garft. 14 Afl. 13. 8 H. 6. 3. 22 E. 4. — Nor of a Yard Land. 13 E. 3. — Nor of a Quaung, a Mine, or Market. 13 E. 3. for they are not in Demene, but Profit only. — Nor of an Upper Chamber. 3 H. 6. lo. 1. Wett’s Symb. 77. b. S. 3.

5. A Common Recovery may be of an Honour, Island, Barony, Castle, Meadow, Grange, Dove-House, Land, Meadow, Pasture, Underwood, Chapel, River, County, Warren, Reftory, View of Frankpledge, Waif, E- stary, Felons Goods, Deslands, Parsn, Heath, Moor, Tithe &c. Pig. of Recov. 96. And the Recovery, the Comitent, shall bare a Writ of Error of the Fine, until it be revered. But a said Recovery is no Bar. Ibid.

If Mortga-gee suffers a Recovery, the Estate of the Mortga-gee remains untouched by the Recovery; because his Right to the Land mortgag’d is only Cut out.
8. Deed is not barr'd by a Common Recovery.  Arg. 4 Le. 152. in Capell’s Café.

9. A. was Tenant in Tail, with Power to make a Jointure, and suffered it if Tenant a Recovery to the Use of himself in Fee; And whether by this the Power for life with Power to make a Jointure, that it was; That a Recovery did not only bar the Estate, but all Powers annexed to it; For the Recovery in Value is of such strength a Common Recovery, it was held, that the Power was destroyed; yet a Collateral Power (as for an Executor to sell Land) cannot be destroyed, according to Brown’s Cafe. 1 Rep. But Powers appertaining to Estates, as to make Leases, Jointures &c. are destroyed by the Alteration of the Estate to which it is annexed in Privy, according to 1 Rep. 400. Extinguishment, that the Common Recovery being a forfeiture of the Estate for Life, by Consequence is an Extinguishment of the Power. Ibid. — 2 Lev. 61. S. C.

10. If Lessee for Years is made Tenant to the Precepe for suffering a Common Recovery, his Term is not extinguish’d; because it was in him for another Purpose. Per tor. Car. Mod. 107. Pach. 25 Car. 2. Fountain v. Cook.

11. If there be a Limitation of a Use upon Condition, and Copy give Use S.P. by Annul a Recovery, that will not destroy the Condition, because the Estate is limited. Ch. J. is charge’d with it; For the Recoveror can have the Estate no otherwise than he that suffered the Recovery had it, and therefore there is an Act of Parliament to enable Recoverors to distrain without Attornment; therefore to long as any one comes in by that Recovery, he comes in v. Charrell. Continuance of the Estate Tail; and by coming in fo, he is liable to all the Charges of Tenant in Tail. Per Hale Ch. J. Mod. 109. Pach. 26 Car. 2. in the Cafe of Benfon v. Hatton.

12. Perpetuities cannot be barr’d by a Common Recovery &c. Because they have no Dependence on the particular Estate. Per Powell J. 12 Mod. 232, cites it as adjudg’d in the Cafe of Pell v. Brown.

13. Money to be raised after the Determination of an Estate Tail may be barr’d by a Common Recovery suffered by the Tenant in Tail, but otherwise where the Estate first limited is a Fee; so to A. and his Heirs, Provided, if A. dies without Issue of his Body, then he gives 2001. to B. to be paid within 6 Months after the Death of A. and in Default of Payment as aforesaid, then he devises the Lands to B. for Payment; For in this last Case, the Estate being a Fee, no Recovery can be suffer’d thereof, and consequently there may be Danger of a Perpetuity. See Wm’s Rep. 200. in a Note of the Reporter on the principal Cafe there of Nichols v. Hooper. Pach. 1712, and Lev. 35. in Trin. 13 Car. 2. B. R. Gooding v. Clerk.

14. It may be of a Rent de Noce; and therefore if one grants a Rent to Lev. 145. B. Remainder to C. in Tail, by a Common Recovery the Remainder S.C. to C. may be barr’d. Sid. 285. Pach. 19 Car. 2. B. R. Smith v. Far- naby.

(T) Bur,
(T) Bar, or Transfer of what Estate.

1. If there be Tenant in Tail Remainder, for Years, Hale Ch. J. said, it was doubted 9 Eliz. if Recovery by the Tenant in Tail should bar the Lease for Years; because it was said that no Recompence in Value could go to it being a Chattel, but constant Experience has been that the Lease shall be barred. 2 Lev. 36. Mich. 23 Car. 2. B. R. in the Case of Hudson v. Benyon and Baron.

2. A Man made a Gift in Tail determinable on Non-payment of 1000 l. by Donor, the Remainder over in Tail to B, with divers other Remainders, Tenant in Tail before the Day of Payment of the 1000 l. suffers a Common Recovery, and doth not pay the 1000 l. Yet because he was Tenant in Tail when he suffered the Recovery, by that he had barred all, and had an Estate in Fee by the Recovery. Per Hale Ch. J. Mod. 111. Pach. 26 Car. 2. in the Case of Benyon v. Hodfon.

3. If Tenant in Tail be with a Limitation, so long as such a Tree shall stand, a Common Recovery will bar that Limitation. Per Hale Ch. J. Mod. 111. Pach. 26 Car. 2. in the Case of Benyon v. Hodfon.

4. In some Cases an Estate that is to take Commencement upon a Continuance after Determination of an Estate Tail cannot be barred; As if A. saillery in Fee makes a Lease for 1000 Years commences after B’s Death without Issue, and then a Gift in Tail is made to B. and the Heirs of his Body; B. cannot bar this Lease for Years, because it was a Charge upon the Land before the Estate of Tenant in Tail was created. Cited by Hale Ch. J. Freem. Rep. 364. pl. 466. as held in Clarke’s Cafe, and said that this was Judge Bartlett’s Contra; For if the Lease for Years had been created by the same Conveyance with the Estate Tail it was held in that Cafe, That it might have been barred by a Common Recovery.

5. A Covenant to stand saillery for 20 Years, Remainder to the Heirs of the Body of the Covenantor is an Executory Remainder, and to be barred by a Common Recovery. Arg. 4 Mod. 257. Hill. 5 W. & M. B. R. in the Cafe of Goodright v. Corninh.

6. N. S. devided Land to his Neice M. B. and the Heirs Male of her Body, upon Condition that she marry with and have Issue Male by one searle Searle, and in Default of both these Conditions, he devided it to E. C. in the same Manner, and in Default thereof to G. S. for 60 Years if he so long live, Remainder to the Heirs Male of the Body of the said G. and their Issue Male for ever; M. & E. together with E’s Husband, joined in a Fine to make J. S. Tenant to the Preicipe, who vouch’d the said M. and E. and her Husband, and also the Wife of the Tealator, and her Husband (he being again married) and vouch’d them all jointly, and they vouch’d the Common Voucher, and so a Common Recovery was had ; adjudged, that this is a good Estate-Tail in both M. and E. and though the Words are express Words of Condition, yet they shall be taken to be a Limitation ; so that the Meaning of the Tealator is, if she hath no Issue Male by a Searle, then the Estate shall remain over; that the Estate Tail in this Cafe does not cease by marrying one who is not a Searle, because the Remainder over is limited in Default of both Conditions; for they may survive the first Husband, and afterwards marry a Searle, because there is a Possibility, as long as they live. If the Estate had been to M. and the Heirs Male of her Body to be begotten by a Searle, provided and upon Condition that if she marry any but a Searle, that then the Lands shall remain to W. R. and his Heirs; In such Cafe a Common Recovery before Marriage would bar the Estate Tail and Remainders.
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minders, and the marrying afterwards with another, would not avoid the Recovery; And the Court took a Difference between a collateral Condition, and a Condition running with the Land. 2 Salk. 579. Trin. 3 Anne B. R. Pagev. Hayward.

(U) Tenant to the Precipe. Necessary in what Cases; And why.

1. **T**ho' there be no **T**enant to the **P**recipe, yet the Recovery is Fiz. of Re-good by way of **E**fflopel against the **P**arty that sufferers it, tho' not against Remainder Men, **S**trangers &c. Per Cur. 10 Mod. 45. Mich. 10 Anne B. R. in Dd Say and Seal's Cafe.

he takes it to be where he that suffers the Recovery is Tenant in Fee; For **E**fflopel binds not the **I**ssue in Tail because he claims Paramount **P**er **F**orman Domi.

Providen in Manwells Cafe elaborately urges this Point, and endeavours to prove that a Common Recovery may be good, where there is no Tenant to the Precipe; Now all his Arguments seem to centre in this, that all Parties and Privies to the Recovery are acquitted, to say there was no Tenant to the **P**recipe against the Admission on **R**ecord; But it is plain that **E**fflopel *bound* not the **I**ssue in Tail; and the **L**aw is now settled, that if there be no Tenant to the **P**recipe, the Common Recovery is void, and the **I**ssue in Tail may *suffice*, that is reverse it for this Error; For the Recovery in Value goes to him that has the Lo's, or loses the Tenancy; and he that loses may aver against a Stranger that he has nothing, to shall recover nothing; And if to a Fortiori, the **I**ssue in Tail who comes Paramount all Citi-\*cious and **E**fflopels may *ever* Nient Tenant Tempore brevis. Pig of Recov. 32, 33. cites B. 3. 6. 65. a. 12 Edw. 4. 12. 19 Cro Car. 529. Cru. E. 21. Mo. 233. 4 Le. 53.

But if one that has a Remainder in Fee suffers a Common Recovery, it binds and effects his Heir, tho' there is no Tenant to the Precipe. Pig of Recov. 32, 33. cites Salk. 22. 24. And that in a *History* of Rites a Recovery may be good without a Tenant to the Precipe. 1 Vent. 503. by Seg Maynard Arg.

But in a Warrant of **C**ha**r**ta, he who brings the **W**rit must be Tenant of the Land the Day of the **W**rit purchased; and it is a good Pea to by Nient Tenant Jouer del Brief; So if one Releases with **W**arrant, he may vouch him that released, but it is a good Pea to by Release he had nothing at the Time of the Re-\*c**a**fe. Pig of Recov. 32, 33. cites Hob. 21, 22.

A Tenant to the Precipe is necessary, because the Efface Tail of the Vouchee is barred only in respect of the Atlets recovered, or which by Possibility may be recovered in Value: Now till the Deman-\*d**d**t has Execution against the Tenant to the Precipe, the Tenant cannot have Execution against the Vouchee, nor the Vouchee against his Vouchee; And if the Tenant to the Precipe has nothing in the Land, no Execution can be had against him, and if an Execution can be had against him no Recovery can be had upon in Value, and consequently no Recovery to bind him, and to the Recovery can be no Bar. Pig of Recov. 32, 33.

And to infer this, Littleton in Eal **A**ttn's Cafe, says, When there is no Tenant to the Precipe there is no Recovery, because there is none against whom the Deman-\*d**d**t may recover the Land, and a Recovery proves not the Tenant fealt, but appropuses it. Pig of Recov. 52.

2. If there be **T**enant for Life Remainder in Tail, Remainder in Fee, *See(D)**pl. 1. if he in **R**eminder in **T**ail suffers a Common Recovery, it bars the **E**ntail, because no Tenant to the Precipe; But if he in **R**eminder in Fee suffers a Recovery that bars his Heirs. Pig of Recov. 37, 13. cites D. 232. * 2 Roll's Abr. 395. Mo. 356.

(W) Tenant to the Precipe. Good, or not.

1. **I**f a Man makes a Leaf for 8 Years upon Condition that if the Leffer does not pay 20 l. within 2 Years next after, the Leffer shall have fee; the Termor cannot be implicated by Precipe quod retulit before the Leffer has failed of Payment; For he has only a Term, and no Frankne-\*m**e**nt before Failure. Feoffment de Terris, pl. 71. cites E. 2. 111. 2. Baron
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2. Baron and Feme jointenants of a Manor, Remainder to the Heirs of the Body of the Husband. Remainder to H.N. in Tail. A Recovery was fullered by Baron alone of all the Manor, in which he was Tenant to the Precipe, without naming the Wife. H. N. dies; Baron dies without Issue; Feme dies. Resolved upon Error brought, That as to the Mote of which the Feme was Tenant for Life, the Recovery was no Bar against the Issue of H. N. For as to that the Baron was not a Tenant to the Precipe, but the Recovery operated by way of Effetop only, which could not bind the Issue in Tail, who claim Per Formam Doni. 3 Rep. 13. b. Tin. 25 Eliz. Marquis of Winton's Cafe.

3. Lands were rendered by Fine to Baron and Feme, and the Heirs of the Body of the Baron, Remainder to J.S. The Baron alone during the Life of the Feme cannot make a Tenant to the Precipe. No. 210. Trin. 27 Eliz. Owen's Cafe, alias, Owen v. Morgan.

4. An Alien Tenant in Tail, Remainder in Fee to J. S. suffers a Recovery to his own Ufe in Fee, and then an Office is found; The Remainder is barred, and the King shall have the Fee Simple. Goldsb. 102. pl. 7. Anon.

5. If Baron and Feme are seised of the Wife's Land for Life of the Wife Remainder to Husband and Wife in Tail, and the Baron bargains and sells the Land by Deed inrol'd, and a Precipe is brought against the Bargonee, and he vouches them in Remainder, 'tis a good Recovery to bar the Estate Tail. Brownl. 36. Anon.

6. Tenant in Tail, Remainder in Tail, Remainder in Fee. Tenant in Tail was attainted of Treafon, the King granted the Estate to A. who bargained and sold by Deed to B. [to make him Tenant to the Precipe] then B. suffered a Recovery, in which the Tenant in Tail was vouch'd, and then the Deed was enrolled. The Lt. Ch. J. Hobart was of Opinion, That this did not bar the Remainder; because before Inrolment nothing passed but by Conclusion only; And the Bargaineer was no lawful Tenant to the Precipe. Goldsb. 218. pl. 314. Mich. 11 Jac. C. B. Anon.

A Person attainted is a good Tenant to the Precipe until Office found. Arg. 10 Mod. 124. in the Cafe of Thornby v. Fleetwood — The Bargain and Sale whereby the Tenant to the Precipe was made was not inrolled till after the Recovery was completed; Lt. C. Talbot said, As to that, if the Lt Hobart's Opinion as cited from Godbolt's Reports had been Law, some judicial Authority would certainly have followed it; if there be no Inrolment, then the Bargain and Sale are void; but if there be an Inrolment within 6 Months, then it is good by Relation. Cases in Eqs. in Lt. Talbot's Time 167; Hill. 9 Geo. 2. Sir John Robinson v. Comyns.

7. If A. be Leaffee for Life, the Remainder to B. in Tail, and a Precipe is brought against B. if it B. gets a Surrander from Leaffee for Life, at any Time before the Recovery, it is a good Recovery, and the Precipe is now made good. Noy 126. Anon.

But if the Precipe is brought against the Remainder for Life, and Remainder-man in Tail, and they vouch the common Vouchee, it is no Bar to the Estate Tail. Cro. E 6:9. Patch. 41 Eliz. Leech v. Cole. — If Tenant for Life surrenders to the immediate Remainder-man, who suffers a Recovery, the Remainder is bar'd. And 216. in Cafe of Wilman v. Jennings.

8. If Infant by his Guardian suffers a Common Recovery, he being Tenant to the Precipe, this shall bind him. Ley 82. 83. Trin. 15 Jac. Blunt's Cafe

If an Infant makes a Tenant to the Precipe, he can do it no otherwise than by Fine or Feoffment, since all other Deeds made by an Infant are void. Pig. of Recov. 65.

9. The Father purchases Land in his Son's Name, an Infant of 17 Years, and he would have suffered a Recovery as Tenant to the Precipe, but the Court would not suffer him. Het. 163. Mich. 6 Car. C. B. Anon.
10. A Lease was made for Life, but Lease being made on the same Day it became due, it was void. The Lessee entered and paid the Rent as it grew due; the Lessee died; his Heir (without Entry) sues a Recovery, in virtue of a subsequent Deed of Assignment. It was intimated that the Lessee was no Dilector but a Tenant at Will, his Lease being void; but if he had been a Dilector, yet the Heir having purchased the Estate from him, and having paid to him the Rent, he having the possession, and the Heir having the set off, the Heir having the set off, it was held that the Heir was the proprietary tenant, and not Tenant to the Freehold. And to that Opinion the Court gave the Judgment Ax. C. 383. pl. 21. Mich. 10 Car. Life: but it had been otherwise.

B. R. Bull v. Wyatt.

had he claimed as Lessee as Will. Roll. 62. Dilefina (I) pl. 7. Keneu Dabry v. Jordan. —See Etoppel (K) pl. 7. and (Ke) pl. 3. ——S. C. of Bull v. Wyatt, cited Pig of Recov. 249. And says he finds in several of the Law Books it is said, That in some Cases a Recovery may be good without a Tenant to the Precipe by Etoppel; but says he takes this to be where he who sues the Recovery is Tenant in Fee; for Etoppel bind not the title in Tail, because he claims Paramount. Per Formam Dain, and that fo is this Case of Bull v. Wyatt. ——Pig of Recov. 199. cites S. P. Per Holt Ch. 7. Tin. 5 Ann. B. R. In Case of Page v. Hayward.

11. If a Bargain and Sale of Lands be made to A. and his Heirs, the See pl. 6. Bargains has an Estate before Entry, and is a good Tenant to the Precipe in a Common Recovery. Per Bridgman. Cart. 73. Tin. 18 Car. 2. C. B. Thomas in v. Mackworth.

12. A Tenant in Tail, Remainder to B. in Tail. A. made a Lease to S. C. 2 Mod. 7. s. rendering a Pepper-corn Rent, and afterwards a Relafe, in order to be kept in the Lease, to make him a Tenant to the Precipe to suffer a Common Recovery, in which A. was to be Voucher. A Recovery was afterwards had to the Use of A. and his Heirs. It was intimated, That there was no good Tenant to the Precipe; for the Lessee never entered, and the Reservation of the Pepper-corn is not sufficient, being to be paid out of the Proits of the Land, and it is a Thing of no Value. North Ch. J. was of that Opinion, and distinguishing between an Allignment of an Estate for Life or Years, and a Grant of a Lease for Years by one fay’d in Free-imple, that in the first Case the Tenant and Attendance, and being subject to the ancient Forfeitures and Payment of Rent, if any, is sufficient to vest an Utt in the Allignment; but in the other Cases, unless the Leffer gives Possession, and the Leffer enters, the Lessee must rate an Utt, and the Land must be united to it before a Rent can tuit out of it. But Windham J. said that the Word that being in the Case of a Common Recovery, we must support it, if possible, and that in the Case of Sutton’s Hospital. 10 Rep. 34. a. the (Grant) in Recreation of 12 d. was held to be a sufficient Consideration to raise an Utt to the Hospital, which is as inconsiderable in respect to a great Estate as a Pepper-corn is to this. The other two Justices delivered no Opinion. And at another Day North Ch. J. said he had viewed the Precedent of Sutton’s Hospital, and that there the Reservation of a Rent was mentioned in the Deed as a Consideration, which he said would per chance make a Difference between that Case and this. But the Court would further advise. Mod. 262. Tin. 29 Car. 2. C. B. Barker v. Keate. Consideration to raise an Utt to support a Common Recovery. That this Lease being within the Statute of Uses, there was no Need of an actual Entry to make the Leffer capable of the Resale; for by Virtue of the Statute he shall be adjudged to be in actual Possession, and to be a good Tenant to the Precipe; and Judgment accordingly in Mich. Term following. ——S. C. Freem Rep. 249. pl. 246. and there pag. 242 North Ch. J. said, That if the Truth of this Case had been found by the Verdict, there would have been no Question in it; for this Recovery was to support a Mortgage, for it was not so found; and that there would have been a sufficient Consideration.


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S. C. addors. for, for what is bisected with in the parents is in Skirn 1. 5 and not in Vent 537. 538.

The word "deeds" is likely a typographical error, and it should be "the Deeds." The text appears to be discussing the recovery of deeds and the procedure for recovering them.

G. Enet R. 16 Sc. C. ibid. 17 at the bottom, cites Trin. Geo. King, D. B. d. Baths, dates. The print facing the Fine shall pass the Estate to the Conufee, and that to bring back the Estate to the Conufee, the Conufor must show that the Intent was not to give it to the Conufee; for the Conufee shall be deemed to have taken the Estate by the Common Law. And this Certificate of Lord Anglesea v. Lord Altham was then held to be good Law.

The first Clause in the Statue of Frauds is general, that all Acts must be confirmed by Writing, and if it had been here, a Fine or Feoffment had cut off all Refuting Acts, that there had been no Conformation but the 2d Clause excepts all Trusts and Confinements that are, or result in Confinement of Land, and I take it, that the Certificate is in the Common Law. The Intent here is manifest; for the Conufee being Tenant to the Precepe, the Tenant in Tail coming in as Voucher, admits him as such, Per Ht. Ch. J. Holt's Rep. 737. Lord Anglesea v. Lord Altham.

Comb 434 — S. C. by the Name of Williams v. Lacy-Carb. 422 S. C. affidav'd in B. R. per Mr. Car. And says, It was agreed that if once there had been a good Tenant to the Precepe, his Actions after death could not hurt; nor if he

18. A Writ of Entry was brought against Miles Corbett, returnable Q. D. to the Court of Chancery, who appeared. The Defendant answered against him, and the cause was heard. The Court held that the Defendant was not Tenant to the Precepe, and that the Defendant had not the Land; for it is not his being Tenant to the Precepe, but the Defendant's having a Title to the Land, that is the Foundation and Cause of the Action;
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Add.]; and consequently it is sufficient if the Tenant has the Land to
read at any Time before Judgment. 2 Salk. 568. Trin. 11 W. 3.
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for that would be fraudulent.—S. C. argued and adjudged in C. B. Lord Raym. Rep. 227. Trin. 9 W. 3. Williams v. Lacy.—S. C. argued, and Judgment affirmed in B. R. R. Raym. Rep. 43.—If there is a Tenant to the Precise Pendente Pleas before Judgment, it is well enough, that there was none at the Time of fusing out the Precipe. And per Holt Ch. J. a Tenant has been made frequently after the Return of the Precipe and a Voucher. Show, 55. Patch. 4 W. & M. Saburne v. Belk.—For even in adversary Writs, if the Tenant was not Tenant at the Time of the Writ, was not so before the Return, it was well. Pig. of Recov. 29.—It is good with this Litigancy, that if the Tenant comes to the Land by his own Act, he has made the Writ good; but if he comes to the Land by At in Lasc, he may abuse the Writ by pleading Non-tenure; as if a Son has a Practice brought against him in the Life of his Father, and his Father dies, he may plead Non-tenure if the Land descended to him by his Father's Death. Pig. of Recov. 51. cites H. 6. 12. 4 H. 5. 9.


But where a Writ of Entry was returnable Quintana Martini, 36 Nov. being a Monday, the Term ended the Wednesday following, the Last and Release were dated the 26th and 27th of November, and the Recovery taken on Wednesday the 28th at the Common Pleas Bar, and ill; for it appeared on the Face of the Recovery, that there was no Tenant to the Precipe, the Writ of Entry being returned before the Release; and this, it appears, was done with a View of avoiding a Recovery being suffered of that Term, on the 26th of November, vj. Quintana, Martini, it cannot be otherwise presumed, but that the Tenant on the Day appeared to the Writ, and Judgment was then given, and the Release bearing Date the 27th of November, it plainly appears there was no Tenant to the Precipe, because Judgment was given Quintana Martini; and that the Recovery was taken at Bar the 28th, and noted by the Reporters, yet the Judges take no Notice of that, and of nothing but what appears on the Record. Pig. of Recov. 58. 49.

19. Where the Tenant appears on the Return of the Writ of Entry, and a Bar other.

Recovery is then had, in such Case the Tenant must have the Freehold at the
Return of the Writ, because it is a Recovery then suffered. Arg. 2 Salk. 559. Trin. 11 W. 3. B. R. in Cafe of Lacy v. Williams, cites 41 E. 3.
5. 8 E. 3. 32. 10 E. 3. 21.

20. Tenant for Life, Remainder in Tail, Remainder in Fee; Tenant in
Tail lives a Fine. This has for ever hinder'd the Tenant for Life and Remainder in Tail from destroying the Remainder in Fee; because the Fine has turn'd his Estate into a bare Fee, and has destroyed all Privity of Estate; so that it Tenant for Life and Remainder in Tail would make a Tenant to the Precipe, yet they cannot touch the Remainder-man in Fee, without he will voluntarily enter into it. 11 Mod. 121. pl. 7. Trin. 6

21. A. on the Marriage of B. his Son with W. conveyed Lands to
J. N. and J. S. and their Heirs in Trust, and to the Use of A. for Life, Remainder to the Use of B. for 59 Years, if &c. Remainder to J. N. and J. S. to possess Contingent Remainders, Remainder to the Use of the first Issue, Son of B. by W. in Tail Mail successively, Remainder to the Use of the Heirs of the Body of B. (who is still living) Remainder to the Use of the right Heirs of A. —A. died. B. had Issue C. who with the Heirs of J. S. the surviving Truttee joined in a Deed of Bargain and Sale in-
vol'd for making a Tenant to the Precipe, and a Recovery was suffer'd to the Use of C. in Fee, who devise'd all his Estate to Trustees for Payment of his Debts, and died, leaving Issue a Son; but J. S. the surviving Truttee living by Will devised to K. and his Heirs, all such Estate as the Lord had bequeath'd upon him, he devise'd Part to J. S. and his Heirs, and all the rest of his Real Estate to his Wife and her Heirs. It was held by the Muter of the Rolls, That the legal Estate being in J. S. in the Eye of the Law, it was His Estate and His Property, and therefore tho' a Trut Estate, yet it pass'd by the Devise of His
M. in m
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Estate; and this being on a Bill to compel a Purchaser to accept the Purchaser upon this Title, his Honour said that he would not, nor did he think it reasonable for a Court of Equity to compel it; and therefore decreed back a Deposit which the Purchaser had made. 2 Wms's Rep. 159. Mich. 1723. Marlow v. Smith.

22. Lt. C. Talbot taking Notice of its having been said, That a Free
Tenant in Test and her Husband cannot make a Tenant to the Precipe
without a Fine, he said, That whatever the Cafe might be where a Husband is merely joined in Right of his Wife, it was not necessary [in the principal Cafe] for him to determine; because in this Cafe the Husband by his Internamage [and having Issue] is become entitled to an Estate by the Courte, and therefore be alone, without his Wife's Joining, might make a good Tenant to the Precipe. Cases in Equity in Lt. Talbot's Time 167.

Hill. 5 Geo. 2. Sir John Robinson v. Conyns.

23. A was Tenant for 69 Years if be so long live, Remainder to Truftees to support Contingent Remainders, and then to the first &c. Sons of A.— A, and his Son cannot make a good Tenant to the Precipe to bar the After-Remainders, the Freehold being in the Truuses, who did not join. Mich. 14 Geo. 2. B. R. Smith of the Demise of Dornier v. Parkhurst. — Alias Dornier v. Fortescue.

24. If a Common Recovery be to be sufficed of a Manor, wherein are many Leases for Lives of Part of the Manor, tho' the Practice has been to get Surrenders from the Leases, that is only Abundans Cautela; and I take it not to be necessary; and I think the Recovery good, tho' the particular Tenants for Lives did not surrender; for the Reverjion of the Land leased for Lives remains still Part of the Manor; and the Fine or Deed that made the Tenant to the Precipe, carried the entire Manor to him, as well Reverjions as Possessions; for the Manor being an entire Thing, the Freehold thereof was in the Tenant to the Precipe. Pig. of Recov. 41, 42.

25. If the Land, of which the Recovery is intended to be sufficed, is not Part of a Manor, and is in Lease for Life, then it must be surrendered to him that has the Reverjion or Remainder before he makes a Tenant to the Precipe; or if the Surrender be after the Conveyance, which makes the Tenant to the Precipe, then to the Tenant to the Precipe; And by mistaking this, several Recoveries have been set aside. Pig. of Recov. 50. cites a Cafe left to be determined by Counsel between the E. of Pembroke and Ld. Windfor.

As for Example, If after Lease and Release executed to make the Tenant to the Precipe, the Tenant surrenders to the Releasee, this is void; for he has no Reverjion for the Surrender to operate upon. Pig. of Recov. 72. But tho' where there is a Lease for Life [of Lands which are] no Part of a Manor, that [Lease] must be surrendered to make a good Tenant to the Precipe; Yet no Term for Years hinders him that has the Freehold from suffering a Common Recovery; because the Law has little regard to Terms for Years, which are only Chattels. And by the Statute of Gloucester, cap. 11. Leafe for Year in London may nullify a Common Recovery, whereby the Judgment is not to be stay'd, but the Execution suspended during the Term. Pig. of Recov. 53, 51.

(X) Tenant to the Precipe. Pleadings. And in what Cases a good Tenant shall be intended.

After Length 1. In Ejection it appeared, That Part of the Land was leased for Life, of Taste a good Legal Tenant to the Precipe, and the Recovery with a single Voucher was sufficed by him in Reverjion, and so no Tenant to the Precipe for those Lands. But in regard the Poffeefion had followed it for a very long Time, the Court said they would presume a Surrender. Vent. 237. Parch. 26 Cat. 2. B. R. Anon.

Mod. 113. Parch. 11 Geo. in Canc. Webber v. the Earl of Montrath.

2. The
2. The Plaintiff initiated himself to an Advovson by a Recovery suffered by Tenant in Tait; and in pleading this Recovery, he alleges two to be Tenants to the Præcie, but does not show how they came to be so, or what Conveyance was made to them; so as it may appear, that they were Tenants to the Præcie. And after Search of Precedents, as to the Form of pleading Common Recoveries, the Court inclined that it was not well pleaded, but delivered no Judgment. 2 Mod. 70a. Patch. 28

3. In every Common Recovery it shall be intended, that there was a good Tenant to the Precie till the contrary is shown of the other part. And so it was resolved in the Case of Ettill in v. Ettill. 2 Cr. 424. and 435. upon Evidence. 2 Lutw. 1559. Hill. 3 W. & M. in the Case of Leigh v. Leigh.

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S.C. cited by Serjeant Lutwicbus 2

2 Lutw. 1559. In the Case of Leigh v. Leigh. Hill. 3 W. & M. and observes, That the Court did not deliver any Judgment; and says, It must be confess'd, that the usual Form of Pleading is to show how the Tenant became Tenant. But from what he had been saying elsewhere (where see pl. 3) he makes a Query, If it be of Necessity always to show specially how the Tenant was made Tenant; but says, That if such from Pleading should be allowed, (as not to be let it specially forth) he sees not any Convenience which would entice; for should it be pleaded, That there was not any Tenant to the Præcie, then the issue might thereupon be taken, as appears by Rall. Ext. tit. Formacion in Execut. 21 E. 4. 7, 8.

And there he makes another Query also, If a Common Recovery in Case may not be pleaded thus, viz: to say, That a Writ of Entry &c. was prosecuted against J. S. and J. N. their Tenants of the Feehold &c. and then to proceed in such a Manner as is mentioned in the Case of Ennich in v. Perry. (Lutw. 562.) And Eys, He does not apprehend any Reason why it might not be to briefly pleaded as well as judgments in other Cases. But then (he thinks) it would be necessary to shew that the Recovery was executed under a Writ, or by a Brevet; for till this is done, the first Entries are not allowed. But this came to the 1550 cited, and the 1549 cited, and Rep. Stibb's Case, and 2 Lea. 24. HUDWEN v. BARKHILL.

S. C. of ALTHAMAN v. BARKHILL. Mod. 24. Mich. 28. Car. 2. C. B. reports the Pleading to be thus, (viz: That W. the Grand-father of the Plaintiff was intestate in Fee of the Manor &c. and that a Precie was brought against O. & E. ADAM Tenants Hereafter Tenants, who appeared and vouched the said J. W. and that a Recovery was had to the Use of J. S. under whom the Defendant claimed. It was intented for the Defendant, That it is not necessary the Tenant to the Precie should have a Precedent at the Time of the Writ brought, 'tis sufficient if he hath it at the Time of the Return, that the Defendant is eftopped to say, That there was not a Tenant to the Precie, bcause the Writ is only abatable if brought against one that is not Tenant. And as long as it is not abated, but is pleaded &c. it shall conclude, All who are Parties or Privies, and all claiming under them; That Here is an Eftoppel with a Recompence; for W. the first Voucher might have counterclaimed the Lieu, and executed the Varruery; but having vouched'd over, he is put that Advantage, and concluded by being made a Party by Voucher; That the Court must intend here, That O. and P. the Tenants to the Precie, came in by Conveyance; because W. came in upon the Voucher, which he would not have done if there had not been a Lien. To which it was answer'd, and so adjudged, that Adum Tenere is a sufficient Assent in the Pleading a Common Recovery, which is always favored in Law; but it is not good alone, when in the Sentence a Matter is set forth, which is inconsistent with it, and plainly contradictory; that as to ETTILL and ETTILL's Case in Hub. that was upon a Special Verdict, where many Things may be intended, which shall not be so in Pleading; and as to ETTILL's COLLEGE Case, the Writ is laid to be brought against Edward Chamberlain in one Part of the Record, and the Mother is said to be Tenant in another Part of the Record, and by here in the same Sentence, OUE PLAIN, there is a flat Contradiction.

* If he were not Tenant at the Return of the Writ, he might abuse the Writ by Non Tenure; but if in that Case he had vouched over, then as to himselfe he admitted the Writ good; but then the Voucher might counterclaim the Tenancy; but if the Voucher does not counter-claim the Tenancy, 'tis good against them all by Eftoppel. Pig. of Recov. 29.
(Y) Tenant to the Precipe. Not Good, yet the Recovery Good.

1. 13 El. 5. 8. 4. (which was made for avoiding fraudulent Gifts and Conveyances) Enacts, That Common Recoveries against Tenants of the Freehold shall be good notwithstanding this Act, and so shall all Estates made for the Preparing of a Voucher in Formedom.

2. A seized of Lands by Deed indented and inroll'd between him of the one, and B. and C. of the other Part, in Consideration of 25 l. paid by B. and C. bargain'd and sold the said Manors to B. and his Heirs, to the Intent that B. should forfeit the said C. and R. S. to recover the said Lands against him, to the Use of A. for Life, Remainder to his Son in Tail, with diverse Remainders over. The Recovery was accordingly suffered, E. and F. being Tenants of the Freehold of the said Lands, the Reversion to him against whom the Recovery was.  F. and F. dy'd. — A. enters, and leadeth to the Plaintiff. 2 Points were moved; 1st, If the Recovery suffered against him in Reversion where the Freehold was in a Stranger, shall bind the Reversioner and his Heirs. 2dly, If the Uses expressed in the Indenture of Bargain and Sale, where the Plaintiff is good; and the Recovery is good against him in Reversion and his Heirs, and Judgment accordingly. Cro. Eliz. 21. Trin.

4 Le. 84.

3. If A. gives in Tail to B an Alien, the Remainder to C. in Fee, and B. suffers a Common Recovery, and after Office is found the Alien dies without Issue, yet the Recovery shall bind C. in Remainder. Noy 137. Anon.


1 Jac. in Ld. Sheffield's Case.

5. Tenant for Life, Remainder to Husband and Wife, and their Heirs, the Husband and Wife suffered a Common Recovery; the Heirs of the Wife shall be barred, tho' she was not Tenant to the Precipe, and tho' it did not appear that she was examined; and she is concluded to speak against this Recovery; for he joined with her Husband in it, and the Record is perfect, and the Remembrance in Value shall go to her Heirs; and the being Party and privy to it, her Heirs shall be bound by it. St. 319. Hill. 1651. Lockoe v. Palkirman.

Bridgman's, thus, viz. Where the Husband and Wife were seized of a Reversion in Fee, expectant upon Estate for Life, and made a Feoffment in Fee to make a Tenant to the Precipe; but that happened to be void, because Tenant for Life continued all the while in Possession; but there was a Precipe brought against the Feoffees, and he reached the Husband and Wife, and they cut off the Common Voucher; and it was held to be good. Pig. of Recov. 1597, 1599. In the Case of Page v. Hayward.

6. Where after a Recovery the Deeds were suppress'd by the Tenant for Life, so that it could not be made out if he surrendered to enable the Recovery or not. It was decreed for the Recovery without a Trial. Per Finch C. Chan. Cases 297. 2 Mich. 28 Car. 2. Gartside v. Ratcliffe.

7. Celfy que Truif in Tail suffered a Recovery, and No Tenant to the Precipe; but being in Possession under the Trustee, (who had the Freehold in him, but was no Party to the Recovery) so that Celfy que Truif in Tail was the Tenant, Finch C. decreed it a good Bar. And he took a Difference, That if there had been a Celfy que Truif of a Truif for Life before the Truif in Tail, so that in that Case the Estate in Law had been executed according to the Truif, and consequently the Tenant in Tail could not have barred the Remainder in Fee, if he had suffered a Recovery, there Celfy que Truif in Tail should not but the Remainder by a Common Recovery,
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Recovery, if there was no Tenant to the Precipe. 2 Ch. Cafes 63. Trin. 33 Car. 2. North, and Chanceron v. Williams.

8. It has been commonly received, That a Common Recovery cannot be suffered where the Title is expectant on an Estate for Life (not made Tenant to the Precipe) which is true in a Writ of Entry in the Possession, which is commonly used. And the true Reason is, because such Writ implies a Dower, which cannot be when there is a Tenant for Life in Possession; But a Common Recovery in such Case in a Writ of Right would be good. Per Squire Maynard. Arg. Vent. 360. Hill. 33 & 34 Car. 2. in the Cafe of Moor v. Pitt.

9. If a Deed be made to A for 60 Years, if he so long live, and from and after the Death of A. to B. A's eldest Son in Tail; A. is no good Tenant to the Precipe; but in Regard, the Issuors had an equitable Title only in himself, and the Estate in Law stood out in an Infant, Per Lds. Commissioners, The Recovery is sufficient, and that even a Bargain and Sale would have done it. 2 Vern. 131. Hill. 1690. Beverly v. Beverly.

10. 14 Geo. 2. Enacts, That All Common Recoveries suffered, or to be suffered, without conveying the Freehold vested in Lessees, or others claiming under them, in Order to make a Tenant to the Precipe, shall be Valid and Effectual.

Provided that Nothing in this Act shall make Valid any Common Recovery, unless such as are intitled to the first Estate for Life, or other greater Estate (in Case there be no such Estate for Life in being, in Recourse or Remainder, next after the Expriation of such Leases) have, or shall, lawfully Convey, or join in Conveying an Estate for Life, at the least to the Tenant to the Precipe.

And that nothing therein contained, shall Prejudice the Estate of any Lessees, or Persons claiming under them.

And further Enacts, That where any Person &c. hath or have purchased, or shall purchase, for a valuable Consideration, any Estate or Estates in Lands &c. whereof a Recovery is, or was necessary to be suffered, in Order to complete the Title, such Person &c. and all Claiming under him &c. having been in Possession of the purchased Estate, or Estates, from the Time of such Purchases, shall and may, after the End of 20 Years from the Time of such Purchases, produce in Evidence the Deed or Deeds, making a Tenant to the Writ or Writs of Entry, or other Writs for sufferance a Common Recovery &c. and declaring the Uses thereof; and the Deed or Deeds so produced, (the Execution thereof being duly proved) shall, in all Courts of Law and Equity, be deemed and taken as a good and sufficient Evidence for such Purchasers and Purchasers, and those claiming under him, her, or them, that such Recovery or Recoveries, was or were duly suffered and perfected, according to the Purport of such Deed or Deeds, in Case no Record can be found of such Recovery or Recoveries, or the same should appear not to be regularly entered on Record; Provided that the Person or Persons, making such Deed or Deeds as aforesaid, and declaring the Uses of a Common Recovery &c. had a sufficient ESTATE, and Power to make a Tenant to such Writ or Writs as aforesaid, and to suffer such Common Recovery or Recoveries.

That from and after the Commencement of this Act, every Recovery already suffered, or heretofore to be suffered, shall be deemed Good and Valid to all Intests and Purposes, notwithstanding the Fine, or Deed, or Deeds, making the Tenant to such Writ, should be levied or executed after the Time of the Judgment given in such Recovery, and the Award of the Writ of Seisin as aforesaid; provided the same appear to to be levied or executed before the End of the Term, Grant, Seisin, Seison, or Alseis, in which such Recovery was suffered, and the Persons joining in such Recovery, had a sufficient Estate and Power to suffer the same as aforesaid.

N n n

(Z) King
(Z) The King Bound; In what Cases, By Fine or Recovery.

1. 32 H. P rovides against a Fine being a Bar to the Recovery of Estates 8. 36. contained by the King's Letters Patents, or by Act of Parliament.

2. If Tenant in Tail of the Gift of the King surrenders his Letters Patents, this shall not extinguish the Tail; For the Involment remains of Record, out of which the Issue in Tail may have a Contingent, and recover the Land; in Case of the Tail of Rutland; by which they made another Device, that the King should grant to him the Fee-Simple also, and then a Recovery against him would bar the Tail; contrariwise if the Recovery be in the King. Br. Surrender, pl. 51. cites 32 H. 8.

A Fine with Proclamations, where the Remainder or Reversion is in the King, is no Disannulment; therefore, there the fine in Tail may ever remain.

after the Death of the Tenant in Tail. Br. A lliance, pl. 6. and cites this Statute of 34 H. 8. cap. 29. But says, That before that Statute a Recovery was a bar against the Tenant in Tail and his Issue, but not against the King, but now, by this Statute, it shall not bind the Issue. Br. A lliance, pl. 6. S. P. Br. D i s c o m i n u n c e [of Possession], pl. 51. before this Statute, a Common Recovery barred the Estate Tail created by the King's Letters Patents, whereas of the Reversion continued in the King 2 Rep. the 6th Resolution in Wifeman's Cafe; and with this Resolution agrees the 53 H. 8. tit. Recovery in Value. Br. pl. 51 & 29 H. 8. D. 32. pl. 1.

Fig. of Recov. 85. says, It is E x t e n t a Q u a s s i s, how far at Common Law a Remainder reified in the King, was devolved by Recovery and Disannulment; and this very Act was made to prevent these Recoveries binding the Issue, but extends only where the Gift was by the King, or his Procuration.

Before the Statute of 20 H. 5. when the King created a Conditional Fee, there was no Reversion, but a Possibility in the King; and if the Donee had Issue, and alienated, the King's Possibility was barred as well as that of a Common Person; but the Statute of 20 H. 5. founded that Possibility into a Reversion, so that the Question is, If at this Day, one make a Gift to A in Tail, Remainder to B in Tail, Remainder to the King in Fee; if in this Case A sundered the Common Recovery, this Bars A and his Issue, and the Remainder to B, but not the King's Recovery, for that cannot be devolved or put to a Right, or pluck'd out of him by the Act of a third Person; and therefore the Difference seems to be, that by an Act in Law, a Remainder or Reversion may be devolved out of the King, but not by Act of the Party; and if there be Tenants in Tail, Remainder to the King in Fee, Tenants in Tail devolved in Fee, and takes back an Estate to himself for Life, Remainder to the King in Fee, Tenant in Tail dies, the Issue is remitted, and the Remainder pulled out of King, and Veils in A. But the Act of the Party as a Fine or Common Recovery, shall never direct any Estate Remainder or Reversion out of the King; but if the Recovery is on good Title against Tenant in Tail, and the King has the Remainder by Dispossessable Title, there it shall direct the Remainder out of the King, and restore and remit the Right Owners. Plowd. 385, 553. Dyer 544, 2 R. 53, 5 R. 76. 1 Inst. 354.

S. 3. The Heirs of every such Tenant in Tail, against whom any such Recovery shall be had, shall take no Advantage in Value, against the Voucher or his Heirs.

S. 4. This Act shall not extend to prejudice the Lessor or Lessee of any such Tenant in Tail made in Writing, indentured of any Manners, Lands &c. for 21 Years, or three Lives, or under, whereupon the annual Rent or Rents, is or shall be Yearly reserved, during the same Terms or Terms: But the same Lessor or Lessee, shall enjoy his or their Term or Terms, according to the Statute of 32 H. 8. 29. this Act notwithstanding.

S. P. Br. R e c o v e r y. pl. 21 cites 35 H. 8. — Co.
it such done had levd a Fine with Proclamations after the Statute of Litt. 54. i. 4. H. 7. this had barred the Estate Tail, although the Reverfion was in the King; but then Littleton wrote, a Common Recovery had against a Wife. Tenent in Tail of the King's Gif, or such a Fine levd by him, the man's Cafe. Reverfion continuing in the Crown, is no Bar to the Estate Tail, by the 3 Rep. 17. Statute of 34 H. 8. And where the Words of the Statute be "Reverfion or Remittance, at the Time of such Recovery had, shall be in the Cafe. King" thole 10 Things are to be observed upon the Conftitution of that Act, 1st. That the Estate Tail must be created by a King, and not by any [Rev. 15. b. 2dly. Subject, about the King be his Hor to the Reverfion, for the Precable King; in Wife. Subje&c. speaks of Gifts made to Subjects; and none can have Subjects but the King; and also in the Precable it is said, (for Service done to the Gov. Sir. cites Kings of the Realm) and the Body of the Act referret to the Precable S. C. & P. And therefore if the Duke of Lancaster had made a Gift in Tail, and the Reverfion defended to the King, yet was not the Estate Tail restrained by that Statute; and fo of the like. Co. Litt. 372. b. 2dly. If the King grant over the Reverfion, then a Recovery suffere, The King, will bar the Estate Tail, because the King had no Reverfion at the Time of the Recovery. Co. Litt. 372. b.

3dly. If the King makes a Gift in Tail, the Remainder in Tail, or grants the Reverfion in Tail, keeping the Reverfion in the Crown, a Recovery against Tenant in Tail in Pofleffion shall neither bar the Estate Tail in Pofleffion, by the express Purview of the Statute, nor by Confequence the Estate in Remainder or Reverfion; For that the Reverfion or Remainder cannot be barred, but where the Estate Tail in Pofleffion is barred. Co. Litt. 372. b.

4thly. If a Subject make a Gift in Tail, the Remainder to the King in A. Seif of Fee, albeit the Words of the Statute be (whereof the Reverfion, or King, land, gave remainder of the fame &c.) yet feeing the Estate in Tail was not created by the King, as hach been feid, the Estate Tail may be barred by a Common Recovery. Co. Litt. 372. b.

to the King in Fee. J. S. had Ilife 3 Daughters, B. C. and D. — B. in Time of Queen Eliz. levd a Fine with Proclamation &c. and died without Ilife. It was agreed, that this was sufficient to bar every Her to this Enfable, by 32 H. 8. which speaks of the Reverfion, and not of the Remainder being in the King, and this Fine makes no Discontinuance, but Fine with Proclamations is a Bar, and makes Fee simple in the Comtie determinable upon the Estate Tail, without touching the Remainder; for the fine remains in the Queen. And the Words in 34 H. 8. 2d. That the Heirs or Remainder in Tail in Lands, whereof the Remainder or Reverfion is to the King at the Time of the Recovery, may enter &c. will not restrain the general Words of 32 H. 8. And 46. pl. 118. Mich. 15 & 16 Eliz. Rot. 1. 20. Anon. — 5 Le. 52. pl. 84. Mich. 16 Eliz. C. B. Seems to be S. C. and adjudged, that the Ilife was barred, and yet the Remainder in the King was not discontinued. For that Fine, an Estate in Fee determinable upon the Estate Tail, did pafs to the Comtie. J. A. & Y. Date. — 4 Le. 42. pl. 108 S. C. and in the same Words — Mo. 115. pl. 261. Patch. 2. 2d. S. P. Anon. — Bendl. 253. pl. 254 S. C. with that of And 49 and says, That it makes no Discontinuance of the Tail,
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5thly. If Prince Henry, Son of Henry the 7th, had made a Gift in Tail, the Remainder to Henry 7th, in Fee, which Remainder, by the Death of Henry 7th, had descended to H. 8, so as he had the Remainder by Deed, yet might Tenant in Tail, for the Caffe aforesaid, bar the Estate Tail by a Common Recovery. Co. Litt. 372. b.

6thly. The Word (Remainder) in the Statute, is no vain Word; for the Words of the (Preamble) be, The King hath given or granted, or otherwise provided, to his Servants and Subjects. The Word (Remainder) in the Body of the Act, hath Reference to these Words, (given or granted,) and (Remainder) hath Reference to these Words, (otherwise provided.)

As if the *King in Consideration of Money, or Alluance of Land, or for other Consideration, by Way of Provision, procure a Subject by Deed indented and enrolled, to make a Gift in Tail to one of his Servants and Subjects, for Reconcilement of Service, or other Consideration, the Remainder in the King in fee, and all this appears of Record, this is a good Provision within the Statute, and the Tenant in Tail cannot, by a Common Recovery, bar the Estate Tail. So it is if the Remainder be limited to the King in Tail; but if the Remainder be limited to the King for Years or Life, that is no such Remainder, as is intended by the Statute, because it is no Remainder of Continuance as it ought to be, as it appears by the Preamble, and it ought to have some Affinity with the Remainder, wherewith it is joined. Co. Litt. 372. b.

7thly. Where a Common Recovery cannot bar the Estate Tail, by Force of the said Statute, there a Fine levied in Fee, in Tail, for Lives or Years, with Proclamations according to the Statutes, shall not bar the Estate Tail, or the Ilue in Tail, where the Recovery or Remainder is in the King as is aforesaid, by Reason of these Words in the said Act, (the said Recovery, or any other Thing or Things hereafter to be had, done, or suffered by or against any such Tenant in Tail, to the contrary notwithstanding) which Words include a Fine levied by such a Donee, and reclaims the same. Co. Litt. 372. b. 373. a.

Strain upon this Statute of 36. H. 8. — [Show. 11. 32 Show. 2.] In the Case of Murr v. Eaton, Ed. Ch. Pemberton says, 'That tho' the Ed. Hobart calls it an oblique and indirect Sentence, yet it has obtained to this Time, and that it seems to have a great Foundation in the very Act of Parliament itself,' For it is plain by the Preamble, that it was the Alteration of the Land they intended to hinder, and not the Manner of the Alteration, and it had been to little Purpose to hinder the Altering by Recovery, if they had left him Power to bar his Ilue by a Fine, and that these Words (any other Thing or Things) show their Intention, not only to hinder Recoveries, but any Thing else that might be made use of to bar the Ilue; and it seems wisely done to extend that Statute, as they did to Fines. — Skim. 95, 96. S. C. and S. P. by Pemberton Ed. J.

8thly. But where a Common Recovery shall bar the Estate Tail, notwithstanding that Statute, there a Fine with Proclamations shall bar the fine also. Co. Litt. 373. a.

9thly. Where the said latter Words of the Statute be (had, done, or suffered, by or against any such Tenant in Tail) the Sence and Construction is, where Tenant in Tail is Party or Privity to the Act, be it by Doing or Suffering that which should work the Bar, and not by mere Permislass, be being a Stranger to the Act. Co. Litt. 373. a.
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As if Tenant in Tail of the Gift of the King, the Reversion to the * 8 P. by King Expectant, is diffus'd, and the * Difficult lev'y a Fine and 5 Years Anawlon, paths, this shall bar the Estate Tail; and so if a collateral Ancestor of the Donee Release with Warranty, and the Donee fulfill the Warranty to defend, without any Entry made in the Life of the Ancestor, this For he is shall bind the Tenant in Tail, because he is not Party or Privy to any Act, either done or fuller'd by or against him. Co. Litt. 373. a. of 54 H. 8. which the other Julli as agreed unto; But Walmley said, This Cafe is to be well advis'd upon; for he conceiv'd it was to be removed by the Equity of the Statute; and that otherwise it would be a Common Мишель, that Donee in Tail of the King, would fulfill a Difficut, and the Difficult should lev'y a Fine and thereby bar the Fille. Cro. E. 195. pl. 42. Mich. 29 & 40 Eliz. C. B. Stratfield v. Dover. ———. Mo. 45. pl. 665. S. C. by Name of Dover v. Stratfield, takes no Notice of what was the Opinion of Anawlon, or the other Judges, but only of that of Walmley, and states the Cafe of a Gift in Tail by H. to Verney, whose Heir was diffus'd, and a Stranger being in Seisin, lev'd a Fine with Proclamations and 5 Years passed, the Reversion always remaining in the Crown, it shall bind only in the Fille fuller'd it.

1othly. Albeit the Preamble of the Statute extend only to Gifts in 2 Rep. 5. B. Tail, made by the Kings of England before the Act, viz. (hath Given Wifeman's, and Granted &c.) and the Body of the Act refereth to the Preamble, viz. (that no such Feigned Recovery hereafter to be had against such Tenant in Tail) so as this Word (such) may seem to couple the Body and the Preamble together; yet in this Cafe, (such) shall be taken for (such in equal Mifctef, or in like Cafe,) and by divers Parts of the Act it appears, that the Makers of the Act intended to extend it to Future Gifts; and so is the Law taken at this Day, without Question. Co. Litt. 373. a. 5. A made a Gift in Tail to B. Remaner to C. in Fee; C. printed his Remaner to J. S. for Life, the Remaner to the Queen, upon Condition to be void on Non-payment of Money; A. fulferr'd a Common Recovery. Reolv'd, That the Recovery bars not only the Estate Tail of B. but also the Estate for Life of J. S. notwithstanding the Remaner in Fee was in the Queen; For this is not within the Statute of 34 H. 8. because the Estate Tail was not of the Gift of the Queen, or of any of her Progenitors Kings of England. 2 Rep. 52. a. b. in Sir Hugh Cholmley's Cafe, cites it to have been adjudg'd 15 & 16 Eliz. in the Cafe of Jackton v. Drury, and 27 Eliz. C. B. Wifeman v. Jennings.

6. A. feiff'd in Fee, for Continance in his Name and Blood, and for Mo. 195. other good Considerations, Covenanted to hand feiff'd to the Ufe of his half self &c. and in Tail Male, Remaner to the Ufe of B. his Brother in Tail, Remaner over to other Brothers in Tail, and for Default of such Fille to the Ufe of the Queen, her Heirs and Successors, Kings and Queens of this 89 Realm. A. died, leaving Fille, who fulfil'd a Common Recovery. And it was adjudg'd that the Fille of that Fille was bar'd by such Recovery. 11th. Because the Words (other Good Considerations) are too general, without a Special Aventerment to raise an Ufe. 2dly. The Continance in his Name and Blood, was not a Consideration to raise an Ufe to the Queen. 3dly. Neither would it have been sufficient, had it been express'd in Consideration that the Queen was the Head of the Commonwealth, and had the Care of preserving the Peace of the Realm &c. Forthere is wanting Quot pro quo. 4thly. Had the Consideration been sufficient to raise an Ufe to the Queen, yet this would not have brought the Estate Tail within the Protection of this Act of 34 H. 8. For no Estate Tail is prefixed by the said Act, unless created by the King's Letters Patents, or of his Privilege, and not of the Provision of a Subject only. 2 Rep. 15. a. b. Wifeman's Cafe. ——Al. Wifeman v. Barnard.

7. A. Tenant in Tail, Remaner to B. in Fee; B. by Deed enrolled, Anon. S. C. granted his Remaner to the Queen in Fee, during the Life of A. and reports, That the Grant to after his Death, as long as any of his Fille Male should live. A. suffered a Recovery, (under which the Plaintiff claimed) and died without Fille, the Queen and then B. estated; Adjudg'd, That notwithstanding his Grant to the B. by B. in his own Queen, the Common Recovery had bar'd B.'s Remaner; besides it was, with 2 0 0 0
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and the Queen, for divers good Causes &c. and at the Petition of the said W. re-granted to be held of the Queen, her Heirs and Successors, by the Service of one Knight’s Fee. An Act of Parliament made a fac. 1. Enacted that those who shall violate the Limitations were made, should enjoy 3, and that the King should hold such Estate, Title, Interest, and Reversion, as if the Act had not been made. Afterwards, upon an Award of a Rent-Charge of 600l. a Year to C.S. in Tail Male &c. King Charles 3. granted the Reversion back to enable the Grant of the Rent-Charge, and the Reversion, within one Year, to be again limited to the Crown. After this W. and his eldest Son covenanted to levy a Fine, to make good the Rent-Charge; and that the Lands chargeable therewith, should be to the Use of W. in Tail Male, Remainder to Sir G.S. in Tail Male, Remainder to J. Ld. S. (eldest Son of W.) his Heirs and Alihgs. The Fine was levied. The Reversion was not re-granted to the Crown. The Manors afterwards defended to W. G.R. Earl of D. who by Lease and Release conveyed to T. and H. and their Heirs to make a Tenant to the Præcie to suffer a Common Recovery, in which W. G.R. Earl of Derby, was vouch’d and vouched the Common Voucher; W. G.R. died. In an Æjacement brought by the Daughters and Coheiries of W. G.R. Earl of Derby, against the Heir Male of the Body of C. S. and younger Brother of the said W. G.R. Earl of Derby, deceased, Ld. Ch. B. Ward was of Opinion with the younger Brother, (the Heir Male of C.S) as to the Manor of L. &c. on the Statute 34 H. 8 which restrains the Tenant in Tail of the Gift of the Crown, from Aliening; But the other 3 Barons held the Intail in this Case, was a fraudulent Contrainence, not within the Meaning of this Statute. Pig. of Recov. 201. to 213. Trin. 6 Ann. in the Exchequer. Johnson of the Demise of John. E. of Anglesea, & Ux. and Lady Eiliz. Stanley, Spinster v. James Earl of Darby, & al.

(A a.) Revers’d, falsified, or Stay’d. For what, and How.

1. A Common Recovery may be defeated, frustrated and reversed, by Entry and Plea, when the Party’s Entry is not taken away by the Recovery, and he brings his Affix, and the Recovery is pleaded against him, and he pleads Musters to avoid the Recovery. Pig. of Recov. 156.

By Affix and Plea, that is when the Entry of the Party that has Right, is taken away by the Recovery, and on a real Action brought, the Recovery is pleaded in Bar of the Right, this may be falsified by Plea, and so by Action only, or by Plea only. Pig. of Recov. 157.

2. If a single Recovery and a Fine be against the Tenant, the Writ of Bar is a Entry must bear Date, and Tenie before the Writ of Covenant, and be returned before. Wel’s Symb. 77. b. Sect. 3.

Tenant and a Writ of Entry against the Demandant, then the Writ of Covenant must bear Date, and be returned before the Writ of Entry, and this is called a Double Voucher. Wel’s Symb. 77. b. Sect. 3.

3. The original Writ of Entry was returnable Off. Michaelis, which was the 9th of October, and the Ded. Pet. de Atorn. Vestr. bore Date the 11th of October, and the Minutus thereof in Bank bore Date the 30th of October, which was after the Return of the Judgment, which is Oftabis Michaelis, tho’ the Entry was Quod Poletas ibi cedens Termino the Demandant came, and the Tenant Sealminiter exatus non vult fed De- fendant fact, ido &c. and so it should be, tho’ the Writ was returnable the last Day of the Term; For Poletas ibi cedens Termino may be the time
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fam Day that the Count and Delience is made; And then in this Case the Warrant of Attorney was after Judgment given contrary to the Suppo-
sition of the Writ of Ded. Pet. which is Ex jam brevi solum pendens &c. And the Writ is not pending after Judgment given; And to the Recovery was held erroneous. Per Curiam. D. 220. pl. 13. Sir Nich. Bacon's Cafe.

3. A Tenant in Taile, Remainder in Fee to B. Or the Reversion in Fee to B. B. makes a Leafe for Years, or grants a Rent-Charge, or acknowledges a Statute; A. afterwards suffers a Common Recovery, and dies without Issue; This Leafe, Grant of a Rent, or Statute, are avoidable by the said Common Recovery, otherwise the Recovery would be of no Effic to the Purchafer; and the Recovery is paramount to the said Leafe, Rent-Charge and Statute. Jenk. 250. pl. 41.

5. Husband and Wife levied a Fine of Lands of the Wife, the being within Age, and afterwards they suffered a Common Recovery; the Husband died; the Widow married again; and her Husband and she brought a Writ of Error to reverse this Fine and Recovery; The Court was of Opinion to reverse the Fine, but would advise on the Recovery, because it was had against them after Appearance, and not by Default. Goldsb. 181. pl. 116. Hill. 43 Eliz. Sir Henry Jones's Cafe.

6. 23 Eliz. 2. Sect. 2. Enacts, That no Fine, Proclamations upon Fines, or Common Recovery, shall be receivable by Writ of Error, for False Latin, Raffone, Interluding, Mis-entering of any Warrant of Attorney, or of any Proclamation, Mis-returning, or not returning of the Survey, or other Writ of Form in Words, and not in Substance.

7. A Recovery erroneous for Want of Original is not void, but voidable by Error, and till it be reversed, he in Remainder has not any Right in it, but the Estate Tail is barred by it. 3 Rep. 3. Trin. 25 Eliz. in the Marquis of Wincheiter's Cafe.

8. The Writ of Entry was De uno Annuali Reddito five Pennyone 4. Maccarum exent de Ecclesia live Rectoria &c. It was informed that this was erroneous, because of the Uncertainty, the Demand being in the Difjunctive (of a Rent or Pension) but adjudged that the Writ is good e-

ough, and that there is no Uncertainty; For that Reditus and Pen-

sio (as this Cafe is) are Symbonymous Words, the lait Words (exent de Rectoria) proving it to be a Rent; For were it an Annuity it would not be illusing out of the Rectory; But in such the Parfon shall be charged in respect of the Rectory. 5 Rep. 40. a. 41. a. Pach. 35. Eliz. B. R. Dorner's Cafe.

9. Writ of Error was brought to reverse a Common Recovery suffered in the County Palatine of Lancaster; The Error affigned was, That it was suffered by Husband and Wife, the Wife being under Age, and that the appeared, and entered into Warranty as Venetee per Attornment, when it should be by Guardian, or in Propria Personas at the least; and this was held to be Error; But Haughton J. said, That at the Time of Suffering this Recovery, this was held to be No Error, but that it has been re-

olved otherwise since, and that this Matter had been argued here since his being a Judge. 2 Roll. Rep. 85. Pach. 17 Jac. B. R. Lady Darcy's Cafe.

10. A Common Recovery was suffered, and a Writ of Entry was not filed, and for this a Writ of Error was brought; And it was moved that it might be examined whether any Writ was filed or not; But the Court denied it, but if it appears by Record that a Writ was filed, then they would consider whether a New Writ should be filed or not; and they said that it's a Recovery be exemplified by the Statute of 23 Eliz. 2. tho' some Part of it be lost, yet it is aided. Litt. R. 299. Mich. 5 Car. C. B. Anon.

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11. In Error to reverse a Common Recovery in Wales, upon the Scire Facias the Sheriff returned several Tenants, who pleaded several Pleas, the one, That he is only Tenant for Years of the Demise of one Owen; Another, That there are other Tenants of the Land viz. A. B. &c. not named in the Writ, Judgment of the Writ; Another pleaded, That the Plaintiff had entered into Part pending the Writ. Upon Demurrer to these Pleas, the Court held them to be Frivolous, and awarded that they plead in Chiet. Raym. 55, 56. Mich. 14. Car. 2. Wynne v. Loyd.

12. Error was brought of a Common Recovery had at the Grand Seilions in Wales upon a Quod ei deoertrict in Nature of a Writ of Right, 11, because the Summons is dated Subsequent to the Dedimus Poof-tain, but this was not much relied upon, by reason it had been disallowed 39 Eliz. in Argentum's Case; 2dly, Because here was no Warrant of Attorney at the Time of the Appearance; but to this it was answered, That the Vouchee may appear by himself, or by Attorney, that there be no Summons or other Process against him, and that to be 18 E. 2. Fitzh. Voucher 230. 5 E. 3. Fitzh. Voucher 197. 13 H. 7, 24. and other Books, and that therefore the Common Recovery is good, and the Process void; And the Court after several Arguments said, that a Common Recovery, being a common Affarsurance, they would insert another Warrant of Attorney made in the Time, and for the Common Recovery was affirmed; Notig. That this was a Writ of Error brought by the Vouchee. Sid. 213. pl. 12. Trin. 16. Car. 2. B. R. Win v. Floyd.

13. If Error be brought to reverse a Recovery, there must be a Scire Facias against the Heir and Tenants. 3 Mod. 274. Hill. 1 W. & M. B. R. Anon.—The Court awarded a Scire Facias against the Tenant (the Heir was an Infant) Gartn. 112. Patch. 2. W. & M. B. R. Earl of Pembroke's Case.

14. A. upon a Comminion had made an Attorney in order to suffer a Recovery this Term, which was done the last Affises at York.—A Motion was in Behalf of the Heir in Tail to stop the paying of the Common Recovery, and several Affidavits were produced to testify the Court that A. (since the last Affises) died in Ireland, and the Court being satisfied of the Truth thereof, did stay the paying the Recovery, and said if it should pass it would be erroneous. 2 Vent. 90. Mich. 1 W. & M. C. B. Sir Thomas Gower's Case.

15. A Common Recovery was suffered, in which a Fine Count was Vouchee, and under Age, and appeared by Attorney, and the same was reversed Nifi Cauta at the End of the Term. 5 Mod. 209, 210. Patch. 8. J. Stokes v. Oliver.

16. Common Recovery may be avoided by there being no Tenant to the Precipe, or if the Writ is brought against a Stranger that had nothing, and he vouches Tenant in Tail in Position, or because be that hath the Estate and Right is not Party or privy to the Recovery. Fig. of Recov.


18. 14 Geo. 2. Enacts that every common Recovery already suffered, or hereafter to be suffered, shall, after the Expiration of 20 Years from the Time of the
Recovery Common.

the sufferer thereon, be deemed good and valid to all intents and purposes, if it appears upon the face of such Recovery, that there was a Tenant to the Writ; and if the Persons joining in such Recovery had a sufficient Estate and Power to suffer the same, notwithstanding the Deced or Deeds for making the Tenant to such Writ, should be lost or not appear.

Provided always, That this Act shall not extend to make any such Common Recovery bereft of sufferers valid, and effectual in Law, which hath been avoided by any lawful Act or Means, or which shall hereafter be avoided by Entry duly made on or before the 16th Day of January 1745; or by Judgment or Decree had or obtained upon some Action or Suit at Law or in Equity, commenced or to be commenced on or before the said 16th Day of January, and prosecuted with due Diligence; but every such Common Recovery shall remain, and be of such Force and Effect only as the same would have been if this Act had never been made.

Provided further, that nothing in this Act contained, shall be construed to prejudice or affect any Question of Law which may arise upon Common Recoveries not remedied or intended to be remedied by this Act; but all such Common Recoveries shall remain and be of such Force and Effect only as the same would have been if this Act had never been made.

(B. a) Error to reverse a Common Recovery. By whom it may be brought.

1. WHERE a Common Recovery is avoidable, it must be avoided by him that is barred by the Recovery; as by the Issue of Tenant in Tail, or it none, by the Remainder-man, or Reversioner by Writ of Error. Pig. of Recov. 165.

2. Tenant in Tail (being Sheriff of the County where the Lands lay) suffered a Common Recovery, and released all Errors; and upon Error brought by him (by Consent) there was Judgment against him, yet several Juries thought that this was no Bar to his Issue, or to him in Remonstrance, to bring a Writ of Error or a Formedon; for such Releases do not bar the Right of Entail &c. D. 188. Sir R. Rowlet's Case, cites 4 H. 8. 1 accordingly.

3. 14 Eliz. 8. Enables that all Recoveries Lad or prosecuted (by Agreement of the Parties, or by Consent) against Tenants by the Courtsey, Tenant in Tail after Possibility of Issue Extinct, for Term of Life or Years, or of Estates determinable upon Life or Lives, or any Lands, Tenements or Hereditaments, whereof such particular Tenant is so judged, or against any other, with Voucher over of any such particular Tenant, or of any having Right or Title to any such particular Estate, shall from henceforth (as against the Reversioners, or them in Remonstrance, and against the Heirs and Successors) be clearly void.

4. Baron and Feme Jointenants, Remainder to the Heirs of the Body of the Husband, Remainder to B. Baron suffers a Common Recovery alone.
Recovery Common.

alone of all, in which he was Tenant to the Precipe, without naming the Wife; and the Remainder-man is attainted of Treason, and executed, and by Act of Parliament forfeited to the King all his Manors &c. Recoveries, Remainders, Ufes, Possessions, Offices, Rights, Conditions, and Writ of Error, all other his Hereditaments. The Recovery being erroneous, the King had brought a Writ of Error to reverse it. But adjudged, That the Writ was not given to him by any Words in the Act of Forfeiture, the Party hav- ing No Right of Entry, but only a Right of Action, which does not pass by the general Words. 3 Rep. 2. Trin. 25 Eliz. The Marquees of Winchester's Case.

5. A Writ of Error was brought to reverse a Common Recovery, and a Seire Facias issued out against all the Tertiants who made Default, and the Recovery was reversed; and it appearing afterwards that the Plaintiff in the Writ of Error had no Title, there being a Remainder-man before him, the Court reversed the former Recovery. Per Cur. 5 Mod. 396. Patch. 10 W. 3. Anon.

(C. a) Pleadings.

1. The Defendant pleaded a Recovery by Writ brought De Tertian-tants predictibus, which is not the usual Way of pleading them, but specially to aver that the Writ was of so many Moieties, so many Acres of Land, Meadow or Pasture in certain, and upon such Writs only Recoveries of Lands are passed. And because it did not appear to the Justices by the Record before them, that the Writ upon which the Recovery was had, contained any Certainty of Moieties or Acres, the Judgment given in a former Action in B. R. was reversed in the Exchequer-Chamber. Mo. 691. pl. 953. Patch. 32 Eliz. Wrenn v. Jennings.

2. Common Recoveries are fo usual, and their Form and Order of Proceeding so notorious by Appearance the first Day, &c. that the Law takes Concomitance of them; and therefore the Judges Ex Officio, without Allegation of the Party, will take Notice that they are Recoveries by Contumacy of the Parties for Affinity of Lands. 3 Rep. 41 Patch. 35 Eliz. The late Resolution in Drummer's Case.

3. If he in Recovery suitors a Recovery to dissever Ufes, his Heirs cannot plead that his Father had nothing in the Land at the Time of the Recovery; for he is estopp'd to say, That he was not Tenant to the Precipe. And it was agreed, That it was a good Recovery against him by Estoppel. Quere this Case. Godb. 147. Patch. 3 Jac. C. B. Duke v. Smith.

4. In a Seire facias upon a Judgment against the Earl of Derby, the Exception Sheriff returned the Earl of Bridgewater and Anne his Wife Tertiants of was taken to the Manor of B. They pleaded that H. 7. was seized of the Manor and the Pleading Lands in Fee, and granted the same to George Lord Strange in Tail Male; Recovery, and that it descended to his Son Thomas, and from him to Ferdinando, who being it dying without issue Male, it descended to William Earl of Derby as Heir; thus Male, who bequeathed a Fine thereof to Earl of Bridgewater and Anne his Wife, who was exonerated. For if there The Plaintiff replied, and confessed the Entail and Defeat to Thomas, who suffered a Common Recovery to the Use of himself and his Heirs, and that he entered Sequestration Recuperationem predicta. and was setted in Fee, and that
Recusant.

The Elifie Tail continued till barred by the Act of Execution; but this was over-ruled; for if no Execution be found, then the Recovery is to the Ufe of the tenant against whom it was sued, since no other Ufe appears. — 2 Lev. 22. Mich. 25. Car. 2. B. R. in Cafe of Hadon v. Benson and Baron. — But the Reporter makes a Quere of this Reason; for before Execution how can any Ufe of the Recovery arise? — S. C. cited 3 Lev. 103. in Cafe of Haller v. Sanders.

For more of Recovery Common in General, See Amendments, Executions, Remainder, Voucher, and other proper Titles.

Recusant.

Sec. (E) (P) (A) Forfeiture. What shall be forfeited by Recusancy. And to whom.

The Defendant was indicted upon the Statute 23 Eliz. of Recusants, by the Name of W. S. of Southwark, Gent. and after Judgment a Writ of Error was brought, and agreed for Error that in the Indictment he is not named of any Parish, but of Southwark generally, in which Place there are many Parishes; and hence by the Statute Part of the Penalty is to be appliead towards the Relief of the Poor of that Parish where the Offence is committed, therefore it ought to appear of what Parish the Defendant is. But the Court held it to be well; for all the Penalties belong to the King, and the Inhabitants of the Parish where the Offence was committed, are to sue in the Exchequer for their Third Part, upon a Satisfy that the Offence was done in their Parish. Patch. 26 Eliz. 8 R. 2 Leon. 167. Scott's Case — See (P) pl. 1.

S. C. Ie. 57. pl. 120. Mich. 50. Eliz. in the Exchequer, by the Name of Salliard v. Everatt. Manwood conceived that they were liable, by reason of those Words, (All other the Lands &c. liable to such Seizure &c.) And Clark B. seemed to be of the same Opinion; but no Judgment. — S. C. cited Hard 417. in Cafe of the Duke of York v. Sir John Marthani — But the Statute of 23 Eliz. 2. & 3. Enacts that if the Offender against that Act shall have any Copyhold Estate, he shall forfeit the same during his Life to the Lord of whom it is held, if such Lord be not a Copyhold Recusant, nor shall he take from the Ufe of any Recusant. And in such Case the Forfeiture shall be to the King.

The King has a Fee.

3. The King shall have the two Parts of the Lands forfeited for Recusancy as a Pledge and a Nomine poena; and the * Profits thereof shall not
Recusant.

be accounted to go to the Payment of any Part of the Debt, but shall be simple in the Lands; for he has them to him and his Heirs and Successors till Conformity, with Satisfaction of the Arrears. Per Coie Ch. J. 4 Le. 239. Mich.

1. But the 1 Jac. 4. 9. Enacts that the Profits shall go towards the Payment.

4. 3 Jac. 1. 4. S. 8. Enacts that every Offender not replying to Church after their Conviction, shall pay into the Chequer, in such of the Terms of Estier and Michaelmas as shall happen next after such Conviction, the Sum then due for the Fortune of 20 l. per Month, and yearly after that in the same Terms according to the Rate of 20 l. per Month, except where the King shall be pleased to take two Thirds of their Lands and Leaves in Lieu thereof, or that they conform themselves and come to Church.

5. 11. The King may refuse 20 l. per Month, and take two Third Parts of his Lands and Leaves; but here he shall not include the Recusant's Mansions, but denume his two Parts to a Recusant, or to any other for a Recusant's Use. And the King's Leaves for his two Parts shall give such Security against committing of Wirts, as by the Court of Exchequer shall be thought sufficient.

5. The Offences made Felony by this Act, shall not cause Loss of Dower, Corruption of Blood, or Disinheritance of Heirs.

5. Tenant for Life, being a Recusant, confess'd, that be in Remainder found fell Timber which he did, and told it, and the Vendee brought the Money into the Exchequer for the Opinion of the Court, whom it belonged to, and the Court held that the Recusant was not intitled to it, but bein Remainder; and it was order'd to him upon giving Bond to repay it, the Court should see Caufe; But the Court were clear that the King was not intitled to the Trees for cut down. 1 Bull. 13. 9. Patch. 9. Jac. Anon.

6. It was resolved, That the Statute of the 23d Eliz. which infifts the Statute of 20 l. per Month does not repeal the 11th of Eliz. which gives the Fortune of 12 d. for every Sunday &c. But that both shall be paid; For both may stand together; besides, the 12 d. is given only to the Poor, but the 20 l. to the King &c. 11 Rep. 63. b. Mich. 12 Jac. Dr. R. 94 S. C.

7. A being the King's Ward died, having 2 Sisters and Cooeirs of full Age, the Eldest went Abroad in her Brother's Life-Time, and there became and remained a Nun Profess, whereby she was disabled by the Statute 3 Jac. to take any Benefit of her Lands, till the returned and received the Sacrament; And it was resolved by Montague, Hobart, and Tanfield, that her Sister shall not sue out Every of the Whole, but that the King shall hold a Mootly till the other should conform and take the Oath required. Ley 59. Patch. 15. Jac. in the Court of Wards. Tredway's Cafe.

8. In Debt upon Bond, Defendant pleads Recusancy according to 21 Jac. 5. per Car. Debt of a Recusant is not forfeited to the King as in Outlawry; But if he fail of Payment of the Penalty imposed by the Statute, Then &c. Hot. 16. Patch. 3 Car. C. B. in the Cafe of a Recusant Convict.

9. A Security taken in Trust for a Recusant Convict is liable to the King's Debt of 20 l. per Month. N. Ch. R. 132. 21 Car. 2. in the Cafe of Attorney-General v. Sands.


Q q q

(B) For-
(B) Forfeitures Determined, or * Discharged. And + Restitution in what Cases.

1. If one be convicted on the Statute of Recusancy, tho' he reconcile himself after to the Bishop, yet shall not be restored to the Profits of his Lands taken before; And tho' on the Death of a Recusant an Affidavit is made, and upon this a Discharge is obtained; yet it is a Rule of the Court that a Commission shall be awarded first to inquire his Death. Savil. 130. p. 201. Anon.

And afterwards. If a Recusant be convicted for Forfeiture by which his Term was forfeited to the Queen, the Lord Treasurer and Barons of the Exchequer sold it for £10; and afterwards the Outlawry was reversed; And Anderdon and Walmley conceived that the Termor should have his Term again; and not the Money for which it was sold; But Perian doubted. Cro. E. 278. pl. 3. Pattch. 34. Eliz. B. R. Eyre v. Woodfine.

2. A Termor for Years being outlawed upon the Statute of Recusancy, by which his Term was forfeited to the Queen, the Lord Treasurer and Barons of the Exchequer sold it for £10, and afterwards the Outlawry was reversed; And Anderdon and Walmley conceived that the Termor should have his Term again, and not the Money for which it was sold; But Perian doubted. Cro. E. 278. pl. 3. Pattch. 34. Eliz. B. R. Eyre v. Woodfine.

3. 35 Eliz. 2. S. 15. Enacts, That if any Person offending against this Act shall before Conviction come to some Parish Church on some Sunday or Festival, and make a public Submission and Declaration of his Conformity as is appointed by this Act he shall be discharged from all Penalties and Forfeitures.

S. 16. Every Ministry or Curate where such Submission shall be made, shall enter the Submission in a Book, and within 10 Days certify the same to the Bishop of the Diocese.

4. Upon a Motion to all the Judges, upon the Statutes 33 H. 8. and 23 and 29 Eliz. if a Tenant in Tail becomes Recusant, and is convicted by Process, and not by Judgment had upon a Trial or Confession, and afterwards dies, whether his Life shall avoid the Seize of the Queen? They all agreed that he should, because it is not a Debt upon a Judgment, as 33 H. 8. requires; But if Judgment had been given, the Issue should be bound. Mo. 523. pl. 691. Mich. 39 & 48 Eliz. Anon.

5. 1 Jac. 1. cap. 4. S. 3. Enacts, That if any Recusant die, his Heir being no Recusant, such Heir shall be discharged of all Penalties in respect of his Ancestor's Recusancy; And if the Heir be a Recusant, and after shall become conformable and repair to Church, and shall take the Oath of Supremacy before the Archbishop or Bishop, such Heir shall be discharged of all Penalties.

S. 4. If
Recusant.

(3) Forfeitures. Prevented, or not, by Conveyances.

1. 23 Eliz. cap. A L.I. fraudulent Assurance made since the Beginning of the Sessions, or hereafter to be made, to evade the Penalties inflicted by this Statute are hereby declared void. A Conveyance was made through of Eliz. before the making of this Act of all the Party's Land to Forfees and their Heirs upon Condition that they should maintain him and his Family, pay his Debts, and account for the Profits at the Year's End; with a Clause of Rescission. Afterwards the Statute was made and the Party convicted of Recusancy, and a Commission issued to inquire of his Lands, the Jury upon this Case would not find as he had any Lands; but upon Reference to all the Judges of England, whether these Lands were within the Statute, it was resolved by all, that notwithstanding the Conveyance, the Lands were liable; and the Jurors, for giving their Verdict against the Evidence, were committed and fined 50s. each. 5 Lea. 14. Hill. 28 Eliz. in the Exchequer. Sir John Southwell's Case.

2. *23 or 29 Eliz. S. 1. Enacts, That every Grant, Conveyance, Lease, Incumbency, and Limitation of Use out of any Land, etc. to be had or made by any Person who shall not repair to some Church, or Chapel, or usual Place of Common Prayer, contrary to the 23d of Eliz. and which shall be revocable at the Pleasure of such Offender, or is directly or indirectly to or for the School or Maintenance, or at the Disposition of any such Offender, whereby or in Consequences whereof, such Offender and his Family shall be maintained or relieved, shall be utterly void against the Queen, as to the leasing and paying of such Sums, as any Person ought to pay or forfeit for not coming to Church as aforesaid, and shall be jealied to her Majesty's Use as is therein mentioned in the said Act.

* The Statute called the 26th of Eliz. and referred to be that Name in the 27th of Eliz. is the same with the 27th of Eliz. being in some Books called the 28th, in others the 29th; but (as it seems) more properly the 29th; For the Session wherein it was made was by Prerogation held the 15th of Feb. 29 Eliz. Casway. 122. Yet in 5 Lea. 313, Lord Perring, the University of Cambridge said where the Defendant pleaded the Statute as the 26th of Eliz. it was held ill; For that the Parliament commended the 29th of Eliz. 5 Lawr. 112. S. C. — And 1 Lawr. 205. 268. Percival v. Mitchell says the Roll of Parliament was searched, and it appeared to be the 28th of Eliz.

3. Securities taken in other Men's Names, after an Act of Parliament subjecting the Estates of Recusants to a Forfeiture, shall be presumed in Law to be so taken, to the Intent to defeat the King of the Forfeiture. 12 Rep. 2. Ford and Sheldon's Cafe.
(D) **Conformity.** When, Where and How it may be.

In Debt for 2d. per
Month for not coming to Church, brought up on the Statute 23 Eliz. At the Trial, after the Jury found, and before Verdict given, the Defendant came into Court, and did there submit, recognize, acknowledge, and confite that he had offended &c. and proved that he had conformed since the Statute took effect, and did promise to conform &c and alleged that he was never indicted or prosecuted for any Offence of this Nature before. The Question was, Whether this Conforming discharges the Action and Verdict, which was given for 40 l. It was insinuated that it did not, because the Plaintiff in an Action Tam Quam had an Interest by the Verdict, which shall not be divested within the Intent of that Clause in the Statute, because it refers only to Cases where the Party is indicted or arraigned, and not to Actions. But it seems that those Words shall be taken distributively, (1 e.) Arrangement in Case of an Indictment, and a Trial in all other Actions. But no Revolution was given, but it was adjourn’d for further Consideration. Raym. 591. Trin. 52 Car. 2. B. R. Oxenden al. Oken v. Kelyn.—2 Show. 179. S. C. adjournatur.—The S. C. came on again Patch. 23 Car. 2. Raym. 265. And the whole Court resolved that the Action and Verdict was discharged. And the Reporter (who was one of the Judges) gives for Reason. 18. Because the Conforming was before Trial Ready, because by Verdict the Plaintiff acquires no Debt or Duty till Judgment. And to the Objection that this will discourage Prosecutors, he says that it is no more Loss to him than if the Defendant had died, and that the Prosecutor undertook this Suit subject to the same Hazard. And 24 l. As Prosecutors are to be encouraged, which made the Ld. Ch. J. Coke in Dr. Feaster’s Case, intercede for Fother to the King after Judgment, cited 2 Bull. 525. And did prevail, cited 1 Rev. Rep. 95.—2 Jo 357. 188. S. C. accordingly.—S. P. But no Judgment. Hard. 62. Trin. 1656. The Protector v. Althleld.

Outlawry for Recusancy determines of Course by Conformity. Arg. 2. Vern. 514 in Case of Peyton v. Ayliff.


4. T. a Popish Recusant being indicted, came into Court, and brought with him a Testimonial of his Submission, according to the Statute of the 35 Eliz. and there in the Presence of the Court upon his Knees, he made another Submission, according as the Clerk of the Crown read to him. Jones paid privately to Whitlock, This is the Course of the Court, but there is no Statute which obliges Submission in this Manner in the Court. Lat. 16. Patch. 2 Car. Thoroughgood’s Case.

5. Conformity may be at the Sessions, as well as certified by the Bishop by the Statute. Sti. 26. Tr. 23 Car. B. R. Lord Arundell’s Case. Parker C. would not accept his receiving the Sacrament twice, as Evidence of Conversion. 10 Mod. 513. Hill. 9 Geo. 1. Cartwright v. Cartwright.

(E) Absenting
(E) Abenting from Church.

See (A)

1. 1 Eliz. 2. E

Nacts that all Persons inhabiting within the Queen's Do- 

S 14. minums, that shall not resort to their Parish Church or Chapel 

accompanied upon every Sunday and Holiday, and * there abide orderly and for- 

berly during the Time of Common Prayer, Preachings, or other Service of God, 

shall mean the Conformity of the Church, and forset 12 d. for every Offence to be 

levied by the Churchwardens by Distresses, to the Use of the Poor. 

That the Words of the Statute, (All Persons inhabiting within the Realm) and that it was not 

acert that the Party did inhabit within the Realm. Sed non allocutur : for if it were otherwise, it ought 

* These Words are in the Dispositive, and yet they are to be taken Conjunctively ; so that one is not 
to depart as soon as the Service is ended, if there be Preachings, but one ought to continue there the whole 
Time And an Indictment being in the Conjunctive, was held good. Godd. 148. Mich. 5 Jac. B. R. 
Anne Mannock's Case. 

It seems that if a Man goes to Church, and stays from the Beginning to the End of the Service, yet 
he may be within the Penalty of the Statute, if he does not abide himself there Diligently, Decently, 
Sunday and Orderly, according to the Words of the Act ; as if he talks or walks about during Service. Per 
Coke. Foll. 95. in Dr. Fowler's Case.

2. 23 Eliz. cap. 1. 8 5. E

Nacts that every Person above the Age of 16 Tho' the 

Years, who shall not repair to Church &c. as required by 1 Eliz. cap. 2 shall Penalty of 

20d. for every 12 Months, and having the said Forfeiture Month for 

every Person who shall be absent 12 Months, after Certificate thereof by the abating 
Ordinary, Justices of Affairs and Gaol-Delivery, or Justice of Peace of the from 

Country where the Offender shall dwell or be, he shall be bound with two suffi- 
cient Serjeanty in the Sum of 200l. for his Good Behaviour, and if remain unm-
til he shall conform and come to Church, according to the said Stat. 1 Eliz. 

yet the general Clause in * Sect. 9. which directs that all the Forfeitures limited by the Act shall be di-

stributed into 3 Parts, extends to this Penalty, as well as to the other Penalties of the Act which were 

not particularly given to any Person; so that an Informer may sue for a third Part. Adjudged upon 
Demurrer. 11 Rep. 68. Mich. 12 Jac. Fetter's Case. — Foll. R. 89. 6 C. — S. F. For that the 
first Words seem to contradict the latter, yet the Intent of the Law is to be considered, which was 
that a Distribution should be made. And. 138. Cift V. Vachel. * It should be S. 11. which see at 
(A) pl. 1

The Defendant was indicted upon the Statute 23 Eliz. of Recusancy ; and it was objected that the 
Words of the Statute [Non uberos aluens interdictam Confessionem] were omitted. But it was resolved that 
the Words need not be put in the Dispositio, but that the contrary ought to be shewed on the other 
Side. 2 Le. 6. Tran. 22 El. B. R. Dunmore's Case. 

The Court held, That the 23 Eliz. extends to all Sorts of Recusants, Protestant as well as Papists. And 
per f delen. J. in the Beginning of Charles the 1st's Time, all the Judges of England held that Protec-
tant Recusants were within that Statute. And per Sanders Ca. J. Courts cannot take Notice of the Ground 
of their Recusancy, but must punish them for not coming to Church, but the Courts why they did not 

3. * 29 or 29 Eliz. 6. 2. E

Nacts that every Convocation for any Offence *See (D) pl. 
in not coming to Church &c. contrary to 23 Eliz. shall be in the King's Bench, 
2 — This 
Court of King's Bench, or Justices of Affairs, or General Gaol-Delivery, and shall be .another into the Ex-

chequer before the End of the Term next ensuing.

Court of King's Bench, or Justices of Affairs, or General Gaol-Delivery. Refereed 11 Rep. 61. Mich. 
2 Jac. B. R. in Dr. Fowler's Case. — Upon Information in the Court of C. B. against a Recusant, it 
was mov'd in Arrest of Jwgment that it did not lie in that Court; but after Time taken to consider, the 
contra was adjudged, and the Resolution on either Opinion mentioned in Lord Coke, was denied to be 

8. 4. Every Offender in not repairing to Divine Service as aforesaid, who It was ad-
shall be thereof once convicted, shall in such of the Terms of Easell and 

Michaelmas as shall be next after such Convocation, pay into the Exchequer 
after the Rate of 20l. for every Month contained in the Indictment whereupon Indictation and

R it
Recusant.

Penalty given to the Informer by the 25 Eliz. is not taken away by the 28 Eliz. For this last Statue directs, That all Convictions upon the former shall be effaced into the Exchequer, and a Power is given for the King to sit for the Penalty, yet it appears to be made in furtherance, and not in repeal of the first, and is in the affirmative only; neither does it limit the Penalty to any new Person, but only gives the King a better remedy than he had before, and therefore does not extend to the Case of a Popular Action or Information. 11 Rep. 60 b. Mich. 12 Jac. Dr. Fuller's Cases.—Roll R. 92. S. C.—Hob. 224. Plea v. Lovel. S. P.

4. 35 Eliz. cap. 1. S. 9. Enacts that all the Pains, Duties, Forfeitures or Payments which shall accrue, grow, or be payable by Virtue of the Act of Debt, Bill, Plant or Information, or otherwise in any of the Courts of King's Bench, Common Pleas, or Exchequer, in the same Manner as by the Courts of the Common Law any other Debt due by such Person, in any other Cafe found or may be recovered, wherein no Indictment, Pre��ition, or Wager of Law shall be allowed.

5. 3 Jac. 1. 4. Enacts that none shall keep or retain any Person in their Home( Servant or other) which shall forbear to come by Church to the Space of a Month together, or Pain to forfeit 10 l. for every Month they so keep them. Howbeit Children may relieve their Father or Mother, and Guardians their Ward or Pupils.

(F) Bulls, Agnus Dei's, Crollis, &c. Books &c.

But the Statute of 3 Eliz. 1 is not to be extended to Public Book-sellers, who sell, nor to those who read such Books as Gregory de Valence, or Bellarmine, or any other Books with treat of the Controversies of Religion, and do not particularly

such Conviction shall be; and shall also for every Month after such Conviction, without any other Indictment or Conviction, pay into the Exchequer at twice in every Year, viz. in Easter Term and Michaelmas Term, after the Rate of 20 l. for every Month after such Conviction. And if Default shall be made in any Part of the Payments aforesaid, then the Queen may by Proces out of the Exchequer, take and seize all the Goods, and two Parts as well of the Lands hate to such Seizure, or to the Penalties aforesaid, leaving the third Part only of the same Lands for the Maintenance and Relief of the Offender and his Family.
they are afterwards bought, read, and conferred upon, ut supra, it was held that these Offences are within the Act. Resolved at Serjeant's-Inn. Dy. 251. b. Anon. 282. pl. 22. Hill. 11 Eliz.

2. 13 Eliz. 2. S. 2. 3. Enacts that the Precurrying or Publishing Bulls, or reconveying any to Rome, shall be High Treason.

S. 5. If any Person shall conceal such Bulls &c. be shall incur the Penalty of Misprision of High Treason.

S. 6. If any Person shall bring into this Realm any Token or Thing called an Autus Dei, or any Crosses, Pictures, Beads &c. and shall offer the same to be worn or used, both he and the Receiver shall incur a Præsumptive.

3. 3 Jac. 1. cap. 5. S. 25. Enacts that no Person shall bring from beyond the Seas, we shall print, buy, or sell any Popish Prayers, Ladies' Prayers, Manuals, Psalters, Epistles, Catechisms, Missals, Brevaires, Portals, Legends, and Lives of Saints, containing Superstitions Matter, printed or written in any Language whatsoever, nor any other Superstitions Books, printed or written in the English Tongue, on Pain of forfeiture 40 s. for every Book &c. and the Books to be burnt.

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(G) Feme Covert and Widow.

1. It was never doubted but that the Statute 1 Eliz. 2. against bearing of Masses, extends to Feme Covertes. Hob. 97. in the Case of Moor v. Hulvé.— cites Dy. 203. 2 Eliz.

2. It was resolved by all the Judges, That a Feme Covert is within Hob. 97. S.P. the Act of 1 Eliz. 2. and shall forfeit 12 d. for not repairing to Church in the Case of every Sunday and Holiday. 11 Rep. 61. b. in Dr. Fottor's Case.— cites Hulve.

3. Eliz. 2. It was likewise resolved, That tho' 23 Eliz. is more penal, and Hob. 97. S.P. inflicts Imprisonment for Nonpayment, yet that Feme Covertes are within it. 11 Rep. 61. b. in Dr. Fottor's Case.— cites 35 Eliz.

And this Statute the Husband could not be charg'd with the Forfeiture, where the Feme was indicted, yet this might be helped by the Manner of her Imprisonment, viz. by Chief Confinement from all Company, and hard Fines. Per Manwood Ch. B. v. 25. 24 Eliz. Anon.

4. 35 Eliz. 2. S. 18. Enacts, That all Married Women shall be bound by every Branch of this Act, except that relating to Abjuration.

5. 3 Jac. 1. cap. 4. S. 40. Enacts, That none shall be provisi'd for his Wife's Office, unless any Woman be chargeable with any Penalty or Punishment, by Force of this Act, for any Offence which shall happen during her Marriage.

6. 3 Jac. 1. 5 S. 9. Enacts, That No Person, whose Wife is a Reconcile, shall exercise any publick Office &c. by himself or Deputy, unless he and his Children above 9 Years of Age, and his Servants, shall repair to the Church once a Month, and such of them as are of meet Age receive the Sacrament at such Times as are required by the Law, and bring up his Children in the True Religion.

S. 10. A Widow Reconcile forfeits 2 Thirds of her Dower, and is disabled to be Executrix or Administratrix of her Husband, or to have any Part of her Husband's Goods.

7. 7 Jac. 1. cap. 6. S. 28. Enacts, That if a Married Woman, being upon an Infraction of the Act, do not conform within 3 Months after Conviction, she shall be committed to Prison by a Privy Councilor, or the Bishop of the Diocese, if she be a Baroness; but if any other of a lower Degree, then shall be bound and committed
Wife for 20 l. per Month, for the Wife's not coming to Church, committed by two Justices of Peace, (1 Quor.) and there shall remain until the contrary, as aforesaid; unless the Husband, for the Wife's Offence, will pay unto the King 10 l. for every Month, or yield the 3d Part of all his Lands, at the Choice of the said Husband.

It was moved in Arrear of Judgment, That an Information did not lie against Husband and Wife for the Recusancy of the Wife, because the statute, (2 Jac. cap. 6.) appoints, That upon such Conviction the shall be committed; and if the Husband will redeem her, he shall pay 10 l. per Month; so that this last Statute abrogates the former, so that he is not to be charged with her Recusancy, but at 10 l. per Month; and that only in Case he is willing to redeem her. But it was held, That it does not affect any of the former Laws; but directs, That if a Man Covert Recusant, being convicted, does not after 3 Months conform herself, she shall be committed, unless the Husband will pay 10 l. for every Month the shall be out of Prison, and not conform. (3) 1559. Parch. 16 Jac. R. Parker v. Carlin. The Lands of the Baron shall be levied on by the Statute for the Recusancy of the Wife, if he do not order her to Prison, and discharge the same. Reliev'd in the Star Chamber. 4 Le. 249. pl. 495. Trin. 12 Jac. Egerton's Café.

8. The Husband is chargeable for the Recusancy of his Wife, and there needs no Conviction of him. But before an Information he shall not be chargeable for her, but where he is nam'd with her. Per Coke Ch. J. 4 Le. 239. Mich. 7 Jac. C. B. Ward's Café.

9. Before the Statute 35 Eliz. if a Man Covert Recusant had been convicted of Recusancy upon an Indictment, (which was the only Method for the King to proceed) the Forfeiture could not be levied upon her Husband, because he was not Party to the Suit; but the Forfeiture to the Informer, (who might proceed either by Action or Information) was recoverable against the Husband, by making him a Party; as was resolved at a Meeting of the Judges. And therefore 35 Eliz. was made, which enables the Crown to proceed by Action &c. and to charge the Baron, as a Common Person might. Per Cur. 11 Rep. 61, 62. Mich. 12 Jac. in Forster's Café, (4) Roll Rep. 94. in Forster's Café.

It was held, That the

Time cannot

pass without the

Baron. 2

Sir George Carlin's Café. But it appearing by the Docket, That they both pleaded, and that it was but a Millprison of the Clerk, it was amended. 35 Eliz. 179. Lovecden's Café.

10. Debt was brought against Husband and Wife for the Recusancy of the Wife, and the Husband would have appeared by Superfideans alone; But the Court resolved, That either Both must appear or Both be outlaw'd. Hob. 179. Lovecden's Café.


(H) Injunctions, Inconveniences and Restrictions.

1. 35 Eliz. cap. 2. E N A C T S, That every Person not repairing to Church shall not posse or remove above 5 Miles from Home, on Pain of forfeiting his Goods and all his Rents and Annuities during his Life.

S. 6. Recusant to deliver in his Name to the Minister of the Parish and Confable of the Town.

S. 8. Recusant not worth 40 l. to adjoining the Realm if he be so above 5 Miles from home; And if he refuse to make such Appearance, he shall be adjudget a Felon without Benefit of Clergy.

S. 13. Provided, That if any Person restrained from travelling shall be required by Process to make his Appearance, he shall not incur any Forfeiture for travelling on such Occasions.

2. 3 Jac. I. 5. S. 2. Enacts, That no Recusant shall come to Court in Pain of 100 l. unless be be commanded by the King, or by Warrant from the Privy Council.

S. 4.
Recusant

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S. 4. Recusants to depart 10 Miles from London; And in Cafe they live in London, or within 10 Miles thereof, they shall give in their Names to the Mayor or some Justice of Peace.

S. 7. If it shall be lawful for the King, or three of his Privy Council, to give a Recusant Licence to a Recusant to travel above 5 Miles from his Place of Abode. And if Convict was any such Person shall have Occasion to go above 5 Miles, upon Licence of the Justices of Peace, with the Assent of the Bishop, or of the Lieutenant, or above 5 Miles any Deputy Lieutenant within the County, it shall be lawful for such Person from his Abode. The Defendant pleased a Licence under the Seals of 4 Justices of the Peace, one of whom was the Deputy Lieutenant; And upon Demurrer the Court held, That the Licence ought to be under the Hands and Seals of 4 Justices, besides the Deputy Lieutenant, and it is not sufficient that he be one of the 4; for the Statute ought to be strictly pursued, and the Deputy Lieutenant's Assent ought to be by itself, without the other 4. 2dly, It must be pleased under their Hands as well as Seals, and the Licence must fore the particular Cause of the Licence, and not in a general Manner, As, for urgent Causes. Cro. J. 52. Mich. 12. Jac. I. R. Maxfield's Cafe. — Roll Rep. 18. the King v. Macclefield S. C. — Mo. S. 56. pl. 112. Macclefield's Cafe S. C.

S. 26. The Houses of every Papist Recusant Conwife, or of every Person whose Wife is a Papist Recusant Conwife, may be searched for Papist Books and Relics; and if any be found, the same shall be burnt, and if it be a Crucifix, or other Relic of any Price, it shall be deemed at the Quarter-sessions, and refer'd to the Owner.

S. 27. All such Armour, Gunpowder, and Ammunition, as any Papist Recusant shall have, shall be seized, except such necessary Weapons as shall be allowed him for the Defence of his House.

S. 28. If any Recusant who shall have such Armour or Ammunition, shall refuse to deliver the same, he shall forfeit the same, and be imprisoned for three Months.

3. W. & M. 9. S. 2 Any Person within 10 Miles of London, not being a Merchant Foreigner, refusing the Declaration against Transubstantiation, shall be adjudged a Recusant Conwise.

Provided, That this Act shall not extend to Trade-men, or those who had their Dwellings within that Compass 6 Months before the 15th of February 1685, not having any other Dwellings-Place, so as they certify their Names and Place of Abode to the Sessions before the 1st of August 1689.

S. 5. Nor to any Foreigner, being a Mental Servant to any Ambassador or Publick Agent.

4. W. & M. 15. S. 4.Enacts, That any Papist or reputed Papist, refusing to make Declaration against Transubstantiation, appointed by 30 Days, shall keep no Arms &c, other than shall be allowed him by the Quarter-sessions for the Defence of his House and Person.

S. 5. But shall, within 10 Days after such Refusal, deliver them to some Justice of Peace, on Pain of 3 Months Imprisonment, and Forfeiture of the treble Value.

S. 6. And any Person who shall conceal, or be privy to the Concealing such Arms, shall suffer 3 Months Imprisonment, and forfeit treble the Value.

S. 9. No Person who refuses the Declaration as above, shall keep a Horse above the Value of 5l.

5. 11 & 12 W. 4. S. 7. Enacts, That if any Papist Parents shall refuse to allow any Protestant Child a Maintenance suitable to his Ability, the Court of Chancery shall make such Order therein as shall be agreeable to the Intent of this Act.

S. ff

(I) Marriage,
Recusant.

(I) Marriage, Baptism, Burial.

1. 3 Jac. 1. cap. 5. [ENACTS.] That every Man who, being a Popish Recusant, shall be married otherwise than in some open Church or Chapel, and otherwise than according to the Orders of the Church of England, by a Minifter lawfully authorized, shall be disabled to have any Estate as Tenant by the Counterpart. And that every Woman, being a Popish Recusant, who shall be married in other Form than as afo, shall be disabled to claim her Dower, or Jointure, or Widow's Estate &c. And every Woman, being a Popish Recusant, who shall be married otherwise than according to the Church of England, shall not only be disabled to be an Executrix or Administratrix of her Husband, but also to have or Demand any Part of her Husband's Goods or Chattels, by any Law, Custom, or Usage whatsoever.

Sec. 14. That every Popish Recusant, who shall not cause his or her Child to be baptized within one Month after its Birth, by a lawful Minifter &c. shall forfeit 100 &c.

Sec. 15. That if any Popish Recusant, not being Excommunicate, shall be buried in any other Place than in the Church or Church-Yard, or not according to the Ecclesiastical Laws of this Realm, the Executors &c. of such Recusant, knowing the same, or the Party that causes him to be so buried, shall forfeit 20l. One 3d to the Crown, one 3d to the Informer, and the other to the Poor of the Parish.

(K) Saying and Hearing Mafs.

1. 23 Eliz. [ENACTS.] That every Person convicted of saying or singing Mass, shall forfeit 200 Marks, and be committed to the next Goal for one Year, and until he shall pay the Penalty; And every Person unwillingly bearing Mafs shall forfeit 100 Marks, and suffer 1 Years Imprisonment.

2. 11 & 12 W. 3. cap. 44. S. 3. [ENACTS.] That if any Popish Bishop, Priest, or Jesuit shall say Mafs, be shall suffer perpetual Imprisonment in the House of any Foreign Minister, so as such Priest be not a natural born Subject.

S. 5. Provided that this Act shall not extend to Popish Priests saying Mafs.

(L) Priest &c.

It need not be shown in the Indictment whether Defendant was a Jesuit &c. beyond Sea, or within the Realm; For wherever it was, it is within the Act, if he was made by the pretended Authority of the See of Rome, but it must appear to have been by such pretended Authority. Resolved by many of the Judges Popish 94 Southwell's Case.
Recusant.

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For a Recusant appear in the Indictment that Defendant was born Jesuit or Recusant Anno... resolved by many of the Judges. Poth. 92. Southwell's Case.

In a Prosecution upon this Statute (against Jesuits who continue in the Realm contrary to it) the
there is a Provision in behalf of such as are detained here thro' Infirmity of Body, and cannot go abroad with
out eminent Danger of their Lives, and that Process is referred to in the Body and Enabling Part of the Act,
you are instructed not to give any Notice of it. For it is to be considered merely as a Proviso, and the
Defendant, if he can, must take Advantage of it. Resolved by several of the Judges. Poth. 95. Southwell's Case.

By a special Vendee it appeared that the Defendant, being one in Popish Orders, and famous records
heard, was by Process drawn into England; and it was inferred that he was not within the Act, first, be
were too old; he was going into Ireland, he did not get thinner, silly, because he did not come into
England voluntarily, but was driven here by the All of God; And the Court, being of this Opinion,
there was Judgment for the Defendant. Raym. 577. Trim 32 Car. 2. B. R. The King v. Quickeen.

3. 4. Every Person who shall be willing to receive such Jesuit &c. shall be It is not Per-
only to receive a meer
Stranger who is a Jesuit. Per Doderidge. Lat. 2. in Sir Simon Clerk's Case.

8. 10. Swearing for Priests &c. submitting themselves, and taking the Oath
of Supremacy.

8. 13. Every Person knowing that any such Jesuit &c. is within the Realm,
and shall not discover the same within 12 Days to some Justice of
Peace or higher Officer shall make Fine and be imprisoned at the King's Plea-
ure: And if any Justice &c. to whom such Matter is discovered shall not
within 28 Days make Information thereof to some of the Privy Council shall
be forfeit 200 Marks.

2. 33 Eliz. cap. 2. S. 11. Enaets, That if any Jesuit or Priest being
examined by any Person lawfully authorized thereto shall refuse to answer di-
rectly whether he be a Jesuit or Priest, he shall be committed to Prison until
he shall be discharged by the Secretary of State, till he should be
delivered by the Court of Law, for refusing to answer, Whether he was a Jesuit or not; And it was object-
ated, 1. That the Committee ought to be by a Justice of Peace (which does not appear in this Case) For the
5th of Eliz. being general by those, who have Authority) must refer to the Statute of 22th of Eliz. 2
which is that (a Justice of Peace may commit) 2. That the Committee ought to have been (still shall
make a direct Answer) according to the Words of the Statute, and not (till he shall be delivered by due
Court of Law) for being a particular Authority, it ought to be purged. And upon this Objection he
was discharged, but then the Court examined him, whether he was a Jesuit or not, and upon his answ-
ering that he was not, he was discharged. Skin 579. Mich. 3 W & M. B. R. Yarles's Case.

* Carth. 251. S. C. reports that this Objection was over-ruled. 1 The Court held that they
had Power to examine him, being not excluded by Negative Words. Cumb. 224. S. C. — Salk.
531. S. C.

3. 3 Jac. 1. 5. S. 1. Enaets, That any Person who shall first discover to a
Justice of Peace any Person who shall entertain or relieve any Jesuit &c.
or discover any Mists has been said, and the Priest or any of the Per-
sents within 3 Days present, shall be discharged from all Penalties for such
Offence, and have a third Part of the confiscations incurred by such Offence,
s0 as the Sum may not exceed 155 l. and then he shall have 50 l. only.

4. 11 & 12 W. 3. 4. S. 1. Enacts, That every Person who shall apprehen-
d a Popish Priest &c. and prosecute him till be be convicted shall have
a Reward of 100 l.

(M) Reconciliation, and Relapse.

1. 23 Eliz. 1. E NACTS, That all Persons who shall have or pre-
S. 2. tend to have Power, or shall by any Means put in Practice, to
the tice to absolve, penitence, or withdraw any of the Queen's Subjects from their same Pur-

natural
natural Obedience, or to withdraw them from the Religion established, to the
Romish Religion, or to move them to promise Obedience to the See of Rome, or
shall do any overt Act to that Intent or Purpose, shall be adjudged Guilty of
High Treason.

S. 3. Those Aiders and Maintainers who do not discover them within 20
Days to some Jurisdictions of Peace or higher Officer, shall be adjudged guilty of
Misprision of Treason.

2. 35 Eliz. 2. 8. 6. Enacts, That if any Offender discharged by Conformity
by Virtue of this Act shall afterwards relapse, and again become a Recusant
in not coming to Church be shall lose the Benefit he might otherwise by Virtue
of this Act have had upon his Submission.

The Defendant was indicted for Recusancy, and before Conviction,
submitted, but afterwards relapsing, he was indicted again, and then submitted, and was afterwards in-
dicted the 3d Time for a Relapse; Upon this it was moved to have it carried into the Exchequer, And
per Williams J. the Nature directs it to be done in case of a Relapse, and accordingly a Rule of Court
was made for the certifying it into the Exchequer. 1 Bull. 153. P. 9 Jac. Francis Holt's Case.

3. 3 Jac. 1. 4. S. 2. Enacts, That a Recusant that conforms shall within
one Year after, and so once in every Year (at least) receive the blessed Sacra-
ment, in Pain to forfeit for the first Year 20 l. for the second 40 l. and for every
Default after 60 l. And if after be both received it, he make Default there-
in by the Space of a whole Year he shall forfeit 60 l.

S. 23. If any Person within the King's Dominions shall be absolved or
reconciled, or shall promise Obedience to any such pretended Authori-
ty, Prince, or State, such Persons, the Procurers, Counselors and Mainta-
ners shall be adjudged Traitors in in Carts of High Treason.

S. 24. This last Clause shall not extend to any reconciled as aforesaid, (for
and teaching the Point of so being reconciled only) that shall return into this
Realm, and within 6 Days after the Bishop of the Diocese, or two
Jurisdictions of Peace (jointly or severally) of the County where he shall arrive
shall be himself to the King and his Laws, and take the Oath of Supremacy,
therein mentioned, which said Oaths the said Bishops and Jurisdictions respec-
tively shall by this Act have power to minifter to such Persons, and shall certify
them in the next General Sessions, in Pain of 40 l.

(N) Seminaries and Schools.

1. 23 Eliz. cap. 3. Enacts, That none shall keep a School without which ob-
fends himself from Church, or not allowed by the Bi-
scop or Ordinary, in Pain of 10 l. for every Month he so keeps him; and such
Schoolmasters shall be for ever disabled to teach Youth, and shall suffer one
whole Year's Imprisonment without Bail.

2. 27 Eliz. cap. 2. S. 5. Enacts, That Persons bred in Seminaries who shall
not return on Proclamation be shall Guilty of High Treason if they return
after.

S. 6. If any Person shall send Relief to a Seminary be shall incur the Pe-
nuity of a Presumire.

3. 3 Car. 1. cap. 2. S. 1. Enacts, That if any Person under the Obedience
of the King shall go or send any Child &c. beyond the Seas, to the Intent to be
trained up in any Abbey, Popish University, or School, or House of Jefuits, or
in any private Popish Family, and shall be there by any Popish Person instruc-
ted in the Popish Religion to profess the same, or shall send any Money or other
Things under the Name of Alms, towards the Relief of any Abbey or Religious
House, every Person so sending, and every Person sent being convicted shall be
disabled to use in Law, or Equity, or to be Committee of any Ward, or Exec-
cutor or Administrator, or capable of any Legacy or Deed of Gift, or to bear
any Office, and shall forfeit all his Goods and Chattels, and all his Lands
during Life.
(O) Disability.

1. 3 Jac. 1. Recusants, that no Recusant shall practice Law, or Physick, or exercise any publick Office.

2. Disables married Women who do not receive the Sacrament within a Year before their Husband's Death, to be Executrix, or Administrares to their Husbands, and to have any Part of their Husbands Goods.

3. Every Papist Recusant, who would be a Papist and would not be a Recusant, his Executors, and they would suffer him to prove the Will in the Spiritual Court; and a Papist being moved for upon the Statute of Eliz. it was granted. For the is disabled by the General Clause, and not enabled by the Proviso. 6 Mod. 239. Mich. 3 Ann. B. R. Ride v. Ride.

4. Every Papist Recusant, his Executors, and they would suffer him to prove the Will in the Spiritual Court; and a Papist being moved for upon the Statute of Eliz. it was granted. For the is disabled by the General Clause, and not enabled by the Proviso. 6 Mod. 239. Mich. 3 Ann. B. R. Ride v. Ride.

5. S. 11. And every Papist Recusant Convey shall stand and be reputed to all Intents and Purposes disabled as a Person excommunicated, until he be wholly conform, come to Church, and receive the Sacrament, and take the Oaths of Allegiance appointed by another Act of this Session; but he may sit for two Terms of the Land not forfeited. Section.

6. Children sent beyond Sea are disabled to inherit, unless they take the Oaths.

7. 22, 23. Disables Recusants from being Executors or Guardians &c. but where the next of Kin to whom the Land cannot descend, not being a Recusant shall have the Land as Guardian.

Guardian, yet if he had granted the Seignior to another not being a Recusant, the Grantor should have the Guardianship; for now the Cows is removed. Per Jones 1. 10 to Hill 20 Jan. 18 B. R. in Cause of Standen v. University of Oxford — — So if the King had seised the Seignior as Part of his 2 Parts of the Recusant's Lands, the next of kin, notwithstanding the Words of the Act, should not have the Wardship, as he would in case it had remained in the Hands of the Recusant. Ibid. 21.

2. 1 W. & M. 26. S. 2. Disables Persons refusing the Declaration against Transubstantiation to preface to any Living &c.

3. A Papist in Ireland cannot make a Will, but his Land shall descend to all his Sons Equally; but if the Heir conform within a Year after his Age of 21 he may enter. MSS. Tab. cites June 22, 1717. Burk v. Morgan.

(P) Actions and Indictments, How; and within what Time.

In an Information for not repairing to Church &c. upon the Statute of 23 Eliz. cap. 1. it was refolv'd, That if the Party be convicted upon an Information, there the Informer shall have the Penalty according to the Statute; But if the Party before the Information be convicted of it upon an Indictment, at the Suit of the King, there the King shall have all the Penalty to himself, by 28 Eliz. c. 6. and the Informer and the Poor, shall have nothing.


1. A N Action Qui tam was brought by the Queen and another, upon the Statute of 23 Eliz. cap. 1. against Vachel for not coming to Church; and being found against the Defendant, it was moved in Arrest of Judgment, because the Queen and the Party joined in the Action, whereas by the first Part of the Statute all the Forfeitures were given to the Queen; and tho' the Statute seems to make a Division, limiting one Part to the Queen's Use, another to the Poor, and the 3d to him that will sue for the same, yet this cannot any how give such Action as here is brought; for by the first Words the whole seems to be given to the Queen, and give no Colour for the Informer's Joining, any more than the other Words, which give the 3d Part of the Forfeiture to the Party suiting &c. and that this does not give Action, but an Action for the 3d Part only, and that in other Statutes the Forfeitures are expressly given to the King and the Party that will sue &c. and that therefore the Makers of the Act did not intend that the Queen and the Party should join. But to this it was answered, That this Act must have a reasonable Intention, and the Intent of this Forfeiture to be dispenced into 3 Parts, One to the Queen's and another to the Party's Use cannot take Effect if all be forfeited to the Queen, as the Words of the 1st Part import; for it would be absurd to sue for a Thing not belonging to him but to another; And that by the Last Part, Suit is given to the Party, which is likewise at Fard if the Makers intended him nothing, and therefore tho' the first Words seem to oppugne the last, yet the Intention of the Makers is to construe it to be, That the Queen and the Party suiting shall have the Forfeiture in Common in such Proportions as the Statute limits; and otherwise they would not have given an Action of Debt &c. to him that will sue, unless he might have Part of the Forfeiture. Whereupon Judgment was given for the Queen and the Informer, &c. That they recover &c. Notwithstanding the Statute says, That every Party who does not pay within the 3 Months &c. shall be committed to Prison. And 138. pl. 190. Mich. 27 & 28 Eliz. The Queen and Cull v. Vachel.

2. The Defendant was indicted upon the Statute of 23 Eliz. cap. 1. for withdrawing several Persons from the Religion established in England, and to promise Obedience to the Church of Rome; and for that "he himself was withdrawn from the Obedience of the Queen. It was objected, That the Prosecution was not within a Year and a Day after the Offence, whereas there is a Proviso in the Act, That all Offences against the Act shall and may be inquired of within the Year; But it was held by Way and Gaway, That this Proviso concerns only such Offences which are cognizable before Justices of Peace, as Spiritual Offences, as the not coming to Church &c. but does not extend to refrain Proceedings against Treason. 1 Leon. 238. Mich. 32 & 33 Eliz. B. R. Guildford's Case.

3. An Information Qui tam was brought for Recusancy in not receiving the Sacrament for 3 Years; and it was objected in Arrest of Judgment, That by the Statute of 31 Eliz. No Informer can sue but within one Year after the Offence; But the Court held it to be well enough for the King, tho' it was not good as to the Informer. Cro. J. 365. Hill 12 Jac. in the Exchequer, Syvedale v. Lenthal.

4. Exceptions were taken to an Indictment for hearing Mass, because it was said, That the Offenders were present, and does not lay with whom, or to what Purposes; nor is it said, They were present on a Religious Account, or with any Priest that read it; nor is it said, "Ex Intentione ad cuendam".
Recrulant.

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dread': edly, It is said, Andierunt Maffam, which is no Latin Word but for a Lump, and then 'tis Nonfence; Mithi is the true proper Word for the same, and so are the Dictionaries; and from hence 'tis plain the Anglec cannot help it; for wherefoever the English Word has a proper Signification, and a true Latin Word to express it by, and the Latin Word has no colourable Sense of that, 'tis not good; and this is the common Rule in Contraetion of Anglices, as to lay Equus Anglec, a Man, would be stark naught, and if the Anglec be reckoned Surpulture and void, then 'tis naught certainly; for 'tis Audibil Maffam, a Lump. But the Court would not quash it, but bid them demur to it; for that they would not quash an Indictment for such an Offence, no more than they would for Perjury; and bid them try it, or demur at their Peril, which they would &c. 2 Show, 216, 217. pl. 220. Trin. 34 Car. 2. B. R. The King v. Evely & Us'.

5. The Statute of 1 Eliz. 1. S. 9. (which directs, That Persons imprisoned for any Offence committed by Preaching, Teaching, or Words only, shall be discharged, unless indicted within One Half Year after the Offence committed) is not to be understood of 6 Months, at 28 Days to the Month, but of Half a Year according to the Calendar. Cawley 13.

6. Lord Coke lays generally, 4 Init. 331. That no Person shall be imprisoned for any Offence by Preaching, Teaching, or Words, unless legally indicted within the Space of Half a Year. But the Statute does not warrant this; for where it limits the Time to Half a Year, it speaks of one imprisoned and not indicted within that Time; and was made in favour of Liberty, to prevent a long Imprisonment upon a groundless Accusation, and that he should not continue any longer upon the same Imprisonment; but cannot extend to the Case of one who was never imprisoned, but now by the Statute of 23 Eliz. the Time as to all Offences against this Act is enlarged to a Year and a Day. Cawley 14.

7. It was moved in Arrest of Judgment, on a Verdict upon the Statute of 23 Eliz. for not coming to Church for 11 Months, because the Statute requires the Prosecution thereon to be brought within a Year and a Day, but this Action was brought 3 Weeks after the Year, and the Verdict was for the Whole. But Mr. Justice Powell said, That this was putting the other Side in Mind of curing this Mistake, they not having entered up their Judgment; for he said, If they entered up their Judgment for no more than was within the Time limited by the Act, viz. For no more Months than were within the Year, then it would not be Error. 11 Mod. 45. pl. 4. Pacht. 4 Anne B. R. Anon.

(Q.) Titles.

1. ONE was prosecuted in a Qui tam &c. upon the Statutes of 1 & 23 Eliz. for not coming to Church, he being of the Age of 16 Years. The Trial was in London, and the Defendant found Guilty. It was moved in Arrest of Judgment, That this Hillie is not triable, because no Place was alleged where the Offence was done, But the Court held the Trial good, because this Action was for a Non-attendance, Elh. Not coming to any Church, the which cannot be done in any Place; but it had been for a Thing done, then a Place must have been alleged. And. 138. pl. 192. Mich. 27 & 28 Eliz. The Queen and Cliff v. Vachel.

2. In Information for not repairing to Church &c. upon the Statute of 23 Eliz. cap. 1. The Defendant pleaded, That he was indicted at the Assizes &c. before A. and B. Justices &c. and it was held a good Bar, and
Recusant.

and that so it was adjudged in the Exchequer and in the King's-Bench accordingly. Noy 117. Pach. 3 Jac. B. R. Grimstone v. Stones.

3. If, pending an Information Quo tum, the Defendant is convicted by Indictment at the King's Suit, he may plead this Conviction Plus Dar- reum Continuance. Per Coke Ch. J. Roll Rep. 95. Mich. 12 Jac. in Dr. Foster's Case.

if, after they have arrested and appropriated the Suit to themselves, the King can devise them of it by bringing an Indictment. — But after a Conviction at the Suit of the King, either upon the Statutes of Eliz. or Jac. the Informer is barred of commencing any Suit. 11 Rep. 65. b. S. C. — And after a Conviction at the Suit of the Informer, the King's Suit is barred; and the Defendant may dis- charge himself by pleading Antejuvicia Coniulii. Ibid.

4. C. brought an Action of Trespass against G. who pleads the Statue of 3 Jac. 5. of Recusancy, That if any Popish Recusant be convicted, that he shall be taken in Law as an Excommunicate Person; and sover'd, That the Plaintiff was convicted at such a Place &c. unde petit Judic. of the Bill; The Plaintiff demurs, Quia Placitum illud Minus fuisse, certum & infallible in Lege eexit &c. And the Court [was of Opinion] for the Plaintiff, That the Plea is naught. 1d. Because there is not shown before what Judges he was convicted; so that if it had been denied, the Court might know to whom to write for a Certificate of it. 2dly. He hath not over'd his Plea with an Hoc parentis est certificare by Record. 3dly. The Conclusion, as Judgment of the Bill, is also naught. But of the 3d Part there was some Doubt. But at length by the Court a Respondeas outlier was awarded. And so it was also in Trin. 2 Car. B. R. Rot. 894. Ratcliffe v. Steweck, upon that Statute, the Defendant concluded Judgment Si Alius, where it should have been, if he shall be answer'd, and cited 24 E. 3. 26. 34 H. 6. 8. 11 Rep. 52. Clerch the Clerk shewed a Record Pach. 2 Car. B. R. Rot. 331. Where the Defendant after Imparable pleads Outlawry in the Plaintiff, and demands Judgment of the Bill; And Judgment was, That he shall an- swer further; And the Court agreed to that. Noy 89. Trin. 2 Car. B. R. Dr. Cademan v. Grendon.

5. In Debt brought upon an Obligation, the Defendant pleads, That the Plaintiff is a Recusant, and convicted according to the Statue of 21 Jac. cap. 5. and demanded Judgment of the Action. The Plaintiff replies No Actus Recordi; and a Day was given to bring in the Record. Crowley J. demanded what Court he would take to make the Record come in; and said, That the Indictment was before the Justices of Peace; And the Court said, That the Defendant ought to have pleaded Judgment if he shall be answer'd; for the Diffability is only quodque &c. And the Direction of the Court for the bringing in the Record, was, That a Certiorari shall be directed out of that Court to the Justices of Peace where the Indictment was taken; For Precedents were alleged, That that Court sent a Certio- rari to the Justices of Allife (a fortiori) to certify that in the Exche- quer, and so come by Times into that Court &c. Heccl. 13. Pach. 3 Car. C. B. The Café of a Recusant Convict.

6. In Ejectment for the Rectory of B. the Cafe was, That the Earl of S. being a Popish Recusant Convict, presented the Leifor of the Plain- tiff, who was infirmitied and induced; but the Record of the Conviction being burnt, the Defendant offer'd to prove it by the Tiercer made thereof in the Exchequer; and by an Inquisition found and returned into that Court of Recusants Lands; and it was held by Hale Ch. B. and the Court, That in such Case a Record may be proved by Evidence, because the Conviction is not the direct Matter in Issue, but only an Inducement to it; But then the Evidence must be strong and cogent; and accordingly the Evidence was admitted; But then by the Ejectment the Conviction into the Exchequer, it appeared to have been the same Allies at which the Party was presented as a Recusant, which is not allowed either by the
the statute of 23 or 29 Eliz. For they direct a Proclamation to be made at the same Altars when the Indictment is taken, that the Body of the Offender shall be render'd to the Sheriff of the County before the next Altars; And upon this it was held, That the Conviction was not sufficiently proved. Hard. 323. Patch. 15 Car. 2. in Scacc. Knight v. Dauler.

7. In Ahm. for 18 l. upon an Informal Computation, the Defendant pleaded, that the Plaintiff, being a Popish Recusant, was indicted for not coming to Church for twelve Months, and jects forth the Indictment and Conviction at Large, and concluded from In Vitio per Recusatum, and pleaded the Indictment to be Secondary remane Statuts in Hapsmodi Cat. &c. Under Petit Judicium if Respondere deboe, cum hoc, That the Plaintiff, being a Popish Recusant, had not conscript, and upon a Demurrer to this Plea, it was objected that the Statute 3 Jac. cap. 5. disable no Persons but Popish Recusants, Convicted of Popish Recusancy; and that each shall, upon Conviction, be into corporal Excommunicated. But that in this Indictment there are no Words of Popish Recusant, or Convict of Popish Recusancy, whereas other Persons may refuse to come to Church, and be thereof convicted, but not disbarred by this Statute; and to this the Court agreed. But this Indictment being in the usual Form, and the Plea laying that the Plaintiff being Popish Recusants was indicted, and that the Conviction was Secundum Formam Statutum, with an Averment that he being a Popish Recusant Convict, his not confining to come to Church: the Plaintiff objected, that this Indictment and Averment were not sufficiently laid to mow what Recusancy it is, and adjured the Plea good.

8. If a Man is indicted on the Statute of Recusancy, Conformity is a good Plea; but not if an Action of Debt is brought. Mod. 213, pl. 46. Patch. 25 Car. 2. C. B. Anon.

9. Tho' the Statute of Recusancy says, That an Outlawry for Recusancy, shall not be reversed for Want of Form, yet in Serjeant Cttltla's Wife's Case, 1 W. & M. it was adjudg'd that it should be, that the Statute might be made Sure: But an Indictment or Information for Recusancy, shall not be quashed for Want of Form. But yet on Travertie of the Fact and Bail given, the Outlawry shall be reversed for Form; but on the Reversal of an Outlawry in an Information for sending Children Layed out to be bred Papists, the Defendants must plead Inander. 5 Mod. 141. Mich. 7 W. 3. The King v. Hill.

10. In Case against the Defendant, he pleaded a Conviction of Recusancy at the Sessions, in Disability of the Person of the Plaintiff, and concluded from In Vitio per Recusatum. Upon Demurrer it was objected, that this Conclusion made the Plea ill; for the Conviction of Recusancy being at the Sessions, which is a Record of of another Court, it should be pleaded with a Projet hoc in Cornu sub Pede Sigilli; besides, this Record being made by the Clerk of the Peace, is trawrifiable, for he is no more than a ministerial Officer, and therefore 'tis not a Record to conclude the judgment of this Court, and is ought not to be pleaded here as a Record. To which it was answered, That if the Record of itself be made the Disability, then it ought to be pleaded (as objected on the other Side) Sub Pede Sigilli; but this Record did not make the Disability, but is only an Evidence of it. 'Tis true, the Clerk of the Peace in Certifying this Record, is but a ministerial Officer; but 'tis not a material Ob-
Rccufant.
jection for the Plaintiff to lay fb, becaale he hath an Opportunity cd
to traverfe it, and to trv the Fact ; but here the Plaintiff, by demurring
to this P!ea, hath owned the Fact, which orherwrfe ought to have been
proved by the Record.
But this way denied by the Council lor the
Plaintiff, who argued, That by the Demurrer the Fact was not conlelled
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for the Plaintiff' demurred, becaafe the Defendant had not pleaacdthe Faff,

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11. An. thcr Objection was,
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Thatthe Statute 3 Jac.cap. 4. gives the
make Proclamation againfl Ranfan s to render themfclves &c.
'they do not, and that the Default is recorded, that pall be taken for
t a Conviction as a Trial by Verdicl
now the Defendant hath not
pleaded that any fuch tefault was recorded at the Seliions ; therefore
this being in a Criminal Cafe, wherein the utmoft Certainty is required,
this Plea cannot be good without purfuingall che Circumrt uices required
b] the Act.
The Anfwer was, That the Statute rt
res the Conviction
uld be certified into the Exchequer, with fuch con ventent Certainty that the
Court may award Proccfs thereon ; and tile DeJenuant hath pleaded, that
it was certifie
there, which could not have been done uniefs the
Default had been Recorded at the Seliions. 8 Mod. 44. Calvin v.
Power

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Fletcher.
12. Another Objection was, that the Defendant did not fct forth that
the Plaintiff had not taken the Oaths Jiuce the King's Accefficn to the
Crown ; for if in Fact, he had taken them lince that Time, then the
Statute doth not extend to him ; therefore this Matter ought to have
been foecially fet forth, like a precedent Condition by him who is to
have the Benefit of it, (viz.) That the Plaintiff was a Perfon on whom
the Act Attaches. Fur by the Statute 1 Geo. it is enacted That all ."
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and fubferibe the Oaths in the Manner appointed by that - 2'./, ire
indemnified from any Penalties and Incapacities &c. incurred by any for n
The Anfwer was, That by the next Claufe in that Statute it
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appears that this doth not extend to any Perfon, other than fuch who entitle

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themfelves to any Offices or Places of Zrafl,

for thoie only are indemniiied

from any Incapacity incurred, and may bring any Action
taken the Oaths fince the King's Accefiion to the Crown.
Calvin v. Fletcher.
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8 Mod. 44, 45.

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(R) Proceis and Conviction.

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as fufficient a Conviclwn in Law of the Offence, as if upon the fame Indtcl!u?li a
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Pads Tent' apud Civitatem Glouceft' in Com. ejufdem Civitatis, 13 Die Januarii, Anno Regni Domini
Car. 2. &c. 30 Coram Johanne WagftarF, Ar. &c. Jufticiariis ipfius Domini Regis ad Pacem &c. Nee
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Praedidt'] ad inquirend' &c.
Die

Car 2. Apud Civit. Gloucelt. pr*d" fuit j^tatis of 16 Years and more, and did not
Church &c. Infra Spat ium Sex Mcnfium Integrorum extunc Prox' Sequen &c. Et fuper
in eadem Curia publica Proclanutio pro Domino Rege fecundum Formam Statuti, cbM

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S. 9. Every Conviction shall, before the End of the Term next following, be certified into the Exchequer, in such convenient Certainty, that the Court may thereupon proceed to the Seizure of all the Offenders Goods, and the Parts of his Lands and Leases, in Case the 20th. of Month be not paid as aforesaid.

S. 13. The Sheriff upon a Writ of lawful Issue may justify to break an House for the Taking of a Recusant Excommunicate.

2. Every Papist Recusant, being convicted, may be attach'd by a Writ De Excommunicato capta, by the Stat. 5 Jac. 5. Excommunicated, being convicted, Per Coke Ch. J. and agreed to per Omnes.

3. Upon an Information against a Recusant for the Penalty it was objected that the Party had not been convicted, and to not liable to the Forfeiture. But it was resolved by the Court upon Demurrer, that a Conviction upon the same Prosecution which is brought for the Forfeiture, is but a different Conviction within the Words and Meaning of the Act. And that so it had been held by all the Judges of England. 11 Rep. 59. Mich. 12 Jac. Dr. Fowler's Case.

R. R. The King v. Law. — 5 Bull. 57. S. C.

4. Whether the Recusant be convicted upon Verdict, Confession, or Demurrer, it is a Conviction within the Meaning of the Act. Refolv'd upon Demurrer. 11 Rep. 60. Mich. 12 Jac. Fowler's Case.

5. Upon an Information for Recusancy for 11 Months, it appeared at the Trial at the Bar that Defendant was sick for great Part of the Time; But it being alleged that the Party was a Recusant both before and after, the Court said that should be no Excuse; For it shall be intended an oblique Forbearance; Whereupon Defendant was found guilty for all the Time. Cro. J. 529. Pach. 16 Jac. B. R. Parker v. Curfon, & Ux.

6. An Informer made his Demand as for a Recusancy for 11 Months, 2 Roll R. when of his own Shewing it appeared to be for 13 Months, except one Day, the Name and so it was objected in Arreit of Judgment, that it appeared not for Sir Geo. which of the Months, the Forfeiture was demanded; Sed non allocatur; Curfon's For tho' he has not demanded so much as he might, yet it is well enough, Cae. and for the Defendant's Advantage; and the Recovery shall be intended for the 11 first Months; and the Adding of more is not material. Cro. J. 529. Pach. 16 Jac. B. R. Parker v. Curfon, & Ux.

7. In an Action Qui Tam, upon the Stat. 23 Eliz. the Defendant Hatt 82. demurred to the Declaration, and after Joiner in Demurrer the King S. C. by died, yet it was resolved that none of the Proceedings were abated; For it of Far is merely the Suit of the Party, and therefore, by the Stat. 1 Eliz. 6. it is ritten 7. not Discontinued. Cro. C. 10. Trin. 1 Car. C. B. Lionel Farning- on'ton's Case.

(S) Error
2. Our Persons were indicted upon the Statute 23 Eliz. and the Indictment was, Quod illi et certa litera recta sunt in Viscel Church. It was expected that the Indictment was not good; For that Uttering refers to one of them, and not where they are many, as here, and so is an indefinite Word, and consequently nothing laid to their Charge; Whenupon the Justices demanding thereof, demanded the Opinion of the Grammarians, who said the Word applyth signifies One of them, and so is used by all Writers; Why said, It shall not be taken for Quiblib in an Indictment, but Penaus said it is superfluous, and shall not hurt: I.e. sec. p. 590. When 23 and 26 Eliz. B. R. Spooner's Case.

3. The Indictment of Recusancy was, Contra Romanum Statutum, and held to be good; As it ought to have been Contra Romanum Statutum of 1 Eliz. & 3 Eliz. Case in P.C. in Case of Dingley v. Moor, cites it in Stockton's Case, and Popham said the Reason was, because the Statute of 23 Eliz. depends upon the 1 Eliz. For it is that every one that refutes to go to Church, against the Form of the Statute of 1 Eliz. shall forfeit 6 months &c.

Upon Information for the Non下雨ing to the Church, but not attending Mass for one Month, or not reciting the Missal, nor any Prayere of the Church, or other Preventing thereof, shall be convicted or reformed by any Default in Form, or other Default, other than by Precept to restrain such Person, as stands under the Penalties following. The Statute of 17 Car. ii. was given to the Parish Church, and that Person shall be committed to go into the Church next adjoining to his Dwelling, and suffer the several Penalties, and the same according to the Laws of England, such Penalties shall be admitted to record and receive the said Indictment, and all Proceedings thereupon.

4. 3 Jac. i. cap. 4. 8. 16. No Indictment for not repairing to Church, but attending Mass for one Month, or not reciting the Missal, nor any Prayere of the Church, or other Preventing thereof, shall be convicted or reformed by any Default in Form, or other Default, other than by Precept to restrain such Person, as stands under the Penalties following. The Statute of 17 Car. ii. was given to the Parish Church, and that Person shall be committed to go into the Church next adjoining to his Dwelling, and suffer the several Penalties, and the same according to the Laws of England, such Penalties shall be admitted to record and receive the said Indictment, and all Proceedings thereupon.

5. But the Convent of Form 8, i. and the Connexion thereof, to the King's Majesty, and the Herrera of the Church, and the action which the Church may have at Common Law, as for non-receiving, dereliction of Order, or other Dereliction, for the Act extendeth only to Delinquents in the Indictment or other Proceedings, 16 Geo. i. in which 18 St. Soc. Parker v. Webb. He may answer as in Matter, who must be in Form. Per Croke J. Bell R. 97. 5 Co. 246. (Q.B.) p. 9.
(T) Disability to Purchase &c.

1. A Prohibition was prayed, because in a Bill in the Court of Requests, to carry an Agreement into Execution, it appeared that the Plaintiff was a Recusant convict, and so a Person excommunicate. But per Cur. The Defendant has answered him there, admitting him a Person able, and it is now too late to have that Plea. And a Prohibition was denied. Nov. 88. Anon.

2. 11 & 12 W. 3. cap. 4. S. 4. Enacts that if any Person educated in the Popish Religion, or professing the same, shall not within 6 Months after be or make, or have the Attainment of 18 Years, take the Oaths of Allegiance and Supremacy, Chancellor, and also subscribe the Declaration for Power and Expressions in an Act made in the 30th of Charles 2d to be by him or her made, repeated and subscribed in the Court of Examiners or B. R. or Quarter-Sessions of the County where such where the Person so resides, every such Person shall, in respect of him or herself only, or in respect of any of his, or her Heirs or Heiresses, be disabled so far as that person and made incapable to inherit or take by Deed, Devise or Lienation, in any Lands Possession, Reversion, or Remainder, any Lands, Tenements or Hereditaments within England, Wales, or Berwick upon Tweed; and that during the Life of such Person, or until he or she do take the said Oaths, and make, repeat, and subscribe the Declaration in Manner as aforesaid, the next of his or when the person Kindred, which shall be a Protestation, shall have and enjoy the said Lands &c. without being accountable for the Profits by him or her received during such Enjoyment thereof, as aforesaid; but in Case of any such Person committed on the said Lands &c. by the Person so Johnson or enjoying the tenantry, or any other by his or her License or Authority, the Party disabled, his, or her Executors and Administrators, shall and may recoverable Damages for the same, against the Person committing such Waste, his or her Executors or Administrators, by Action of Debt, in any of His Majesty's Courts of Record. Rec. 448. Act 1718.

3. Win's Cold. Vines v. Fotheringham. It has been decided that a Papist may be a Pater, and that a Papist may be a Person educated in the Popish Religion, or professing the same, and that all and singular Estates, Terms, and any other Interest or Profits whatsoever out of Lands, from and after the 10th Day of April, to be which the said Papist may, suffer, or he, or for the Use or Benefit of any such Person or Person, or upon any Trust or Confidence mutuallly or immediately, or to the Benefit or Relief of any such Person or Persons, shall be utterly void and of none Effect, to all Intents, Conclusions and Purposes whatsoever.

4. It defends upon andcells in his Hie (the a Papist) for the Benefit of his Heirs; and that the next Protestant Kin has only a Right to the Perception of the Papist during the Non-conversion of the Heir. 5 New Abr. 299. Pulch. 1738. C. 6 Malton v. Brune. A Deed to a Papist is a Purchase within this Act, but that is where such Papist is a Benefactor to the Inheritance, but not where a particular Estate or Inheritance comes to the Heir at Law by a Deed; for that is but a Modification of that Estate which would otherwise devolve to him, as he is, or is to be, and conforms within 6 Months after. 9 Mod. 1710 in the House of Lords,Roger v. Ratcliffe — S. C. cited by Ed Packer. 2 Win's Rep. 9. in Case of Hill v. Felkins. A Papist above 15 and an half Years of Age, is not capable of taking Lands by a Devise, and the Word (Purchase) in the larger Clauses, is used in Contradistinction to the Word (Deed) notice of which it was urged that the Expression of (Purchasethis a Papist) especially when the Words following, viz. (his own Name, or in the Name of any other in Trust for him), must be intended where such Papist is a true, 

and
4. A Papist being Tenant in Tail suffered a Common Recovery, and declared the Uses to himself and his Heirs. This was held not to be a Purchase within the Statute of 11 & 12 W. 3. 4. 9 Mod. 172. Hill. 5 Geo. Ld. Derwentwater's Case.

5. If a Papist is seised of a defeasible Estate, and devises a Fine with Pre- fessed by future clausions, and 5 Years palls without any Claim, the Estate is now become

3. Lands devised to a Papist is a Purchase within the 11 & 12 W. 3. And if Lands are devised to pay Debts and Legacies, and a Papist is made Reopus Legatee, or is Heir at Law, the Lands to devised shall as to them be deemed as Lands, because such by Payment of the Debts &c. may stop the Sale, and require a Conveyance, tho' as to Creditors and to other Legates, such Lands shall be deemed as Money. 9 Mod. 167. Roper v. Radcliffe, in the House of Lords; and so reversed a Decree of Ld. Ch. Harcourt.

2. Lord Dever, being possessor of a Long Term for Years, made his Will, and his Lady, who was a Papist, Executed thereof. And it was allowed by my Lord Chancellor, That notwithstanding the Dif- abling Words, the Term was validly in her, and this was not a Purchase within the Act. And he said that a Papist may be Tenant in Dower, or by the Court's, because in all these Cases it is by Operation of Law, and not by any Act of the Party, that the Estate comes to him. 5 New Abr. 759. The Lord of Dever's Will.
come indefeasible; this is an Alteration of the Estate, but no Body will say it is a Purechange. 9 Mod. 175. in Lord Derwentwater's Case.

6. A Papist settles Land on his Son with a Power of Reversion, and after he executes that Power, so that the Estate is reveted in the Father; this is an Alteration of Estate, but was never yet call'd a Purechange. Arg. 9 Mod. 175. in Lord Derwentwater's Cafe.

7. Papists cannot take by Leaf or Grant, and consequently they can not take a Mortgage. 3 P. Arg. 9 Med. 177; in Lord Derwentwater, in an Interest in Land, and on Nonpayment the Estate is absolute in Law, and his Interest is good in Equity to inite him to receive and make a Cafe. The Rents till Redemption o' Satisfaction, and on a Foreclosure a Mortgage he has the absolute Estate both in Law and Equity. Per Pratt Ch. J. 9 Mod. 196. in the Cafe of Keeper v. Radcliffe.

8. A Remainder was limited by A. to B. a Papist for Life, Remainder to C. a Protestant, in like Manner; Remainder to his Coheir. Mess. Rep. to Trustees to preserve &c. Remainder to the 1st &c. Son of B. in Full Male, Remainder to C. a Protestant, in like Manner; Remainder to his Coheir. The right Heirs were two Sisters, Protestants. Lord C. King held, That the Rents and Profits of the Premises, from the Death of A. the Grantor, should go to the Sisters during the Life of B. for it should go to C. it could not afterwards go back to any Sons of B. who might be Protestants; and that this being an Hardship and Wrang to a third Person, and tho' in Favour of C. the next in Remainder, in order to let him in to take the Profits immediately, it was infincred that the Settlement being by Leave and Release, the whole Estate pass'd out of the Grantor, and could not return to him again, but must go to the next in Remainder; and that this being a Trust which is a Creature of Equity, the Court ought to let C. into Possession, and that in Cafe B. should leave Protestant Sons, the Court might then order the Trust for them; yet his Lordship said he would not take such extraordinary Power on himself, and the Intent of the Statute was more plainly complied with by confirning the Trusts void as to the Papists only, without letting the next Protestant Remainder-man into Possession before his Time, and so prejudice the Sons of B. 2 Wms's Rep. 361. Trin. 1726. Carrick v. Errington.

9. A Bill was brought, praying that Defendant might discover whether the it is ob- J. S. (under whose Will the Defendant claimed) was a Papist, or not. The Defendant pleaded the Statutes of 11 & 12 W. 3. The Lord Chancellor was of Opinion, That he was not obliged to discover; That there is no Rule better established, than that a Man shall not be obliged to answer to what may subject him to the Penalty of an Act of Parliament. And there can be no Doubt but this is a Penal Law, inflicting Disabilities or Incapacities. If a Bill is brought against the Person for a Discovery whether he is a Papist or not, he is not bound to discover; and where is the Difference between him and the Person claiming under him? Besides, what ways with me very much, is the great Inconvenience that would follow should this Plea be disallowed; we should have nothing in this Court but Bills of Discovery whether fuch and fuch Persons were Papists.
(U) How a Papist is Affected by 11 & 12 W. 3. 4.

1. A Papist under the Age of 18, at the Time of making the Statute 11 & 12 W. 3. 4, may take either by Decent or Purchase, and the Word Purchase in this Statute is only a Modification of the Estate, and shall not be taken in the full Extent of the Word; for those Purchases are intended only by the Statute, by which Papists enlarge and extend their Land of Interest, and not where by Deeds of Settlement the ancient Family Estate is new model'd, without making any new Acquisition. So that even at this Day a Purchase by Limitation in a Settlement, or by a Devise to a Papist under the Age of 16 Years, is good; so as such Papist within 6 Months after he comes to that Age, conform and take the Oaths &c. otherwise he loses the Permancy of the Profits during his Life only, Per 4 Commissioners Delegates against 1. 9 Mod. 180. Hill. 5 Geo. Ld Derwentwater's Cafe.

An Estate forfeited for Rebellion by the next of Kin, was referred to the Heir at Law on his becoming Protestant, and taking the Oaths. 9 Mod. 54. Trin. 9 Geo. Sir Lawrence Anderson's Cafe.—Lands were devided to a Papist under 18, who before 18 confounds. The next Protestant heir for the Land, but held that the Devise is good, and that he had not conformed, yet the Inheritance is in the Papist, and shall be divided to his Heirs, and he shall maintain an Action of Waste, by Virtue of the Stat. 11 & 12 W. 3. cap. 4. Par. 5. to the next Protestant heir, who is entitled to take the Profits during the Dility. 9 Mod. 156. Trin. 11 Geo. Hill v. Filkins.—2 Wms. Rep. 6. Patch. 11. 22. S. C. —Parker C. held, That being a Papist at the Death of the Teftator, the Estate would never vest; but King C. held, That confounding at 18 made the Devise capable. To Mod. 176. Hill v. Filkins.

2. The Heir at Law, tho' a Papist, is capable to take the Inheritance; for it is in him, tho' the next Protestant of Kin hath the Permancy of the Profits till the other becomes a Protestant, and the *Trust limited to support Contingent Remainders, cannot be said to be a Trust for a Papist, nor shall the Remainder-man take immediately. Arg. said to be settled in Cafe of Roper v. Radcliff. 9 Mod. 34. Trin. 9 Geo. in Cafe of Carrick v. Errington.

ButterCarr That Decree was made on some extraordinary Circumstances. 9 Mod. 147. in Cafe of Winter v. Birmingham.

3. A Papist must be accountable for the Profits since the Time of the Original Purchase; cited to have been so resolved in Dom. Proc. in Cafe of Blake v. Blake. 9 Mod. 146. Trin. 11 Geo. in Cafe of Winter v. Birmingham.

4. If Papists take Conveyance to their own Trufts, and it be undiscovered, all is well; or if it be discovered, the Conveyance it is true is void.
Redilliisin and Post Dilleillin.

* Redilliisin and Post Dilleillin.

(A) Statutes.

1. 20 H. 3. E NACTS, That if any be dispossessed of their Freehold, by the Act, but then it revokes again in the first Owner or Trustees, and Prat Ch. J. 9 Mod. 194. in Case of Roper v. Radelliisin.

only a Disability, but makes no Forfeiture; it prevents a Vesting, but divests nothing that is vested. Ibid. 500.

For more of Recusant in General, See Dillenters, Recrota-tive (P. a) &c. Universitities, and other proper Titles.

The like, whereof if a Man be dispossessed, he may have an Ailile of Novel Dilleillin 2 Infu 83. 85.—Co Litt. 154. observes, That Littleton in few Words hath made a good Exposition of the Word (Libel-rium Tenementum) in this Statute where in S. 233, he expounds it to extend to a Rent-Suck or Rent-charge, For tho’ they are against Common Right, yet a Man has a Freehold in them.

* This Word (Freehold) extends to Land, Rent, Common, or.

† This Branch extends not to an Ailile of Mens d’Ancêtres, or Durvors Possession, or Titres utiles; But if a Man recovers in a Writ of Redilliisin upon that Recovery, he shall have a Redilliisin and the like as often as he is redissessed. 2 Infu 85. cap. 5.—Upon a Plaintiff in the Nature of a Frethor, according to the Custom of a City or Borough, and a Recovery thereupon had, a Redilliisin does not lie; for no Redilliisin lies but where the first Plea began by Writ. 2 Infu 85. cap. 5.—S. P. and all in ancient Demesne there are no Coroners. Co. Litt. 154. a.—Here Allia is taken for the Verdict of the Ailile, as Littleton expounds the same, Vel per Recognitionem &c. or by Confession. Then the Question is, What if the Recovery were upon Denominator, or by pleading of a Recovery and Failure of it, or by any other Matter? And seeing Littleton speaks generally, it must be understood of all Manner of Recessions in an Ailile of Novel Dilleillin; and so it is confirmed by the statute of W. 2. cap 26. Co. Litt. 154. a.—And therefore if a Man sue a Writ of Right d’ancêtres in ancient Demesne, and makes Protestation to sue in the Nature of Ailile of Novel Dilleillin, and recovers in that Writ, and after he is redissessed, he shall not have a Writ of Redilliisin; because the first Recovery was not by Writ of Ailile of Novel Dilleillin. Co. Litt. 154.—S. P. P.N. l. 189. (G) for that Writ lies not upon an Ailile at the Common Law.

Or by Confession of them which did the Dilleillin, * and the Dilleillin Lath, * and the Ailile delivered by the Sheriff, * if the Plaintiff in the Ailile enters and executes the Recovery by Entry. 2 Infu 85.—Tho’ the Statute mentions Seilis had by the Sheriff, yet Littleton, S. 255; mentions only (Execution had) generally; so as whether it be by the Sheriff or the Party, so as an Execution or Policeion be had, it suffices. Co. Litt. 154. a.

If the * same Dilleillors, after the Circuit of the Justices, or in the mean * time, have dispossessed the same Plaintiff of the same Freehold; but here ibid is taken for Now aliud, and therefore if the Recovery in the Ailile were against 3 Dilleillors, and one of them redissesses him again, he shall have a Redilliisin against him; for he is at Alius but if the Recovery had been against one, and in and another redissesses the Plaintiff, he shall not have a Redilliisin;
Rediflein and Post Rediflein.

Rediflein; for here is Alius; and he cannot have a Rediflein against the former Diffrac alone, because he is Jointenant with another. Co. Litt. 154. a b.

If a Counterfeif be difproft, and recover in an Affile, if after they make Pleitie, and after they are fevcerally difproft, they shall have fuper Redifleins; and if it be in the Replication, & not Alius. Co Litt. 154. b. — Alius a Rediflein does lie against the Diffrac who redifproft, if he is against another t. whom it is made Proftent after the 2d Diffrac; for otherwise the Rediflein might prevent the Plaintiff of his Rediflein. But in an Affile against A. and B. in which A. is found Difproft and B Tenant, and the Plaintiff recovers, and after he, who was found Tenant, difproft the Plaintiff, he shall not have a Rediflein, because he did difproft him but once. Co. Litt. 154. b. If the Affire recovers a Kent when it is a Rent-Suit, and after the Rent becomes a Rent-Suit by Sculping, and the fame Perfon doth redifproft him of the Rent, he shall have a Rediflein; for the Subfance of the Rent remains, tho' the Quality be altered. Co. Litt. 154. b.

If Tenant in special Tail recover in Affile, and after becomes Tenant in Tail, after Possibility of Ille extinct, and 6en is vex'd, he shall have a Rediflein; for albeit the State of Inheritance be altered, yet the same Foredeed remains. Co. Litt. 154. b.

* The Reason of this Punishment is, that Interest Reikly of us sit finis Lithium; otherwise great Oppression might be under the Colour and Pretence of Law. For if there should not be any End of Suits a rich and malicious Man would by Actions and Suits intirely vex one that has Right, and at length compel him to purchase his Peace by relinquishing his Right; And the Reporter says, that this Miffchief is the Consequence of those Rules of Rights and Titulure of having a Right in Personal Actions, in which there is no End of Suits; and that this has introduc'd many great Inconveniences (which are there enumerated.) 6 Rep. Mich. 43. & 41 Eliz. in Ferrer's Calf.

† See the Statute of Milebridge, cap. 8. After.

And this is the Form how such Convif Perfonis fhall be punished; When the Plaintiff's come into the Court of our Lord the King, they shall have the King's Welt directed to the Sheriff, in which might be contained the Plaintiff of Diffrac framed upon the Diffrac.

* This is taken from the Plural Number; therefore where there are two or more Coroners, he ought to take at least two; but when there is but one, if he take him of be fit within the Meaning of this Statute, tho' regularly the Plural Number is not satisfied with one. 2 Inst. 84. — Bridgen. 119 in the Calf of Cæs. v. Welthall, cites 23 Aff. — That if he goes with one Coroner only where there are more, it is not good. And that the Law is the same if he take not others with him according to 26 Eliz. 25. 57.

If two Coroners were in the County, the one of them was fick and could not come, the right of Rediflein was directed to the other, who executed the same alone. Upon the Rediflein the Sheriff returned, That he took with him one of the Coroners, the other being fick, and could not come; and all this appears by the Record to be so. Per Doderidge. J. This Statute affigns a Number certain, and the face is not to be diminished; That if there had been 4 Coroners, and he had taken two of them with him, this would have been good, and the Statute well punished; but not here, as this Calf was, taking but One Coroner with him. The whole Court agreed with him therein, That this was a clear Error; and therefore the Judgment given in the Rediflein was reversed. 2 Bull. 93. Trin. 11 Jac. Penfio v. Knight.

† So that if he does not go in Proper Person, and return accordingly, it is all void; because he does not put the Statute, Quia trivilic & Br. Parliament, pl. 92. chit. VII. 4.

‡ This must be a underflood where he were Jurores in the Affile; for if there were none, then it must be tried only Per Alias; As if the Diffrac plead a Record, and falls of it; or if he plead a Bar, and confaffs an immediate Oufier, upon which the Plaintiff doth demur, and Judgment is given for Plaintiff, and after the Plaintiff is redifproft, the Plaintiff shall have a Rediflein; and it shall be tried only Per Alias, because there were no Jurores at all in the former Affile. Co. Litt. 154. b. If the Plaintiff (albeit it be Penal) shall not be so literally expanded, that if it cannot be tried by Per Primos Jurores, that it shall not be tried at all; for Verbo intelligi debent cum effectu. But where there were any Jurores it shall be tried by them and others; and where there were none, then by others alone; But if there were Jurores in the Affile, and they all die, and after he which recovered is redifproft, there (by the Act of God) the Rediflein falls. And so it is, if all the Jurores be dead. † Giving one, because the Words of the Statute be, Per Primos Jurores, & alias; and to note a Diversity where there were never any Jurores at all, for there the Statute could by no Possibility have wrought but upon others only, but where there were one Jurores, and the Party neglects his Time, and by the Act of God...
Neither shall the Sheriff execute any such Plaint without special Commandment of the King.

In the same Manner shall be done to them that have recovered their Seisin by Affidavit of Mort d'Anceflor.

And so it shall be of all Lands and Tenements recovered in the King's Court the Recover by Inquest, if they be differed after by the first Dereceor, against whom they have recovered any Sale by Inquest.

For any other Real Action, it is by Verdict; and in this Case the Recoveror shall have a Poll Differin against the former Tenant being Dececor, that differed him after the Recovery; But if the Recovery be by Redifin or other Sale & he shall have a Poll Differin upon the Statue of Welt. 2. cap. 26. Nota, Here (Eadem modo) are Words of great Operation; for they imply, That there must be Idem Conquemens de eodem Tenement, & Idem Te: ens, against whom the Recovery was had after the same Manner as is before said in Case of a Redifin.

2. 52 H. 3. cap. 5. Enactis, That they which be * taken and imprisoned * the Statute, and the King, and shall make Fine with our Lord the King for their Tojafts.

Rediffin, and Poll Differin, the Words of which Statute being, in Prifons Dominis Regis deimnemur quodque per Dominum Regem, vel aliiquos modo Deliberentur. Upon these Words, Vel aliiquos modo Deliberentur, they were delivered by the Common Writ De domino Replicando; for the Liberty of a Freeman is so much favoured in Law as there is ever a benign Interpretation made for the benefit thereof. Now this statute doeth exact, That they shall not be delivered sine speciali Præcepto Domini Regis; for, by the King's Writ, reciting the special Matter, and for a Fine with the King themselves to be made. And if it be that which is attained in a Rediffin be in Prison, this Fine that this Act speaks of, as some have found, ought to be ascribed in the Chancery; to which end, he must have a Certiorari to remove the Record thither; and out of the Chancery, to have his Writ to discharge him, for sine speciali Præcepto Domini Regis is intolerable by Writ (say they) in the Chancery.

S.P. Dalt. Sher 326. cites S. H. S. F. 1. And says, This was the Opinion of the Court, (exceptinglefield) 13 H. S. F. 1. because the Words of the Statue of Marlebridge are, That such Offenders shall not be delivered without the King's special Commandment, which cannot be but in Chancery. But the King, That the Justice of C. is having the Record before them (by a Certiorari) had Power to affix the Fine, and to award such a special Writ out of that Court to the Sheriff to let the Prisoner at large; and that such a Writ, filling out of that Court, was the special Commandment of the King; and that the meaning of the Statute was only to prohibit the Sheriff to effect the Fine, and not to prohibit the Justice, who are Judges of Record.

And therefore if one be attained in a Rediffin, and is at large, the Party may have a Certiorari to remove the Record into C. B. and by Caputus out of that Court he may be taken; Andsome do hold, That this Court cannot seal the Fine, nor make the special Writ. 2. Inf. 115. If a Man be convicted before the Sheriff, upon a Rediffin and Poll Differin, then he shall not be delivered out of Prison without the special Command, and then he ought to sue a Certiorari to remove the Record into B. R. and there to agree with the King for his Fine; and therefore he shall have a Writ to the Sheriff to deliver him out of Prison. F. N. B. 192. (F) 3. Inf. 115. cites S. C. This does extend as well to the Poll Differin as Rediffin. 2. Inf. 115.

And if it be found, That the Sheriff delivereth any contrary to this Or by his own hands, he shall be grievously answerd therefore. And, nevertheless, they which are so delivered by the Sheriff without the King's Commandment, shall be grievously punished for their Trejafts.

Rediffin, and Poll Differin, the Words of which Statute being, in Prifons Dominis Regis deimnemur quodque per Dominum Regem, vel aliiquos modo Deliberentur. Upon these Words, Vel aliiquos modo Deliberentur, they were delivered by the Common Writ De domino Replicando; for the Liberty of a Freeman is so much favoured in Law as there is ever a benign Interpretation made for the benefit thereof. Now this statute doeth exact, That they shall not be delivered sine speciali Præcepto Domini Regis; for, by the King's Writ, reciting the special Matter, and for a Fine with the King themselves to be made. And if it be that which is attained in a Rediffin be in Prison, this Fine that this Act speaks of, as some have found, ought to be ascribed in the Chancery; to which end, he must have a Certiorari to remove the Record thither; and out of the Chancery, to have his Writ to discharge him, for sine speciali Præcepto Domini Regis is intolerable by Writ (say they) in the Chancery.

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And if it be found, That the Sheriff delivereth any contrary to this Or by his own hands, he shall be grievously answerd therefore. And, nevertheless, they which are so delivered by the Sheriff without the King's Commandment, shall be grievously punished for their Trejafts.

And like as in the Statue of Morton, the same Writ was provided for such as were delivered after they had recovered by Affidavit of Novel Differin of Mort d'Anceflor, or other Juris,
Rediffeifin and Post Diffeliefin.

given. This

Statute is an

Act addi-
tional in

several

Points. 18. Where the Statue of Merton gave but Single Damages this Act doth give Double Dama-
ges both in the Rediffeifin and the Post Diffeliefin; but the Jury is to give the Single, and the Court is to
double them solely. Where notwithstanding the Statue of Merton and of M arridge, cap. 8. he
might be replieved by the Common Writ, yet by this Act he cannot to be. 30. Where the Statue
of Merton extended only to Rediffeifins upon Recoveries in Affile of Novel Diffeliefin by Verdict of
the Recognitors, and to Post Diffeliefin upon Recoveries by Verdict only, this Act extends to Re-
coveries by Default, Redition, or otherwize, without Recognition of

Affiles or Jurates.

(B) Lies. In what Cases.

1. UPON Recovery in Affile of Freedom Rediffeifin does not lie; for there are no Coronors. Contra it seems in London, for there

are Coronors; For there the Writ of Rediffeifin is to the Sherif Quod

Aliquip. recum Callod. Placitorum Corona nonire &c. But London is a

County in itself: Contra of other Boroughs, which use Freh-force. Br.


2. If a Man recovers Rent in Affile, and after comes and takes Distress,

and Receivos is made to him, he shall have thereof Rediffeifin. Per Knivet.

Brooke says, Quere inde, for it seems that he is not immunod, As where

the Sherif by Recovery pursuant in Sein in a Twig Closs &c. But

Contra where the Party is not distrained, and does not get other Sein,

as it seems. Br. Rediffeifin, pl. 5. cites 42 Aff. 23.

3. If a Man recovers Land by Default in Seire facias, and after is dis-

seived by the same Man, he shall have Post Diffeliefin as well as if he had

recovered in Precipe quod Rediat. Quod not, Br. Rediffeifin, pl. 2.

Man recovers cites 15 H. 7. 8.

Land or re-

nements in Value against the Vouchee in a Precipe quod Reddat, and after he is put in Execu-

tion by the Sherif, the Vouchee diffides him of the same Lands which he so recovered in Value, he shall

have a Post Diffeliefin of that Land to recovered in Value against the Vouchee. F. N. B. 152. (C) —


Co. Lit 155. 4. The Writ of Rediffeifin lies where a Man recovers by Affile of No-

bility, That if a Man recovers Land, to which Common

is Appendant, and after he is rediffeifed of the Common, he shall have a Rediffeifin of the Common, for it is truly recovered in the Affile. — S. P. F. N. B. 189. (F) — If a Man recover by Affile of

Novel Diffeliefin, Common of Pature, or other Profit Appendent in the Soil of another, or any Office or

Cofody; if he be rediffeifed, he shall have a Rediffeifin. F. N. B. 185. (L)

5. If a Man recover by Affile of Novel Diffeliefin any Land or Tene-

ment before the Bailiffs of any Liberty, where they demand Comnence of

Pleas before Juftices of Affile, and the Juftices grant the same, because the

Lands are within that Liberty, and afterwards he be rediffeifed of the

same Land, then he shall have a Writ of Rediffeifin. F. N. B. 189. (A)

6. A Mad
6. A Man shall have a Redileitun upon a Recovery in Affixe of Nu-
facne De Stagno injufce levat &c. or De Cursu Aqno divero, or De Vía
andina & oblitertura. F. N. B. 189. (A)

7. If a Man recovers by Rediffen, and afterwards is diftiffed again by
him by whom the first Redileitun was before, he shall have a new Redi-
ifeitun; and to one Redileitun after another every Time he is re dif tiffed.
F. N. B. 180. (C)

8. The Writ of Post Difileuin is given by the Statute of Wettminder
2. cap. 26. and lies where a Man recovers Lands or Tenements by a
Precipe quod Reddar, by De flant or Reddilion, and afterwards he is
outted again by him against whom he recovers &c. then he shall have
that Writ of Post Difilein; but if he recover by Affixe of Mort d'Ance-
tor or Jnus utrius, or in those Actions which pass by Storage and Verdicts,
then he shall have his Writ founded upon the Statute of Merton, cap. 3.
of Post Difilein. F. N. B. 192. (A)

9. A. recovered in Novel Difilein against B. certain Lands in H. and Goldsb
had Execution. B. enter'd upon A. and outted him, and re dif tiffed him. pl. 3. S. C.
A. re-entered, and afterwars brought Rediffen. Per Cur. A. may main
his Writ notwithstanding his Entry, and on the Conviction of the De-
fendant, he shall be fined and imprifoned, and render double D images. Le. S. P.
and if the Defendant has any
Caufe of Redemdy it is by Audita Querela.

10. Tho' the Writ be Rediffenititus de eodem Tenement, yet Rediffen
lies of Part. Goldsb. 76. Thatcher's Cafe.

A. a Man recover'd of Part of the Land recovered by him in a Novel Difilein. F. N. B. 188. (G) — Co. Lit. 154.

(C) Lies for and against whom.

1. A Man recover'd in Affixe against a Feue sole, and he took Baron, who Hob 66.
after diftiffed the Plaintiff; and he brought Redifeitun against the
Baron and Feue, and recover'd, and the other brought Writ of Error and
revered the Judgment; for he was not Party to the first Judgment, and
therefore is no Redifeitun; nor does the Statue give imprifonment nor
double Damages against him who was not Party to the first Difeilun: s. S. C. fay,
and also he may have Special Writ supposing the Rediffen was by the Feue
only; For where a Man recovers in Affixe against N. and after is diftiffed
by N. and T. he shall not have Redifeitun against both. By which he convi-
ected, and then the Judgment was revers'd, and the Plaintiff restored to the Land with
the Proths in the mean Time. Br. Redifeitun, pl. 1. cites 9 H. 4. 5.

2. And

Redileitun and Post Difilein.
2. *And if a Man recovers in Affidavit, and is redissailed by him again, who aliens to another, he cannot have Redissailed against both.* Per Tirwhit.

3. Redissailed, pl. 1. cites 9 H. 4. 5.

3. But it was said, That he may have Redissailed against the Disfessor, and Seire Facias against the Tertenant. Br. Redissailed, pl. 1. cites 9 H. 4. 5.

4. A Redissailed shall be maintainable against any of the Diffessors. F. N. B. 189. (E)

5. Tenant by Statute-Merchant or Staple, shall have an Affidavit of Novel Redissailed if he be oufted; and also a Redissailed, if he he be Re-dissailed. F. N. B. 189. (I)

6. Writ of Poff-Diffessor ought to be brought by those who first recovered, or by some of them, and of the same Land, which was recovered, or of Part thereof, or against those, or some of them against whom the Recovery was. F. N. B. 191. (A)

7. If a Man Recover by a Precipe quod reddat, and after he is dissailed by him against whom be recovered, and the Dissessor doth make Peiiment, and takes back an Estate to him and another; he who first recovered shall have a Poff-Dissailed against him, and his Jointenant, as it feems, and he shall be punished by the Statute, if it be found against him. F. N. B. 191. (A)

(D) Writ, Pleadings, Proceedings, and Judgment.

F. N. B. 188. (c) in the new Notes there (b) cites 23 Att. 7. That if there be but one Covertor in the County, he may take it, otherwise all must join. 23 H. 6. 17. And note a Redissailed taken before the Sheriff and one Covertor, it is not good. Also note this Clause, Assumpsit team &c. was omitted, and therefore the Writ abated. 26 E. 4. 5. And herein the Sheriff is Judge. 1 H. 4. 5. but if there are 4 Covertors, but one is dead, the Sheriff ought to return this.
Redifflein and Post Diffleisin. 271

2. A Writ of Redifflein granted on a Recovery in B. R. was sued in Chancery, and held good by the Award of Court. F. N. B. 188. (D.) in the new Notes there (c) cites 26 E. 3. 57.

3. In Redifflein it was found by the Sheriff for the Plaintiff, and he sued to the Sheriff to return it, who returned that he had found Redifflein, and made Execution to the Plaintiff; and the Plaintiff said that he had not made Execution, and pray'd Garnishment against the Tenant and had it return'd immediately, and because the Writ respected that be recovered by Affidavit by which he was setted, and after the Writ was Searc'd Fact. Quære except Affidavit before not debtor, and so contrariant, therefore the Writ was abated by Award. Br. Redifflein, pl. 4. cites 30 Aff. 35.

4. Joustenancy is a good Plea in Redifflein. F. N. B. 188. (F.) in Co. Litt.

5. Per Cand. In Waif and Redifflein in divers Villls, the Sheriff and S. P. For Coroners shall go to the Villls, but they may take the Inquest in one Vill only. The Writ is made to D. & ibidem captiv Inqui-

6. If the Diffleor has a Release to plead, he shall not plead it in the Redifflein, but shall have it given in Evidence, per Knivit J. And of the Release lies Audita Querela by some; For he shall have no Answer in the Redifflein by some. Br. Redifflein, pl. 5. cites 40 All. 23. It seems that if the Writ be Adjudged ad ilium ibi Testamenta prædilat non &c. it is Erocerus. If H. 4. 6. 94. Adjudged. But if the Rent lies out of several Lands in diverse Villls, it is sufficient to take the Redifflein in one Vill only. 40 All. 23. But the View ought to be made in all.

7. If he has a Fine Moneys he shall not plead it, but shall have Super-

8. The Pannel is challengeable, but not the Array, as it seems, because Per Keble, the Sheriff is Judge here. F. N. B. 188. (C) in the new Notes there (c) cites Keiw. 125. S. C.

9. In a Redifflein against Husband and Wife, the Writ shall be thus in the End, Ei idem A. domus fia in Duplicum quae oceamini illius Rediff, subintit de Terris iurorum B. & S. & Caelatis ipsius B. in Ball tua; because the Wife has not any Chattel. F. N. B. 188. (H.)

10. If the Sheriff will not execute the Writ of Redifflein, he shall have an Alias and a Pluris directed to him, and if he then do it nor, he shall have an Attachment against him to the Coroners &c. and upon the Name, Differe finite. F. N. B. 188. (I.)

11. If he who loses the Land by Default or Redifflein in a Precipite quod reddat, do alter diffet him who recovered, and make a Fellament
Reference to Words.

in Fee into another, or for Life, It seems he who recovered shall have a Post-Diffusior in against him who defounced him again, altho' he be not Tenant of the Land; for in a Writ of Post-Diffusior, the D-
mandant shall not have Judgment to recover the Land &c, but the Sher-
riff shall put and render the Plaintiff to his Possession, if he find the Di-
ffusor &c. and shall take the Defendant and keep him in Prison until &c.
F. N. B. 191. (A)

12. It seems that Non-tenure is no Plea for the Defendant in a Writ of
Post-Diffusior, but he ought to anwter the Diffusior &c. when he comes
in upon the Seire facias &c. And if he make Default upon the Seire facias
returned, the Sheriff shall take the Inquest. Tamen quare. F. N. B.
191. (B)

13. Redifusior lies in Middlesex or London. By all the Court. And
Walmesley said, That there be Writs in the Register accordingly.
Goldsb. 76. Thacker's Cafe.

14. In Redifusior the Plaintiff shall recover Damages as they are assis'd
by the Jury, and not by the Affid. Goldsb. 76. pl. 7. Hill. 30. Eliz.
Thacker's Cafe.

For more of Redifusior and Post Diffusior in General, See Diffusior
and other proper Titles.

Reference to Words.

1. D. 8. 9 El. 255. 4. A Man makes a Leave for Years, and
after binds himself by Obligation with Condition, that if he
suffers the Lefsee peaceable to enjoy the Land during the Term, and
that without Trouble, Deterion, or Denial of the Lessee, or any o-
er Person, that then the Obligation shall be void. Per Curiam.
The Words 'Suffer shall rule all the Rest of the Sentence; so that
upon the Entry of a Stranger upon the Lefsee without Procure-
ment of the Lessee the Obligation is not forfeited.

2. D. 7. El. 249. 43. A Man assigns a Leave for Years, and co-
venants and grants that he had not made any former Grant, or any
Thing by which this Leave may be in any Manner frustrated (But
that) the said Assignee and his Executors by Virtue of this Grant
and Assignment, may quietly enjoy the Premises during the Term
without Disturbance of him nor of any Person; By 3 Justices against
1 the Words (but that &c.) depend upon the 1st Words, and is not
any new Punter or Sentence, and therefore the Entry of the Stran-
ger by ancient Title has not broke the Covenant.

Covenant

that the In-
denture of
Leave at the
Time of As-
fignment is a
good, true,
and Inde-
fensible
Leave, and
that he shall
enjoy &c.

without the Lett or Interruption of Defendant or any claiming from, by, or under him, are several distinct Sentences. 2 Salmend. 58 Parch. 19 Car. 2 Gainford v. Griffith.— See Sid. 758. Gainford's Cafe.

D. 14 b. 72. 3. If A. die before Michelmas 1620 without Issue of his Body then los-
ing &c. Then Living shall refer to the Feait and not to the Death. And.

4. Writ
For more of Reference to Words in General, see Grants, (H. a. 13) Parole, Prerogative (I b.) &c. and other proper Titles.

**Refunding.**

(A) By what Persons.

1. **WHERE Trustees for Payment of Debts out of Lands devised for that Purpose had preferred some Creditors in Payment, so as the others were left unpaid by the Affets being all exhausted, as where they paid Debts by Specialty only, when they ought to have paid Simple Contracts, Pari Passu, and in Proportion; It seems that it was decreed that the Creditors who had received their Monies should not refund any Part of the Money received by them; but that on a Bill of Review, this Decree was reversed per Ld North. 35 Car. 2. See 2 Chan. Cases. 54. a Note in the Margin of the Case there of Gell, &c. al. v. Adderley.**

2. A. an Attorney, lying ill of the Sicknes of which he afterwards died, takes B. of his Clerk, and receives 120 l. and by Articles agrees with the Father of B. to return 60 l. of the Money if he died within a Year. A. died within three Weeks. The Executor of A. was decreed to pay back 100 Guines. V. 460. pl. 437. Trin. 1687. Newton v. Rowle.

3. A. was indebted to B. by Mortgage in 400 l. Principal Monies and died. B. died leaving J. S. Executor. On a Bill in Chancery, for Payment of Debts of A. out of Lands charged with the same, the Matter reported 700 l. due on the said Mortgage, and the Executor received the whole 700 l. But afterwards it appeared that 353 l. 13 s. 1d. had been paid to B. the Trustor by A. in his Life-time; whereupon the Trustees and City of the Trust, an Infant, brought a Bill to be relieved against this Overpayment. The Executor Defendant pleaded all the former Proceedings, and
also that he, before any Notice of the Over-payment, as Executor of R, had paid away the 700 l. in the Debts of B. The Manner of the Rolls decreed the Executor to repay the Surplus, and he to be at Liberty to sue such Creditors, as thro' Mistake he had paid, to Refund; and this Decree was affirmed by Ld Chan. Cowper, and compared it to the Case of a Judgment obtained by the Executor, and after reversed for Error, and to that of a Decree which is after reversed by Appeal; tho' he said that in the last Case of an Appeal if the Defendant had delayed the Appeal, and willingly fled by whiff the Executor paid away the Money to the Tistor's Creditors it would be otherwise: For this would be drawing the Executor into a Snare. Wm's Rep. 355. Trin. 1717. Pooley v. Ray.

(B) In what Cases; And where the Payment was illegal, and not to be countenanced.

1. WHERE a Man enfeoffed W. till 8 l. was levied to instruct him in Colley in 3 Years, and the Feoffor died within 3 Weeks, yet he shall hold the Land till the 8 l. shall be levied, for 'tis no Default in the Feoffor; Quod nona, in Affife. Br. Affife pl. 230. cites 21 All. 18.

2. A. for 600 l. purchases B's Interest and Possibility in such an Estate to him and his Heirs; The Land is exsitial. A. is not incited to have his 600 l. back, but his Bill was dismissed. Fin. Rep. 288. Hill. 29 Car. 2. Maynard v. Motely.

3. Crofs Bill was brought for Creditors to take their proportionable Shares, but the Debts having been paid to them and Releaves given by them, it was dismissed. 2 Chan. Rep. 173. 31 Car. 2. 'Tucker v. Searle.

4. A. sells a Place in the Guards for 400 l. to B, who enjoyed it 3 Years, and then is turned out, and suggested in the Bill, but not proved, to be by A's Means or Procurement; Ordered that what Money had been received, should be repaid. 2 Chan. Cafes. 82. Hill. 33 & 34 Car. 2. Coniers v. Hammond.

5. If an Executor pays a Debt on a Simple Contribut, there shall be no Refunding to a Creditor of a higher Nature. 2 Vent. 266. Patch. 35 Car. 2. Hodges v. Waddington.

6. A Mortgagee received Interest on an old Mortgage after the Rate of 8 l. per Cent after the Statute for reducing it to 6 l. per Cent. Decreed, and so confirmed a former Decree that the 8 l. per Cent. paid should be retain'd, and that the 2 l. per Cent. should not be discounted nor applied towards Satisfaction of the Principal, tho' it had been paid for 15 Years after the making the Statute. 2 Vern. 42. 78. Patch. & Trin. 1688. Walker v. Penry.

But tho' it was afterwards decreed per Commissioners, that the 2 l. per Cent. over-value should form too much of the Principal Mortgage Money, yet if the Principal and Interest were over-paid, the Parties must shake Hands; For in such Case there should be no Refunding. Ch. Prec. 50. Patch. 1692. Walker v. Penry.— 2 Vern. 145. 8. C.

For more of Refunding in General, see Devise, Executors, and other proper Titles.
Rege Inconsulto.

+ (A) Rege Inconsulto.

1. In Allhe, if the King sends his Writ of Rege Inconsulto to the Justices, shewing good Matter in the Writ, but there is a Clause in the Writ that Sives conhahare poterit, that the same Land put in Deed in this Allis be Parcel of the Land which he has mentioned, Quad alterius non procedatur gc. The Justices are not bound to stay till this Matter be inquired. 49 Afl. 14. Admitted.


2. But in this Case, if the Justices inquire by the Allis, and they find that the Land put in Deed is not Parcel gc. they may proceed; for this is expressly limited by the Writ. 49 Afl. 14.

the Allis find that it is not Parcel, yet the Court shall not proceed without Procedendo. Per Car.

* (A. 2) In what Cases it lies.

* This in Roll is (A)

1. 4 E. 1. Rot. Clausarum 94. 4. Rec. Justiciarius de Bancroq. reciting that where G. of C. was outlawed of Pelony, and his Goods forseized ad nos deventur et nos quendam Librwm de eisdem Bonus R. M. dedimus & Margaretae, ut hic in ore suis et incident Librwm versus Marian de S. per Dese notentum, as a new effet de Bonus prout G. Fornelatis, casum dvis erigit, Pabst Danalutus, quod prediciet Marian de Librwm reddiri a quoque immane implicitum, tec usque unde quietam essl permittatis. Dile Rege apud Niger.

2. No Proceeding ought to be where the King may have Evident Damage; and in such Case Stranger or Privy may have a Rege Inconsulto. Jenk. 7. cap. 11. cites 1 E. 3. 7.

A Writ of Rege Inconsulto does not lie but when it appears plainly to the Court, that the Party's Title is in Disaffirmance of the King's Title. Hard. 179. Pach. 13. Car. 2. in the Exchequer, Anderson v. Arundel.

3. In Precipe quad reddat against the Prior of B they were at Uffie, and at the Day that the Inquest came, the Prior shewed Writ, by which the King had seized the Land, by Reason that the Prior is a Prior Allis, and under the Obedience of the King of France, & quod ista Circumstancia agen-
Rege Inconsulto.

4. A Man held of the King in Ireland in Capite, and died, his Heir within Age. The King seized, and after the Action was pressed, which was pressed by the Ancestor of the Heir, became void in the Middle Time, and the Grantor of the Ancestor presented, and the King brought Quare Impedit in the Court there, and the Plaintiff came here and pressed Ratification, and had writ to the Justices of Ireland to furceafe; and because the Servants of the King saw that it would be a Prejudice to the King and to the Heir, they prayed the Chancellor to repeal the Ratification and Proceeds to the Justices of Ireland, and had it. Quare how the Ratification may be so repealed, it seems that the King was deceived in it, and therefore void, Br. Procedendo, pl. 12. cites 45 El. 3. 19.

5. Assise against 3, there one said that J. N. was thereof seised in Fee, and was attainted of Treason, and the Lands seised into the King's Hand, and demanded judgment in Rege Inconsulto, and the Assise was taken, the King not Confulted, and therefore this was assigned for Error; and because another was found Tenant, therefore well, and no Error. Contra, If he who pleaded had been found Tenant; for where the Tenant found that the King granted to him for Life, the Reversion to the King, and prayed Aid of the King, he shall have it, for otherwise it is Error; because then if the Tenant had Fee-simple before, the King had by this gained the Reversion and the Fee Contra, where one pleads this who is not Tenant; note the Diversity. Per Galgocine and Huls. Br. Error, pl. 41. cites 8 H. 4. 14.

6. An Action on the Case was pending against a Bishop, for claiming the Plaintiff as his Vileain regardant to his Manor; and the Temporalties of the Bishopric coming into the King's Hands by Forfeiture, a Writ issued, commanding the Justices not to proceed any further Rege Inconsulto; Whereupon all the Justices assembled in the Exchequer Chamber, and after Consideration the Writ was held allowable. Mich. 2 K. 3. 15. b. pl. 35.

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S. C. Cited
Cro. E. 417; in Caefe of
Sde Leofse of Nevil v. Barrington. And 2d. in Caefe of Blo-
field v. Hur-
vey.—S. C. Cited Mo. 843, 844.—Jenk. 165. pl. 9. cites S. C.—So in Træfæs for Breaking Bi-
Gafe, and rαmping by Grefa, against one who claimed Common in a certain Wele Parcel of a Manor of the Temporalties of the Bishop of Lincoln, which came into the King's Hands pending the Suit, the Defendant shewed it, and had Aid of the King before his joint, as he should have where the King is Party. Sec. 2 R. 3; 13 pl. 54; cites 4 H. 6. (And the Margin there cites 4 H. 6. 11. but more if the same Point is there, and 10 b. pl. 4, and 11 b. pl. 7, are both upon the like Point as to Aid of the King, but quære if any Thing be laid there against the Rege Inconsulto.) But Cro E. 417; in the Caefe of Sde Leofse of Nevil v. Barrington, it was said by Coke Attorney General, and not denied, That when the Defendant will not pray in Aid, this Writ is in Nature thereof to inform the Court how it concerns the Queen, and to inhibit their Proceedings until Sec. — Rep. 16. 2. 8. P. in Anne Beding-
field's Caefe — And in Caefes where the Effect of the Party is to make that he cannot pray in Aid, as Inc-
cumbent, Bailiff, Copyholder, there Writ shallice to the Justices to furceafe Rege Inconsulto, or the Parties in their Plea may conclude, Judgement if they shall proceed Rege Inconsulto. Arg. Mo. 542. pl. 1158 in Caefe of Brownlow v. Cop and Michel, cites 4 H. 6. 8. 9 H. 6. 3. 53 Aff. 59. 19 H. 7. 10. and D. 258.

If the Defendant in a Personal Action pray in Aid of the King, and the Aid be granted, now the Judges ought not to proceed until Proceeden; in Lowela comes unto them, and then they may proceed and try the Issues joined; but yet they shall not give Judgment until a Writ comeseth to them to proceed to Judgment. P. N. B. 155. (E)

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Br. Proce-
dendo, pl. 1. cites S. C.
But per
Chevney J. after the

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7. Note, that the King certifies to the Justices of Assise, that the Lands are seised into his Hands, they ought to furceafe, notwithstanding that it be not alleged by either Party. And per Vampagne, if in the Assise the Party alleges that the Lands are seised into the Hands of the King, and it is found, and notwithstanding this the Justices proceed, and
and after they have Procedendo, and give Judgment, it is Error, because they Force not a Procedendo in Loquela; quod init Concilium per Cur. Br. Error, pl. 8. cites 9 H. 6. 41.

are in the King's Hands.—And the Principal Case was, That the first Justices in Afficæ had Procedendo in Loquela after Stafia of the King, and after the Paper was without Day by the Not coming of the Jusitices, and after General Re-attachment came, and the new Justices took the Afficæ, and adjourn'd it for Difficulty; and upon this a Habeas, certifying that the Tenementes were in the Hands of the King, commanding them that they do not proceed Roque Inclusa, and therefore by all the Justices, They cannot proceed without Procedendo at Judicium; but it is agreed there, that the taking of the Afficæ was good, notwithstanding they had not Procedendo in Loquela, because by the General Re-attachment nothing was revived but the first Original, and not the Sein of the King; and therefore they might proceed till they were certified by Writ, that the Tenementes were in the Hands of the King. Br. Procedendo, pl. 1. cites 9 H. 6. 40.—Jenk. 97. pl. 89. cites S. C.—F. N. B. 153. (1) in the new Notes there (b) cites S. C.

8. In Diseet the Defendant, who first recovered by Default, said that the Tenementes were feised into the Hands of the King after the Recovery, by Virtue of an Office, and demanded Judgment in Rege Incluso: and the Summoners were return'd warn'd, and appeared, and the Tenant then'd Writ, proving that the Lands were feised as above: And by same, The Hands of the Justices are closed, so that they cannot do any Thing, but yet at the last they were examined de bene off, viz. If Procedendo came then to be in Force, and otherwise to be void; and this for the Milkcl, because if the Summoners and Viewers die, then the Action is gone; and in Writ of Error by an Infant, upon a Fine levied within Age, if the Land is feised into the Hands of the King, yet they shall examine the Age, by Reason of the Milkcl. Per Littleton. Br. Diseet, pl. 6. cites 35 H. 6. 43.

9. In Diseet of Land, Parcel of a Manor, the Parties were at Issue, and the Jury ready at Bar, a Writ was delivered in Court to the Justices, directing the Attiree of the Duke of Norfolk, and Philip Earl of Arundel, for Treacon, and also an Office, finding that the said Duke being feised of the said Manor, made a Foetuality thereon to the Use of himself for Life, with several Remainders in Title, Remainder to his own right Hands, and receiving also another Office, finding that the said Earl at the Time of the Attiree, was feised of the Remainder to him and the Heirs Males of his Body at that Time, and that Ejection was brought, and Issue joined &c. commanding the Judges not to proceed Regina Inclusa.

It was invited, that the Court was not to delay the Trial, because this was only a Personal Action, wherein the Queen could receive no Prejudice, as it was admitted the Duke if it had been in a Real Action; and some of the Justices held, That there is no Difference in Reaon between a Real and a Personal Action; for if the Queen is feised in Fee upon an Attiree of Treacon, and makes a Leafe for Life, and a Formesdon brought against the Leafe, the Plaintif shall not proceed, because his Remedy is by Periton; but in such Case if the Plaintif should proceed to Trial against the Tenant for Life, and Evidence should be given to the Jury which concerns the Queen's Title, and a Verdict should be found against the Tenant for Life, this might be very prejudicial to the Queen in another Trial between her and the Party upon the same Title, and yet the Land shall not be recovered against the Queen in a Suit against the Tenant for Life; and the Reaon is the same in a Personal Action. And 250. pl. 889. Mich. 34 & 35 Eliz. Blofeld v. Haverstoke & Michel.—Geo. 417. Mich. 37 & 38 Eliz. B. R. Nevil v. Baringto.

S. C. Cited in Comp. of Nevil v. Barington, as in Caufe of the Name of Blofeld v. Earl of Kent.—S. C. Cited 21st. 160. And Law 2937. Co. OfC. holds in all Points where Ten- ant or De- fendent press not in Aid, but if a Writ De Domino Regina Inclusa is brought, and made a Cass on the Court, the Court ought to disallow the Writ, and to proceed in the Cause; and if the Cause appear to the Court to be just and lawful, (as in our Books it appears to be,) and not brought for Delay, then the Judges ought to incaicase &c;

10. In Ejfectum Issue was join'd, and the Jury ready to try it, and S. C. cited then a Writ came to the Justices, forbidding them to proceed Regina Inclusa, in Nature of Aid, and it was allowed after great Debate. Mo. 421. pl. 53. Mich. 37 & 38 Eliz. B. R. Nevil v. Baringto.

Rege Inconsulto.

In Action of Writ, after special Verdict for the Plaintiffs, the Queen by Writ, reciting that the being seized of the Land in the Declaration mentioned, by Letters Patent granted it to D. and his Heirs, rending Rent; and that A. brought Action of Writ against D. and supposed that he had committed Writ in the Land which he held for Title of A. of the Grant of the Queen, to the Dis芙蓉ion of the said A. commanded the Justices not to proceed Regina Inconsulto; Whereupon they by Agreement, after Argument by all of them, forsees'd to proceed. Cited And. 251, 282, pl. 259. in Case of Blofield v. Havers, as Hill. 38 Eliz. Arden v. Darcy.

(B) In what Cases it shall be granted; Without Writ.

If a Seize Fasias out of a Fine against a Prior, if the Tenant pleads the Release of the Ancestor of the Demandant to his Predecessor, to which the Demandant says that the Predecessor had nothing at the Time se. upon which they are at Plea, & at the Day that the Inquest comes, the King's Serjeant reads the Charter of H. I. by which he had given the Land to the Predecessor of the Prior and his Successors in Frankishmam Tea Libere Kent Corona illud Cumul, and demands Judgment if the King not consulted se. by the Inquest shall be taken, and if it be found for the Demandant, he shall recover. 7 R. 2. Mis of the King, 62. Adjudged.

1. In an Action by an Abbot against the Bailiffs of Southampton, for taking of Toll against the King's Charter to be free of Toll se. and the Bailiffs say that they are the Farmers of the King of the Bill of Southampton, and that they have been seized of the Toll of the said Abbot always since the said Charter of Exemption, upon which they are at Bill, & quia videtur eorum studiorum, quod &c. Teptionem prædictæ Inquisitionis ui Domino Regis Inconsulto pro eo quod idem Dominus Reo quasi Pars eorum Inquisitionis et videtur ei praedictæ Babylon nihil habente, nisi Dominus ipatus Dominus Regis in praedictæ Theolomos capienda procedere non durantur decrement Deem Paritius praedictis & cænwm Turatorius coram ipso Domino Rege & eis Consilio, such a Day se.

3. In an Action by the Bishop of Winton against Henry Hub, for Chafing in his Chafe, as Minister of the King against the experts Charter of the King, the Defendant claims to chafe there, as Incident by Custom to his Place, as Constable of a Castle of the King, and lays that he has used to chafe there since the said Charter, upon which they are at Bill, & quia videtur Curia quod Inquisitionis ui Domino Regis Inconsulto tam prædictæ Chasitatem ipso Dominum Regis parcerent quam necum per Inquisitionem Parties del ab modo judicare debet nisi tuis Dominus Reo, quam ratione Saltior pro-

Rege Inconsulto.

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predicta, quae ci ipsius Domni Regis, ad quam predictiis Deponente uti predictam Libertatem pertinere, Domini et Partibus quod se sequatur versus Dominum Regem quod predictum procedere ad predictum Inquisitionem capienda sit voluntatem illius in Legula predicta.

4. 18 E. 1. Liber Parliamentorum. 15. Dominus Reipublicae offeratur de Banco quod tunc Videat post Martem Di

5. When the Parties come in Chancery, if any Interest can be shown in the King, alio it be entered that it was only a Stayoff, yet a Pro
cedendo shall not be granted till the King's Title be discussed. P. N. B. 153. (F.) in the new Notes there (b.)

6. If 'Title appears for the King by Examination of the Estates, the Jullicies ought to forbear. Arg. No. 843. pl. 1135. in Causs of Brown
dow v. Cop, & Michel. — Cites 1 H. 7. 29.

(C) In what Cases it lies; Counterplea.

1. In Action, if the Tenant says that the King is Tenant of the
Land, and demands Judgment Reipublicae et. it is a
good Counterplea, that the King is not Tenant; for this Con
taince has settled the Inheritance in the King. 8 P. 4. 14. b.

2. But in Abuse against two, and he who is not Tenant pleads this
Plea, then this is a good Counterplea; for there his Con
tance can settle nothing in the King. 8 P. 4. 14. b.

3. If it appears to the Court that the King has sold the Land with
tout Title, the Reipublicae shall not be allowed. Co. 9.
Anne Baddingfield, 16. (Yet note that the Party is put to Striten by
such Eervice.)

4. In Abuse, if the Tenant sets forth a Patent of the Duchy Land of
Lancaster for Life, the Reversion to the King, yet the Abuse shall be
taken; (Fees to this Land be is but as a Common Preston) 11
P. 4. 85. b.

5. Brought Abuse of the Office of making Superfaced's which A. claim'd
by Patent of the King. A Writ reciting the Grant was sent to the Jus
tices not to proceed Reipublicae et. It was objected that the
Writ contain'd no Title to the King of the Thing in Demand, nor any
Prejudice which might happen, the Jullicies ought not to forbear; and
that the Writ is founded upon a void Patent, and therefore not to be al
defored; it. Because this is a New Office, as appears by the Words
Creamus, Erigimus, Constitutum, in the Patent, and which lays that
De Cetero it shall be an Office; 2dly. Because to this new Office is an
neced an ancient Thing, viz. the ancient Fees, and if this Office had
been granted without Fee it had been void, and the Suit should not be
if it y'd

S. C. Ar

gued. Mo.

842. pl.

1135. and

And, says,

the Parties

accorded,

and Michel

was sworn

above

into the Of

and the

king

granted a

Privy Seal

that he
Rege Inconsulto.

would never stay'd by such Writ; For the Party could have no Benefit, nor the make an- other Grant of any other Branches; or Members of Offices.

(D) Procedendo in Loqueli. What will be good Cause to deny it in Chancery.

If it appears of Record, as by the King's Writ &c. that the King has (Claims) Interest; and if it be after Verdict, the Justices shall not give Judgment; contrariwise, if it be only a Nuisance, or have Survivolt the Party, de hiro; but see 3 H. 6. 6. Aid not to be granted in Trifocy, without Prayer of the Party. F. N. B. 155. (F.) in the new Notes there (a.) cites 11 H. 4. 71.

If the Tenant has Aid in Nature of Voucher of the King, and in Chancery, upon pleading it appears that the Demandant has not any Right to recover, no Procedendo shall be granted; but a Writ shall be directed to the Bank, quod Superceded Omnino, and upon this it shall be awarded in Bank, that the Tenant shall go to Chancery, 38 C. 3. 14. b. of the King, by Reason of the Warranty, the Warranty shall be tried in the Chancery, and a Writ shall be sent into C. B. to take the King's; but if they plead in Chancery, and there it appears, that the Demandant has Right, the King shall not have a Writ to C. B. reciting the Matter, and commanding them to Supercede &c. because Judgment shall be there given. Right Warrants are made for Dir. F. N. B. 156. (F.) in the new Notes there (a.) cites 38 E. 3. 14. And per Thorpe there, The Right shall not be try'd in Chancery, but in Court where the King has the Record, and the Parson may. But does not, pray in Aid Sec. 38 E. 3. 19. and therefore if the King has a Release of the Annuity, and pleads it, is it shall not be brought into Chancery; for the Aid is granted only to maintain or support the Parson, which he pleads it. 19 H. 6. per Newton. See 13 H. 4. 5.

If it appears to Judges of * Record, that the Lands are filed into the King's Hands; or if it appear to the Court by pleading or showing of the Party, that the King hath Interest in the Land, or Shall Lie Rent or Service, there the Court ought to stay until they have from the King a Procedendo in Loqueli; and if the Procedendo be directed into any of the Judges to proceed, It is good, although it be not directed unto them all. F. N. B. 155 (F.)


4. If Aid be granted upon a Lease made by the King dated the 28th of June, and the Proceeding suppose the Lease to be that Date the 28th of June, this Writ does not give any Warrant to the Court to proceed. 26 C. 5. 32.

5. In Præcipue good redret the Tenant had Aid by Recession, now upon this the Grant shall be discussed in the Chancery, and when it is tried, and the
(E) Procedendo ad Judicium. What will be good Cause to deny it in Chancery.

1. If upon Aid granted by the King, a Procedendo in Loquela be granted, upon Aid of the King, or ed out of the Chancery, the Title after appears to the Court for the Damandant to recover persons shall not have Judgment before a Procedendo ad Judicium comes to the Court. 7 S. 2. N. B. 63. Judgment Rege Inconsulto &.

Upon Procedendo the Procedendo shall be in Loquela after the Cause of Aid examined, but no Procedendo ad Judicium, unless in Case of Decree only. For three after the Aid granted and examined the Procedendo shall be Ad Judicium; For the Cause the Decree shall be disposed in the Chancery before the Procedendo granted. Br. Procedendo, pl. 2. cites 46 E. 3. 15. --- 8 S. P. N. B. 153 (E) in the New Notes there a cites 46 E. 3. 29. And adds, that in all Cases but those of Decree where Aid of the King is granted, there is a Cause of Quist and not at judiciam Rege Inconsulto; And says, Note, that there ought to be in the Procedendo in Loquela an eject Date to proceed to Judgment, otherwise if the Writ only commands to do right Reason, Judgment shall be given, and cites 26 E. 3. 38. --- S. P. Br. Aid del Roy pl. 18. cites 46 E. 3. 19.

If any Man prays in Aid of the King in a real Action, and the Aid is granted, it shall be awarded, that he sue in the King in Chancery, and the Judges in C. B. shall pay until the Writ of Procedendo in Loquela comes to them, and then they may proceed in the Pleas, until it be come that they ought to give Judgment for the Plaintiff, and then the Judges ought not to proceed to Judgment until the Writ come to them to proceed to Judgment, which is called a Writ De Procedendo ad Judicium. F. N. B. 153. (E)

2. In Quare Impedit by the King, if the King commands by Writ not to proceed, and after the Writ tends to the Court, that the Defendant shall have the Effect of his Proclamation, the Defendant shall have Judgment to have Writ to the Bishop without other Authority to give Judgment; For this cannot be any Receiver to the King; For in every Judgment, where he is Party, his Right is fixed. 18 E. 3. 57 (Judged). 3. In Affairs, after the Procedendo in Loquela, an Issue be tried, that the Plaintiff, yet when the Chancellor of the Record comes into Chancery, if it appears that the Trial is not good, because the Venue was not well awarded, the Procedendo ad Judicium shall not be granted. 13 P. 4. 5. 4. A Procedendo ad Judicium was Quod ad Finalem Dispositionem procedendam, and thereon the Judges gave Judgment. F. N. B. 153 (E) in the New Notes there (a) cites 29 E. 3. 12. & 3 E. 3. 3.

5. In Aid Prayer they proceeded to Judgment in Seire Facies to report Letters Patents upon Procedendo in Loquela, and no Procedendo was ad Judicium. Br. Procedendo, pl. 3. cites 11 H. 4. 53.

Teunt said nothing, and it was said that the Plaintiff sued Procedendo ad Judicium, and had Judgment. Br. ibid.
Registring Acts.

(F) In what Cases the Justices may proceed Rege Inconsculo.

In Affife, if 1. In Affife, the Tenant said that the Escheator had seized the Land in the King’s Hands, judgment whether Rege Inconsculo; The Escheator shall be thereof examined, and if it be true, they shall file to the King, and the Escheator shall show Cause of the Seifure; For if the Escheator seizes without Cause, Affise lies against him, and in the Affise against him it shall be tried whether he had Cause or not, and if the Cause be true or not. Br. Affise pl. 257. cites 24 Aff. 7.

2. Where the King has any Interest they shall not proceed till the King be consulted, which was affirmed by several. Br. Aid del Roy, pl. 101. cites 1 H. 4. 10.

3. Reattachment, if the King certifies to the Justices of Affise, that the Tenements are seised into his Hands commanding them not to proceed Rege Inconsculo, they ought to surcease, notwithstanding that no Party alleged it; per Patron, quod sui conscientia. Br. Affise, pl. 3. cites 9 H. 6. 40.

For more of Rege Inconsculo in General, see Aid of the King, and other proper Titles.

(A) Registring Acts.

1. 2 Anne cap. Enactts, That a Memorial of all Deeds and Conveyances made after the 25th of Sept. 1704, and of all Wills &c. made in the Well-Riding of Yorkshire may be registred.

2. 3, 4, 5, 6. Registrar’s Office to be kept at Wakefield. Directs how the Registrar is to be elected, and when and what is to be done during Vacancy by Death.

7. Memorials of Wills to be under Hand and Seal of one of the Devisors, his Guardian or Trustee, attested by 2 Witnesses, one whereof shall prove on Oath the signing and sealing such Memorial, which Oaths the Registrar is empowered to administer.

8. Memorials shall contain the Day and Year of the Date, the Names, Additions and Abodes of the Parties and Witnesses, the Hereditaments, the Places where such Hereditaments lie, that are thereby conveyed, or devised; and the Deed, Conveyance, or Will shall be produced at the Time of Entering the Memorial; and the Registrar shall thereon endorse a Certificate of the Day, Hour, and Time of such Entry, and the Page where entered; and the Registrar or Deputy shall sign such Certificate, which shall be allowed as Evidence; The Page of Registrar Book, and the Memorials entered, shall be numbered.
Registring Acts.

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and the Time of the Day when registered, entered in the Margin of the Regifter and Memorial.

S. 9, 10, 11, 12, 13, 14, 15, 22. Relates to the Registrers &c. Oaths and Securities, Times of Attendance, Fees, and Penalties on Mishandling.

S. 16. This Act not to extend to Copyhold or Leasehold Estates, at Rent not exceeding 21 Years where the Act of Pleading goes with the Lease.

S. 17. Minor's, Lands &c. to be but once named in the Memorial &c. where there are more Writings than one for making the Conveyance &c.

S. 18. A Memorial of Deeds &c. made in London, or other Place 40 Miles distant, which concern any Lands in the West-Riding may be registered on Affidavit, and the Regifter to give Certificate thereupon.

S. 19. Punning Forging or Counterfeiting Memorials or Certificates, and Persuas forswearing themselves.

S. 20. Memorials of Wills entered in 6 Months after Death of Defensor dying in England &c. or in 3 Years after his dying beyond Sea to be valid.

S. 21. In Case a Deafele by some inevitable Difficulty without his wilful Nightly bed added to exhibit a Memorial within the Times before limited, then the Regifter thereof in 6 Months next after Appearance of the said Will or Robate thereof or Removal of the said Difficulty shall be sufficient Registry.

S. 23. This Act to be deemed a publick Act.

S. 2. Ann. cap. 18. S. 1, 2, 3. Entries that from 24th June 1707. All Bargains and Sales of Lands &c. in the West-Riding of Yorkshire, entered in Regifter's Office at Wakefield, shall be good in Law, as if entered at Wakefield. That the Inhabitants be in Petition, and shall be allowed in all Courts, and such Inhabitants be deemed entering a Memorial thereof.

S. 4. That no Judgment &c. (unless entered into the Name of, and on the King's proper Account) shall affect any Manners &c. in the West-Riding, but from the Time that a Memorial thereof be entered in Regifter's Office, that the Cause in Case of a Judgment the Names of Identifiers, and Names and Additions of Defendant's Sum recovered, and Time of Signing; and in Case of Statutes and Recognisances, the Date, the Names and Additions of Cognizors and Cognizants, Suits, and before whom acknowledged. The Party notifying the Entry shall have with the Regifter or Deputy, to be filed in the Office, a Memorial of such Judgment, Statute or Recognizance, signed by the proper Officer for such Judgment &c. or whose Office such Statute shall be involved respectively, together with an Affidavit sworn before a Judge at Wakefield, or Mayor of Chancery, that such Memorial was signed by such Officer, for which Memorial such Officer is to be paid 1 s. and no more.

S. 5. Regifter to enter such Memorials, and give a Certificate, if required.

S. 6. 7. 8. Relates to the Security given by the Regifter, his Fees, and Penalties on forging or counterfeiting Entries and Perjury.

S. 9. All Certificates by this or the former Act, required to be given in Case of Searches, shall be signed by Regifter or Deputy, in Presence of 2 Witness.

S. 10. On Certificate that Money due on Mortgages &c. is paid, Regifter to make an Entry thereof &c.

S. 11. Provided that if Judgment &c. be entered in 30 Days after the signing or Acknowledgment, all the Lands that such Defendant or Cognizant had at the Time of the Signing or Acknowledgment, shall be bound thereby.

S. 12. This Act to be read in a Publick Act.

S. 3. Ann. cap. 35. S. 1. Entries, That a Memorial of all Deeds and Conveyances, and of all Wills and Deafele, whereby any Manners, Lands &c. in the East-Riding of Yorkshire, or towns and Country of the Town of Hull may be affected, may be registered, may be registered, and that Deeds so registered shall be adjudged fraudulent and void.

S. 1. Effales the Method of registering such Memorials; and that the Regifter Office to be at Beverley.

S. 27. Mortgages, Judgments &c. wherein Memorials are entered, and afterwards Monies due thereupon be paid, Regifter may make an Entry in the Margin, that such Mortgages &c. is discharged.

S. 28. Proofs if Judgment &c. be registered within 30 Days after signing, all the Lands which Cogizor &c. had at the Time, shall be bound.

S. 26.
S. 30. In all Deeds of Bargain and Sale, to be sealed in Purvisance of this Act, whereby any Estate of Inheritance in Fee-Jump is limited to the Bargaine in his Heirs, the Words Grant, Bargain and Sell, shall be adjudged an express Covenant to the Bargaine, his Heirs and Assigns, from the Bargainer for himself, his Heirs, Executors, and Administrators, that the Bargainer was sealed of an indefeasible Estate in Fee free from Incumbrances, (Rents and Service due to the Lord of the Fee excepted) and for quiet Enjoyment against Bargainer, his Heirs and Assigns, unless limited by express Words contained in such Deed, and that the Bargaine, his Heirs, Executors, Administrators and Assigns, may in an Action assign Breaches, as if such Covenants were expressly inferred.

S. 31. Every Leaf of the Register-Books shall be signed by two Justices of the Riding, appointed at the General Quarter-Sessions, and an Entry thereof from Time to Time shall be made by the Clerk of the Peace in the Order-Book of the Sessions, and signed by the Justices that sign the Register-Books, and an Entry shall be made and signed as aforesaid, of the Number of the said Books, and how call'd or marked, and how many Pages each contains.

S. 33. This Act to be deemed a Publick Act.

S. 34. From 29th September 1708. all the Previsions, Classes &c. in this Act, and contained in the above recited Acts, to offete all Honours, Manors &c. within the West-Riding, as if the same were inserted in the said Acts.

4. 7 Ann. cap. 20. Another like Act made for the Publick Registering of Deeds, Conveyances, and Wills, and other Incumbrances which shall be made of, or that may offete any Honours, Manors, Lands, Tenements, or Hereditaments within the County of Middlesex, after the 29th September 1708. Provided not to extend to Copyhold or Leases &c. [as in the other Acts] or to any the Chambers in Sergeant's-Lan, the Ins of Court, or Ins of Chancrey, Judgments, Statute, or Recognition, other than such as shall be entered into the Name, and upon the proper Account of his Majesty, his Heirs and Successors, shall offete or bind any Honours &c. being in the said County, but only from the Time that a Memorial of such Judgments &c. shall be entered at the said Register's Office, as by the said Act is directed.

5. 8 Geo. 2. cap. 6. Another like Act was made for the Publick Registering of all Deeds, Conveyances, Wills, and other Incumbrances that shall be made of, or that may offete any Honours, Lands, Tenements or Hereditaments, within the North-Riding of the County of York, after the 29th Day of Sept. 1736.

Rehearing.

1. The Court would not hear a Caufe after Decree sign'd and in-rolled, notwithstanding the said Caufe had been opened since the Inrollment in Order to Rehearing, and discharged the Order for Rehearing. 2 Chan. Rep. 365. Colman v. War.

2. A Plaintiff in a Bill of Reviver omitted making the Wife a Party, who before was a Defendant with her Husband, and where the Husband claimed only in her Right; but because several Motions were afterwards made in her Name in the Suit, and a Composition was executed in her Name since the Decretal Order, and named her Defendant in the Tit of several Orders, and the Order was confirm'd; this Omission was held to be no
Relation.

Causa for a Rehearing, the Defendants having made her a Party by the Proceedings, and all having submitted to it, her Name must be used as a Defendant throughout the Cause. Chan. Rep. 252. 16 Car. 2. Peachy v. Vinter.

3. Rehearing granted on Suggestion, that special Matter, disclosed in the Replication, could not in within Time so as to be examined to and put in Issue, and that the now Defendant had discover'd till and strong Proof. But Finch C. took Notice how dangerous it would be, if after Publication pass'd, and People seeing where a Cause pinch'd, they should be let look out Witneffes to boulter up the faulty Parts of their Cause. Vern. 47. Patch. 1682. Jones v. Prelacy.

4. Upon the Plaintiff's petitioning to rehear, the Cause is open as to the whole and every Part of it, with Respect to the Defendant; while in Respect to the Plaintiff, it is only open as to those Parts of it comprised of in the Petition. Per Lord C. Cowper. Wms's Rep. 300. Mich. 1715. in the Case of Rawlins v. Powel.


5. No Proofs to be read at a Rehearing that were not read at the first Hearing. MSS. Tab. cites Feb. 23. 1706. or 1726. Williams v. Lane.

For more of Rehearing in General See Review, and other Proper Titles.

Relation.

(A) Relation.

1. If a Man dies possess'd of certain Goods, and after a Stranger For this a takes them and converts them to his own Use, and then Administration is granted to J. S. this Administration shall relate to the unlawful Act; but the Death of the Testator, so that J. S. may maintain an Action of trover and Conviction for this Convery before the Administration granted to him. Trin. 10 Car. 3. R. between Locksmith v. any and Crefwell abjured, this being moved in Areyt of Judgment, after Verdict for the Plaintiff. Instaurat. Ill. 9 Car. Rot. 729.

2. If a Man seized in Fee of Land, grants to the King in Fee by Deed, and after the King before the said Deed is inserted, regrants it to
Relation.

Brownl. 162. S. C. him in Fee by Letters Patents, and after the Deed of Grant made to the King, is inroll'd; this shall be relate by the Involuntary to the first Act, that it shall make the Grant of the King a good. Dacott's Reports, between Needler and the Bishop of Winchester. Cafe 293.

3. Lease for Life on Condition to have Fee when the Condition is performed; he has Fee from the Commencement of the Lease, as by one and the same Grant, and as one and the same Estate. 8 Rep. 77. Trin. 7 Jac. C. B. in Lord Stafford's Cafe.

A. made a Lease for Years of Land, to J. S. in Alien, upon Condition on Payment of 100 l. to A. during the Lease, then B. to have Fee. Afterwards the King made B. a Denizen, and after that B. paid the 100 l. This was all found by Office; Dyer cited it as paid by Prior in his Reading, that the King shall have Fee. But it is paid there (under Correction) that the Law seems to be otherwise; for the Condition being that on Payment he should have Fee, the Fee shall not vest all the Payment; for that the Condition shall have Relation to the Livery to avoid Incumbrances, yet to the vesting of the Fee it shall have Relation only to the Time of the Payment; for the Condition is, If he pay that then he shall have Fee, and he cannot have it before, and then when the Fee was vested in him he was Naturalis, and had Capacity as a Subject; so that the Time when the Condition was made is not so much to be reflected as the Time when the Fee vested; and when that vested, he was capable as a Subject. Pl. C. 482, b. 475. Mich. 17 & 18 Eliz. in Cafe of Nichols v. Nichols.

5. Inquisition upon an Outwary in Debt was taken in Berks, the Defendant came in as Tenant, and pleaded that he had obtained a Judgment against the Person outwaried in C. B. at Wellminster in the County of Middlesex, in a Plea of Debt for 600 l. and that afterwards in the same Court of C. B. at Wellminster in the County of Middlesex he proved an Estate to the Sheriff of the County aforesaid, and had a Moiety of the Lands in Berks found in the Inquisition delivered to him, and averns them to be the same; upon Demurrer amongst other Things, it was objected that these Words, Sheriff of the County aforesaid, must relate to the County of Middlesex, that being Proximum aucteeditum, and if E. the Sheriff of the County of Middlesex cannot deliver Lands in Extent in the County of Berks. But it was anwvered, That the Rule Ad proximum antecedens hat Relatio hath many Restritious, and does not always hold; but Relation shall be had secondum subiectum. Materiam, and so as to avoid Incorruptity and Aburdity. Judgment was given for the Defendant. Hard. Mich. 1756. The Attorney General v. Buckeridge.

6. In a Special Verdict in Ejectment, the Declaration was of several Messages in the several Parishes of St. Michael, St. James, St. Peter, and St. Paul, and that Part of the Premises lay in the Parish of St. Peter and St. Paul, but that there is no Parish called St. Peter nor none called the Parish of St. Paul. The Court held clearly, that the Copulative (Et) shall relate to that which is real, and has an Existence, Ut res magis valat, not to make St. Peter's one Parish, and St. Paul's another, but to make both one Parish, and the Words (Several Parishes) are supplied by the other Parishes before mentioned; so that if there is any such Parish as St. Peter and St. Paul, it shall relate to that. Hard. 336. Mich. 15 Car. 2. in the Exchequer, Inleton v. Wakeman.

(B) Rela-
Relation.

(B) Relation. Shall not Defeat Mefne Lawful Ats.

If a Mefne Ancestor, to whom a Right descends, makes a Re-lease and dies, The Heir, tho' in Action Ancestral he shall claim of the Possession, and as Her to the Ancestor Paramount the Re-lease, yet the Release shall bind; for he ought to make the De-fection by the Mefne Ancestor. 7. P. 4. 19. b.

2. Office found after the Heir of the Tenant of the King had suffered a Recovery by Title, or made a Feoffment, shall not defeat the Recovery, nor the Feoffment, nor the Seisin of the Baron to give the Feoffed Estate; and to the Office found, Note that it has not Relation to defeat Mefne AIts, but only to give those the King the Profits. Br. Relation, pl. 18. cites 1 H. 7. 17 & 4 H. 7. 1.

found, shall not be avoided by the Office which comes after. Ibid.

3. Where Judgment or Recovery affirms the first Possession, this shall not avoid Mefne AIts, as Recovery in Suit or Cessavit, this shall not avoid a Charge granted before; for those affirm the first Possession; Control of Reversal by Error, Advozvson, or Writ of Disceit, Those disaffirm the first Possession, therefore those shall not avoid Mefne AIts. Br. Dette, pl. 139. cites 4 H. 7. 13.

4. A. by Parol, gave a Manor (to which an Advozvson was expedant) with the Appartenances to B. and made Livery on Parcel of the Land, before Atttomn the Grantor granted the Advozvson to another, and then the Attornment is bad to the Grant of the Manor &c. All the Justices held, That the Attornment shall have Relation to make good the first Grant. And. 256. Trin. 30 Eliz. Rot. 2024. Long v. Heming.


5. Office found of Idecy shall have Relation to the Birth of the S. P. 8 Rep. Idecy, to avoid all Mefne AIts done by the Intant, as Possessions, Re. 170.


6. A. acknowledged a Statute to B. the 22d of January, and afterwards confessed a Judgment to C. the 22d of January next ensuing. And it was resolved that the Judgment by Relation will defeat the Statue; For Judgment has Relation to the Liloit Day, and that is the 20th of January. Het. 72. Mich. 3 Car. C. B. Stamford v. Cooper.

(C) Notes; And Construction.


2. The Relation of AIts of Parliament is Violent. If a Bargain and Sale be, the Inrolment after will make AIts before good; but a Relation by Common Law will not make an AIt good, which was before void. Arg. Godb. 376. in Brooker's Cafe. —Cites 3 H. 7. St. Leger's Cafe. Petition 18.

3. In
Relation.

3. In Cases of Relation, they many Times shall have Relation to make or defect a Thing to some Resolve, and to other [Resolves] the same Thing shall not relate, and shall be taken always as Resiion allows. Arg. And. 352. Mich. 29 & 30 Eliz. in Cafe of Butler v. Baker.


6. As Relations shall extend only to the same Thing, and to one and the same Intent; so they shall extend only between the same Parties, and never shall be strain’d to the Prejudice of a 3d Person, who is not Party or Privy to the said Act. 3 Rep. 29. a. in Cafe of Baker v. Butler.

7. Where to the Perfection or Consummation of a Thing. 2 Accidents are requisite, and the one happens in the Time of one, and the other in the Time of another, in such Case neither the one nor the other shall take Benefit of this; because both did not fall in the Time of any one of them, and both are requisite to the Consummation of the Thing. As if the Lord and Tenant, be by certain Rent, and the Tenant ceases for one Year, and then the Lord grants away his Seigniory, and then the Tenant ceases for another Year, in this Case neither of them shall take Benefit of this Cefer. 2 Rep. 92. b. 93. a. Trin. 43 Eliz. in Bingham’s Cafe.

8. Where the Commencement, Progression, and Consummation of a Thing, are necessary to go together, there all of them are to be respected. Per Fleming Ch. J. 3 Bull. 11. Hill. 12 Jac. in Cafe of the King and Waller v. Hanger.
Relation.

(D) Of what Things in General. And to what Time.

1. A Man tender'd to be Attorney for the Defendant at the Nisi Prius, and the Justices received him Conditionally, fell, if the Defendant would attest to it, and after the Defendant attested to it, this shall have Relation to the Nisi Prius before, quod non bene. Matter of Record accepted upon Condition, and this in a Precipe quod reddat. Br. Relation, pl. 26. cites 7 H. 4. 3 & 8 H. 4. 3. accordingly.

2. A Man is arrested in London, and after Writ is returned against him returnable in C. B. the Title of which Writ is before the Plait in London, and the Return is after; and therefore this shall have Relation to the Title, and to the Defendant shall have Privilege of C. B. Br. Relation, pl. 28. cites 9 H. 6. 54.

3. Patent of the King, Pardon &c. which are Matters of Record, shall have Relation to the Date or Time, and Matters in Fact, as Relates, Obligation &c. to the Deliver of it. Br. Relation, pl. 13. cites 37 H. 6. 21.

4. If the Man be bound for the Tenants of D. it shall be intended the Tenants which D. had at the Time of the Obligation made. Br. Relation, pl. 39. cites 39 H. 6. 6.

5. Where the Title of the Writ of Appeal of Death is within the Year, and the Return and the Deed of the King is after the Year, there by Relation the Year shall be vailed by Relation to the Original. Br. Relation, pl. 24. cites 13 T. 4. 13.

6. Remainder to the right Heirs of W. N. who is alive, and after dies, shall then pass a Principio. Br. Relation, pl. 22. cites 1 H. 7. 31.

7. In Action a Verdict was for the Plaintiffs; a Motion in Arrears of Judgment was made 4 Days after, and it being a special Matter of Law, the Court took Time to adjudge, and in the mean Time one of the Plaintiff's deist. It was objected that the Favour of the Court shall not prejudice the Party; for after the first 4 Days the Judgment ought to have been given presently; and in this Case the Judgment shall have Relation to the Time when it ought to have been given, at which Time that Plaintiff was alive; and said that it was lately to adjudge in Druck James's, who died the Day after the Verdict, and yet Judgment was not laid. 1 E. 17. pl. 264. Trin. 31 Eliz. B. R. Hiley's Cafe.


9. Grant of Trees then growing shall not refer to the Date, but to the Delivery of the Grant: So Covenant to pay for Corn then laden, if there are 10 Months between the Date and the Delivery. Per Fleming. Cro. J. 264. Mich. 8 Jac. B. R. in Cafe of Offley v. Hicks.


It's Cafe. — 10 Rep. 49. Lamer's Cafe. — 10. 428. per 2 Jull. in Cafe of Harper v. Burgess of Derby. — But where a Premomies are necessary for the Perfection of a Thing, it is not there of any Validity until the last be effectuated, and that it shall not relate &c. for then it should be to the Preminence of a third Person. Cro. J. 451. Arg. cites the last Cafe put in Butler and Baker's Cafe. 1 Rep. 55 36. 5.
Relation.

(E) Acts subsequent relate to precedent. In what Cases.

WHERE a Man delivers an Obligation to be as an Escrow to deliver to the Obligee as his Deed, after certain Condition performed, there upon the Delivery after the Condition performed, it shall have Relation to the first Delivery to be his Deed; so that if the Obligor in the mean Time, between the first Delivery and the second Delivery dies, yet it shall bind him by Reason of the Relation. Br. Non eft Pactum, pl. 5. cites 27 H. 6. 7. Per Danby.

1. A Relation, pl. 1. cites S. C. But if an Escrow deliver an Escrow to deliver as his Deed, after certain Conditions performed, and the Conditions are performed at his full Age, and then the Bailee delivers it as a Deed, it shall bind the Feme. Br. Non eft Pactum, pl. 5. cites 27 H. 6. 7. Per Danby.

2. And if a Feme Sole make such a Delivery as an Escrow &c. and after takes Baron, and then the Condition is performed, and the Bailee delivers it as a Deed, it shall bind the Feme. Br. Non eft Pactum, pl. 5. cites 27 H. 6. 7. Per Danby.

3. A Man devise his Land to be sold by his Executors, and died, the Heir entered, and justices do clear the Land, and then the Executors sold; the Vendee shall hold discharged; for the Sale in this Respect shall have Relation to the Death of the Testator, but not as to the taking of the M rehe Profits; quod nota Diversity, by the Opinion of Bradnel in Replevin. Br. Relation, pl. 39. cites 14 H. 3. 10.

4. Every Escrow has in Judgment of the Law Relation and Respect to the Judgment, as appears in 1 Rep. 94. b. Shelly’s Case. 7 Rep. 38. in Lillington’s Case.


7. When the Writ of Liberate is sued, it has Relation to the Writ of Extent, and they are Quasi but one Extent, and the Goods are bound by the Extent and Appraisement, that the Conouer has no more Property in them but Seundum quid, and not Simpliciter, that is if the Conouer refuse to accept them; For it is a Conditional Writ to deliver them to the Conouer if he will accept them, and when he accepts them, they are bound Ab Initio. Cro. C. 150. Hill. 4 Car. in the Case of Audley v. Halfey.

8. Where there are Diverse Acts concurrent to make a Conveyance, Estate, or other Thing, the Original Act shall be preferred, and to this the other Acts shall have Relation. Per Barkley and Jones Jo. 428. Hill. 14 Car. B. R. in the Case of Harper v. the Baillifs of Derby.

9. Bail taken at different Times, the first is De bene ellis, and no compleat Bail till the last is taken, and so shall not relate to the Time of the first Recogn.
(F) Estates Subsequent relate to Precedent.

1. In Entry in Nature of Affidavit, it was agreed that a Man may plead Recovery in Bar and the Estate of the Plaintiff Mesne &c. and well; For this is founded upon Title, and therefore shall have Relation before; But it is no Plea to plead a Fine in Bar and the Estate of the Plaintiff Mesne between the Confluence of it and the Execution; For it shall not have Relation before the Execution; Quod nota Diversity. Br. Relation pl. 27. cites 21 H. 6. 17. — And there 8 E. 3. is vouched to be so ruled. Ibid.

2. Entry for Condition broken makes a Man, by Relation, in as of his first Estate to, as if the Potestasion had been never out him. Arg. 2 Roll. Rep. 469. Mich. 22 Jac. in Case of Nicholas v. Simmonds.

3. Where an Estate is executed by Virtue of a Power, the Estate shall rise from the Original Creator of the Estate, and shall be as preceding. Per Bridgman Ch. J. Cart. 111. Mich. 18 Car. 2. C. B. in the Earl of Bath's Case.

(Finer or Feoffment to Usfes, when once raised or veiled, it relates to the Fine or Feoffment, as if immediately limited thereupon; Arg. Show. 507. cites 1 Rep. 155. 156.

4. If the Husband discontinues the Wife's Estate, and then the Discontinuance conveys back the Estate to the Wife 'in the Abundance of the Husband, who lo Icon as he knows of it disagrees to it, this shall not take away the Remain over which the Law wrought upon her first taking the Estate from the Discontinuance; Because he is in of a Title paramount to the Conveyance, to which the Disagreement relates. Arg. Show 307. * cites Init. 336. Jo. 78. and says the same Rule holds for Agreement, and of that Opinion was the whole Court of Common Pleas.

(G) Torts Subsequent. Relation.

1. WASTE was brought of Waste done Mesne between the Fine and If a Recovery of the Attornement, and by the Opinion of the Court it does not lie; For the Attornement shall not have Relation to the levying the Fine. Br. Relation, pl. 5. cites 48 E. 3. 15.

Between a Grant and Attornement Lessor commits Waste, tho' the Attornement relucts to make the Grant good Ab Initio, yet the Relation being a Fiction in Law will not make the Lessor punishable for Waste. Arg. Godb. 328. cites 18 H. 6. 25.

2. Lessor for Years sells Trees for Repairs, and afterwards sells them; it is Waste, not for the selling them only, but for the Felling; For by this Act done it is plain from the Beginning, to be unlawful; For the Sale is only a Declaration of his ill Intent to benefit himself by selling the Trees to the Injury of the Leissee. Godb. 28. pl. 37. 27 Eliz. C. B. Anon.

(H) Made good by it; What is.

1. If a Man makes a Lease for Life by Deed, the Remainder to the King, and makes Livery and Seisin, the Remainder does not pass immediately; but if the Deed is afterwards enrolled, then the Remainder shall be in the King from the Time of the first Livery. Pl. C. 31. b. in the Case of Colthirt and Beulah Patch. 4 E. 6. per Hales J. cites 1 H. 7. 19. according to the old Books, but in the New Books it is Trim. 1 H. 7. 31. per Brian.

2. Relations in several Cases shall aid Acts in Law, as in Case of S. C. — 1 Dower &c. but not Acts of Parties, viz. to make void Acts of the Parties good by Relation or Fiction of Law. 3 Rep. 29. Butler v. Baker. Mervell's Cafe — And therefore if a Man enfeoffs an Infant on Feme-Covert, and afterwards gives, or grants, or devises the Land, or any thing out of the Land to another, and after the Infant or Baron dies, this without doubt shall have Relation between the Parties Ab Initio, to this Intent, viz. that the Infant or Baron shall not be charged in Damages, or receive any Prejudice; But shall never make a valid Grant or Deed of the Party good. 3 Rep. 29. a. in Case of Butler v Baker — Not to defeat collusive Acts, which are lawful, especially if they concern Strangers. 13 Rep. 21.

3. If after the Death of the Husband the Wife marries a Jointant made after Marriage; This puts the Inheritance entirely in the Husband, and in his Heir in Relation to divers Respects, yet as to other Respects he shall not be paid in them with such Relation. Poph. 92. Butler v. Baker.


5. A. and B. be Jointants. A. enfeoffs J. S. and makes Livery within Five, and directs him to enter, and then marries J. S. before Execution; J. S. enters after Marriage; Resolved that this Livery is well executed after Marriage, and the Entry hath a strong Respect to the Livery, and shall be pleaded as a Feoffment when the was Sole. Vent. 186. Hill. 23 & 24 Car. 2 B. R. Parsons v. Peters.

(1) Defeated by Relation. What Estates or Things.

1. Where the Inheritance of the Crown with all Prebendaries and Prerogatives were given to King H. 7. yet this did not extend to revive Liberties and Franchise of other Monarchs; By all the Justices. Br. Relation, pl. 19. cites 1 H. 7. 13.

2. In Quare Impediment, where the King is intituled to the Advowson by Office by Death of his Tenant, the Heir being within Age and in Ward of the King by Tenure in Capite, this Office shall have Relation to the Death of the Tenant of the King; if that there be a Male Prezrent, the King shall avoid it by Relation. Br. Relation, pl. 11. cites 14 H. 7. 22.
Relation.

3. If A. covenants to levy a Fine Oil. Par. Beatrice Maria 1 Car. and the Covenantor acknowledges a Statute February the 4th. in the same Year, and the Fine is levy'd according to the Covenant, the Conulide shall avoid the said Statute by Relation to the Effjon Day, which was prior to the 4th of February. Jenk. 250. pl. 40.

4. Relation shall not defeat Collateral Things executed. Per Coke Ch. J. S. C. cited Arg. Lant. 3r, by the Name of Wingate v. Hall.

5. Tenant for Life, Remainder to his 18 Son in Tail, Remainder to The Reversal in the Honour of Sir Simon L. in Fee. Tenant for Life (before the Birth of any Son) and afterwards executed a Deed of Surrender of all his Estate and Title, to Sir Simon L. and delivered this Deed to T. S. to the Use of Sir Simon; and all this was done without the Knowledge of Sir Simon.— Afterwards a Son was born, and after that Sir Simon L. hearing of the Surrender, affidited it to pay. See Sale Park. 152.

No Relation to a precedent Act can work to strong as to defeat an Estate created, which was created by Conveyance Antecedent to the Deced, to which the Relation must be. Arg. admitted Show. 298. in the Case of Leach v. Thompson.

7. Husband and Wife made a Feoffment of the Lands of the Wife, and were after divorced; it was a Discontinuance; for between themselves Relation made a Nullity, but never as to a third Person. 12 Mod. 293. Patch. 11 W. 3. B. R. Ter Holt Ch. J. in the Case of Cage v. Acton.

(K) Favour'd in what Cases; and bound by it. Who. See Laitant, (A) pl. 4. Trefpass(K)

1. A Confiable took a Man who struck another, and after suffered him to go, and after the Party struck dead of the Blows. This Escape is not felony, and yet it shall have Relation to the Striking, in respect of him who struck; Ex prima Cauta Oritur omnis Aetio; but shall not have such Relation to respect of the Confiable who sufiered the Escape. Br. Rec. pl. 7. cites II H. 4. 12.

2. When an erroneous Judgment is reversed by Writ of Error, As to the Doer if any Mists Profits the same shall have Relation, by Construction of Law, to the Time of the first Judgment given; and that is to favour Justice and advance the Right of him that had Wrong by the erroneous Judgment. 13 Rep. 21. in Menville's Cafe.
Release.

The King shall not be in the Cafe of the King v. Baker. 

by Relation; As in the Cafe of Money of an Outlaw paid into the Exchequer when the Outlaw is reversioned; Now by Relation the Money was the Property of the Party all the Time, but such Relation does not over-reach the Purchaser of the King. Per Holt. 5 T. 9. E. 4. B. R. in the Banker's Cafe.

If a Gift is made to the King by Deed inroll'd, and before Inrollment he grants away the Land, the Grant is void; yet the Inrollment by Relation makes the Lands to pass to the King from the Beginning. Arg. Godb. 77. 6. cites 5 Rep. Butler v. Baker.

For more of Relation in General, See Deed, Execution, Fruits, Fines (a. n.) Forfeitures, Grants, Judgments, Release, Statutes, and other Proper Titles.

Release.

(A) By Enlargement. Of what Things it may be.

In Affile of Rent the Tenant feised, That his Feas ed thereby, and granted it to W. N. who granted it to the Plaintiff; and after W. N. died without Issue. Judgment a. c. The Plaintiff said, That at the Grant made to Tail the Grantor released all his Rights to the Tenant in Tail, and to his Heirs, and so he had Fee; and pray'd the Affile. Ex Adjournatur. Br. Affile, pl. 5: 10. cites 44 Aff. 1.

A Man feised of Rent granted it to J. S. in Tail, and after the Grantee released to the Grantee and his Heirs, (for it was ancient Rent) by which the Grantor had Tail in Possession, and Fee in Reversion, and the Grantee granted between Statutes found in the Rent to W. N. and his Heirs, and died, the Grant is determined; For his Estate is that which he had in Possession, which is only Tail; Quere. Br. Grants, pl. 59. cites 43 Aff. 8.

(B) Releases by Way of Enlargement. To follow.

1. If one gives to 2, and to the Heirs of the Body of the one, the Donor may enlarge their Estates by a Release to them. 45 Aff. 7. admitted.

2. If there be Lesse for Life, the Remainder for Life, the Remainder in Fee, he in Remainder in Fee may enlarge the Estate of the Lesse by Release. 44 Aff. 35. Per Finch. Admitted.

3. If
Release.

3. If there be Lease for Life, the Remainder in Tail, the Remainder in Fee, he, in Remainder in Fee may enlarge the Estate of the Lessee by Release, notwithstanding the Whole Estate. 44 Ed. 35. Per

4. If Lessee for Life, Reversion for Life are, Reversioner in Fee may release to the Reversion for Life. 43 Ed. 3. 16.

5. If Lessee for Life, the Remainder for Life are, the Reversion in Fee may release to the Remainder for Life. 43 Ed. 3. 16.

If a Man leaves for Life, the Remainder over for Life, and after he releases all his Right to him in Remainder, and his Heirs, he has gained the Fee by this Release. Per Perley and Finch quoit non negatur; but per Finch, he shall not have Action of Waste against the Tenant for Life without Attornment; querite inde, contra per Perley. Br. Releases, pl. 76. cited 45 E. 3. 16.

6. If Lessee for Life, the Remainder in Tail are, the Donor may release by Attornment to the Lessee. 9 H. 6. 54. It seems the Book intends so there.

7. If Lessee for Life, the Remainder in Tail, the Remainder in Fee 2 Bont., to the Tenant for Life, are. The Tenant for Life by his Release to 34. Leases, the Remainder may transfer his Tenant for Life to him in Remainder in Tail, but not his Estate for Life. P. 3a. B. between Francis and Pack, per Curiam.


8. If Tenant in Dower grants over her Estate, he in Reversion may enlarge the Estate of the Grantee by Release. (See note that intestating the Grant over, the Parity continues between Reversioner and Tenant in Dower, for Waste he against her.) 11 H. 4. 9. 11. admitted. 18 Ed. 3. 40. 18 All. 56. adjudged.

9. If Lessee for Life or Years grants over his Estate, Lessee may enlarge the Estate of the Grantee by Release in Fee, or for his own 4 Life. 18 Ed. 3. 40. Adjudged. 21 All. 21. adjudged.

Lease for Years, and 4. relates to the Lessee for Years, and his Heirs; this void, because here is not the Context of the Tenant for Life, who is immediate Tenant to the Reversioner, and ought to appear; and therefore this Estate ought to pass by Grant and Atornment. G. Treat. of Ten. 65. — S. P. Co. Lit. 272. b. 222 a.

So it is a Man leases for 20 Years, and the Lessee affirms for 10 Years. G. Treat of Ten. 65. — S. P. Co. Lit. 272 a. That a Release to the second Lessee and his Heirs, is void, because there is no Parity. But in such Case, a Release to the first Lessee s good, for he had an actual Possession, and the Possession of the Lessee is his Possession. Co. Lit. 272 a. — S. P. Per Tyrrell. J. Cas. 69. — In Clarke v. Beacroft, cites Lit. 560. 10. But if Dower in Tail makes a Lease for his own Life, and the Dower relates to the Lessee and his Heirs, this Release is void to enlarge the Estate, because there is no Parity. Co. Lit. 272 a. * Orig. is No) but it seems to be misprinted.

Lease for Years cannot make a Lease for Years, within the Sense of Use, and by this Method to possess to make him capable of a Release of the Reversion. Per Powell J. Lutw. 570. Hill. 9 W. 5 in Case of Chaloner v. Davis.

10. So he may by Confirmation. 17 Ed. 3. 31. b. 31 All. 13. ab.
mitten.

11. If Baron and Feme are Leases pur auter Vic, Lessee may enlarge their Estate by Release for their own Lives. 15 Ed. 3. 40. Adjudged. 18 All. 56.

12. If a Man has Execution of Land upon an Easement, it seems that he can be in Reversion, for whose Debt it was created, cannot enlarge his Estate by a Confirmation to him to have for Life. 15 Ed. 3. 21.
Release.

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14. If a Man dies Execution upon an Eject of my Land, and after I who have the Reversion in Fee confirm to him his Estate, he may after enlarge his Estate by Release to have in Fee, for the Confirmation has created a Privy between them. 31. 14. admitted.

By whom.

15. If the Father leaves for Life, and dies, the Heir to whom the Reversion descends may enlarge the Estate by Release. 18. 3. 49. by Admittance. 43. 14. 8. admitted.

16. If Lefsee for Life he and afterwards the Reversion is granted by to Fine Baron and Feme, and to the Heirs of their Bodies, the Remainder in Fee to the Baron, and the Baron and Feme by Fine release all their Right to the Lesse, and after the Issue be; this is a good Enlargement of the Estate of the Lessor, and this shall bar the collateral heirs of the Baron. 30. 3. 4. b.

17. If Lefsee for Life be the Remainder in Fee, he in Remainder may enlarge the Estate of the Lessor by a Release. 44. 17. Admitted.

18. If a Man enters into Land of his own Wrong, and take the Profits, he is a Diligitor, and a Release to him is good; or if the Owner con- fered thereunto, then he is Tenant at Will, and that Way also the Release is good; but there is a Diversity when one comes to a particular Estate in Land by the Act of the Party, and taken by Act in Law; for if the Guardian holds over, he is an Abator, because his Interest came by Act in Law. Co. Lit. 271.

19. If a Man makes a Lease for Years, Remainder for Life, a Release by the Lessor to the Lesse for Years, and to his Heirs, is good; because he has both a Privy and an Estate, and the Release to him in the Remainder for Life and his Heirs, is good also. Co. Lit. 273. a.

S. P. That it is good to the Tenant for Years, because the Tenant for Years holds of the Reversee and pays him the Services, and ought to attend to his Grants, and not he in Remainder for Life; and therefore where Tenant for Years accepts a Release of the Reversee, it must in Consequence be good; and in that Case, a Release to the Remainder for Life is good, because the Lessor, in the Original Inheritance, took the Estate for Years, subjected to such Remainder for Life, and therefore there needs no Consent from the Lessor for Years, to enlarge the Estate into a Fee. But a Man must not only have an immediate Relation, but he must have the necessary Possession of the Estate, as Tenant for Life has by the Feudal Contract; for if he has not the Possession, but has assigned it over to another, there can be no such notorious Possession upon which a Release should ensue; for it would destroy the solemnity of Contracting, if the Release should put the Estate, and charge the Tenant, when the Party was not really in Possession. G. Treat. of Ten. 65, 66.

He is liable to an Action of Waif, Attornment &c. and yet a Release to him and &c. Because his Heirs cannot enure to enlarge his Estate, who hath no Estate at all. Co. Lit. 273. a.

20. If a Tenant by the County grants over the Estate, yet he is Tenant to an Action of Waif, Attornment &c. and yet a Release to him and &c. Because his Heirs cannot enure to enlarge his Estate, who hath no Estate at all. Co. Lit. 273. a.

created mere- by the Later, yet he is not capable of a Release, because he has no Notorious Possession in Possess, which may be enlarged into a Fee. G. Treat. of Ten. 66.

21. If
Release.

21. If I grant the Reversion of my Tenant for Life to another for Life, and after Release to the Grantee and his Heirs, he has Fee-Simple. Co. Litt. 273. a.

22. Release cannot be made to Leesee of a future Term, so as to increase the Estate, yet he is capable of a Release of the Rent, because of the Privity between them. Arg. Show. 381. cites 1 Hinit. 46.

23. A Lease was made 3 H. 8. to A. B. and C. at Will; afterwards A. released, B. and C. took a new Eftate by Indenture to them and their Heirs in Ann. 4. H. 8. but no Warrant of Attorney to make Leivery could be proved. If the Indenture recited the former Lease, [as] by Indenture made 3 H. 8. and the Death of A. and that B. and C. had surrendered the Indenture, and that it is now cancelled; The Court was of Opinion that the former Estate at Will being determined, the second Indenture could not enure as a Confirmation to issue or enlarge a Fee-Simple to the Leesees, as it might make the Estate at Will and not been determined. D. 299. b. pl. 20. Hill 10 Eliz. Anon. and says that the Opinion of a Grant made by the Lessor to the Leesee at Will for Term of Life, was held, 14 Eliz. as a good Confirmation to enhance the Estate without Leivery. Ibid.

24. A. leased to B. for Years; Afterwards A. before Entry by B. released to B. all his Right; this Release is void, because the Leesee had not Possession of the Land at the Time of the Release made, but only a Right to have it by Virtue of the Lease. 5 Rep. 124. b. Patfch. 3 Jac. C. B. in Stynyn's Case.

has Possession by Force of the Lease, then such Release by the Tenant, or by his Heir, is Sufficient, as Possession of the Leesee by the Leesee between him &c. —— Pl. Ca. 453. a. cites A. B.

25. If an Advowson be granted for Years, the Patronage for Years is in the Grantee, and he may accept a Release in Fee of the Patron in Fee; per Jones J. Jo. 19. Hill. 20 Jac. C. B. in Case of Standen v. The University of Oxford & Whiston. Favored, nor can such Grantee accept of a Release in Fee of the Patron in Fee; per Jones J. Jo. 19. Ibid.

26. If an Infant makes a Lease for Life, and the Leesee assigns it over to S. P. Co. to another with Warranty, the Infant at Full Age brings a Damnum infirme against the Assignor, and he comes the Assignor, who enters into the Warranty; the Demandant cannot Release in Fee so as to enlarge the Estate, because the Vouchee has no Possession. G. Treat. of Ten. 66, 67.

(B. 2.) To whom; By Enlargement; by cohort Words.

I. LORD and Tenant were by Fealty, and 10s. Rent, the Lord released to the Tenant all his Right in the Land, facing to the Lord the Rent; and by the Opinion of all the Justices, this shall be a Rent-Service, as it was before the Release, and he shall have Fealty and then the Release is void, notwithstanding that the Deed of a Man shall be taken more strongly against himself; And if he see that the Saving is Repugnant to all the Deed, and yet the Deed shall not serve. Br. Release, p. 55. cites 12 E. 4. 11.

2. A Release by the Leesee to the Leesee for Years, without other Words, gives the Leesee for Years an Estate for Life. Jenk. 299. pl. 18.

3. If a Release be made to Tenant by Statute Staple or Merchant, or S. C. cites Right, by him in the Reversion of all his Right in the Land, by this a by Ven-. 4 G
Release.

Freehold passes for the Life of him to whom the Release is made; for that is the greatest Estate that can pass, without apt Words of Inheritance. Co. Litt. 273. b.

4. To a Release that enures by Way of Enlargement of the Estate, there is not only required Privity, and an Estate also, but sufficient Words in Law to raise or create a new Estate. Co. Litt. 273. b.

5. If Tenant for Lease grants in Fee, and the Recoverer in Fee releases to the Grantor, but does not say for him and his Heirs, this Release gives only an Estate for Life. And if Tenant for Life dies, and the Recoverer dies, and the Grantee levies a Fine, this is a Forfeiture to him that is next in Reversion. Jo. 328. Mich. 9 Car. B. R. Dikes v. Ricks.

6. As in Feoffments there was required the Word Heirs to distinguish the Feud from such as were not Hereditary; so it must be inferred in Releases that only come in Place of the Feoffment, in Cases where the Feoffment was transfer'd before. G. Treat. of Ten. 67.

(B. 3) At what Time. Before Entry, or out of Possession.

1. If A. makes a Lease for 100 Years to B. and B. makes a Lease for 50 Years to C. and after A. releases to B. in Fee; this Release is good, and yet B. has not any actual Possession. Co. R. on Fines 6. cites 12 E. 4. 6.

2. But in the same Case a Release made to C. is void; for tho' he has Possession, yet he hath no Privity, and yet a Lease made by A. to B. by Fine made to the Tenant in Statute Staple, or Merchant, or by Light, is good; and yet there is no Privity. Co. R. on Fines 6. cites 25 E. 3.

3. If A. makes a Lease for Years to B. and before B. enters, A. by Fine releases to B. and to his Heirs, now this is a void Release; for A. against his own Fine might say that B. had not entered into the Land before the Fine levied; and yet 31 All. 24. it is adjudged Contra in such a Case; but other Books are to the contrary. Co. R. on Fines 6. cites 16 H. 7. 5. 50 E. 3. 37. 3 H. 6. 23. 46 E. 3. 13. 15 H. 7. 14. 47 E. 3. 27. &c. accordingly.

4. If a Man leaves Land for Term of Years, and releases to the Former all his Right before the Lease expires; this Release is void, notwithstanding the Privity, because he wants Possession. Br. Releases, pl. 92. cites Lib. Littleton, Tit. Releases.

5. But if he had entered before the Release, this had been a good Estate for Life: Note the Diversity. Br. Releases, pl. 92. cites Lib. Littleton, Tit. Releases.

Where the Words of a Lease were Demise.

Grant, and to Farm for six Months, rendering a Pepper-corn, if demanded. It was agreed by all, That if it did operate only as a Lease at Common Law, the Party was not capable of taking an Enlargement of his Estate by a Release, until actual Entry, according to Co. Litt. 46. And they all but North Ch. J. inclined that this Lease did operate by the Statute; for they said it had been often adjudg'd, That tho' there were not the Words (Bargain and Sell) yet it would operate by Way of Use, there being a sufficient Consideration. Freem. Rep. 249. 250. pl. 266. Patch. 16. S. C. B. Bicker v. Keets.

There is a Diversity between a Lease for Life, and a Lease for Years; for before the Entry of Leases for Years, a Release cannot be made to him; but if a Man makes a Lease for Life, the Remainder for Life, and the first Lease dies; a Release to him in the Remainder, and to his Heirs, is good before he enters to enlarge his Estate, because he has an Estate of a Freehold in Life, which may be enlarged by Release before Entry. Co. Litt. 270. b.
Release.

6. If a Man makes a Leave for Years, the Remainder for Years, the first Leave enters; a Release to him in the Remainder for Years, is good to enlarge his Estate. Co. Litt. 270. a.

Fines 6. — But a Leave by Indenture in Joint, habeant, the Land at the Feast of St. Michael provision for 21 Years, and the Leffer releases to the Leefe before Michaelmas all his Right, this Release is void; for he had not Possession before. Co. R. on Fines 6. cites Mich. 32. E. 4. 37.

7. If a Leave for Years be made to two, albeit the Leffer before they enter cannot release to them to enlarge their Estate, yet one of them may before Entry release to the other. Co. Litt. 270. b.

(B. 4) To Whom. By Way of Enlargement. How it operates.

1. If A makes a Leave to B. for Life, Remainder to C. for Life, Remainder to D. for Life, and A. by his Deed releases all his Right to B. C. and D., in this Case those in Remainder are not Jointtenants with the Tenant for Life, and yet the Release is good to them all. And 32. cites it as held Per Mountague Ch. J. Tirn. — E. 6. But says, Quære how it shall be good, and how it shall take its Effect.

2. Nothing passes by a Release to the Leefe in Possession, but by Way of Enlargement of the Estate of the Leefe; for it does not operate to give a new Estate of the Reversion, but to increase the Estate in Possession, according to the Words of it: So it works not by Merger of the first Interest, but by enlarging of it. But it is true, after the Release the Leefe does not exit distinct from the Estate by the Release; for tho' it does not continue as a Term, yet it is Part of the Interest that he now has in him by the Release; for it is not like a Grant to a particular Tenant by him in Reversion, which does drown the particular Estate. Arg. F. r. 47. in Case of Shortridge v. Lamplugh. has nothing in the Leave. Arg. Pl. C. 425. in Case of Bracebridge v. Cooke.

(G) Releases. What Things are releasable by any Words.

1. A MAN cannot release that of which he has no Interest in Right nor in Deed, as if a Man recites that whereas you shall be bound to me in 20l. I release this, now it is void. 21 E. 4. 45. b.

2. After one has found Surety of the Peace, all the Leges of the King have Interest; and therefore he, against whom it is found, cannot release it, nor the King. (And to by Consequence no one [can] 21 E. 4. 42.

3. If my Tenants have used Time whereof Memory &c. to chafe, one of them to collect my Rents for one Year, and another for another Year,
Release.

Year, and to su, I may discharge one of my Tenants only thereof, and the others shall not be further charged than before; for when it comes to his Court who is discharged, my left shall collect it.

4 Le. 175. pl. 272. in Grendon and Aldbury's Case, cites S P. adjud. 2d. Elliot in one Passer's Case — * Jo. 169. S. C. cited.

A freed of Lands in W. and B. devised the Lands in tail to B. his Wife for Life, and afterwards to T. his younger Son in fee, and devest the Lands in T. to D. his wife for Life, and afterwards to B. the Plantiff. 

if his eld. Son in Fee, and that if either T. or B. die before they enter, the Survivor to enjoy the whole to him and his issue. D. entered B. in the Life-time of D. released all his Right to T. the youngest Son, with Warranty; T. died in the Life of D. Adjudged that B. had an Interest as well in his by the Devise, but not executed till it happen upon the Death of the Wife; and that this Release with Warranty was a good Bar to B. And Hobart Ch. J. who delivered the Opinion of the Court, said that this is not like to a Release by an Heir in the Life of his Father; for the Heir in such Case is a Stranger, and has no Title at all, and yet this Release with Warranty bars him. Putt. 65. Howell v. Augur. — Howell v. Augur. Jo. 16. Hill. 20 Jac. C. B. S. C. accordingly; and that it was held that supposing it to be a Fee-simple in Contingency upon the free Fee simple to T., yet the Release had extinguished it, and that this, by Reason of the Warranty, is a much stronger Case than Lamport's Case. To Rev. 25. b. 48. — Win. 93. S. C. cited by the Name of Gird's Case. And ibid. 54. S. C. by Name of 20 astonishing. Mich. 20 Jac. but nothing said by the Court.

A. An Incident cannot be released, unless by general Words. Br. Incid. pl. 26. cites 52 All. 6.


7. A Noname Paima waiting on a Rent cannot be released till the Rent be behind; for the Not paying the Rent makes the Nomine Paine a Duty. Brownl. 116. in the Case of Bridges v. Enion. — cites 5 E. 4. 42.

8. A Thing not in Possession as a Lease for Years to begin at a Day to come, can't be released. 4 Le. 134. Arg. cites Lit. 195. and 4 H. 7. 10.

9. If a Tenant 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. Dones &c. pl. 24. cites 6 H. 7. 9.

10. Extent by Eject is may be assignd or surrender'd, but it cannot be released; for a Release foppofes the Relator to be out of Possession, and a Surrender foppofes him in Possession. Jenk. 269. pl. 87.

11. Clq?
11. **Close of Action may be releaved or confirmed to him that is in Possession, and to none else.** *Pin. Law* *Svo.* 197.

12. The next **Advowson** was granted to *A.* and *B.* the Church became *And. 222.* 
13. and afterwards *A.* releaved to *B.* all his Estate, Right, and Title. The Release Adjudg'd, *That the Release was void,* for after the Avoidance it is was of all merely a Thing in Action, and so annex'd to the Person that it cannot Right and be releaved; but a Release before Avoidance is good. *Cro. F.* 174. *Hill.* 

35 Ed. 2. *Brooksbie's* Cafe.

14. **There is a Diversity between a Duty certain upon a Condition subsisting, and a Duty uncertain at first,** and upon Condition precedent to be made Difference between a certain after. The first may be releaved before the Day of Performance Duty determined, the Condition, but the other cannot be releaved, because in the mean Time it is not more than a Possibility. *Rep.* 70. b. 71. *Per Cur., Inq.* *Fp.* *Pash.* 34 Ediz. B. 3. *in* *Hoe's* Cafe.

15. In the first Cafe it may be releaved, for it was in Effe before any Act done; but in the other Cafe it is not in Effe, and therefore cannot be releaved; As if one covenant to sell to me before Michaelmas, a Release of Covenant before Michaelmas is to be an Action of Covenant brought after Michaelmas, for there was no Action at the Time of the Release made. But if an Obligation be for Performance of that Covenant, a Release of all Action is a Discharge of the Bond; for it was a Duty defeasable. So if I grant to you, That if I have such an Act I will pay unto you. If you relax to me this Action, and afterwards B performs the Act, the 2nd分子, and an Action in the Effe; for it was not in Effe at the Time of the Release. *Per Popham.* *Cro.* 570. *Mich.* 59 & 4. Ediz. B. 3. *in* *Hoe's* Cafe. *of* *Marshall.


17. A *Precepture* was made, That all the Inhabitants of ancient Monu- 
sances in such a Village shall have Common within the Vill, by reason of their *Commonty,* Such Common cannot be releaved; for tho' one In- 


19. An uncertain *Thing* cannot be releaved; As a Release of all Ac- 

20. A *future Right or Possibility* which may be releaved, ought to have a *future Foundation and Original inception,* and to be a Necessity and Common Possi- 
bility. See *Rep.* 50. b. in Lampett's Cafe. — And Winch. 55. *Hoe's* Cafe.

21. If a *Feoffment in Fee be to the Use of such as J. S. fiall names.* *J. S. Roll.* 197. cannot releave this Nomination. Per *Coke Ch.* 3 *Bailit.* 30. *in* *C.* & *P.* of *Quick* and *Harris* v. *Ludburrow.
Releafe.

20. If I devise, That my Executors shall sell my Land, they cannot releafe this Power. Per Haughton. J. 3 Bult. 31. in the Case of Quick v. Ludbrooke.

21. If A. be bound to B. by his Promiss to perform two Things, B. may well discharge him of Part, and so make it severall. Per Haughton J. But Per Dodridge, If it be One entire Thing, it seems he cannot discharge Part of it by his Releafe. 3 Bult. 232. Mich. 14 Jac. in the Case of Elken v. Waffell.

22. A. said to a Feme Sole, Marry my Friend W. and if you ever-like him I will give you 100l. They intermarried, and the Husband releaſes to A. all Demands, and dies. This Releafe bars not the Wife, because during the Life of the Husband it was not a Thing in Demand; but it might well be releafe by apt and special Words, tho' it was to take Effect by Contingency in Future. Per Altham Serjeant and Winch J. attenued. Noy 26. in the Case of Smith v. Stafford.

23. A Bond cannot be releafe by Will, because a Will is no Ded, tho' it be signed and sealed. Sid. 421. pl. 11. Trin. 19 Car. 2. B. R. Pigeon v. Harrison.

24. A devise to M. his Wife for Life, and after to D. and his Heirs, provided if C. within 3 Months after M's Death pay to D. 500l. then the Lands to remain to C. and his Heirs; it was held by the Lord Chancellor and Matter of the Rolls Mich. 1718. That C. might have releaſed, for extinguisht his Right. Ch. Prec. 489. pl. 303. Pack. 1718. Marks v. Marks.

25. A Right releafe cannot be releafe; and this was said to be a General Rule. 8 Mod. 105. Mich. 9 Geo. in the Case of the Chamberlain of London v. Lopez.

26. A devise Lands in Trust for the eldeſt Son of B. for 2 Years, and if within those 2 Years he should become a Protestant then to him in Free Male, but for Default of such Conformity, then to the Ufe of the second By. Son of the said B. being a Protestant, and to the Heirs Male of their bodies being Protestants, and for Default of such Conformity in any of the Sons, or if they should die without issue Male, then to the Ufe or the eldeſt Daughter of B. being a Protestant, and the Heirs of her Body being Protestants, Remainder to the second Daughter &c. Remainder to C. (who actually was a Protestant) Lord Chancellor Macclesfield said, That such Brothers and Sisters could not releafe their Right to any Intest given them by the Will, nor much as without a Fine they could not bar their Issue. 2 Wm's Rep. 132. 135. Pack. 1723. Carteret v. Carteret.

(H), What Persons may releaſe.

See Good Behaviour (D)

1. H E against whom Surety of the Peace is found cannot releafe it; For every one has Interest; For he is bound to keep the Peace against him, and all the Lieges. 21 E. 4. 49.
Releafe.

2. If a covenants with B. that C. shall pay to D. D. cannot release this to C. in discharge of the Covenant, because he is a stranger to the covenent; for when a man binds himself, that a thing shall be performed to a stranger, he takes upon himself that a stranger shall accept it. P. 12. *B. R. between Flower and Edger."

8 P. 7. Baron alone may releafe a Waffe done by Leffe for Life before Covt. upon Leffe made by the Feate. 52 C. 3. 18. Annuller; But the Acton of Waffe was brought by the Baron and Feate, 17 2. 1. to be barred during Covernment (But Square if it shall be Suer after Covernment against the Feate.)

4. In Troubles, or Definate by the Villein, the Releafe of the Lord is a good Part. 18 H. 6. 23. B.

5. If a Right defendes he may releafe it, and it shall bare the Juris, who ought to make him Sane in the Definate, he claims in the Action Anc,Metell of the Postilion Paramount. 7 H. 4. 19 b.

6. If A. has Judgment against B. for Debe or Damages, and after the Land at W. for this Debe, and then affigns over the Land extended to C. for all his Estate, and after A. releases to B. the Judgment, this shall abate the Extent, to that B. may have an Audito Querela against C. the Alligee, and therein shall abate the Extent, because B. norwithstanding the Affignment continues privy to the Judgment, and might, after the Affignment, have acknowledged Satisfaction of the Judgment, and to be the Sate of the Alligee, and this Releafe is all one as if he had acknowledged Satisfaction of the Judgment. P. 7. *B. R. between Flower and Edger. A. adjudged upon a Demurrer, releafeed to the Defendant, the Term should not be devided.

7. If a Commonalty be disaffised and after every one releases for himself, it is not good, because it ought to be by their Common Seal. 19 H. 6. 64. b.

8. If the Prior or Abbot releases to the Tenant for Life All Actions, this is no Bar against the Succeeder, because it was not by the Abbot or Prior and their Covent. Br. Releafe pl. 64. cites 42 E. 3. 22.

9. It
Release.

9. If a Man be dispossessed of a Manor, and the Distressor releases the Services to a Tenant who holds of the Manor, and the Distressor re-enters, this Release shall not be a Bar to the Distressor to have the Services; for the Re-entry shall defeat all Morte Acts made by the Distressor. Br. Releases, pl. 91. cites 4 H. 7. 13. Sands v. Peckham.

10. If the Father, Tenant in Taunt, brings a suit, or is barred by fault, and after releases all Actions, and dies, this is no Bar to the Tree in Taunt to have Attain. Br. Releases pl. 86. cites F. N. B. 138.

11. He who has Property in a Thing cannot release, but he may give. See Br. Executions, pl. 118. Per brook.

12. A Parishioner is sued in the Spiritual Court for Reparations of the Church: A Release to him by One Church warden only, without the other, is not good; And in our Law it is the same. Jenk. 305. pl. 98.

13. An Infant Executor may make a Release upon a true Satisfaction, but not otherwise. 5 Rep. 27. b. Hill. 26 Eliz. B. R. Rufie's Cafe.

by Name of Rufie v. Patr. — S. C. Mo. 156. pl. 289. says, That Plowden was strong in Opinion against the Judgment, but Wray Ch. 1. laid to him, That he had confered with all the Judges of England; and they had agreed to give Judgment for the Infant; 'cause the Release being without Consideration, the Infant would charge himself in a Devaflion. — S. C. cited Roll Rep. 356. — And 117. pl. 164. in an Anonymous Cafe.

14. Oblige dies in the Province of York, but the Obligation was in the Province of Canterbury; Administration was granted to A. in the Province of York; A Release by A. to the Obliger was held not good. Cro. E. 472. pl. 25. Hill. 38 Eliz. B. R. Byron v. Byron.

15. An Ejectment was brought, and Recovery had upon it, and after the Lettor brought an Action of Treppay for the Male Profit, and the Lease released the Action; but the Court set it aside, and laid, That the Lease is a Person in Tryst, and set up by the Practice of the Court, and is in the Nature of an Officer of the Court, and shall be within the Power and Control of the Court; and therefore the Money which was in the Sheriff's Hands was ruled to be delivered. Skim. 247. Hill. 1 & 2 Jac. 2. B. R. — v. Close.

S. C. Roll Rep. 136. pl. 15. Mich. 13 Jac. B. R. And that it was infilled to have been after a Writenam granted, Coke Ch. 1. said, It was not material.

Nel's Ch. R. 15. A Release by an Attorney in his own Name is void. 3 Ch. R. 91.


18. A Debtor was owing to a Creditor, who by his Will made B. and C. Executors, and devised the Debt to D. — B. and C. proved the Will and released the Debt. D. brought his Bill against the Executors and against the Debtor, to be relieved against their Release, charging them with Practice &c. The Defendants pleaded this Release, and upon arguing it the Plea was allowed, and the Bill dismissed. N. Ch. R. 36. 1649. Matthews v. Thomas & al.

19. A Release of Right and Title to Land by one that had no Right or Title to the Land, but only an Inception of a Right, which may happen to take Place in Future, is of no Force; As a Release by a Comitee or Debtee. Arg. 2 Mod. 128. Patch. 29 Car. 2. in the Cafe of Morris v. Philpot.
20. A. promised B. That if B.'s Son would marry A.'s Daughter A. would pay him 1000l. B. may release; But it is doubtful whether B. can release after Marriage, because then it is vested in the Son, as Scroggs Ch. J. Ltd. Vent. 333. Mich. 30 Car. 2. B. R. in the Cafe of Dutton v. Poole.

21. Action upon the Statute of Hire and Gey by a Servant who was releaved of his Master's Money, And Levin, argued, That he should not have the Action; for by that Means he might prepatice his Master by releaving the Action. And took a Difference between a Servant, and a Common Carrier, and a Sheriff, for the two last have a special Property, and may have Treover; But Per Cur. He shall not release. 12 Mod. 54. 

Trin. 6 W. & M. Comes v. Hund' de Bradley.

S. C. as to the Servant's bringing the Action --- [And it seems that the Matter of the only a Thing Other upon the Argument of the Counsel.]

22. A Commissary released the Administration Bond after it was put in Suit at Law, and Ifuz joined, Is that the Defendant pleaded this Relee Puts Darrin Continuance. It was infituted, That if it was in the Commissary's Power to release this Bond the Statute would be of no Force. And Per Powell J. The Doctor has not done well in giving this Relee, and it is a Breach of Trufl. Quere, Quid inde venit. Holt's Rep. 660. Hill. 7 Ann. Butler v. Hammond.

(i) To whom a Relee may be. In respect of Estates. (P. 305.)

1. One Jointenant of a Reversion depending upon a Leave for Life may release to the other. 14. J. 4. 32. 0. — (L) pl. 10, 11, 12.

2. If one Tenant in Common release to the other, Nothing passes thereby; because he had nothing before in the Ratio of the Relee.

19. P. 6. 26. 10 C. 4. 3. 4. 11.

3. One Coparcener may release to the other; For each is lid by the same Estate, and shall join in Affire. 21. C. 3. 27. Amended 38.

4. If one particular Man of a Corporation differs his own S.P. And for Life, and I after releave to the Corporation, nothing passes; because the Corporation had nothing at the Time in the Land. 8 P. 6. 1. 0.

5. If a feile in Fee of Land, bargains and sells it to J. S. in Fee See Estate, by Deed imroll'd, to whom a Stranger who has a Right to the Land before Entry, derived from Entry made in the Land by the Bargaine; This is a good Relee, because he has a Frankenement in the Land before Entry. Such 13 Car. 2. R. between Hoben and Stick. Dr. Cur. Relesed upon Evidence at War.

4. 1

6. Where
6. Where a Man leaves Land for Term of Life, and after grants the Releafe to J. B. for Term of Life, a Releafe of all his Right to the said J. B. in the Remainder by the Lessor is good, tho' it be but Elatitude for Life, Br. Releases, pl. 85. cites Fitzh. Quod Juris clamat t. 

7. In Recordare it was agreed, That a Stranger to the Annuity may plead Releafe of all the Services. Per Hank and Hill clearly. Br. Releases, pl. 13. cites 14 H. 4. 7.

8. In Formdon a Man has'd for Life, and after granted the Reversion to J. B. and the Tenant attorn'd, and after 4. of the 7 releas'd all their Right &c. to the other 3, and after the one of the 3 releas'd to the 2, And Per Cur. Those are good Releaves, and shall make the Right to pass. Br. Releaves, pl. 60. cites 14 H. 4. 32.

9. If a Man recovers in Writ of Annuity against a Person, and he who recovers releases to the Patron, this is a good Releafe. Per Curt J. Quod mirum! For the Church is charged, and the Patron may join in Aid, but has not properly any Reversion in him there; Quare, How it shall enure. Br. Releaves, pl. 19. cites 8 H. 6. 24.

So it was agreed, That where a Part for is charged with an Annuity out of His Church, &c. Releafe made by the Demanant to the Vouchee, or by another, is good against the Demanant; For he is Tenant in Law after the Entry into the Warranty, and may render the Action, or have a Fine. Br. Releaves, pl. 45. cites 5 H. 7. 41. Per Townsend J. — But see if a Stranger releas'd to him; for he has nothing in the Land, so that Release of the Right cannot enure. Br. Releaves, pl. 2. cites 20 H. 6. 29. — S. P. Br. Releaves, pl. 9. cites S. H. 4. 5. Per Sterne, Quod futr concinnat. — S. P. Co. Lit. S. 491. — S. P. Co. Lit. 315. 5.

Releafe made by the Demanant to the Vouchee, or by another, is good against the Demanant; For he is Tenant in Law after the Entry into the Warranty, and may render the Action, or have a Fine. Br. Releaves, pl. 45. cites 5 H. 7. 41. Per Townsend J. — But see if a Stranger releas'd to him; for he has nothing in the Land, so that Release of the Right cannot enure. Br. Releaves, pl. 2. cites 20 H. 6. 29. — S. P. Br. Releaves, pl. 55. cites 7 E. 4. 13. — S. P. Co. Lit. 315. 5. — S. P. Co. Lit. 6. Some Cases, and to 1 E. 14. & 22 H. 6. 15. & 8 H. 4. 2.

After Receipt or Entry into Warranty by the Vouchee, Release to the Demandant, or the Tenant by Relese or Vouchee, is good; but Release to them by any Stranger is no good. Per Coke Ch. J. who said, It was so without Question. 8 Rep. 151. b. in Edward Altham's Case.

If after the Vouchee has entered into Warrant, and becomes Tenant in Law, an action for Cessation of the Demandant releass to the Vouchee with Warranty, he shall not plead this against the Demandant; for the Release by the Stranger is void. Co. Lit. 284. b.

But Br. Rele. 11. In Afflise Release made to the Tenant at Will was pleaded, and the leaves, pl. 58. cites of the Opinion of the Court was clear, That it was not good. The Reason is, That a life seems to be, inasmuch as he may enter and infeud him. Contra, Upon Tenant at a Termor &c. who has an Interest certain. Br. Releaves, pl. 48. cites Will of his 2 E. 4. 6. Right, it good, for the Privity which is between them, and cites 1 E. 4. 27. Per Choke. — S. P. Co. Lit. 270. b.

But if I suffer a Man to occupy at my Will without Leaseth, and after releaseth to him all my Right, this is not good; because there is no Privity. Ibid — br. releaseth, pl. 52. cites 7 E. 4. 27.

A Releaseth to Tenant at Will after a Lease for Years made by him, is void; and this is a Confirmation, because the Privity is determined. Co. P. 259. Patch. 45 Eliz. C. B. Shall v. Barber. And Walmsley J. said, That it had been so reliev'd against the Opinion in 12 E. 4. 12. Ibid.

So where a Stranger releaseth to him to Reversion, Per Finch. d and Sidenham. Br. Releaves, pl. 58. cites 5 E. 4. 1.

12. If a Man leaves for Term of Life, and grants the Reversion to two, the Tenant attorns, and the one of the Grantors releaseth to the other, this is good. Br. Releaves, pl. 50. cites 5 E. 4. 1.

13. A Releaseth made to the Permanr of the PROFITS is good. Per Vavilior J. And he may plead it in Action brought against him upon the special Matter ther. Br. Releaves, pl. 43. cites 3 H. 7. 2.
14. A Release to Tenant at Sufferance is void, because he has a Possession without Privity. Co.Lit. 270. b.

Term &c. a Release to him is void, because there is no Privity between them; And so the Books are understood to speak of this Matter. Co.Lit. 270. b.

So where B. was Devisor of an House for Life: Precisely, that if B. clearly departed out of London, and died in the Country, that then for shall have a Rent out of the said House. B. wholly departed out of London, and died in the Country, a Release by the Remainder-Man to B. that before the Entry of the Remainder-Man on B. cannot induce to enlarge the Estate of B. which by the Proviso was determin'd before Entry, and the he was only Tenant at Sufferance; And tho' the Words (To take) or (That it shall be void) are not mentioned, yet being in a Will, 'tis implied in the Words (That then the shall have) which cannot be if his Estate be not determined, and so the Release to his not good, tho' the continued in Possession. Cro. E. 238. pl. 5. Trin. 25 Eliz. B. R. Allen V. HL—S.C. 252. pl. 252. S.C. — S. C. cited Cro. J. 176. in the Case of Butler v. Duckmanton. — And Brownl. 257. in S.C. — S.C. cited G. Eliz. R. 257.

15. He in the 1st Remainder may release to him in the first Remainder, but not censure. Per 3 Jutes. Dal. 32. pl. 17. 3 Eliz. Anon.

16. Lease for Life cannot release to him in Remainder. D. 251. pl. 91. Dal. 52. pl. 17. S.C.


S. B. by Verbon J. Brownl. 228. in the Case of Butler v. Duckmanton. — So if Tenant for Life released to him in Remainder, this Release is void; for it cannot ensue as a Release, because the Tenant for Life is not a Possessor; neither can it ensue as a Surrender, because it wants proper Words to make it a Surrender. Per Arderon Ch. J. who said, it had been adjudged. Cro. E. 21. Trin. 25 Eliz. C.B. in pl. 2. Anon. — S.P. Cro. J. 169. Trin. 5 Jac. B. R. in the Case of Butler v. Duckmanton.

17. A married M. They had 2 Sons, both named John, Iora in Wedlock, but A. always believed, That John the Elder was begu by Mayo, and not by himself; and therefore he always called him (and made others 15 Eliz. the do no) by the Name of John Mayo. M. died; Afterwards J. A. to Options, in whom M. and others were Cred it was, and upon Office this Case found after his Death, John the Youner Son was found Cred in Right of M. together with the other Creditors, and they went all together to the Munors, and held Courts (by the Steward appointed by J.S.) in all their Names, naming them by their proper Names; and all the Tenants accorded, and paid their Rent to their Common Bailiff. Afterwards John the Elder Son released to John the Youner, by Words of (Give and Grant of all his Right, Title, Claim, Interest, and Demand, to him and his Heirs, but No Legacy was made.) One Question was, Whether any Act before mentioned had gained any Tenancy by Dilletain, Abatement, or Intrusion, in the Younger Brother, upon which a Release might ensue? And it seemed to the Court, That it had not gained any Tenancy of the Lands in Lease for Life or Years, or in Tail, nor in the Copyholds so long as they continued their Possession without Expulsion or Removal. But the Reporter adds a Quere as to the Copyholds. D. 302. pl. 302. pl. 43. Trin. 15 Eliz. Vlson's Case.

18. Release to Copyholder in Fad, who was admitted by the Lord, and in Patiscion, is good, and no Prejudice to the Lord, he having his Fine for Admission, and Release was in Title, viz. for Admission; and so the Releas ensues as Extingishment. 4 Rep. 25 a. b. Patch. 31 Eliz. B. R. Kite v. Quinton.

19. A. devised Land to M. his Wife for 15 Years, if she so long lived, Brownl. 257. Remainder to B. in Tail, Remainder to C. (who was Hie of the Theln. S.C. and the tor) in Fee; M. married C. The Term of 15 Years expired, and then B. was adejudged void chiefly because it was made to the Heir; Adjudged, That C. continuing in Possession after the End of the Term, was but Tenant at Sufferance, and had no other Title to hold by, till Entry was made upon him; And that a Release made to Tenant at Sufferance is not good to vest any Estate for Want of Privity between them; And adjudged for the Plaintiff. Cro. J. 169. Trin. 5 Jac. B. R. Butler v. Duckmanton.

he had but a bare Possession. — S. P. Co.Lit. 270. b.
Releafe.

20. A Tenant for Life, Remainder in Tail to B. Remainder in Fee to C. — A Releafe by C. to A. is a void Releafe, because of the Meane Remainder in Tail; Per Fenner, who cited 30 E. 3. And no Anuwer was given to it. Brownl. 207, 208. Trin. 5 Jac. in the Case of Butler v. Duckmantel.

21. A devise of a Rent-Charge with Clause of Disnrefs, and died, the Great Grandson makes a Realement to B. — Devise of the Rent released all Actions, Debts, and Demands to the Great Grandson, and after disntrained the Beasts of B. for the Rent behind before the Fixment. It seems the Releafe is not good, because the Devise had no Caufe of Action, at the Time of the Releafe made, against him to whom it was made, nor Demand against him; otherwise if the Releafe had been made to the Tenant, for he was subject to the Disnrefs, and this is a Demand. 2 Brownl. 190. Trin. 10 Jac. C. B. Strobridge v. Fortescue and Barrett.

22. A Releafe to Caffyque Use is good as Littleton lays in his Chaper of Releaes; and it is now of a * Truff as of an Use before the Statute, Arg. Cart. 162.

He may take it in Will, but not as Tenants.


(I. 2) Good, or not, to one who has No Right, or only a bare Right.

1. If there be Lord and Tenant, and the Tenant be diufed, and the Lord releases to the Diuiffee all the Right which he has in the Seigniorly or in the Land, this Releafe is good, and the Seigniorly is extinde, by reason of the Privity which is between the Lord and the Diuiffee; For if the Beasts of the Diuiffee be taken, and the Diuiffee fues a Replevin of them against the Lord he shall compel the Lord to avow upon him; For if he avow upon the Diuiffeor, then upon the Master sworn the Avowary shall abate, for the Diuiffee is Tenant to him in Right and in Law. Litt. S. 454.

2. If land be given to a Man in Tail, referring Rent to the Donor and his Heirs, it the Donor be diufed, and after the Donor releases to the Donor and his Heirs all his Right in the Land, and after the Diuiffe enters upon the Diuiffeor the Rent is given; because the Diuiffee at the Time of the Releafe made, was Tenant in Right and in Law to the Donor; and the Avowary of Fine-Force ought to be made upon him by the Donor for the Rent behind &c. but yet nothing of the Right of the Lands, viz. of the Reversion, shall pass by such Releafe, because the Diuiffe to whom the Releafe is made, had nothing in the Land but a Right, and to the Right of the Land could not then pass to the Donor by such Releafe. Litt. S. 455.

3. If A. be very Lord and B. very Tenant in Fee-Simple, and B. makes a Ffoffment in Fee to J. S. who never becomes Tenant to the Lord, if the Lord releas to B. all his Right &c. this Releafe is void, because B. has no Right in the Land, and he is not Tenant in Right to the Lord, but only Tenant as to make the Avowary, and he shall never compel the Lord to avow upon him; For the Lord shall avow upon the Feeokee if he will. Litt. S. 457.

4. There
There is a diversity between a Seigniory or Rent Service and Rent-charge; for a Seigniory or Rent Service may be released and extinguished to him that has but a Right in the Land, because of the Privity between the Lord and the Tenant in Right; for he is not only as Tenant to the Aways, but it he die his Heir within Age, he shall be in Ward, and if of full Age, he shall pay Relief, and if he die without Heir the Land shall escheat; but there is no such Privity in case of a Rent-Charge; for there the Charge only lies upon the Land. Co. Litt. 263 a.

(K) To whom a Release may be without Estate Actual, See (I) in respect of Privity.

1. If Abbot and Covent alien in Fee, and Founder releases all his Right in all Actions to the Abbot, it frees this shall bar him of his Contra Formum Collationis; for this Action lies only against the Abbot, and therefore there is sufficient Privity between them. Contr. 14 H. 4. 32. b. But note.

2. A Release made of all Errors to him who is Party or Privy to the Judgment is good Barr of a Writ of Error. 9 H. 9. 45. b. tho' he has nothing in the Land.


4. If A. leaves for Years to B. referring Rent, and after before Entry by B. A. releases the Rent to B. this is good for the Privity, tho' B. has not any actual Estate till Entry but only an Interest. Co. Litt. 49. b.

5. In Writ of Entry the Tenant pleaded Release of the Demannant made For if Dis-allow of all Actions and Rights, and the Demandant find that he had nothing in the Franktenement at the Time of the making of the Deed, Prit; and the other said that he had, Prit; and per Bellnap the Tenant shall shew what he has in the Franktenement. Br. Releases pl. 7. cites 49 E. 3. 23. the release to the Tenant all his Rights, this is not good, because it is only a Chattle, and there want Privity, per Bellnap. But per Hanmer it ought to be answered that the Tenant had nothing in Demeaine, or in Reversion at the Time of the making of the Lord, and so to avoid it to all Intent, and not to lay, Nothing in the Franktenement only. Et alia. Ibid. * Co. R. on Fines 6. cites S. C.

6. Where the Lord or Donee in Tail releases to the Dislassier, or to the Issue Br. Aowsry in Tail after Discontinuance, to hold by Left Services, or releases all the Rents and Services, this is good, tho' the Tenant be only Tenant as to the Land to the Aowsry, and has nothing in Possession; Contra as to falling of Reversion in Fee Simple. Br. Releases pl. 14. cites 49 H. 4. 37. 38. & Libro S. C. Littleton tit. Releases, accordingly.

7. If A. makes a Leaf for 100 Years to B. and B. makes a Leaf for 50 Years to C. and after A. releases to B. in Fee, this Release is good, and same Cafe if yet B. has not any Actual Possession. Co. R. on Fines 6. cites 12 E. 4. 46. Releases made to C. is void; For tho' he has Possession, yet he hath no Privity and yet a Leaf made by Leftor by Fine to the Tenant in Statute Simple, or Merchant, or by Erection is good, and yet there is no Privity. Co R. on Fines 6. cites 23 E. 5.
Where a Release of a Right is good to one who has neither Freethold in Deed or in Lawn.

In such Cases 1. In Releases of all the Right which a Man has in certain Lands &c. as a Right, may be conveyed from one to another, there it may be related to the Tenant of the Land; and in some Cases it will merge and extinguish, and in some it will endure by Way of Mitter &c. But in all Cases to the Tenant of the Land; but in no Case can it be given to one who has not the Possession or Reversion in the Land in Deed or in Lawn. 

2. If Diuersor lets the Lands for Term of his Life, saving the Reversion to him, if the Diuersor or his Heir releases to the Diuersor all the Right &c. this Release is good, because Release had in Lawn a Reversion at the Time of the Release made. Litt. S. 449.

3. Where a Lease is made to A. for Life, Remainder to B. for the Life of J. 8. Remainder to C. in Tail, Remainder to D. in Fee; if a Stranger which hath Right to the Land releaseth all his Right to any of them in the Remainder, such Release is good, because every of them hath a Remainder in Deed vested in him. Litt. S. 450.

4. If the Tenant for Life is diuersified (the Possession being in the Diuersor) and afterwards, he that Right hath, releases to one of them, to whom the Remainder was made, all his Right; this Release is void, because he had not a Remainder in Deed at the Time of the Release made, but only a Right of a Remainder. Litt. S. 451.

5. A Release of all the Right &c. in some Case is good to him who is supposed Tenant in Lawn, tho' he hath nothing in the Tenements. Litt. S. 490.

As in a Pre- cipio good retdatur, if the Tenant anew the Land bringing the West, and after the Demandant releases to him all his Right &c. this Release is good, because he is supposed to be Tenant by the Suit of the Demandant, and yet he has nothing in the Land or the Time of the Release made. Litt. S. 490.—S. P. Co. Litt. 266 a. (d)

S. P. But if 6. If the Diuersor makes a Lease for Years, the Diuersor cannot release Diuersor and Diuersor him in a Release to such Leesee, the same is good; for first it shall endure as the Release of the Diuersor and then of the Diuersor. Le. 213, pl. 563. 

(K. 2)

1. Where the Plaintiff binds the Defendant to the Acquittal, as Heir of his Mother, and the Defendant pleads Release to his Father and his Heirs, and that he is Heir between the same Father and Mother, this is no Bar. Br. Releases, pl. 15, cites 38. E. 3. 10.

2. If I be within Age, lease Land to another for 20 Years, and after he grants the Land to another for 10 Years, if I release to the Grantee of my Leese &c. when I am of full Age; this Release is void, because there is his Father no Privity between him and me &c. but if I confirm his Estate, then this being his Confirmation is good; but if my Leesee grant all his Estate to another, then my Release made to the Grantee is good and effectual. Litt. S. 547. 223. and afterwards the Infant at full Age released to Leesee all his Rights, by Indorcement on the Lease. Per Way Co J. When the Father leas'd he did it as Guardian to his Son, and it was not any Ejection of his Son, but it was a Lease in Behalf of the Son, tho' the Son might avoid it; then when the Indorcement is at supra, the same is a good Affirmation. 2 Le. 221. pl. 275. Patch. 16 Eliz. C. B. Anon.

3. It is a certain Rule, That when a Release enures by Way of enlarging an Estate, there must be Privity of Estate, as between Leesor and Leesee, Donor and Donee. Co Litt. 272. b.

4. To Releases that enure by Way of Miter or Flseate, there must be so Privity of Estate at the Time of the Release. Co Litt. 273. b.

5. To a Release of a Right made to any that has an Estate of Freehold in Deed or in Law, no Privity at all is requisite. Co Litt. 275. a.

6. When the Lord by his Release abridges the Services of the Tenant, Privity is requisite. Co Litt. 305. b.

7. A Release of Inheritance, or of Estate for Life, is not good to one that is but Leesee for Years without Privity; As if Tenant for Life or in Fee relieves to the Leesee for Years of his Dileflee. But the Release of a Term for Years to the Leesee for Years of him that doth eject him, is good enough; for there needs no Privity. Fin. Law. 8vo. 115.

8. A leased of a Rent-charge in Fee, sitting out of the Lord of the Wife, relieves the Rent to the Brook and his Heirs; the same shall enure to the Wife. Arg. 4 Le. 90. cites 14 H. 8. 6. 38 E. 3. 10.

9. The Lord releases, and grants his Seigniory to the Husband, who is seized of the Tenancy in Right of the Wife, to him and his Heirs; the Husband dies, and his Heir distrains for the Rent upon the Land; It was held that it shall enure as a Grant, which is most beneficial to the Grantee, and it is agreeing with the Intent of the Deed, that the Husband and his Heirs shall have it. Cro. E. 163. pl. 3. Mich. 31 & 32 Eliz. C. B. Anon.

10. Right or Title to Inheritance or Freehold, be it in Prefenti or S. P. Co. Future, may be Released 5 Ways. 1st. To the Tenant of the Freehold in Deed, or in Law, without any Privity. 2d. To the Tenant in Remainder. 3d. To him in Possession without any Privity, but Eate can not be enlarged without Privity. 4th. To him that has a Right only in Respect of Privity; As if Tenants be d伊利esed, the Lord may Release
Release.

the Services in Respect of Privity and Right, and without any Estate 5thly. In Respect of Privity only, without Right; as if Tenant in Tail makes Feoffment in Fee, the Donee after the Feoffment has not any Right, yet in Respect of the Privity only, the Donee may release to him the Rent, and all the Services; so the Defendant may release to the Vouchsee in respect of Privity only; but no Estate can pass by a Release, but to him who has Estate in Privity, and not in respect of Right or Privity only. 10 Rep. 48. a. b. Mich. 10 Jac. in Lamper's Cafe.

11. An Estate may be conveyed by Release or Confirmation to a Tenant by Copy of Court Roll, and the Use limited to him and his Heirs is good. 13 Rep. 55. Sammes Cafe.

(L) By what Words it may be made. Words, which shall amount to a Release.

1. OCE Coparcener gives the Land by Dedi & Concessi, it shall entier by Release if it cannot by a Feoffment. 10 G. 4. 3. b.

2. If an Indenture be, that the one Party renunciant, to the other Torus Commune in certain Land; this is a good Release of the Common, too; it be not Torus jus quod habit in Communita, or, Renunciat Communion. 9 H. 6. 35 b. Curta.

3. If A. Pene Sole, and B. are Jointants for Life, and A. takes Baron, and after A. and the Baron levy a Fine to B. by which A. and the Baron concede the Land, & roton & quicquid &c. to B and his Assigns for Life of A. and this with Warranty, and then B. dies during the Life of A. In this Case he in Defection may enter, because this Fine enters as a Release to * B. Tr. 22. 1a. B. R. by common Enfarrce and Sealow, per Curiam upon a special Service, and afterwards, Mich. 22 Ja. Unassiduously accordingly.

5. 1. If a Man be bound to J. S. in 40l. and he by his Dedi grants to him that he will never sue Action upon this Obligation, the Debtor shall have it by Way of Aniver, in Lieu of Release; per Martin; but per Babbe, he shall have thereof Covenant; but Brooke says if it be any action against Mistar of Record, and says it seems that it is not. Br. Barr pl. 5. cites 3 H. 6. 40.

5. 2. If a Man be bound to J. S. in 40l. and he by his Dedi grants to him that he will never sue Action upon this Obligation, the Debtor shall have it by Way of Aniver, in Lieu of Release; per Martin; but per Babbe, he shall have thereof Covenant; but Brooke says if it be any action against Mistar of Record, and says it seems that it is not. Br. Barr pl. 5. cites 3 H. 6. 40.
6. A Release of all Advantages on Account, is a good Bar in Action of Debt upon Account. 8 Rep. 152. a. in M'ham's Cafe, cites 9 B. 4. 49.

7. If he in Reversion on a Leafe for Years, grants his Reversion to D. in Leafe for Years by Words of Deed, Convey, Freegrant, and a Letter pl. — D. of Attorney is made to make Nexy and Sefiia, the Donee cannot take by the Livery; For that the Leffe has the Reversion prefently. Per Wray and Cutline J. 3 Le. 17. pl. 39. Mich. 14 Eliz. C. B. Anon.

8. If A. relefae to B. all Actions which J. S. has against B. it is a good Release, and the Words (which J. S. has against B.) are Surplusage, and void; For by Words subsequent, a Deed may be qualify'd and abride'd, but not destroy'd. Arg. Bridgni. 102. cites* D. 56. 6.

one may Qualify and Abridge, but not Destroy. Arg. in Cafe of Read v. Bullock.

9. A Lided of 3 Acres, grants a Rent-chargfe out of them to B. A. 8 C. cited intoils C. 2 of 2 of the Acres; B. the Grantee Covenants and grants with C. that he will not charge the 2 Acres for the said Rent, with any Di- streptions. Afterwards B. the Tenantant of the 3d Acre being diftriftened, brought Replevin. As to the Covenant and Grant being a Release, the Court was divided; but agreed, that it be a Releafe; D. may plead it; for by that the Rent is extinghuifh'd. Nov. 5 Butler v. Monnings.

10. An Oblige's acknowledging himself on good Confederation satisfied, or discharged of all Bonds, Debts and Demands, is in Judgment of Law, a good Releafe; and tho' the Word (Discharge) is not properly a Word of the Part of the Oblige but of the Obligor, because the Ob- ligor is to be discharged; yet when the Oblige conveys himself to be discharged of all Bonds by the said Obligor, this amounts to as much as that the Bonds themselves shall be discharged. 9 Rep. 52. b. 53. Mich. 8 Jac. C. B. Hicknor's Cafe.

11. If B. be bound to A. in an Obligation of 200. Conditioned for Payment of 104l. at a Day certain, and afterwards A. makes a Release to B. by Name of All that Obligation of 200l. for Payment of 100l. This Release does not discharge the Obligation condition'd for Payment of 104l. for tho' a greater Sum includes a lesf, as to a Tender, yet the Debt and Duty is intire, and cannot be discharged by a Release of a lesf Sum. All. 71. Trin. 24 Car. B. R. Chase v. Gold.

12. If one Jointenant gives, Grants and Confirms to the other, This one ope- rates as a Releafe, according to 1 Init. 391. b. and other Books. That is, either the Word (Deed) or (Conceff) makes a Releafe. Sid. 452. Parch.

8. Chester v. Wilfon. — Rarm. 18. S. C. where the Words were (Grant, Bargain, Sell, and Con- firm.) Anejg'd a Releafe. — 2 Sound. S. C. where the Words are (Grant, Bargain, Sell, Align, Strow, and Confirm.) And aneg'd clearly, That it pas'd the Parcanny. And there is a Note, That the Word (Conceff) is of a general Extent, and may amount to a Grant, Feoffment, Gift, Leafe, Re- leafe, Confirmation, or Surrender; and cited Litt. S. 551. & Co. Litt. 511. and 521. a.


14. Articles of Agreement were made between A. B. C. & D. Tenants of a Manor, for the better regulating their Common, and to limit the Number of Beasts which each should put in. A. broke the Articles by furcharging; B. brought an Action upon the Articles against A. To which A. pleaded, That after the Articles the Plaintiff and one J. S. (a Stranger) after the Execu- ting the said Articles, did relieve to the Defendant, his Heirs, Executors &c. All Actions, Suits, Bills, Bonds, Writings obligatory, Debts, Duties, Quarrels, Controversies, Trespasses, Damages, and Demands whatsoever &c. which they or either of them ever had, or then had, or
might have &c. It was held, That the Release was no Bar to the Plaintiff's Action; and that it could never be the Intent of the Parties to release these Articles, J. S. being a Stranger, and no Party to them; besides, had the Articles been intended to have been released, some Mention would have been made of the Common in the Release. Raym. 392.

S. C. cited. Arg. Show. 533. Letter of Licence was under the Hand and Seal of the Plaintiff, whereby he gives the Defendant Liberty for 3 months; and covenants, That if be sue or molest him in that Time the Defendant should be acquitted of the Debt. The Plaintiff sued him. Held, That being under Seal, and the Plaintiff's own Agreement, it was not barely a Covenant, but a Release upon Condition; And Judgment accordingly. 2 Show. 447. pl. 411.


16. Oblige reciting the Bond, covenants to save the Oblige harmled; it is an absolute Release; And if it upon a Contingency, it is a conditional Release, because it has an express Relation to the Bond. Salk. 573. Hill. 10 W. 3. B. R. in the Case of Clayton v. Kinniton.


(2) What Act by one that has a Right shall be said a Release in Law of his Right or Action.

1. Releaves in Law are more mildly taken against the Releaves in Deed. Per Turton J. 12 Mod. 291. cites Co. Litt. 264. 265.

But if the Deeds of the Right are delivered within 2 years, this is good. Br. Releaves, pl. 34. cites Perk. 138 — So if the Release be given Condition contained in it, if it be by Deed indurated, the Deeds are good, and declarers the Power of the Release. Br. Ibid. — But it seems that he who releases may plead the Condition without forgiving the Deed; and then, when it is shown, the Party may have Oyer of it, and may pray that it be entered De Verbo in Verba. And then it is of Record, and he may plead the Condition. Ibid.

Where Release is Simple, and Indenture of Deeds comprehend a Condition in Full also upon it, there if the Release and Indenture of Deeds are done at one Instant, it is sufficient upon the Performance of the Deeds to defeat the Release. Per Trevisilian and Wich, Quod Curia non Negatur. Br. Releaves, pl. 39. cites 43 Aff. 12.

3. If A. releases to B. all his Right in the Land which B. has by Delegation due to A. and after B. grants to A. That if be pays 10l. at such a Day, that the Release shall be void, and be may re-enter; this shall not avoid the Release, because the Right is gone Simpler before. But it seems clear, That if the Condition had been in the Release, that then the Condition had been good. Br. Releaves, pl. 39. cites 43 Aff. 12. and 43 Aff. 44.

4. If a Man releases to another, and delivers it to J. S. to deliver to the Party, this does not take Effect before the Agreement of him who shall have
have it; for the Stranger is only a Servant to him who made the Release; quod nota. Br. Releas.es, pl. 45. cites 8 H. 6. 13. Per Hulsey
and Brian Ch. Justices.

5. If the Lord disfies the Tenant, and makes a Feasamet in Fee by or A Prettant without Deed, this is a Release of the

ever may in Evidence be used as a Release. Clat. 52. pl. 55. 11 Car. Ballard v. Stowell.

6. If the Disfee disfies the Heir of the Discharge, and makes a Feasamet in Fee by or without Deed, this is a Release in Law of the Right;

and so of a Right in Action. Co. Lit. 264. b.

7. If the Oblige makes the Obligor Executor, this is a Release in Law of the Action, but the Druy remains, for the which the Executor may

remain to much Goods of the Testator. Co. Lit. 254. b.

8. If a Feme Oblige takes the Obligor to Husband, this is a Release in 0 if there

are 2 Feme

Obligees, and

the one takes the Deleve to Husband. Co. Lit. 264 b — But if a Feme Executive takes the Deke to

Husband, this is no Release in Law; for that should be a Wrong to the Dead, and in Law work a De-

vallavit, which an Act in Law shall never work; And so was adjug’d in the King’s-Bench, Mich. 59 & 51 Eliz. Co. Lit. 264. b.

9. An Aoward that all Suits shall cease hath the Effect of a Release, and the Submission and Award may be pleaded in Discharge as well as a Re-

lease. 2 Mod. 228. Pauch. 29 Car. 2. B. R. Stringf. Green.

10. In Debt upon a Bond of 1000 l. the Defendant pleaded a Co-

venant by the Plaintiff, whereby he covenant’d not to sue for the said Debt

upon the said Bond for and during the Term of 99 Years. Upon De-

murrer to this Plea it was negt; for it is but a mere Covenant, and

does not enure as a Release or Defeance. 2 Salk. 573. Trin. 1 W. & in Bar a *

Letter of Li-

everse to. to

abroad for 7 Years without Molestation, and a Covenant not to sue him, and that if he should

be discharged and released of the Debt. And by Hol C. 1. It is be a Covenant Precedent, it is an

obfure Release, but it is a Covenant not to sue within a particular Time, it is no Release, and you

must take your Remedy upon your Covenant. And adjudged per tot. Car. for the Plaintiff.—Carth. 63. S. C. adjudge. 6. And per Car. If the Covenant be that the Oblige shall not put the Bond in Suit

at any Time, it is payable as a Release, because in Effect it is so.—S. P. In delivering the judgment

of the Court. Trin. 15 W. 3. in Case of Lacy v. Kinaion; but fail, That if A and B are joint

ly and severally bound to C in a Sum certain, and C covenant with A not to sue him, that shall not be a Release

but a Covenant only, because he covenants only not to sue A. but does not covenant not to sue B. for

the Covenant is not a Release in its Nature, but only by construction to avoid Circuity of Action; be-

cause that he covenants not to sue the one, he still has a Remedy, and then it shall be construed as a Cova-

nent, and no more. And without his Covenant he might have sued one of them without the other; and

therefore there being nothing in the Covenant to preclude from that Benefit, he has it still left in

him. 12 Mod 551. 552

* Carth. 64. at the End of the Case says, Nota, In the Argument of this Case it was allowed by all,

That a Letter of Licence containing the Words following, (viz.) That if the Creditor the Sec. within

in such a Time, that the Debt shall be extinguished, such Licence is pleaded in Bar.—S. P. Co. E. 552.


(L. 3) Mistake or Misrecital.

1. D EFT by S. against B. who pleaded Release of all Actions which the

Defendant had against the Plaintiff Noverint &c. me S. remitted 
&c. B. omnes Actions quas idem B. habet versus S. where it should be

all Actions quas the Plaintiff has against the Defendant; and it was de-

nur’d, and the Plaintiff recover’d. Br. Releas.es, pl. 56. cites 14

E. 4. 2.
Release.

2. If a Man releaseth to W. N. Yeoman all Actions where he is a Gentle-
man, the Releaseth good, and the Addition void. Br. Releases, pl. 58.

 cites 21 El. 4. 72.

3. One condemned in Debt paid Part of the Money to the Plaintiff, who gave him an Acquitance for the Sum received (in these Words) Re-
ceived ten Pounds in Part of a greater Sum, wherein I am condemned [Re-
covered by me] by Judgment given by the Justices of Assise in Derbyshire, whereas the Judgment was in Truth given in Bank, as it ought; The Queation was it this Acquitance be sufficient in Law, by reason of this Mistake, to bring an Audita Querela, the Plaintiff having sued a Ca.
Sa. And it seemed not; for no such Judgment was given. D. 50. B.

(L. 4) In Mist Actions. What shall be a good Release in Mist Actions.

So of Release 1. IN Writ of Annuity, a Release of all Actions Personal is a good Plea,
Reus, tho' the Annuity be to the Plaintiff and his Heirs. Br. Annuity, pl.

Brooke says, Quære inde; for this is a strange Reason, and he says he has the Book at large which is in Doubt.
Actions Real, or of Actions Personal, is a good Plea in Writ of Annuity.

Note a Di-
versify be-
tween the
All of the
Party and an
shall be recovered for the wrongful Waifte done by the Tenant; and
therefore in this Action a Release of Actions Real is a good Plea in Ear,
and so is a Release of Actions Personal. Litt. S. 492.

Act cannot alter the Nature of his Action; and therefore if the Lease for Life or Years does waife, now is an Action of Waifte given to the Leffer, wherein he shall recover two Things, viz. The Place waif-
ated, and treble Damages; in this Case if the Leffer releaseth all Actions Real, he shall not have an Ac-
tion of Waifte in the Personall only; And if he releaseth all Actions Personal, he shall not have an

A Release of Actions Real, or of Actions Personal, is a good Plea in Writ of Waifte, and in *Assise
which are Actions mixt, and to it it occurs in Quære Impediment. Br. Releases, pl. 92. cites Lib. Littleton,
Tres. Releases—S P. Co. Lit. 285 a.—But Br. Waifte, pl. 29. is that a Release of all Actions Per-
sontal is in Plea in Waifte; for it is an Action mixt, and brought in the Reality; and cites 42 El. 3. 21. 32—
* But Differentiali in Assise may plead Release of Actions Personal, but not of Actions Real, for this is for
the Tenant; for the Tenant may plead the one or the other; and it seems also that Quære Impediment is a

(M) What Thing may be released by express Name.

1. If the Recognizer of a Statute releaseth to the Tenant all his
Right in the Land, and all Manner of Actions which by reason of
the Statute he shall have in the same Land; this shall be a good Dis-
charge of the Land. 15 Mf. 7. 25 C. 3. 51.
Release.

2. A Covenant not broken may be released by Release of all Covenants. Tr. 16 John B. R. in Witten and Bies’ Case, agreed per Curiam. Co. 10. Albany 112, b. Co. 10. Lempert 5 11, b.

Release of all Covenants is no Discharge of a Bond for Performance of Covenants after that the Covenants are broken; for the Obligation being forfeited, is not dispensed with. D. 55. b. pl. 28. Mich. 55 H. 8, in Case of Reed v. Bullock.

3. If Lessee for Years grants over his Estate, reserving a Rent during Prov. 156 the Term; this Rent shall be released by Release of all Rents. Tr. S.C.

If A. recovers in Trepass against B. in B. R. and after B. brings Writ of Error, and then pending this Writ A. releases to B. all Executions, and after the Judgement is affirmed, and new Damages given to A. for the Delay upon the Statute of 3 H. 7. the said Release shall not bar A. to have Execution of those Damages, because he had not any Right to have the Execution, nor to any Duty at the Time of the Release made. P. 12 John B. R. between Childs and Durrant adjudged.

and Bull. 157. Durrant v. Child are upon a different Point. — For more see to Execution see (O) 33.

(N) What shall be released by Release of All Suits.

1. By such Release a Man shall be harr’d to the Execution of a Re. by Release, recovery of Damages by Fieri Pactas, Eliget or Capias; for the Court will not grant them without Prayer of the Party, which is a Quit, 19 P. 6, 4.

H. 6, 4. But it seems misprinted, and that it should be 19 H. 6. as in Roll. — S. P. Co. Litt. 291 a.

2. If A. recover Debt or Damages against B. and after releases to him all Suits, this shall bar him to have Execution by Capias or Eliget. 26 P. 6, Execution 7.


(O) What shall be released by Release of All Debts and Duties. [Or, All Debts or Duties.]

1. If [A Man] releases all Duties, this does not bar a Writ of S.P. for De- Account, because there is not any certain Duty, before the Ac- count made. 26 P. 6, 8, 9.

fall out upon the Account, is uncertain, and that the Latin Word is Debita, yet the Duties extend to all Things, the are certain, and therefore discharge Judgments in Personal Actions, and Execution also. Co. Litt. 291 a. — This seems misprinted for (6) b.

2. If A. recovers Debt or Damages against B. and after releases to B. all Duties, this shall bar him to have Execution by Capias or Eliget; because the Duty is extinct. 26 P. 6, Execution 7.

Newton J. — 5 Rep. 155, b. in Altham’s Cite.

4 M
Release.

3. If a Feme releases to another all Actions of Debt, this shall bar her of a Writ of Rationabili Parte honorum which the had Right to have. 17 C. 3. 17. b.

4. If a Cononor of a Statute Merchant be in Execution and his Lands also, and after the Conorree releases to him all Debts, this shall discharge the Execution; because the Debt is the Cause of the Execution. Co. Litt. 76.

(P) What shall be released by Release of All Actions, [or, All Manner of Actions.]

Be Releases, 1. I f a Han releases all Actions by this he shall release as well Actions which he has as Executor as other. 39 C. 3. 26.

2. By a Release of all Actions he shall not release an Annuity. 39 P. 6. 43.

in the Case of Hoo v. Marshal. cites 4 E. 4. 43 — In Debt for the Arrearages of an Annuity; the Defendant pleaded a Release of all Actions before the Day of Payment and after Oyer of the Deed, it was demurred thereupon, and held to be no plea, because a Release cannot discharge a Duty which was not then in being; wherefore it was adjudged for the Plaintiff. Cro Eliz. 897; pl. 29. Trin. 44 Eliz. in C. B. Tuke v. Cheek — Bull. 178. S. P. by Williams J. and the whole Court inclined to be of the same Opinion.

Grantor of an Annuity in Fee, upon the first Day of Payment paid it to the Grantee, who gave him an Accrayment, and at the End thereof was a Release of all Actions; At the next Day of Payment, the Annuity being in Arrear, the Grantee brought a Writ of Annuity; The Grantor pleaded this Release in Bar; and upon Demurrer to the Plea, it was infiuled for the Defendant, that by the Release of all Actions the Annuity was discharged, because an Annuity seems to be a Thing in Action, and the Party had no Remedy to recover it but by Action; and therefore if the Action be released, the Thing itself is too, but adjudged, that theo' that is true, yet it is not a Thing in Action, for before the Day of Payment no Action lies in this Case. Mo. 153. pl. 279. Trin. 24 Eliz. Dig's Cafe.

If a Man has an Annuity for Term of Years for Life or in Fee, and be, before it be behind, releases all Actions, This shall not release the Annuity; For it is not merely in Action, because it may be granted over. Co. Litt. 252. b.

4. If a Man recovers Damages in Assise, and after releases to the Recoveree all Manner of Actions, this shall release his Execution by Scire Facias, so that he shall not have this Execution upon this Judgment contrary to this Release. 1 C. 3. 26. b. Admitted by Mist. 2 C. 3. 39. Same Case.

S. C. & Litt tit. Release accordingly — Contra Litt. S. 564. That if a Man recovers Debt on Damages, and he releases to the Defendant all Manner of Actions, yet he may lawfully sue the Execution by Copy of suit &c. or, by Eleget or Pare Facias; For Execution upon such a Writ cannot be laid an Action. — For regularly an Action is said in his proper Shape to continue till Judgment he given, and after Judgment then does Proceed of Execution begin, and therefore a Release of all Actions regularly is no Bar of Execution; For the Execution begins when the Action ends, and therefore the Foundation of the first is an Original Writ, and determines by the Judgment, and Writs of Execution are called Judicial, because they are grounded upon the Judgment. Co. Litt. 283. a.

S. P. Co. Litt. 201. a. Plaintiff.

5. If I recover against J. and have his Body in Execution, and after release to him all Actions, yet he shall remain in Prison, because the Duty
Duty remains, and is not extinguished by the Release. 26 H. 6. Co. 2 after Judgment. Release refers to the Defendant all Actions, and his Body afterwards taken in Execution, he shall not have an Audita Querela upon it. For Execution is no Action. 8 Rep. 153. in Alcham’s Cafe. — For Execution begins when the Action ends. Co. Lit. 289, a.

6. In Annuity, Release of all Actions Ratione Debiti Comparat, seu alterius covenante Contractus is no Plea where the Plaintiff counts by Prescription; For it may be before Time of Memory. Br.’s Annuity, pl. 42, cites 12 R. 2. and Fitzh. Release 29.

7. Where an Abbot alias, so that Contra Formam Collisionis lies, Release of all the Rights to the Abbot is not good; For he has nothing in the Land; Contra of Release of all Actions to him; For Action lies against him. Br. Releases, pl. 14, cites 14 H. 4. 375, 38.

8. Release of all Actions will not extinguish Executions; Quod nota. But a Release of all Actions was admitted a good Bar of Execution upon Statute Merchant, and not Execution into Action, Br. Barre pl. 35, cites 24 E. 3. 25. — S. P. Brooke says the Reason seems to be insufficient as the Plaintiff may have Action of Debt upon it; Contra Littleton in his Chapter of Release; For Statute is only an Execution. Br. Statute Merchant, pl. 47, cites 29 E. 3. 22.

9. If a Man sues an Appeal of Felony of the Death of his Ancestor against another, tho’ the Appellant releases to the Defendant all Manner of Actions Red and Personal, this shall not aid the Defendant; for that his Appeal is not an Action Red inasmuch as the Appellant shall not recover any Reality in such Appeal; neither is it an Action Personal, the Wrong being done to his Ancestor and not to him; but if he release to the Defendant all Manner of Actions, then it shall be a good Bar in an Appeal. Lit. S. 505.

10. In an Appeal of Robbery, if the Defendant will plead a Release of all the Appellant of all Actions Personal, this seems no Plea; For an Action of Appeal, where the Appellee shall have Judgment of Death &c. is higher than any Action Personal is and is not properly called an Action Personal; and there if the Defendant will plead a Release of the Appellant to bar him of the Appeal, in this Case he must have a Release of all Manner of Appeals, or all Manner of Actions, as it seemeth &c. Lit. S. 501.

11. If after the Year and Day the Plaintiff sue a Scire Facias why the Plaintiff should not have an Execution, it seems such Release of all Actions shall be a good Plea in Bar; But some hold the contrary, because a Scire Facias is a Writ of Execution, and is to have Execution &c. But because upon the same Writ the Defendant may plead divers Matters after Judgment given to out him of Execution, as Outlawry &c. This may well be said an Action &c. Lit. S. 505.

12. So in a Scire Facias upon a Fine a Release of all Manner of Actions is a good Plea in Bar. Lit. S. 506.

13. If a Man by his Deed be bound to another in a certain Sum of Money, to pay at the Feast of St. Michael next ensuing; If the Obligee before the said Feast release the Obligee all Actions, he shall be barred of the Duty.
Releafe.

14. But if a Man leaves Land for a Year rendering at Michaelmas 40s. and afterwards before the Feait he releaseth to the Leafee all Actions, yet after the Feait he shall have an Action of Debt for the Non-payment of the 40s. notwithstanding the said Releafe. Lit. S. 513.

By a Releafe of all Manner of Actions, all Actions, as well Criminal as Real, Personal and Mixt, are released. Co. Lit. 257. b.

16. If a Man by Deed covenants to build an House or make an Estate, and before the Covenant broken the Covenantee releaseth to him all Actions, Suits and Quarrels, this does not discharge the Covenant itself; because at the Time of the Releafe Nihil suift Debuit there was no Debt or Duty, or Cause of Action in being; But in that Case a Releafe of all Covenants is a good Discharge of the Covenant before it be broken. Co. Lit. 292. b.

17. If a Man be indicted by Conspiracy, and after releaseth to the Conspirators all Actions, and after that the Party indicted is arraigned upon this Indictment, and by Trial acquitted; Gauw J. doubted whether this Releafe would bar him in an Action of Conspiracy or not. Godsb. 167. in the Case of Hoo v. Marthul.

It is not a Releafe of Covenants not to perform a Day, and bind myself by Obligation to perform the Covenants, and before the Day you releaseth to me all Actions, there the Obligation is discharged but not the Covenant; For the Obligation was an absolute Duty, and the Covenant but contingent. Per Popham Ch. J. Goldsb. 168. in the Case of Hoe v. Marthul.

19. By a Releafe of all Actions, Duties, and Answerments, it seems admitted, That a Relief and Herriot, which were in Question, were releas'd. Cro. E. 375. pl. 10. Patch. 37 Eliz. B. R. Rotherham v. Crawley.

20. Difficultie releaseth to Diffieror all Actions, this is no Releafe of his Right of Entry; For when a Man has several Means to come at his Right he may releaseth one of them especially, and yet take Benefit of the other. S. P. Co. 8 Rep. 151. b. 152. in Altham's Cafe.

21. Besh to pay Money at Several Feasts; 3 of the 4 are past; a Releafe of all Actions before the last Feait discharges all; Otherwise of Rent. Lit 292. b. in Altham's Cafe.

22. By Releafe of all Actions all Causes of Action are released. S. P. Co. Lit 285. a. 153. b. in Altham's Cafe.

23. If I releaseth all Actions to my Diffieror, yet after the Diffieror's Death in Law shall I may have Wrif of Entry in the Per & Cui against the Heir of the Diffieror.
Release.

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Annuity; given

than his express Words, because Equior est Dispositio Legis quam Hominis. § Rep. 152. in Altham's

24. Release of all Actions to Bailee of Goods in Writ of Detinue against Bailee's Executors, they shall not take Advantage of this Release; for this is a New Action founded upon their own Detainer. 10 Rep. 51. b. in Lamper's Cafe, cites 22 H. 6. 1.

25. By a Release of all Actions a Releafion is released, and the Avowant is Defendant, tho' in some Respect he is Plaintiff. Per Dockeridge j. 2 Roll. Rep. 75. Hill, 16 Jac. in the Cafe of Lodar v. Samuel.

(Q.) What Things shall be released by Release of

Actions Real.

1. This Release shall be a good Bar of a Queare Impedit; for it is in a Dainer Real, for thereby the Inheritance shall be recovered. 9 H. 6. 57.

2. If an Affile of Novel Differeis be arraign'd against the Diffesor and the Tenant, the Diffesor may well plead a Release of Actions Personals to bar the Affile, but not a Release of Actions Reals; For none shall plead a Release of Actions Reals in Affile but the Tenant. Litt. S. 494.

3. Such Release to one who is only a Reverterion Expectant on a Franksinement does not extinguish Dower; For Action et jus Prolequendi in Judicio quod aliqui debetur, and the Feme cannot sue against him to recover Dower by Judgment; because he is not Tenant to the Precise, nor could he render Dower to her; for at the Time of the Release another was Tenant of the Franksinement. 8 Rep. 151. a. b. Altham's Cafe.

4. When Land is to be recovered or restored in a Writ of Error a Release of all Actions Real is a good Bar. Co. Litt. 288. b.

5. If a Judgment is given in a Real Action, a Release of all Actions if a Judgment is a good Bar in a Writ of Error brought thereupon. Co. Litt. 288. b. given upon a False Verdict in a Real Action, a Release of all Actions Reals, is a good Bar in an Attaint. Co. Litt. 289. a.

6. Release of Actions Real, after Grantee has made Election to bring An S. C. Cro. unitv, is no Release or Bar in Annuity; Contra of Actions Personals, where Grantee has made Election to take it as a Rent. Jo. 215. pl. 3.


(R) What Things shall be released by Release of

Actions Personal.

1. By this Release an Annuity shall be bar'd. 21 C. 4. 84. 19 D.


lease of all Actions Personals, is a Plea in a Writ of Annuity. Het. St. 1. in Cafe of Gerard v. Boden—Where Annuity was granted with Clause of Differeis, but did not live for himself and his Heirs, it was held clearly to be a Bar. Cro. C. 171. in Cafe of Bodvell v. Bodvell.—Jo. 214. 215. S. C. accordingly, and that the Co. Litt. 285. a. S. 492. says it is a Mixt Action, yet the Court there held it to be a Personals Action only.—But it is no Plea in Writ of Debt of Annuity granted for Term of Years for the

4 N
Releafe.

2. This Releafe shall be a good Bar of an Action of Covenant brought to have a Fine (admitting the Covenant broken before the Releafe) for this is not Real but Personal. 10 Ch. 6, 13.

3. This Releafe is a good Bar of Ađm. 12 H. 6, 4. 19 H. 6, 42.

4. If the Diffidente releaseth to the Diffidente, or to the Tenant all Actions Personal, yet he may well enthr. Brooke lays Quare fit he had releaseth all Demands. Br. Releaseth, pl. 35. cites 17 Ađm. 25.


7. If a Man leseth for Years rendeth Rent, and that the Tenant shall forfeit 20. 5. Nonage pene for Nonpayment at the Day &c. Releaseth of all Actions Personal made to the Tenant before the Penalty be forfeited, is no Bar; for it is neither a Duty nor a Chafe in Action till the Tenant fails of Payment. Br. Releaseth, pl. 47. cites 5 E. 4, 41. Per Ar den.

8. If a Man by Wrong takes away my Goods, it is no Plea to him all Actions Personal, yet I may by the Law take my Goods out of his Possession. Lit. 497.

9. If I have any Cause to have a Writ of Detinue of my Goods against another, tho' I releaseth to him all Actions Personal, yet I may by the Law take my Goods out of his Possession; because no Right of the Goods is releaseth to him, but only the Action &c. Lit. 498.

10. In Appeal of Makessim, a Releaseth of all Manner of Actions Personal is a good Plea in Bar, because in such an Action he shall recover nothing but Damages. Lit. 502.

11. If a Man be Outlaw'd in an Action Personal by Proceeds upon the Original, and brings a Writ of Error, if he at whole Suit was outlawd with plea against him a Releaseth of all Manner of Actions Personal, this seems no Plea; for by the said Action he shall recover nothing in the Personal, but only to the Outlawry; but a Releaseth of the Writ of Error is a good Plea. Lit. 503.

12. There is a Diversity between Real Actions, wherein Damages are to be recovered at the Common Law, as in Ađm. &c. and where Damages are not to be recovered by the Common Law but are given by the Statute; for there a Releaseth of all Actions Personal is not any Bar, as in the Writ of Detinue, Entrée &c. &c. Lit. 285. a. b.

13. If the Plaintiff in a Personal Action recovere any Debt &c. or Damages, and be afterward after Judgment, there in a Writ of Error brought by the Defendant upon the Principal Judgment, a Releaseth of all Actions Personal is a good Plea. Co. Lit. 288. b.

14. If
Release.

1. If a Writ of Audita Querela be brought by the Defendant in the former Action, to discharge himself of an Execution, A Release of Actions Personal is a good Bar; because he is to discharge himself of a Personal Execution. Co. Litt. 289. a.

(S) Of all Actions Real and Personal.

1. Such Release will be a good Bar of a Writ of Error upon Judgment in Real Actions. 9 D. 6. 47. b.
3. Save Facts upon a Recognition of Debt in the Chancery, the Defendant pleaded Release of all Actions Real and Personal, and a good Plea; and so was the Opinion of Littleton in his Book. Br. Releases, pl. 29. cites 24 E. 3. 73.
4. In Appeal by a Feue of the Death of her Husband, the Defendant A Release pleaded Release of the same after the left Continuance of all Actions Real and Personal; and the Plaintiff demurred; and the left Opinion was, that Real is a Thing durable, as Land or Rent, and Personal is Damages &c. But per Huls, Personal is as well the Punishment of the Person as Damages, and the Punishment here is by Death, therefore a good Bar. Contra Littleton, tit. Release; therefore Quere. Br. Appeal, pl. 29. cites 9 H. 4. 2.

Common or Civil Actions, and not to Criminal Co. Lit. 257. b.

(T) Of all his Right.

1. If a Man has Title to have a Writ of Error upon a Recovery in a Real Action, he releases all his Right, this shall extinguish the Writ of Error. 9 D. 6. 47. b. 48. b.
2. If Lessee releases to Lettee all his Right in the Land, the Rent This will released upon the Lease is gone hereby. 19 D. 6. 23. extinguish the Rent; per Hale Ch. J. Freem. Rep. 357. pl. 470. Parch. 16. 3. Anon.
3. So if the Lord releases to the Tenant all his Right in the Land, A Life of 7 years, the Rent Service is gone thereby. 19 D. 6. 17.
4. If the Lord releases to the Tenant all his Right in the Land, the Rent is gone. 19 D. 6. 17.
5. If a Grant of a Rent-charge releases to the Tenant all his Right in the Land, the Rent is gone. 19 D. 6. 17.
6. If the Governor of a Statute releases to the Governor, being levied of the Statute, he and subject to the Statute, all his Right in the said Land, yet this does not discharge the Land, because the Land is not charged by the Statute.
Release.

Statute, but the Body of the Conouffor, and the Land only chargeable by Releafe thereof. 25 All. 7. 25 E. 3. 51. b. 45 E. 3. 22. b. all one and the same Case. Cook. 10 Lambert, 47. b.

7. If a Term for Years of Land be devised to one for Life, the Remainder to another, by which he in Remainder has a Possibility of a future Interest, he may well, by Releafe of all his Right, extinguishe his Possibility, because it is a near Possibility that he shall survive the other, and this Releafe is for the benefit of the Partition to extinguishe the Possibility. Cro. E. 355. pl. 2. Patch. 39 Eliz. B. R. Barrow v. Gray. But there is Tilde and Interest alto.

8. So it terms if a Term be devised to one so long as he shall have Issue of his Body, the Remainder over, he in Remainder may releafe his Possibility by releafe of all his Right; for the this Possibility is not to near as the other before, yet this is, by reasonable Intention, a Possibility which may happen, whereas it would not be a good Remainder.

9. So it terms if a Man devises his Term to another, so long as he shall have Issue of his Body, and dies, by which his Executor has a Possibility of Reversion, that he may releafe this Possibility by Releafe of all his Right, for the Calue aforesaid.

10. Waft against Tenant for Life of the Lease of his Ancestor, the Tenant pleased Releafe of the Ancestor, of all his Right for Rents and Issues to the Tenant for his Life; for he has no Rents any Right may Challenge, Claim, or Demand, during the Life of the Tenant: And the best Opinion was, that it is no Plea; and yet the Tenant has but for Term of his Life only, and if he alien, he in Reversion may enter, and by a Releafe nothing can depart but that which is in Action, or in Effe, at the Time; and this Was was done after; but conant, of Grant; for if the Letfer grants that the Tenant shall not be impeach'd of Waft, or may do Waft, this is good. Note the Diversity. Br. Waft. pl. 30. cites 42 E. 3. 23. 24.

11. Rents are not extinguished by a Release of all Right of Land; for if they are not soothing out of Land, nor are they extinguished by Unity of Possession. Le. 248. pl. 386. Mich. 33 Eliz. B. R. The Bishop of Lincoln v. Cooper.

12. Title by Condition or Alienation in Mortmain is extinguished by Releafe of all his Right. 8 Rep. 153. b. in Altham's Case.

Land was

Release of Condition or Alienation in Mortmain is extinguished by Releafe of all his Right. 8 Rep. 153. b. in Altham's Case.

if A releaseth the Tenant by Fine all his Right, yet the Condition remains.
Release.

13. If a Man quietaims a Right before the Right happens, the Qui-claim is void. 19 Rep. 17, b. in Lamper's Cae.

14. If a Man releaseth all his Right in such Land, this will not dis-

charge a Judgment not executed, because such Judgment doth not give or

vest any Right, but only makes it obnoxious or liable to Execution. 3


(U) What Things may be released by Release of

All Demands.

1. A Release of all Manner of Demands is the best Release to him

in which it is made that he can have, and shall entitle most to

his Advantage. Lit. 117.

2. If A. recovers against B. in W. R. in Action of Everts, and see (N) pl.

after B. brings Writ of Error in the Exchequer-Chamber, and pend-

ing this A. releases to B. all Demands; and after the Judgment is

annulled, and new Damages here given to A. for the Delay upon the

Statute of 3 H. 7, the said Release shall not discharge those Damages,

because nothing was given to him at the Time of the Release made, nor

any Exception of any Duty. P. 12 Ja. B. R. between Child and

Dorcant. Admit.

3. If A. takes a Distress for Rent as Bailiff to B. and by his Com-

mand, upon the Land of C. and after releases to C. all Demands, and

then C. brings Replevin in against A. who makes Confinement in Right of

B. and as his Bailiff, he may well do this, and shall not be barred

by the said Release, because at the Time of the Release made he had

not any Suit or Demand against C. but only had taken a Dis-

tres in the Right of another Man. D. 13 Ja. B. R.

4. So should it be tho' the Release was made after the Replevin

brought, and before the Confinement made by him. M. 13 Ja. B. R.

5. So should it be tho' the Release was made after a Writemount: Salk. 116,

brought, and before Confinement made. M. 13 Ja. B. R. between Flint and

Longborne. Admit.

6. By such Release all Manner of Demands are extinct and gone.

Litt. 117.

7. By this Release all Actions Real are extinct and gone. Lit. 117, S. P. Litt.

117.

8. By this all Actions Personal are extinct. Litt. 117.

9. By this all Actions of Appeal are gone and extinct. Litt. 117, S. P. Litt.

117.

10. By such Release a Right of Entry, and every Thing which is

implied therein, is released. 6 H. 7. 15.

11. If a Man has a Title of Entry into any Land or Tenement by S. P. Litt.

such Release for Title is gone. Lit. 117. Et. 16 Ja. B. R. in 5 39. And
Release.

Wotton * and Bic's Café. Agreed Per Curiam. Co. Litt. 291.
S. 599. 34 H. S. Brook's Releases 90. Contra 19 H. S. Per
Fitz-James.

Lord Coke, in his Comment upon that Section, says, That (Title) is taken in the largest Sense, including Right also. Co. Litt. 292 a.


G. C. was poss'd of an Indenture, and left it, and G. S. gave the same Indenture to whom the said G. C. releas'd all Actions and Demands; and after the said J. S. gave the same Indenture to J. T. and after the said G. C. brought Action of Detinue against J. T. who pleaded that the said J. S. found the Indenture, and that the said G. C. releas'd to the said J. S. all Actions and Demands, and after the said J. S. gave the same Indenture to the said J. T. Judgment is S. J. and it was agreed in C. B. the Café being of Lord demanded there, that this is a good Bar, and that the Release of all Demands shall exclude the Party from seizing the Thing, and from his Entry into the Lord, and from the Property of the Chattel which he had before; and it was moved in B. R. and they were of the same Opinion, and said that the Realson is inasmuch as Entry into Land, and Seizure of the Goods are Demands in Law; good nota; and Littleton in his Chapter of Release's accordingly. But Simpson Ch. J. was of the contrary Opinion. 25 H. S. But all here were against him. Br. Releases, pl. 9. cites 34 H. 8.

After out of Rent out of Land, the Tenant pleaded a Release from the Plaintiff of all his Rents in the County of D. and all Actions and Demands, and at this Time no Rent was due, nor Arrear; and yet by the Opinion of the Court it is a good Bar, by Reason of this Word Demands; wherefore the Plaintiff was Non-suited. Br. Bar, pl. 61. cites 22 Att. 5. — Br. Releases, pl. 56. cites S. C. By Release of all Demands, all Frankments and Inheritances Executory are released, as Rents &c. 8 Rep. 154. in Albion's Caffe.

S. P. Litt. S. 310. — Litt. 117. A Rent-Serate shall be releas'd thereby.

16. Aid to marry a Daughter may be releas'd by those Words, before it be due, if he recites that where he holds by Fealty, Rent, Service, and Lib, to marry his Daughter, and he released all Demands, except Rent and Fealty. 40 E. 3. 22 b. (But quere if it be not an Incident inseparable.)

By a Release of all Manner of Demands, a Rent-Charge is extinct. Litt. S. 510. — Release of all Demands, is no Release of Rent upon Lease for Years not then due. 1 Lev. 59. Hen. v. Hanlon.
Release.

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19. Against such a Release a Man shall not sue Execution of a Judgment for Damages by Seizure facias. 19 H. 6. 4. adjudged.

20. By such Release Execution of a Judgment for Damages shall be discharged, because the song of a Fieri facias or other Writ of Execution is a Demand; for it shall not be granted without Demand of the Recoverer, nor the Suits不妨s it, and therefore against such Release he shall not sue Execution by Fieri facias, Capias, or Eject.

19 B. 6. 4.

21. By a Release of all Demands a Covenant before it is broken Com. J. 172 shall not be released; for before the Breach it is not in Demand. In re. Dear. 6 J. R. between Hancock and Field abridged. But this was abridged Or. 5 J. R. where the Covenant was to have the Land well repaired at the End of the Term.

Hudfon. Roc. 332. adjudged. This Case was cited by George Crooke. 16 J. R. B. R. in Water and Bee's Case, and then agreed per Curiam, which see for cited 11 Dobson's Reports 279.


23. If a Man promises A. that if he marry J. S. that he will pay to B. herself a certain Sum after the Death of J. S. and after B. takes J. S. to Baron, and then J. S. releases all Demands to him which made the Promise; this shall not discharge the Allumpst, but the Feafe shall have Action thereupon after the Death of the Baron, notwithstanding the Release, because it was not broken at the Time of the Release, for it is to be paid after the Death of the Baron, and it was only in Covenant at the Time of the Release; for this Promise was but a Covenant without Deed. Hill 6 J. B. R. between * Belcher and Contingent. Hudfon. Roc. 332. adjudged. This Case was cited by George Crooke. 16 J. R. B. R. in Water and Bee's Case, and then agreed per Curiam, which see for cited 11 Dobson's Reports 279.


If a Man promises A. in Consideration that he will sell to his Son such Merchandise at such a Price, that if his Son does not pay it at the Feast * of St. Michael next coming, he himself will pay it, and after before Michaelmas he releases all Actions and Demands to him who made the Allumpst; this shall not release the Allumpst, for till Michaelmas comes it is not known whether his Son will have paid it or not, and till Default of Payment by him the other is not bound to pay it, and so it is a mere Contingent till Michaelmas, which cannot be released. Hill 16 B. R. between Brice and Auer adjudged. Yelv. 215.

If a Man promises to pay to A. in tim. to B. during Life, a Release of all Quarrels, Controversies and Demands which he had or may have, will not discharge this Agreement, because the Execution of the Promise was not to be till the Rent should be due; but if by express Words he had released all Promises or all Actions which he had or might have, then the Promise had been released; for the Promise being a special Cause of Action, cannot be released till it comes in Life. Yelv. 156. Trin 7 J. R. B. R. Belcher v. Hudson.

24. If Lease for Life grants over his Estate by Indenture, reserving Com. J. 486. Rent during the Continuance of the Estate, and after releases to the pl. 6. 2 C. 71. Action all Demands; this shall discharge the Rent aforesaid, for he had a Frankenestment of the Rent in him at the Time, and may Demand

Rouse. — * Yelv. 36. 383. Contingent

Bond is not discharged by Release. 1 Yelv. 117. 124. Neal v. Whitfield.

The Lefsee having all his Estate, this Rent is not attorned in the Reversion, but is due by Contract only; and this Release discharges this Contract, and all Demands concerning...

25. So if the Lefsee for Years grants over by Indenture all his Estate, reserving a Rent during the Term, and after releases the Allignee all Demands, this shall release the said Rent; for tho' he cannot have an Action to demand all the Estate, yet this is an Action of Debt for any Arrearages after, he shall claim it as a Duty accrued from the said Estate; and it shall not be fair that the Duty arises annually upon the taking of the Profits; but this has its Countenance and Creation by the Reformation and Contract, which was before. Tr. 16 Ja. B. R. between Witon and Bie adjudged upon a Demurrer per Kufam Curiam prior Doughton, who feared effect, because all the Estate cannot be demanded by an Action, as in the Case of the Frankentenement before, said, vide. P. 16 Ja. B. R.

26. If Lefsee for Years rendering Rent be, and the Leflor grants over the Reversion, and Lefsee attorns, and after Lefsee assigns over his Estate, and after the Allignee of the Reversion releases all Demands to the said Lefsee, yet this shall not release the Rent; for no Prebey of Estate is between them after the Allignement, nor of Contract at any Time. And Privity of Contract is not sufficient to make such Release good. See this Act. 40 H. 6. B. R. between Collins and Harding adjudged.


27. But if this Release had been made to the Allignee it had extinguished the Rent. Vide ante. Agreed.

28. If he who has a Rent-Charge in Fee releases to the Tenant of the Land all Demands from the Beginning of the World till the Breaking of the Deed of Release, yet this shall discharge all the Rent to which it is to come as that which is past. 20 At. Pl. 5. Per Curiam.

5. C. cited Lev. 103. in the Case of Henn v. Hanlon.
Release.

33. A brought Action against B. — C. was Bail for B. Judgment was S. C. Goddard against B. and he not paying the Money nor rendering his Body, a 59. pl. 93. suit was brought against C. who pleased in Bar a Release of all Debts made to him by A. after the Taking the Bail, and before Judgment. Judgment was not only foraggainst B. Gawdy and Popham held it no Bar, because it was only S. C. for undeniable; But Clerch and Fenner e contra, because the Recognition was acknowledged before the Release, and the Uncertainty was only new, but also upon the Condition thereof; Adornatur. Mo. 469. pl. 672. Mitch. 39 & 40 Eliz. Hoe v. Marshall.

34. A Release of all Demands does not extend to such Writs by which money is demanded in Fact or in Law, but which lie only to receive the Plaintiff by way of Discharge, and not by way of Demand. 8 Rep. 154. in Altham's Case, in a Note of the Reporter, cites 11 H. 4. 6. Treffuld's Case, where a Release of all Demands is no Bar in Writ of Error to receive an Ordemancy.

35. A receives the Arrears of Rent at Nisi Prima, but before the Day in Bank A. related to the Defendant all Demands. Per Holber. If it had been in the Case of the King, the Defendant at the Day in Bank might have pleased it; for he cannot have Audita Querela against the King. But otherwise in the Case of a Common Person. No. 26. Ford v. Mead.

36. Rents-bond, all must Aliums, a * Warranty, which is a Covenant, Real, and all other Covemants Real and Personal, * Aliums, all Manner of * S.P. 5. P. 5. 8 Rep. 154. in Altham's Covemants and Profits Apprendre, Conditions before they are broken or Covemants and Profits Apprendre, Conditions before they are broken or broken or performed, or after. Amnesties, Recognizances, Statutes Merchant or of the Staple, Obligations, Contrails &c. are released and charged by Release of all Demands. Co. Litt. 291. b.

37. In Debt upon Performance of Covemants in a Lease for Lev. 96. S.C., where there was a Rent reserved, the Defendant pleaded Condition years, performed; the Plaintiff replied, and aligned a Breach in Non-Payment of Rent reserved; the Defendant pleaded thereto a Release of all Demands. Refolled by Polier Ch. J. and Mallet and Windham J. That the Rent is not discharged by this Release, and the Defendant between Rent reserved upon a Lease and Incident to the Reservoir, this being Execution, and renewing out of the Land every Year, and a Rent in Grosses and sever'd, which depends only upon the first Contract, without any Regard to the Taking the Profits of the Land; But Twidten J. contra. But Judgment was given for the Plaintiff. Sid. 141. pl. 16. Patch. 15. Car. 2. B. R. Hen v. Hanfon.

4 P. A Release of all Demands shall not release any Thing of a Rent more than the Arrears after days; Per Hale Ch. J. Freeen. Rep. 567. pl. 470. Patch. 1674. Anon. 

Le. Ch. J. North said, He remember'd the Case of Gim v. Ferris, adjug'd in B. R. that such Release had not released his Rent Service; which he observ'd to be contrary to Littleton; but says, That Dillingenius (tint Tempora); For now it is the Form of a General Release to put it in, and is not intended to extend so far. Freeen Rep. 194. pl. 198. Patch. 1675. in the Case of Hayes v. Bickhardt.

38. In Covenant by A. against B. for Payment of an Heriot after the Death Mod. 216. of J. S. or 40s. at the Election of A. — B. pleads, That A. released to pl. 4. 38s. him in the
(U. 2) What shall be released by a Release of All Demands, joined with other Words.

1. If the Lord releaseth all Actions and Demands to the Tenant, except the Fealty and Rent, yet this shall not extinguish an Incident, As reckonable Act; nor the Relief for Double the Rent, unless it be by express Words. Br. Avowry, pl. 18. cites 40 E. 3. 20. 

2. In Trefpafs the Defendant pleaded, That F. was seised in Fee, and releas'd him at Will; and afterwards releas'd to him all Accounts, Suits, and Demands ab Intio Mundi until the Day of the Date, by Virtue whereof he was seised for Life &c. Resolved per toto. Cur That the Estate was not enlarged. And the Plaintiff had Judgment. Cro. E. 268, pl. 7. Hill. 34 Eliz. B. R. Seyman v. Okeley.

3. In an Action of Debt for Non-Performance of an Award made for Payment of Money at a Day to come, there is no present Debt nor any Duty before the Day of Payment is come; and therefore it is not to be discharged by a Release of all Actions and Demands before the Day. Per Williams J. And the whole Court inclined to be of the same Opinion, but the Matter was ended between the Parties. Bult. 178. Eynan v. Bridges, alias Bridges v. Onion.

4. If a Man devises to one 20 l. when he comes to the Age of 21 Years, and dies; the Legatee, after the Age of 21 Years may release this Legacy, and yet by a Release of all Suits and Demands, it is not released. 10 Rep. 51. b. Mich. 10 Jac. in Lampet's Case.

See (M) to (U), inclusive.— (B. a) pl. 2.

(U. 3) Executions released by what Words, and what is released by the Words All Executions.

1. Maintenance was found against the Defendant to the Damage of 10 l. and before the Execution the Defendant got a Release of the Plaintiff made to him and H.K. of all Actions, Suits, and Demands Que verius eos vel corum alterum habeo &c. Newton Ch. J. Eid
fied this Word (Action) does not extend to Execution; But Suit extends to it; For no Execution is awarded but at the Suit of the Plaintiff, and Demand extends to Execution; Per Yelturton, the Release shall not serve for both of Joint Actions against the Defendant and H. K. but Newton contra, For it extinguishes Joint Actions, and several Actions, and the two shall have Advantage thereof jointly, and each by himself shall have Advantage thereof solely, the these Words (vel eremium alterni) was out of the
2. If a Man be condemned to the Party, and to make Fine to the King, and the King releases to him all Actions, Suits, and Demands, yet the Fine shall be paid, per Car. For the King shall not have Action of it, but the Court shall make Execution thereof ex Officio. Br. Releases, pl. 21. cites 19. H. 6. 3.

of Execution: Because the Debt or Duty in itself is discharged. Co. Lit. 291. a. — By Release of all Action, well Executions as Actions are released. § Rep. 177. b. in Edward Altham's Case. S. P. Co. Lit. 291. a.

4. H. the Lord of the Manor entered into a Statute to M. and afterwards M. released to H. then Tenant of the Manor, all Demands, Actions, Suits, and Executions, which he had or might have in the said Manor; And all the Justices agreed that he who is intitled to have Execution upon a C. B. C. Statute, may by his Release discharge it before Execution sued, notwithstanding that he to whom the Statute is made had no Right to the Manor till Execution had; and that a Release of all Right in the Land by the Conun this before Execution does not extinguish the Execution, yet in this Case there are Words sufficient in the Release to discharge the Execution; For Executions and Demands are discharged. And. 153. pl. 132. Hide v. Morley.

5. A Release of Executions is a good Bar in a Scire Facias. Co. Litt. 290. b.


7. If Judgment be given in an Action of Debt, and the Body of the Debt taken in Execution by a Capias ad Satisfacendum, and after the Plaintiff releases the Judgment, by this the Body shall be discharged of the Execution. Co. Lit. 291. a.

8. If Execution be fixed upon a Recognizance by Elegit, and the Conunence by Deed makes a Discharge, that it the Conunor do such an Act, then the Recognizance shall be void; by this the Execution is discharged. Co. Lit. 291. a.

9. It was resolved that Release, after Error brought, made to the Principal Debtor, and his Bail of all Actions, Executions and Demands is a good Bar to a Scire Facias against the Bail; because the Debt and Duty remains notwithstanding the Error brought, and it is not like to a bare Politica

ity. Mo. 832. pl. 1161. Trin. 14 Jac. B. R. Harrison v. Huxley. Adjournment; but mentions the Words of the Release to be All Actions, Debts, Duties, and Demands. — Co. J. 390. S. C. adjournment; but gives the Release was of all Debts, Judgments, and Executions — 2 Bult. 220. Pathe. 12 Jac. S. C. The Court was clear of opinion that the Debt was discharged, and that this being pleaded by the Bail is a good Plea; but the Court would not then over-rule the same, but the Parties feeling the Opinion of the Court relied satisfied; but it is not mentioned there by what Words the Release was made.

(U. 4) By
(U. 4) By other Words, or general Words.

1. A Man cannot dispense with Suit to the Let unlefs by special Words. Br. Incidents, pl. 28, cites 8 E. 2.

2. An Incident cannot be released unlefs by special Words; And the fame of Reasonable Aid. Br. Incidents, pl. 26, cites 52 All. 6.


4. If a Man release all Quarrels (a Man's Deed being taken most strong against him itself) it is as benefical as all Actions; for by it all Actions Real and Personal are released. Co. Litt. 292 a.

5. If a Man release omnes Loquelas, it is as large as omnes Actions; For Omnis Accio edt Loquela, and it extends as well to Actions in Courts of Record as Safe Courts; For the Writ of Error says, In Recordo &c. Loquela que sit inter &c And so the Writ of False Judgment says, Recordare facias Loquelaum; where the Judgment was given in the County Court. Co. Litt. 292 a.

6. Omnes Actions seem to be large Words; For Exatio derivatur ab Exigendo, & Exigere signifies To Enquire or Demand. Co. Litt. 292 a.


8. Baron before Marriage promises to leave his Wife worth 500 l. Per Houghton, She cannot release this, even before Marriage, by Release of all Actions and Demands; but by Release of all Promises or Covenants the may. Per Houghton. Palm. 99. Pack. 17 Jac. B. R. Thompson v. Clerk.

9. Release of all Demands to the Personal Estate of an Intestate, made by the Oblige to the Administrator, does not release a Bond; For a Bond is not any Right or Demand to the Personal Estate, till Judgment and Execution paid out; But otherwise if the Release of all Demands had been to the Person of the Administrator. 2 Salk. 575. Trin 1 Ann. B. R. Topham v. Toller.

10. A Release of all his Estate will extinguish the Right. Arg 11 Mod. 90. pl. 13.

See (M) pl. 2.
— (P) pl. 16.
18. (R) pl.
2. — (T) pl.
5. — (U) pl. 1.

Covenant against the Mafter of the Friars for not performing of Maffes in such a Chapel, against the Covenant &c. The Defendant pleaded Release of all Services to be done in the same Chapel; and a good Plea; and yet Maffes are Oraisons, and not properly Services. Br. Releases, pl. 8. cites 2 H. 4. 6.

2. If
Release.

2. If a Man by Indenture covenants to do a future Act, and before the Covenant broken, the Covenantee relieves all Actions, Quarrels and Demands, and after the Covenant is broken, the said Release is no Bar again, that in Action of Covenant; because the Covenant was to be performed in a Release in a Future, but a Release of all Covenants had been a good Bar; for the Covenant was in Effe & Præsent. 10 Rep. 51. b. Mich. 10 Jac. in Lamper's Case.—cites 35 H. 8. D. 57. & 4 Eliz. in the Report of Benloes.


3. A Release of all Covenants until such a Day, is no Discharge to D 57. Trin. Covenants which were broken before; for being broken before, there was no Covenant as to them; per Hobart J. Hurt. 17. in Case of Smith v. v. Bullock.

4. All manner of Actions Personal, Suits, Quarrels, Duties, Executions and Treasurers, which I ever had, have, or hereafter may have, against the said X. for or by Reason of any Matter or Cause from the Beginning of the World to the Day of making this present Release. This is 126 pl. 198. 15 B. R. 92. No Bar to Action of Covenant, for Covenant broken after the Release.

5. Acquittd and Discharge of all Reparations is as well for the Time past as to come, and amounts to as much as if he had relieved the Covenant; but after Covenant broken it is no Discharge of the Force due; per Manwood, to which Dyer and Mounford agreed. 3 Le. 69. pl. 105. Mich. 20 Eliz. C. B. Anon.

6. A Covenanted with B. to pay B. 40l. per Ann. for 21 Years afterwards B. released to A. all Actions; The Question was, whether the whole Covenant was discharged? All the Justices held that only the Arrears were; because the Covenant was Executory yearly, to be executed during the Term of 21 Years, and he may have several Actions of Covenant every Time it is behind; For nothing shall be discharged by this Release of all Actions, but that which was in Action or a Duty at the Time of the Release made. Godb. 11. pl. 17. Patch. 24 Eliz. C. B. Anon.

7. Grantee in Fee after Assignment relieves to the Grantor All Covenants, this is no Discharge of Covenants running with the Land, as Covenant for further Alliance &c. Cro. C. 503. Trin. 14 Car. B. R. Middlemore v. Goodall.

8. A Release of all Duties, Duties and Demands is no Release of Covenants that were not broken; nor is any other Word but the Word Covenant. Agreed. Freem. Rep. 235. pl 245. Mich. 1677. Anon.

9. A. had Covenanted and broke his Covenant in his Life-time, and dies, and makes the Defendant Executor. The Plaintiff relieves all his Right and Demand to the Testator's Effeate, and brought Action of Covenant; and the Defendant, who was the Executor, pleaded this Release: And the Question was, Whether this Release was a good Bar to the Action of Covenant, or whether it should only be extended to as co Bar the Plaintiff's Claim to any of the Estate in Specie? Adjournal. Freem. Rep. 1747. pl. 649. Mich. 1678. Morris v. Wilford.
(U 6) *Dower.* Released, by what Words; And to whom.

1. **THE** Baron makes a Leafe for Life and dies; *The Release made by the Wife of her Dower to him in Reversus,* is good; albeit she has no Causa of Action against him in Praesenti. *Co Litt. 265. a.*

2. *A feied of Land in Fee devises the Whole to his Wife for 4 Years,* the Remainder to J. his Heir in Fee. *The Wife,* within the 4 Years, releases to the Heir *All Actions and Demands*; *this it seems tolls her Dower,* per *Welton J. Dal. 52. pl. 26. 5 Eliz. Anon.*

3. In Dower, *Tenant pleads Release of Demandant to B. in Possession Tenementorum prodict' exilient' and because he does not pay that he was Tenens Liberi Tenement,* it was held to be no Plea, and adjudg'd for the Demandant. *Cro. J. 151. Hill. 4 Jac. B. R.*

4. *A Mother having Right of Dower to encourage a Marriage of her Son with M. N. released her Dower, and shows the Release to the intended Wife and her Relations,* it shall bind the Mother, tho' the Release was obtain'd by a fraudulent Suggestion of the Son; per Lords Commissioners. *2 Vern. 133. Hill. 1690. Beverly v. Beverley.*

(W) **How it may be made, and what may be reserved upon it.**

*1. Man cannot release a Rent, or Chief en Act. and shall enure to Releife for ever; because every Release goes always by way of Extinguishment*; *Per Fineux & Tremaille. Kelw. 88. a. pl. 2. Hill. 22 H. 7. Anon.*

A Release on Condition that Releefe shall pay to Releffer, to much Money is not good; *But if a Release be so made, that if Releefe pay so much at such a Day to come, then he releefe &c.* This is a good Release; *Per Treby Ch. J. Laww. 638. cites 21 H. 7. 22. & 31.*

Kelw. 89. *J. S. P. per Fineux. — but 2 Show. 446. pl. 411. Matth. & Cm. where in Debt Defendant pleaded a Letter of Licence for 3 Months, in which the Plaintiff covenant'd, That if he should fail in that Time the Defendant should be acquitted of the Debt, and that the Plaintiff did sue him; the Plaintiff demurred; It was held per Cur. That it being under Seal, and the Plaintiff's own Agreement, it was not barely a Covenant, but was a Release upon Condition; And Judgment accordingly for the Defendant.*

† A Release for one Life to Tenant in Fee Simple as to the *Title of the Land* is good for ever, and yet it is contrary of a Rent. *Br. Lect. Stat. Limit 75.*

2. The Lord Paramount cannot release to the Tenant Paravisale paying to him Part of the Services; But the Saving in that Case is void. *Co. Lit. 305. b.*

But the Lord upon his Release &c to the Tenant cannot have a New Kind of Service. *Co. Lit. 305. b.*

(W. 2) How
(W. 2) How it may be made. By Wills.


2. A Man cannot release a Debt by his Will. Vent. 39. Trin. 21 Car 2. Tho’ a Will cannot (as was allowed) ensue as a Release, even supposing it to be sealed and delivered, for Want of taking Effect in the Testator’s Life-Time, yet, provided it were expressed to be the Intention of the Party that the Debt should be discharged, the Will would operate accordingly; And J. Cogiser said that in such Case it would be plainly an absolute Discharge of the Debt, tho’ the Testator had survived the Legatee. Win’s Rep 83. Mich. 1705. in the Case of Elliot v. Davenport.

A Release by Wills can only operate as a Legacy, and must be Agreed to by the Testator’s Deeds, and if a Debt is released by Will be afterwards received by the Testator himself in his Life-Time, the Legacy is extinct; and such Release by Wills intimates no more than that the Executors should not after his Death give any Trouble or Molestation for the Debt. Per Lt. Ch. King. 2 Wms Rep. 552. Hill. 1755. Robt v. Wager.

3. Whether a Release by Will of all Debts, Accounts, Reckonings, and Demands whatsoever, will transfer the Property of Goods which the Releasee had in his Possession at the Testator’s Death? The Court directed that Defendant should admit some of the Goods come to his Hands, to enable the Plaintiff to bring his Action at Law. Per Lords Commissioners. 2 Vern. 118. Mich. 1689. Funn v. John.

4. A devise’d to B. a Legacy of 100l. and by Will released to her all Debts and Demands, and after the Date of the Will lands her 100l. Per Lds. Commissioners, H. If the Executor can recover it by Law he may, we will not take away his Remedy, if any he has, nor will give him any Aid in Equity; and therefore decreed Payment of the Legacy. 2 Vern. 136. Balk. 1692. Robt v. Bennet.

5. Where Debtor is made Executor the Debt is extinguish’d, not by Way of Release, but by Way of Legacy. Per Powell J. 1 Salk. 303, 304. Hill. 1 Ann. B. R. in Case of Wankford v. Wankford.

But, per Holt, Ch. J. it does not amount to a Legacy, but to a Payment and a Release. Ibid. 306.

(X) By Deed; How; In what Cales it ought to be by Deed.

1. If A. contracts with B. for a certain Consideration to deliver to C. a. 279. for 1s. c. 279. with B. for a certain Consideration to deliver to C. a. 279. for 1s. c. 279.


3. Assumpsit for 1l. upon Exchange of a Horse, to be paid upon Request. The Defendant pleaded, that before the Action brought, the Plaintiff did exonerate him of this Agreement; Resolv’d it was no good Plea. For tho’ a Parol Agreement may be discharged by Parol, before Court of Action accrued, yet after that it cannot be discharged but by Deed; and here the Cause of Action did accrue at least upon Request, and therefore he should have pleaded the Exoneration before the Request. Freeman Rep. 232. pl. 233. Trin. 1077. Edwards v. Weekes.

(X. 2.)
Release.

(X. 2.) The several Sorts; And how they may Enure.

1. A Release may enure 4 manner of Ways, viz. 1st. By Way of Extin- 

uishment. 2dly. By Way of Mitter &c. 3dly. By Way of 

Extinguishment. 4thly. By Way of Creation or Enlargement of an Estate. 

Co. Litt. 193. b. 

2. There is a Diversity between a Release in Deed and in Law; for if 

the Heir of the Diffeffe makes a Leafe for Life, and the Diffeffe releases 

his Right to the Leffer for his Life, his Right is gone for ever; but if 

the Diffeffe makes the Heir of the Diffeffe, and makes a Leafe for Life, 

by this Release in Law the Right is released but only during the Life of 

the Leffer, for a Release in Law shall be expounded more favourable 

to the Meaning and Intent of the Parties, than a Release in 

Deed, which is the Act of the Party, and shall be taken most strongly 

against himself. Co. Litt. 264. b.

(V) Extin- 

guishment. How it shall enure; By Way of 

Extinguishment.

Br. Counter- 

ple de Vou-

cher, pl. 29. cites 21 E. 3. 21. 

Voucher 

(F. a.) pl. 11. 

& (P) pl. 2. 

S. C. 

Br. Counter- 

tple de Voucher, pl. 29. cites S. C.

3. If there be Lord and Tenant, and the Tenant is diftabl’d, and the 

Diffeffe purchaseth the Seigniory, and releafeth, by Deed or Fine, all his 

Right in the Land, falling to him his Seigniory; the Seigniory by such Re- 

leafe is not extint; but if in the fame Case, the Lord hath nothing in or 

out of the Land, but only the Seigniory, and makes such Release, falling 

his Seigniory, such saving is void; because the whole Operation shall be 


ledge Lingfield’s Cafe.

4. If Lord and Tenant are, and the Lord releafeth all his Right to the Te- 

nant and the Heirs of his Body, by this the Seigniory is fpent during the 

Tail; Brook fays, and I fee that it is taken, That this is not any 

Extinguishment, tho’ the Release be made to him who has fee-simple in 

the Land; the Reafon feems to be inaffect that the Release goes by Way of 

Making of Exitate of the Seigniory, which is in the Land at the Time of 

the Gift, and then it shall enure by Way of Grant. Br. Releafes, pl. 

86. cites 13 E. 3. & Fitzh. Voucher 120.

Co. R. on 

Fines, 7. 

cites S. C. 

and Litt. 

112 26 H. 

S 42 E. 3. 

18 E. 3. 

11 H. 3. 

And Guv. 

That if the 

Lord re- 

leafe to the Tenant for Term of his Life, this does not extinguish the whole Seigniory, becaufe the Lord 

departs from an Inheritance in Possifion. Co. R. on Fines, 7. — But if there be Lord and Tenant, and 

the Lord releafeth all his Right which he hath in the Land, or all the Right which he hath in the Seigniory 
to the Tenant, by Deed or by Fine, the Seigniory is extint for ever, without these Words, (his Hez’s) 

Co. R. on Fines, 7.
Releafe.

5. Contro where he who releafe, has only a Right at the Time of the Releafe made. Br. Releafes, pl. 86. cites 13 E. 3. & Fitzh. Voucher 120.

6. The Lord may releafe the Services to the Tenant, for Term of Life of the Tenant, and after the Death of the Tenant the Lord shall have the Services again, For the Ground in Littleton, That if a Man releafe for one Hour to him who has the Fee-simple, that it shall serve for ever, is where the Thing which the Tenant has is releafe; and the Tenant here had the Land, but not the Services, and therefore by such Releafe the Services are not extinguished for ever. Br. Releafes, pl. 96. cites 13 E. 3. & Fitzh. Voucher 120.

7. If several jointtenants are, and One releafe to the rest, or All releafe to One, there those who take the Releafe are in by the first Feoffor, and not by him who releafe. Br. Releafes, pl. 63. cites 40 E. 3. 41.


9. Where the Lord releafe Part of his Services, yet the rest remain; so that a Man cannot plead Hos de Non Fee. Br. Avovery, pl. 49. cites 14 H. 4. 2.

10. If a Man releafe Land for Term of Life rendring Rent, and after releafe Part of the Rent; this is good, and the rest of the Rent is not extinct; quod nota. Br. Releafes, pl. 83. cites 9 E. 4. 8. and Fitzh. Aiff. 153.

11. If Convey of a Fine of Land in Ancient Domaine at Common Law, re- S. C. and P. releafe Convey in Poifeffion by his Deed, or confirms his Eate in his Deed, cited Cro. C. to the Convey shall retain and have the Land, tho' the Fine be annul'd, be- 48. in Case onde the Releafe or Confirmation, made to him in Poifeffion, makes his Willa.

Estate firm and nutial against Relefor and his Heirs. to Rep. 58. in Lampert's Cate, cites P. N. B. 98. and says this Opinion was affirm'd there for good Law Per tot. Cur.

12. If Liffe for Years be giff'd, and be in the Reveriion dislieafe, and the Liffe releafe to the Difeife; the Difeife may enter, for the Term for Years is extinct and determined. Co. Litt. 275. b.

Difeife has a Freehold whereupon the Releafe of Tenant for Life may enure, but the Difeife has no Term for Years whereupon the Releafe of the Liffe for Years may enure. Co. Litt. 275. b. and 276.

13. If the Difieife releafe to the Difeife by Deed intende, or by Fine for Life or in Tail, after the Eflate for Life ended, or Gift in Tail determined, the Difieife may enter again, tho' only a naked Right by the Releafe. Co. R. on Fines 7.

14. A made a Feoffment to W. R. of 2 Acres to the Use of himself for 2 Le. 133. Life, Remainder to B. in Tail, Remainder to C. in Tail, Remainder to pl 352. S. C. D. in Fee, Proceed if E. die without Issue, then A. by Deed might revoke. ibid. 419 pl.

the said Les. N. in S. d. 7. S. of one Acre, and as to the other Acre A. by Deed releafe d &c. to W. R. and B. C. and D. the said Power and Authority: E. died without Issue The whole Court agreed, That had this been a present Power of Revocation, as the usual Powers of Revocation are, A. might have extinguish'd this Power by a Releafe to any who had Estate of Frankentenement in the Land in Possession, Reveriion or Remainder; and therefore the Eates which before were defeatable, are by such Releafe made absolute. 1 Rep. 110. b. Hill. 28 Eliz. B. R. Grendon v. Albany.

15. Liffe for Years devise the Term to his Wife for Life, the Remainder of the Years to 7. S. who by Deed releafe all his Right, Interest, Term of Years, Possession and Demand in the said Land to him who had the Reveriion in Fee. And per 3 J. The Possession was extinguish'd in the Reveriion; so that the Reverioner, after the Death of the Wife, may enter and have good Right; but Brampton ccontra; but afterwards be 4 R. chag'd
Releafe.


(Y. 2) Enure. By Way of Extinguishment totally, or partly so, and partly by Enlargement.

1. If a Man has a Rent-charge out of 20 Acres, and releaes all his Right in one Acre, this extinguishes all the Rent. Br. Releaes, pl. 18. c. 34 Ait. 15. and Fitzh. Ait. 318.

2. Releaes, which enure by Way of Extinguishment against all Persons, are where he, to whom the Releafe is made, cannot have that which to him is releas'd; As if there be Lord and Tenant, and the Lord releases to the Tenant all the Right which he hath in the Seigniory, or all the Right which he hath in the Land; this Releas goes by Way of Extinguishment against all Persons, because the Tenant cannot have Service to receive of himself. Litt. S. 479.

For a Man cannot have Land, and a Rent issuing out of the same Land; nor can a Man have Land, and a Common of Pasture issuing out of the same Land; but in the Case of the Right of the Land the Tenant of the Land may take and enjoy it for Strengthening his Estate therein. Co. Litt. 280. a. 389. a. and B. Tenants of Land, out of which a Rent of 20 l. per Ann. is paid to the King, and he by Consideration of Money paid by B. Granted, Releas'd, and Remanded to B. and his Heirs, the said Rent &c. Per Dyer, The Patentee may use this as a Grant of Releas and Extinguishment, he will, especially the Habendum being Habendum &c. and Consideration Remained paid to him and his Heirs. D. 319 b. pl. 16. Mic. 14 & 15 Eliz. Anon.

3. So is it of a Releas made to the Tenant of the Land of a Rent-charge or Common of Pasture &c. because the Tenant cannot have that which to him is releas'd &c. So such Releases shall enure by Way of Extinguishment always. Litt. S. 480.

4. A. Leafe for Years, Remainder to B. for Life, Remainder to C. for Life; He in Reversion in Fee releas'd to all three and their Heirs. By this Releas each of them has got a Reversion in Fee in the same Land, but the first Leafe shall have the Sole Possession, as he had before. Benl. 36. pl. 65. Trin. 7 E. 6. Per Mountague Ch. J. of C. B. Anon.

5. Where a Releas is paid in some Cases to ensure by Way of Extinguishment, it is to be underfoold either in Respect of him that makes the Release, or in Respect that by Contraction of Law it enures not only to him to whom it is made, but to others also who are Strangers to the Release, which is a Quality of an Inheritance extinguished. Co. Litt. 279. b.

6. There is a Diversify where a Releas enures by Way of Extinguishment of an Inheritance which is in Possession, and may be granted over, and a Releas of a Right, or an Action, to Lands which cannot be granted over; for the Lord may releas his Seigniory to the Tenant of the Land for Life, or in Tail, Ex se de ceteris: But if he cannot one releas a Right or an Action; for if it be releas'd but for an Hour, it is extinct for ever. Co. Litt. 280. a.

7. Feme Maje intermarries with the Tenant Parsaville; if the Lord releas to the Feme, the Seigniory only is extinct; but if he releas to the Husband, both Seigniory and Mofality are extinct: And in this Cate, if the
the Lord release to the Husband and Wife, it is a Question how the Release shall enure, but it is no Question but that a Release may be made to a Heiralty, or a Seigniory suspended in Part of the Estate. Co. Litt. 280. a.

8. If the Tenancy be given to the Lord, and a Stranger, and to the Heirs of the Stranger, and the Lord releases to his Companion all the Right in the Land, this Release not only passes his Estate in the Tenancy, but extinguishes also his Right in the Seigniory, and for one Release enures to extinguish several Rights in one and the same Land. Co. Litt. 280. a.

9. If there be Lord and Tenant by Fealty and Rent, the Lord grants the Seigniory for Years, and the Tenant attorns, and the Lord relieves his Seigniory to the Tenant for Years, and to the Tenant of the Land generally, the whole Seigniory is extinct, and the State of the Leetee also; but if the Release had been to them and their Heirs, then the Leetee had had Inheritance of the one Moiety, and the other Moiety had been extinct; and the Reason of this Diversity is, because when the Release is made generally, it can enure to the Leetee but for Life, because it enures by way of Enlargement of Estate, and being made to the Tenant of the Land it enures by way of Extinction, and then there cannot remain a particular Estate in the Seigniory for Life; but when the Release is made to them and their Heirs, each one takes a Moiety, the one by way of increasing the Estate, and the other by Extinction. Co. Litt. 280. a.

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**Y. 3** Enure as a Grant.

1. A Man leased for Term of Life, the Remainder over in Tail, the Release gives to the Tenant in Term of Life, the Remainder in Fee to the first Tenant for Life, and after the first Tenant for Life had Issue, and died, and the Tenant in Tail entered, to whom the Heir of the first Tenant for Life, who had the Fee Simple in Remainder, related all his Right, and after the Tenant in Tail died without Issue, and his Heir collateral entered by Colour of the Release, upon whom he in Remainder for Life entered, and the other brought Affairs, and by all the Justices he is barrable; for the Release may give the Fee Simple, yet it shall not determine the Estate of him in Remainder for Term of Life; But where he can give the Fee Simple. Br. Releases, pl. 71. cites 29 Eliz. 30.

2. If Diffessor gives in Mortmain by Licence of the King and Chief but where on Lord, and the Diffessor relieves to the Abbot all his Right, the chief Lord or the King cannot enter; For this counteracts Entry and Footment. Br. Mortmain, pl. 13. cites 11 H. 4. 38.

3. In Dower it was thought that if the Diffessor relieves to the Diffessor, the Diffessor is in by him, and shall not have the View in Writ of Dower; And to see that a Release makes one Degree. Br. Releases, pl. 28. cites 9 E. 4. 6.

4. The Lord releases and grants his Seigniory to the Husband who is seized of the Tenancy in Right of the Wife to him and his Heirs, the Husband dies, and his Heir disfrains for the Rent upon the Lands, it was held that it shall enure as a Grant which is most beneficial to the Granter, and it is agreeing with the Intent of the Deed that the Husband and his Heirs shall have it. Cro. E. 163. pl. 3. Nich. 31, 32 Eliz. Anon.

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**Z** How
Release.

(Z.) How it shall enure. By Mitter le Estate.

See Voucher 1. If 2 Coparceners are sold of Land, and one releases to the other in Fee with Warranty; this enures by way of Mitter le Estate. * 21 C. 3. 27.

1. If there are 3 Jointenants, and one releases to one of the other all his Right, this enures by way of Mitter le Estate, and passes the whole Fee Simple without these Words (Heirs) Co. Litt. 275. b.

But if there are 2 Jointenants, and one releases to the other, this does not pass to the other without these Words (Heirs) Co. Litt. 275. b. --- But if there are 2 Coparceners and the one releases all his Right to the other, this will enure by way of Mitter le Estate, and shall make Degree, and without these Words (Heirs) Co. Litt. 275. b.

2. If 2 Coparceners be of a Rent, and the one of them takes the Tontent to Husband, the other may release to her notwithstanding the Rent be in Sufpence, and it shall enure by way of Mitter le Estate, and the rent released also to the Tontent, and that shall enure by way of Extingishment; but if the release to her Sifter and to her Husband, it is good to be seen how it shall enure. Co. Litt. 273. b.

3. If Baron and Feme, and a third Person are Jointenants in Fee, and the third Person releases to the Baron all his Right, without saying To have and to hold to him and his Heirs, yet the Baron has Fee Simple, and...
Release.

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and the Feme shall take nothing by this Release, as has been adjudged, and yet shall enure by Mitter l'Estatte. Co. R. on Fines. 7. cites Elcots Cafe.

adjudged.—Co. Litt. 2-3. b. S. P. And so it would be, had the Release been made to the Wife.---

But where Baron and Feme purchased to them and the Heirs of the Baron, and of the third Person, the Court held that such Release shall enure to the Baron only, and not to the Feme, and that the Word (Heirs) need not be expressed: But had the 3d Person made a Release to the Feme there must have been Words of Inheritance, because the Estatte which she had in Jointure before was only an Estatte for Lift. D 263. pl. 34 Trim 9 Eliz. Anon.

(Z. 3) Contraed; How In General.

1. For the Construction of a Release, it was argued that if the Intention of the Parties principally to be regarded, and Ex Prevoculentibus & Cons equentibus optima, fit Interpretatio. 2dly, A Release is particular, and may by Inference of other Words have a General Sense, yet I argue Contraed shall be made, Nisi impedita Sententia, ex Intento Contractum. 3dly, Expede Circumvenustas & Intentio intelligitur. Hett. 15. in Abree's Cafe.

2. There is a Difference where a Thing is uncertain to which a Certainty is added, and where it is certain: For if I release all my Right in all my Lands in Dale, which I have by Defent of the Part of my Father; If I have Lands in Dale by Defent of the Part of my Mother, and none from my Father, the Release is void; But if the Release had been of Wh. Acres in D. which I have by Defent of the Part of my Mother whereas it is of the Part of Father, the Release is good, because the Thing was certainly expressed in the first Words, and to the rest was superfluous, and need not be averred. Per Cur. Pl. C. 191. b. in the Cafe of Wrotzley v. Adams.

3. A Release in Law shall be expounded more favourable according to the Meaning and Intent of the Parties, than a Release in Deed, which is the Act of the Party, and shall be taken most strongly against himself. Co. Litt. 264. b.


(A. a) Limitation. [Or, Restriction by Construction.]

1. If an Executor release by such Name, [185.] J. S. Executor releases Br. Releffes, all Actions; this is not and Limitation of the Release, but this shall release as well Actions which he has in his own Right, as that which he has as Executor. 39 C. 3. 25. b.

but that where there is a particular Restrict in a Deed, and then general Words follow, the general Words shall be qualified by the special Words. Lid. Raym Rep. 253. 256. Trim. 9 W. 3. C. B. in Cafe of Thorpe v. Thorpe, cites 2 Saund. 482. 3 Keb 45. 50. Lid. Arlington v. Merrick 1 Ard. 64. Mo. 133. by Anderson; And therefore in the principal Cafe Judgment was given accordingly:---Upon Error brought of the Judgment in the Cafe of Thorpe v. Thorpe, the Rule laid down, ut supra, of the particular Restrict, and then general Words following, that the general Words shall be qualified by the special, was infufed upon by the Counsel in Support of the Judgment, with this Difference, that where there are general Words all alone in a Deed of Judgment, they shall be taken most strongly against the Releffor, and that to it had often been adjudged: But to this Point the Court gave no Opinion, tho' the Judgment in C. B. was given upon this Point only. Lid. Raym Rep 665. 654. Patch. 13 W. 3. B. R. Thorpe v. Thorpe.
Releafe.

A Suit was depending in the Exchequer between B. and J. S. upon an Account between them, relating to a Trade carried on in Barbadoes. Pending this Suit A. dies, and makes B. Executor. J. S. was likewise accountable to B. for Monies received by him. B. and J. S. compromised the Suit in the Exchequer, and thereupon B. gave him a Releafe. Afterwards B. as Executor of A. and J. S. in Chancery, on the Account between A. and J. S. to which J. S. pleaded the Releafe. It was in Proof that this Releafe, tho' given after A.'s Death, was not given as Executor to A. but only upon the particular Account between B. and J. S. The Court let aside the Releafe as to each Demand, and ordered that it should not be pleaded in Bar, nor given in Evidence in any Suit concerning the Estate of A. Fin. Rep. 443. Hill 32. Car. 2. 1679. Calvert v. Calvert, Beaw. &c.


2. If a Man gives by Deed a Rent in Tail, and after his Heirs release to the Lefsee and his Heirs all his Right in the Land to perceive according to the said Deed, ita quod he or his Heirs shall claim nothing therein against the said Land; it seems that this a limiting Releafe, sett a Confirmation of the first Grant, and not an Enlargement. 433 3d. Dibitaratur.

3. If a Man receives 10l. of another, and by his Deed acknowledges the Receipt thereof, and thereof releases acquiesces and acquitteth him, and of all Actions, Suits, Debts, Duties &c. and Demands. By this Releafe nothing is released, but the 10l. and the Action and Demands thereof, for the last Words have Reference to the first, and so limited by them. * Tr. 3 Ja. B.R. cited by Tankeld to be adjudged.

4. If A. be obliged in 20l. to B. by Bill for Payment of 10l. and does not pay it at the Day, and after B. releases him all Actions of 10l. this does not release the Bill, because the Action is to be brought for 20l. or as much as the Releafe was after the Foreclosure. 3d. 1 Ja. B. between Walter and Barroll.

5. If an Obligation he dated and delivered the 23 Jan. 3 Ja. and Obligeere makes a Releafe, which is dated 22 Jan. 3 Ja. but it is delivered after 23 Jan. 3 Ja. And by this Deed he releases to the Obligeere all Actions due him of the party to whom the Deed is made as the party is not to be discharged, for (Huius pretendentis temporis) this Releafe shall not discharge the Obligation, for (Huius pretendentis temporis) shall be taken the present Time when the Deed was dated. 3d. 9 Ja. 2. Per

6. Releases are to be construed Secundum folgendam Materiaem at the Time of the making of them. See 2 Chan. Cases 126. in Cafe of Bovey v. Smith and Bony, and the Cafes here following.

7. If one release all Actions to such a Day, which is past, the Releafe is void as to any Thing which shall happen after the Releafe, and good for the Relidue. D. 56. 6. pl. 21. Trin. 35 H. 8. in Cafe of Reid v. Bullock.

8. In Debt upon Bond, the Defendant pleads a Releafe; and upon the Pleading the Cafe appeared to be, that there were Controversies betwixt the Plaintiff (Lord) and the Defendant, being his Tenant for a Rent, and as Heriet; and they having submitted it to Arbitrament, it was awarded that
that there should be a *Release* made of them; and in Performance of this Arbitrament a Release was made *by these Words,* Of all Reliefs, Duties and Amenements; and this Release was pleaded in Bar of this Obligation, which was not put in Arbitrament, nor intended to be released. And upon all this Matter disclosed, it was demurred; and Coke Attorney General mov'd that it should not be a Bar, for this Word Duties being placed between Reliefs and Amenements, shall be intended Duties of such a nature, as to extend not to this Bond. But the Court declared the contrary; for although the Intent was not to extinguih it, yet (Duty) extends thereto in Extremity of Law, wherefore it shall not be an Extinguishment and Discharge of the Bond. And therefore it was adjudged for the Defendant. *C. R. 370. pl. 10. Pach.* 37 Ediz. B. R. *Rothearv v. Crawley,* which alone was in Question; but adjudg'd a good Bar.

9. In Debt upon an Obligation, the Defendant pleaded a Release made to him after his entering into the Bond, viz. *All and all Manner of Errors, and all Manner of Actions, Suits, and Writs of Error whatsoever,* *which I the said (Plaintiff) for any Matter or Thing &c.* And I am by these Presents excluded of Waits or Suits, Actions of Error, or Suits against the said (Defendant) &c. *Richardson and Hurton thought the Intention was to release no other Actions but Errors.* *Hct. 9. 15. *Pach. 3 Car. Abree v. Page.*

*Cafe of Rothearv v. Crawley.* *C. R. 370. and Ow. 11. from there v. S. C. cited Arg. 5 Mol. 27*; *in Case of Cole v. Knight.* —*And cited Show. 152. Arg. in Case of Cole v. Knight.*

10. A Release of an *Estate* being not known, was resolved against an Executor. *Toth. 265. cites 7 Car. Wilton v. Grove.*

11. In Covenant for Non-payment of Rent refered in a Lease for S.C. 6d. Years, the Defendant pleaded a Release of all Demands at a Day before the Rent in Question was due. The Plaintiff reply'd that the Release was in *Performance of an Accord of all Matters in Controversy* between Releasor, and Plaintiff and Defendant. It was insinuated that this Release was no Bar, to the general becase (among other Things) it was not within the Intent of the Arbitrators and Parties, the Accord being made of other Matters, and this Rent not then due, or in Controversy. And of this Opinion were Polier, Windham and Mullet, but Twidden J. contra. But Judgment was given for up according to the Plaintiff. *Lev. 99. Pach. 15 Car. 2. B. R. Hen v. Hanlon.*

12. *A *poisc'd of a Term for Years, affected the fame to Trustees, and afterwards *parcell'd the Inheritance,* and being on a *Treaty of Marriage* with M. he *covenanted to *pay* *&c.* to the Ule of himself and M. for Life for a *Sum:* A. di'd, M. entered, and upon Agreement made with A.'s Executors, as to her Claim out of the Personal Effe of A. for releas'd to the Executors all the Personal Effe of A. and all Demands for the same. M. *continued the Petition,* afterwards the Inheritance was *erased.* Reolved that the Release should not bar or prejudice M.'s Title in Right to the Leafe; and she was decreed to hold for many Years as the liv'd during the Term. *Chan. Cajes 46. 47. Pach.*

16 Car. 2. *Bewtey v. Ibon.*

13. *A Bond was taken by J. S. in the Name of the Plaintiff in Trust for Nokes and the Children of J. S.* *and an Action of Debt was brought against the Defendant, in the Plaintiff's Name on this Bond.* The Defendant pleaded a Release, *whereas J. had arrest'd the Defendant in the Name of the Plaintiff* without his Knowledge, be by this releas'd to the Defendant all Demands newly made, on his own Account. Adjudged that the Bond was not hereby releas'd; *there were two* for the it was taken in the Name of the Plaintiff, yet it was not on his own Account, but upon the Account of the Children of J. S. and the in A. Words, *Upon his own Account,* which he brought could
Releafe.

by both, the Defendant pleaded the Release of one of them as a bar to both; but adjudged as here for the Plaintiff—S.C. cited by Dolben J 3 Mod. 29 in Cafe of Cole v. Knight.

14. W. being to release his Interest in a Parcel of Land, the Release was so penned that it extended to release his Interest in almost 2000 l. per Annum, which he did not intend; and he had Relief in Chancery. Freem. Rep. 302. pl. 366. Mich. 1673. Wentworth's Case.

15. A Bill was brought by A and B. and their Wives against J. S. and W. R. for an Account of Rents and Profits of a Real and Personal Estate received by the Defendants, to which J. S. pleaded a Release to him, his Heirs, Executors &c. by A. and another in the like Manner by B. of all his, and their Lands and Tenements, Goods and Chattels, and particularly the Manors and Lands therein mentioned, of and from all Actions, Claims and Demands whatsoever. The Plaintiff alleged that these Releases were to extend only to the Portions of the Wives, which J. S. had paid; and it appeared on pleading the Plea, that J. S. did not set forth that there was any Discourse between them, concerning the Estate or Lands in Question, at the Time the Releases were executed. The Court ordered the Word (Plea) to be struck out, and the Defendants to answer, but not as to the Part which demands an Account of the Rents and Profits of the Lands, unless the Court upon the Hearing should think fit to decree an Account thereof. Fin. Rep. 117. Hill 25 Ca. 2 1673. Ld Herbert of Cherbury & Ux. & al. v. Mounagne.

16. A. on his Marriage with M. executed a Bond of 1000l. to Trustees, condition to cause M. 600l. &c. if she should survive him. The Trustees after the Marriage delivered the Bond to M. who lock'd it up in a Cabinet, which A broke open, and cancel'd the Bond, and afterwards several Suits were carried on between the Trustees and A. which were refer'd to Arbitration; whereupon Releases were order'd to be given by the Trustees to A. who gave Releases accordingly, and A. soon after died. Upon a Bill brought by M. for Relief as to the said Bond against the Executor of A. the Defendant pleaded the Award and Releases; but the Bond not being concern'd therein, and the Releases given upon the Award having no Relation to the Bond, nor there having been any Discourse about it, nor any Recompence made or intended to M. by that Award in Satisfaction of the Bond; the Court decreed M. to have Satisfaction out of A's Estate, and as much Benefit of the Bond as if it had not been cancel'd. Fin. Rep. 184. Mich. 26 Ca. 2 1674. Brown v. Savage.

17. The Plaintiff, an Heir at Law, imagining that by the Will of his Ancestor the whole Inheritance was devolved from him, whereas the Words carried an Estate for Life only, and not the Inheritance from him; and afterwards Differences arising between one of the Trustees (who had sold the Inheritance for a full Consideration, and a Fine thereof levied) and the Heir, an Award was made, and 200 l. accorded to the Heir, and he to give a General Release of all Actions Real and Personal; but no Notice was taken in the Award of Breach of the Trust, whereby the Restitution belong'd to the Heir. The Plaintiff received the 200 l. and released accordingly. The Trustee 10 Years afterwards purposed back the Inheritance, and the same came to the now Defendant. The Heir exhibited his bill to have an Execution of the Trust, and the Inheritance to be decreed to him. Ld. C. Nottingham heard this Cause twice, and decreed it both Times for the Plaintiff; but the Decree not being signed and enrolled, it was re-heard by Ld. K. North. It was intimated for the Defendant, that the Breach of Trust was released by the Words; but however, that after so many (viz. 30) Years, it was too late to enquire, whether that was intended to be released, or not? But it was at least, that it was made
Release.

made in Pursuance of an Award, which concerned Matters in Accompt between the City que Trust and that Trustee only; nor was it pretend-
ed, That the Heir had received any Satisfaction for the Inheritance; and
that had this Release been intended to have releas'd the Breach of Trust;
it would have been made to all the Trustees, and not to one only, they
all having joind in the Conveyance by which they broke their Trust. Lt.
K. North took Notice of the great Length of Time, and of the Purchase
being made for a full Consideration, and of the Acquiescence of the Plaintiff
and said, That tho' it was hard to dimiff the Bill after 2 Decrees for the
Plaintiff, yet he was not satisfied he could decree for him, and that the
Bill must stand dimiff'd. Vern. 144. pl. 199. Hill. 1682. Bovey v.
Smith.

Heirs; And that the Plaintiff had given a distinct Release before the Purchase made, of all Actions
Real and Personal; yet there was no Occasion prov'd, why that Release should be made, nor any al-
lowed; and there were other Dealings between them, and therefore preferred not to relate to this
Matter; And so the Decree passed for the Plaintiff. Afterwards the Lord Chancellor declared at
another Day, That he had concurr'd with the Ch. Jutl. of B. R. who was of the same Opinion.

18. A. was Leflee by Deed of D. of 263. a Year, and Tenant at Will
of S. of 221. a Year. Upon Payment of Half a Year's Rent of the
Great Farm, the Lessor's Steward gave a Receipt in full for Half a Year's
Rent due at Lady Left, whereas nothing was paid of the Rent of the Land
held at Will. The Lessor brought a Bill for Relief, but it was dimiff'd
by the Master of the Rolls; because (as he thought) the Lessor might
have his Action at Law for the other Rent; But on Appeal brought, the
Lord Chancellor doubted if he had any Remedy at Law, as both the
Lands might formerly have been held together; and the general Words
in the Leafe might possibly extend to S. contrary to the Intent of the Parties;
And said, If the Lessor should not recover at Law he must
relieve here; so that it would be fendig him to Law in order to have a
New Bill; And so decreed an Accompt. Sel. Cales in Equ. in Ld. King's

19. Where a Tenant got a Receipt in full to the Date, and a Bill was
brought for an Accompt; tho' the Tenant intimated, That he was not obli-
ged to any Accompt previous to the Receipt, because his Vouchers might
be loft, and not preferred on Account of the Receipt; and so might suf-
er without his own Default, but by relying on the Receipt. But there
being great Reason to believe the Receipt was got thro' Fraud or Mitake, and
that he had not paid all due to the Time, an Accompt was ordered to be
taken previous to the Receipt, and to pay Costs. Sel. Ch Cafes in Ld.
King's Time 2. cited by Mr. Talbot Mich. 11 Geo. 1. as decreed about
2 or 3 Terms before, in the Cale of Bacon v. Harris.

(A. a. 2) Construed How. Extended beyond the Words.

1. If a Man has Cause of Action, and releas'd all Actions to the Tenant
for Term of Life of the Tenant, the Action shall be gone for ever;
Per Newton and Hody Ch. Jutl. But Per Palton, He shall have Action
after the Death of the Tenant for Life, which Brooke says does not seem
2. If I releas'd to a Ditto for an Hour, it shall serve for ever; Per Self I releas'd
Day, it shall serve for ever; Per Elliot. Br. Barre, pl. 54. cites 31 H. 7. 30.
At what Time it may be made.

1. If the Sheriff levies Money at my Suit upon a Levantia facias upon a Recognizance, and after I make a General Releafe to him, and after he returns the Writ in Bank served, and after I bring an Action of Debt against the Sheriff for the Money, he may well plead this Releafe in bar of the Action, tho' I ground my Action upon the Return which was after the Releafe; for this was a Duty to me immediately upon the Levying of the Money, which was before the Releafe made. D. 15 Ta. B. between Speake and Richards. Adjudged. Hobart's Reports 280. Same Case.

2. If the Consor of a Statute Merchant be in Execution, and his Land also, and the Contrue releafes to him all Debts, this shall discharge the Execution; for the Debt was the Cause of the Execution, and of the Continuance thereof till the Debt satisfied; and therefore the Discharge of the Debt, which shall discharge the Execution, is the Effect. Co. Litt. 76, where he bounces 22 ill. pl. 7. (But it seems that this does not warrant this Dissolution.)

3. If A, delivers an Obligation to B, as an Executor (in which he is bound to C) to be delivered as his Deed to C, after certain Conditions performed, and after C. releafes to A, before the 2d Delivery, this is void; because tho' the 2d Delivery it shall relate to the 1st Delivery, where there is a necessity, it Res Magis valeat, quam porcat, per as to Collateral Acts it shall not relate at all. Co. 3. But. Bak. 56.

4. No Right doth pass but the Right which the Releafe hath at the Time of the Releafe; As if the Son releafe to the Dileitor of his Father all the Right which he had, or may have, and the Father dies, the Son may enter; because he had no Right in the Life of his Father, but only a Decent to him after the Releafe by the Death of his Father. Arg. Bridgm. 76. cites 13 E. 1. 10 E. 2.

5. Debt upon Arrears of Annuity; The Defendant pleaded Release of all Arrears before any Arrears were due, and no Plea; Per Cur. Br. Detre, pl. 215. cites 5 E. 4. 4.

* Orig. is (Difterior)

6. If a Man makes Indenture of Leafe to J. S. in July, to hold the Land at the Feast of St. Michael next, for Term of 9 Years, and the Seller releaves to the Lefsee before Michaelmas all his Right, the Releafe is void; For he has no Possession before Michaelmas. Br. Releafes, pl. 59. cites 22 E. 4. 37. Per Brian & Neal J.


8. After a Verdict for the Plaintiff in Ejezement, and before the Day in Bank, the Plaintiff releafed; and the Day in Bank the Defendant pleaded this Releafe, and they'd it to the Court. Resolved, That he had not any Day to plead it, nor had he any Remedy but by Audita Querela,
Release.

Querela, if the Plaintiff sued Execution; Wherefore it was adjudged for the Plaintiff: Cro. J. 646. pl. 10. Mich. 20 Jac. B. R. Stamp v. Parker.


10. Release by an Assignor to the Debtor, after Assignment to a Stranger, unless it be without Notice, and on Consideration to release, will not hurt the Assignee. See Chan. Cases, 169. Trin. 22 Car. 2. in Case of Hurit v. Goddard.

11. Lessor after Assignment of Reversion, released to Lessee all Covenants and Demands, yet Assignee may have Action of Covenant for Rent due after the Assignment, for it runs with the Reversion. 2 Jo. 102. Patch. 19 Car. 2. B. R. Harper v. Bird.

Action brought upon the Reddendum, which is a Covenant in Law, and runs with the Reversion at Common Law before the Statue 32 H. 8. and passes by the Grant of the Reversion; and therefore Lessor could not release it after the Assignment. 2 Lev. 266. S. C.

12. Conveyee of a Statute extended assigns the same; yet per Serjeant Maynard, the Law is clear and certain, that the Conveyee himself, his Executors, Administrators, or Assigns, may, notwithstanding release or discharge, such Statute, and it shall be good and binding in Law; which is not admitted by the Counsel of the other Side, but they intimated that after Assignment the Conveyee is but as a Trustee for the Assignee, and must be answerable to him for the Breach of Trust. Vern. 50. pl. 49. Patch. 1682. Earl of Huntington v. Green vill.

13. An Orphan cannot release her Customary Share, it being a mere future Right, nor can the Husband do it; Per Ld Macclesfield; But whether such Release will not amount to a Composition or Agreement in Barr of her future Right, or be, as they call it, A Compounding for her Customary Share, was not determined. Ch. Prec. 546. pl. 338. Mich. 1726. Kemp v. Kelley.

(C. a) To what Thing it shall Enure.

1. If Baron and Dame seised of a Manor in Right of the Feme, make Feoffment of one Acre to another, by which it is severed from the Manor, and after make Feoffment of the Residue to him also, and after levy a Fine out to the Feoffee of the said Manor; This extinguishes the Right of the Feme in the Acre severed from the Manor; but this was Parcel of the Manor in Right, as to the Feme, who had a Right to recover it by a Cui in Vita. 18 E. 3. 39. 18 Att. pl. 2. Curia.

(D. a) In
(D. a) In what Cases the Release of one Person shall be of others. For what Thing.

1. If there are diverse Obligees, and one releases, this bars all.

2. In Debt by Baron and Feme, and a 3d Person, the Release of the Baron before Covertury bars all. (It seems it is to be intende that Baron was Debtor with the others before Covertury,) 7 P. 4. 14. b.

3. The Release of the Baron is good for the Debt due to the Feme before Covertury. 17 C. 3. 66.

4. If several Obligors, [are] and the Obligee deliver the Obligation into an Indifferent Hand, upon Condition if one of the Obligors releas to the Obligee; per this does not bar the others to demand the Obligation, if the Condition be not performed; for they claim no Duty, but only a Discharge. 2 P. 4. 16. b.

5. If 2 Consecutives of a Statute are, and one releases to the Conseque, this shall extinguish all the Statute against the other also. 21 S. 25. The one Consecut purchaseth the Land, this shall discharge the Land against the other.

Where the Executors sell the Goods of the Testator for a certain Sum, and take an Obligation for this Sum, the Release of one of them shall bar both. 17 C. 3. 66. Adjourned.

7. If one Executor releases Damages recover'd by Testator, this shall bar the others. 21 C. 3. 13. b.

8. In a Qua. Imp. brought by diverse, the Release of one of the Plaintiffs proving the Debt, shall not abate the Debt, but shall go in Bar as to him who releas'd only, and the other Plaintiffs shall have Advantage thereof; because it is a Thing inequitable, and in the Reality. Co. 5. Countys of North. 97. b. Adjourned.

9. If 2 recover Damages in a Real Action, the Release of one shall not bar the other of the Damages; because the Damages were recover'd for the Profits, and to Reall. 47 P. 3. per Perniet.

10. If a Hall recovers in Estimone Firma against two, the Release of one of them shall not bar any Bar of the Write of Error of the other; because it is not to recover and Thing, but to have Restitution of that which he had lost by the Judgments. Co. 4. 6. B. between Nisfore plaintiffs, and Partic and Blent Defendants. Adjourn'd.
Release.

11. If A. conveys Land to B. by Indenture, and covenants with B. his Heirs and Assigns, to make any other Assurance upon Request, for the better Settlement thereof upon B. his Heirs and Assigns; and after B. conveys the Land to C. who conveys it to D. who requires A. to pass another Assurance, according to the Covenant, and upon Refusal brings Action of Covenant as Assignee to B. It B. releases the Covenant after Action brought, this shall not bar D. of his Action, which was well attached. Tr. 14 Car. B. R. between Middlemore and Goodale, per Curiam, upon De terminer. But Judgment given against the Plaintiff for other Cause. Infratur. Hill. 12. Car. Rot. 229.

12. But in the said Case, after Request made by D. and Refusal by A. and before any Action brought by D. B. may release the Covenant in the said Case of Middlemore and Goodale, the Court seemed to agree this.

13. In Trefpass by two, of Goods carried away, the Defendant pleaded the Release of the one; this is a good Bar as to both, because it is an Action Personal. Br. Release, pl. 94. cites E. 3. H. N. T.

14. Alluit against an Infant, who pleaded a Deed of Release of the Assignor of the Plaintiff, whose Heir he was, with Warranty made to one J. S. and to his Heirs, whose Estate he has, the Plaintiff said that the Land was leased to the said J. S. for Life, the Remainder to the Plaintiff in Tail, and the Release was made to the said J. S. the Remainder continuing in him, which J. S. is dead, and he entered into his Remainder, Judgment if the Warranty binds. And the Tenant said that the Remainder over in Fee, after the Tail determined, was to the said J. S. to whom the Release was made. And the Opinion of the Court was against the Tenant, and that the Release shall enure to all the Estate. Br. Alluit, pl. 21. cites 34 E. 3. 10.

15. Release by one Churchwarden, of Coils recovered in the Spiritual Courts by both, is not good against the other. Mar. 73. pl. 112. Nich. 15 Car. Anon.

key v. Barton & Gore. — S. C. cited Arg. 5 Mod. 390. in Hawkins's Case.

16. Release of one Defendant in Error shall not discharge the rest; but a Release by one Plaintiff is a Bar to all, because they have not a Joint Interest but a Joint Burden. 3 Mod. 135. Trin. 3 Jac. 2. B. R. Hacket v. Herne.

17. A. and B. were Defendants in Exemption; and they both entered into the Common Rule; and at the Trial A. appeared, and confec'd Leafe, Entry &c. but B. did not. After Evidence given the Plaintiff was Non-suited, and Coils taxed for the Defendants. Per Cur. A. and B. are both intitled to the Coils, and B. (the he did not appear) may release them to the Plaintiff. But if Covin should appear between the Plaintiff and B. as to releasing the Coils, the Court suppozed they might correct such Practice. 2 Vent. 193. Trin. 2 W. & M. C. B. Fagg v. Roberts & al.

18. Favour against two, one pleaded Not Guilty, and a Verdict against one, the other pleads a Release of all Actions; the Release discharges both, no Judgment against the other. 4 Mod. 379. Hill. 6 W. & M. B. R. Kiffin v. Willis & Evans.
Release.

(E. a) In what Cases a Release of One shall enure for Others.

1. If one Jointenant of a Rent in Fee releases all his Right, yet this does not pass the Motley of his Companion. 21 Eliz. 3. 58. b.

The other shall recover the whole, because it favours of the Realty. 

2. In an Ejectment by two, the Release of one shall not bar both, because it favours of the Realty. 

3. If Statute Merchant is made to Baron and Feme, and the Baron releases all Executions, or makes other Decease; this shall discharge both, and shall be a Bar to the Feme for ever. 

4. In Writ of Right of Ward for the Body brought by two, the Release of the one shall not prejudice the other, but shall give to his Companion all the Ward. 

5. If two join in Action, and after one is summon'd and sever'd, and after releases, this is a Bar to his Companion. 

(F. a) In what Cases the Release of One shall be of Others.

1. In a Trespass Vi & Armis against two, if the one be condemned by Nihil Dictum, and the other by Verdict, and the one releases all Errors after Judgment given, and after they join in a Writ of Error, in this Case the Release of one shall bar both of the Idee of Error. 

2. In a Replevin by A against B, if B makes Contest in Right of C, for Damage enfuing, as the Frankenteeenment of C. to which A pleads in Bar of the Containment, and this adjudged against him upon Demand for B to have Return irrepealable with Costs and Damages; In a Scire Facias to have Execution of Costs and Damages brought by B, if A makes Contumy in Right of C, for Damage enfluing, as the Frankenteeenment of C. to which A pleads in Bar of the Containment, and this adjudged against him upon Demand for B to have Return irrepealable with Costs and Damages; In a Scire Facias to have Execution of Costs and Damages brought by B, if A makes Contest in Right of C, for Damage enfluing, as the Frankenteeenment of C. to which A pleads in Bar of the Containment, and this adjudged against him upon Demand for B to have Return irrepealable with Costs and Damages;
Release.


3. Two Parties have Title to a Writ of Writ of the Body. One refiis. This is no Bar to the other, but the shall recover the Entire a-gainst both. Arg. Cro. E. 65. cit. 45 E. 3. 10.

4. Judgment was against 2 Defendants in Action for Case Quare erex. & in Error, to a wrong & Damages given; After Error brought one releases more Errors; this shall not hurt the other; for they are joint Sufferers. Jenk. where Judgment is given, 265. pl. 65.

and so in Action Quoets brought by 2, where a Statute is extended upon Both. Jenk. 267. pl. 65.

5. But if a Man bring a Writ of Error, in the Real, and the Tenants plead the Release of one, it is a good Bar against Both; Because the Error in the Record is released. Per Popham Ch. J. Ox. 22. in Case of Wright v. Mayor of Wickham.—S. P. by Popham Ch. J. Cro. E. 460. (bis) pl. 5. Patch. 38. Eliz. B. R. in S. C.

6. In Replevin against 6, one of them arrested in his own Right for an Adjudged. Amenacement in a Leet, and the other 5 made Contraouro as his Bailiffs. Ruddock's Judgment was against the 6, whereupon they all 6 brought a Writ of Error, and the Defendant in the Writ of Error, (who was Plaintiff in Jenk. 274. the Replevin) pleaded in Bar a Release of all Errors, by one of the 5 pending the Writ. It was adjudged no Bar. Cro. E. 645. 649. pl. 4. Hill. 41. Eliz. B. R. Raising & v. Ruddock.

This is to certify him from Damages and Costs given against them when they were Defendants. — Two Defendants are Plaintiffs in "Trespass," an Erroneous Judgment is given against them; they bring a Writ of Error for this Erroneous Judgment; the Release of one of them destroys the Whole; For upon this Writ of Error they should recover Damages for the Trespass; and so of Debt with Damages for the Debt, and also they should be discharged of the Costs given against them. In the principal Case they are Defendants, and the Writ of Error is in the first Place, and Principally to discharge them from Damages and Costs, and not to give a Return of the Castle: An Avowry found for the Avowant for Damage feeling gives a Return of the Castle, with Damages and Costs; But where a, and Judgment against them, and they bring a Writ of Error, and one releases, the other shall have a Return, they in the principal Case being Defendants in the Replevin, lose Damages and Costs; if they have been Plaintiffs, in Trespass or Replevin, and barred by an erroneous Judgment, upon a Writ of Error or Against such Judgment should be given, as ought to be given in the Original Action; but they brought the Writ of Error as Defendants; and also they took the Diffretts for an Amenacement in a Leet, and to Damages are to be recovered in, if it be found for the Avowant: The Case is the same of several Defendants, if the Avowancy have been for Damage Peasantry, where Error is brought by several Defendants, the Release of one shall not bar the others, For they are forced to pay in Error. So is in bones. Jenk. 214. 22. pl. 60 cit. Cro. 125.

But where two Joint tenants are Plaintiffs in Ejta mount, or Defendants in a Real Action, the Release of one shall not bar the other, but the other shall proceed as to his Right. Jenk. 265. pl. 65.

6. The Difference is where an Action is brought by several in Discharge of themselves, the Act of the one, as Nonuit or Release, shall not prejudice his Companions to bar them to proceed in the Suit; As in Aud. Quo, by several, the Nonuit of One shall not bar the Rest, but where an Action is brought to change another if the Action is brought by several, the Release or Nonuit of one shall bar the others. Cro. E. 649. Razzing, Scot. & al. v. Ruddock. — Where the Ground of the Action is a Joint Interest, which may be released. 6 Rep. 25 b. S. C.

As if a bring Error to release a Judgment, that the Release of one is pleaded, he may be barred, and the other

may proceed Cro E. 649. (bis) in the Case of Wright against the Mayor &c. of Wickham. — But if one theret a Right bringings an Action against Two, and One pleads a Release, this is good to Both. Ibid. An Action of Suits and Battery and false Impression was brought against 4 Defendants; The Plaintiff had Judgment, and they brought a Writ of Error; The Plaintiff in the Action pleaded the Release of one of them, and to this Plea 4 jointly demurred, The Opinion of the Court was, That Judgment might be given generally, for they being compelled by Law to bring in a Writ of Error, the Release of one shall not discharge the rest of a personal Thing; but where不服s are to recover in Peculius, the Release of one is a Bar to all; but it is not so in Point of Discharge. 5 Mod. 159. Pich. 7 Jac. 2. in B. R. 1686. Anon.

7. If 2 are Plaintiffs in Debt, and they are barred by an Erroneous Suit, and Costs are taxed against them, and they bring Error to avoid them. 3 Mod. 148. — P. Jenk. 271. in pl. 8.
Release.

thos Cofts, the Release of the one shall bar the other; for it was their Folly to join in the first Action. Per Popham. Cro. E. 649, in the Cafe of Razing, Scot, & al v. Ruddock. 

7. G. brought Cafe against 2 for keeping so many Comus in a Warren by them erected, whereby the Plaintiff lost the Benefit of his Common in the Land adjoining. After a Verdict and Judgment for the Plaintiff, the Defendants brought a Writ of Error in B. R. G. pleaded in Bar a Release by one of them, and concluded in Bar to Both; And upon a Demurrer it was ruled that the Plea was not good, because it concluded against Both, whereas he that did not release is not barred; but he should have concluded against him only who released. Palm. 319. Mich. 20 Jac. B. R. Greetley v. Lee and Taylor. — Et c. Contra.

See (D. a) S. P.

(G. a) In what Cases Releases to one shall enure to another.

When divers do a Trespass, the name is joint or several at the Will of him to whom the Wrong is done, yet if he releases to one of them all are discharged, because his own Deed shall be taken most strongly against himself. Co. Litt. 252. — For tho' a Trespass be joint to the Purpose, viz. That he may sue one or all, yet when 2 join in a Trespass, they do make one Trespasser as to either of them is well answerable for his Fellow's Fact as well as himself; and therefore a Release to one discharges the whole Trespass; And also a Release is good a Satisfaction in Law as a Satisfaction in Deed. Hob. 66. pl. 69. Cock v. Jenmor. — Brown 189. Cook v. Jernon S C held a good Plea, and that a Satisfaction by one is a Satisfaction by all. — S. P. Cro. J. 444. Hill. 11 Car. R R. That if a Release be made to one Trespassor, and the other had it to plead, they'll take Advantage thereof to discharge themselves accordingly. — S. P. Br. Attain. pl. 91. cites 13 E. 4. 1.

2. If an Arbitrement be between one of the Trespassors and the Plaintiff, and [there is] a Performance of it; this has the Action of the Plaintiff against the other, because this is a Satisfaction. 8 H. 6. 15. 7 D. 4. 37. 1 b.

But if Mayor and Commonalty discharge me, and I release to

20 or 30 of the Commonalty by proper Names, yet this is not good to the Mayor and Commonalty. Br. Corpor. pl. 24. cites 8 H. 6. 4. 14.

S. P. Br. Prerogative, pl. 124, cites 2 R. 3. 4. 8. 34 H.

H. 6. 5. — So the Obligee releases to one, Preserve that the other shall not take Benefit of it, y this is a valid Provise: And so in Cafe of a Trespass if the other can get the Release to produce it. Per to. Cur. Litt. R. 191. Mich. 4 Car. C. B. in the Cafe of Everard v. Hume.

S. P. Co. Litt. 252. a

Hob. 10.

pl. 20. Fryer v. Gilbridge — Mo 855. pl. 114. 2 Trin. 13 Jac. B. S. C. — S. P. Ars if the joint Remedy is gone, the several Remedy is gone also. Agreed per Cur. But Holt Ch. J. who delivered the Opinion of the Court, said they did not determine that on Covenant, where the joint Remedy failed, there could not be a several Remedy. 2 Salk. 54. Hill. 10 W. 3. B R in the Cafe of Clayton v. Kynaston.

S. P. Co. Litt. 252. a
Release.

6. So if A. and B. are named as Obligors jointly and severally, and A. only feals it, and then the Obligee releases to A. and after B. feals the Deced; It seems that the said Release shall enure to him, tho’ it was not his Deced at the Time of the Release; For now this is a joint and several Deced; For the Release does not defeat the Deced, but is only a Bar by Plea, and both were bound for one and the same Debt, the which is satisfied by the Release, and therefore a good Discharge of both. Br. 16 In B. between Duyner Plaintiff against Bride and Knight Defendants; This was a Doubt between the Serjeants and the Court. Dubitativ 9. 31. 32. El. B. R. between Monings and Townendl.

7. If I receive for me a certain Sum of Money jointly, and after each of them binds himself to account for the Whole, and after I bring a Writ of Account against them by divers Precipes, and count severally against them as my Receivers of the said Sum, my Release made to one of them of all Debts and Accounts shall be a Release of the other also. 2 El. 3. 45. b.

8. If I recover in a Real Action against J. S. and after J. S. releases S. P. by all Errors to one of them; This shall release his Writ of Error against the other also; For he has released the Errors in the Record. 9. 38. 39 El. B. R. in Wright’s Case. Agreed by Popham.

B. R. in the Case of Wright v. the Mayor &c. of Wichham.

9. Difceit against 3, and the one appeared, and the others made Default; S. P. Br. De- the Plaintiff released to him who appeared, and pray’d Judgment against the others. Per. Cur. You cannot; For now you have confed your Action false, because you have releas’d to him who is present; but if he had made Default also, then you might have releas’d to him, and pray’d Judgment against the other 2. Br. Difceit, pl. 31. cites 9 H. 4. and Fitzh. Difceit 25.

10. If a Monk or Feme Covert and J. S. are bound, and the Obligee rele- leaves to the Feme Covert or Monk, J. S. shall have no Advantage thereof. Br. Faitis, pl. 23. cites 14 H. 4. 31.

11. If the Plaintiff releaseth to one of the Executors, this shall serve him who waits. Br. Dette, pl. 177. cites 11 H. 6. 7 & 16.

12. Precipe quod Reddat is brought against A. who vouches B. and B. enters into the Warranty, and then the Defendant releases all his Right to A. — A. cannot plead this; For Continuance now in Court is between the Defendant and the Vouchee, and the Defendant should count against the Vouchee; This Vouchee may plead this Release, and may also plead it as if made to himself; it being made to the Tenant after the Vouchee had entered into the Warranty, For now he is Tenant in Law of the Land. Jenk. 192. pl. 95. cites 14 H. 6. 7. 19. 5 H. 7. 38.

13. If 2 are bound to the King jointly or severally, and the King releaseth Per ven- to the one, all the Debt is determined; Per Prior and Danby. But Per nec, If 2 are Aitson, He shall have the whole Debt of the other. Quere. Br. Releas- es, pl. 57. cites 34 H. 6. 3.

those of the Exchequer will not allow it to the other. ibid. — If 2 are Joint Debtors to the King, and he pardons to the One Omnia Debtos, this shall not serve for the other, by some. Br. Releaseth, pl. 80. cites 2 R. 1. 4. Br. Prerogative, pl. 124. cites S.C. — And Br. Releaseth, pl. 42. says 1 H. 7. 15. is, That it shall not serve for the other; Per Catesby. But contra of a Common Person; By him.


15. If a Man gets Possession of my Rent by Distress upon my Tenant, and I release to him, yet I may distrain the Tenant for the same Rent; For he is not my Difieror, but at Pleasure. Contra, If I bring Action against him thereon, then the Release shall be a Bar; for I affirm him Difieror. Br. Releaseth, pl. 79. cites 15 E. 4. 8. Per Littleton.

16. In
Releafe.

16. In Appeal against 2, Releafe of the Plaintiff made to the one of all Felonies and Executions thereof, is no Bar for the other; For Execution of One of them is not for all, it is severally in itself. Contra, in Trefpafs. Br. Releafes, pl. 74. cites 21 E. 4. 72.


In Appeal against Acreary and Principal there is no Privy, nor shall Releafe to the One serve the other. Br. Acreant, pl. 91. cites 15 E. 4. 1.

17. If the Diffefor makes a Leaf for Life, and the Leafee interest's 2, and the Diffesee releaseth to one of the Efeuices, this shall bar the Diffefor; but yet he shall not hold his Companion out. Co. Litt. 277.

18. Where several Perfons enter into several Covenants in the same Deed, a Releafe to one of the Covenantors will not discharge the others. See Cro. E. 408. 470. (bis) pl. 22 346. Hill. 39 Eliz. & B. Matthewson v. Lydiah.

19. If Trefpafs be brought against 3, and Judgment is given against one, and the Plaintiff enters a Noli Prosequi against the other 2; if the Noli Prosequi had been before Judgment, it had discharged the whole Action. The same if Judgment had been against all 3, and the Plaintiff had entered d Noli Prosequi against the 2; For Nonuit, or Releafe, or other Discharge of one, discharges the rest. Hob. 70. pl. 51. Hill. 11 Jac. B. R. Parker v. Lawrencé & al.

20. Where a Lien is Joint or Several at Election of the Party, there a Releafe to One is a Releafe to Both; for the other may plead it to Debt against him upon Bond &c. 12 Med. 351. in the Cafe of Lacy v. Ky- nifton. --- cites Co. Litt.

(G. a. 2) Enure. Where given to a Stranger shall enure to one that is Privy.

1. If Diffesfor dies discharged, and his Heir is in by Decent, and is discharged by E. and the first Diffesee releaseth to E. now if the Heir of the Diffesor re-enters, he shall take Advantage of the Releafe; And to fee a Diversity between him who has Title of Entry, and him who has Right of Entry. Br. Releafes, pl. 46. cites 9 H. 7. 25.

2. In Debt against the Heir he may plead a Releafe made to the Executors. Br. Releafes, pl. 25. cites 14 H. 3. 4. Per Prüherbert J.

3. A Bond was condition'd, That if f. S. should become an Apprentice to the Obliger, and transport his Goods beyond Sea, and make a good Return of them; and should make Account thereof, and pay the Money on such Account within such a Time, that then &c. The Obliger released to the Apprentice. Per tot. Cur. The Obligation is saved by this Releafe if the Releafe was made before any Forfeiture; But otherwise, if made after; For then such Releafe to the Apprentice did not dispose with the Bond made by the Obligor, (who was a Stranger to the Releafe) because an Obligation once forfeited cannot be saved by any Act or Releafe made or done to a Stranger. 3 Le. 45. pl. 65. Mich. 15 Eliz. C. B. Anon.
(G. a. 3) To one that is in of one Estate. In what Cases it shall enure to another, who is in of another Estate.

1. If there be Lord Mefie and Tenant, and the Mefie grants the Mefialty to one for Term of Life, and after the Lord releases to the Tenant of the Land all the Right which he hath in the Land, there the Mefialty is extant; for the Services which the Mefie has, shall be in Respect of the Services which he does over to the Chief Lord, yet the Tenant for Life shall have the Services for his Life. Per Babb. Ch. J. Quare inde; and to see Release between the Lord and the Tenant extinguisht the Mefialty. But it seems that if there be any Surplus, he shall have it. Br. Releases, pl. 20. cites 8 H. 6. 24.

2. In Precepta quod reddat, if the Tenant vouches, the Vouche may plead Release made to the Tenant after the last Continuance & c. converted. Per Yaxley and Brian. Br. Releases, pl. 46. cites 9 H. 7. 25.

3. And in Contro formam Collationis by the Founder, the Feoffee may plead Release made to the Vouche, in Scire facias brought against him. Br. Releases, pl. 46. cites 9 H. 7. 25.

4. If a Man has a Rent-charge out of the Land of a Feme Covert, and releases to the Baron all the Right which he has in the Land to the Heirs of the Baron, yet this shall enure to the Feme and her Heirs; for this shall enure by Way of Extinguishment. Per Port. Quare. Br. Releases, pl. 25. cites 14 H. 8. 4.

5. Regularly it holds true, That when a Naked Right of Land isre. If the Heire entered to one that has Fumi Possession, and another by a Mefie Title receives of the Def. the Land from him, the Right of Poffession shall draw the Naked Right, and shall not leave a Right in him to whom the Release is made. Co. Litt. 266. a.

(H. a) In what Cases a Release of Part shall enure to the other Part.

1. If A. be bound in a Statute of 1000 l. to B. and B. makes a Discharge by Deed, by these Words, I have received 100 l. Part &c. of which I have discharged, releasted and acquit- ted the said A. This Discharge and Release of this Part is not any Release of the Rechufe. M. 37 El. B. R. between Cook and Bacon adjudged and affirmed in a Case of Error.

2. If A. be bound to B., in an Obligation of 400 l. whereby the Condition is for Payment of 200 l. and the Obligation is forfeited, and
Release.

and then the Obligee releases to the Obligor 300 L. Parcel of the 400 L. by their Words, 
Remitt, Release and Execut; this is a good Re- 
lee of this Parcel, and shall not release all the Obligation. P. 10 
Car. B. R. between Barkley and Parkes adjudged upon a Demurrer, 
per Curiam. Intratru P. 9 Car. Rot. 262. And the Court said 
that a Man may release Part of a Rent issuing out of Land, 
without releasing all.

3. If A. in consideration that B. shall marry C. his Daughter, 
promises to pay 100 L. to B. at certain Days; and further to give him 
such as he should after give to any of his other Daughters, 
accounting the paid 100 L. therein; and B. marries C. accordingly, and after 
B. releases by Deed to A. the paid Promiss as to the paid 100 L. and 
after A. gives 200 L. to another Daughter, and then B. releases all Promis 
touching the paid 100 L. yet this does not release the Promiss as 
to the Incurred of the Portion, teller. The other 100 L. which he 
gave over and above the paid 100 L. Mich. 14 Car. B. R. between 
Warren and Carr adjudged in Writ of Error upon such Judgment in 

4. Lord may release to the Tenant Parcel of the Services, 
and yet the reft shall remain. Per Hank, quod non negatur; quod nova. Br. Releases. 
pl. 13 cites 14 H. 4. 7.

5. If a Lease be upon Condition that Leffer shall pay 3 Acres every Year, 
if the Leffer discharges him of paying one or two of the Acres, yet he 
shall plow the reft. Per Periam J. Mo. 205. cites 4 H. 7. 6.

6. If a Man has a Rent-charge of 20 s. he may release 10 s. to the Te-

tant of the Land, and releve the other 10 s. for he deals only with 
what is his own, viz. the rent, and deals not with the Land as in 
The Cafe of Purchafe of Part; or if such Grant be to J. S. and the Tenant at-
torns, by this the Rent-charge is divided. Co. Litt. 148. 8.

7. There is a Difference between a Chafe en Action and a Chafe en 
Droit; the firft cannot be divided, but the other may; as if a Diftrict of 
20 Acres release all his Right in 5 Acres, this does not extinguish all his 
Right in the Residue, but in the 5 Acres only; but of a Chafe en Ac-
ction, which is merely intire, no Apportionment can be. Arg. Owen 21.

8. If a Recovery be against A. for 20 Acres, and A. releases all Errors 
for one Acre, he shall not have Error for any; for the Record is intire. 
v. Jackfon, cites the Cafe of Wright v. the Mayor &c. of Wickham.

9. When Execution is had of 20 Acres, by Releafe of one Acre, the 
Execution is gone, and is a Discharge of Land and Body. Arg. And. 
266. in Cafe of Linacre v. Rhodes.

10. When a Man has diverfe Means to come to his Right, he may rele- 
"e one, and yet take Advantage of the other. 8 Rep. 152. in Altham's 
Cafe.

11. If a Man has Common in 100 Acres, by a Releafe of his Right of 
Common in one Acre, his whole Right is extinguished. Brownl. 180. 
Morfe v. Wells.

(F. 8)
Release.

357

(1. a) In what Cases a Release of one Thing shall enure to another [Thing].

1. If a Man levies a Fine of certain Land, and after enters into Part of the Land, and makes Sequestration thereof, which is a Release in Law of his Writ of Error, to recover the Fine as to this; yet this shall not release his Writ of Error for the Relief. 357.

2. If the Obligor takes from the Obligee the Obligation with Force, and after the Obligee releases to him all Debts, this releases the Action of Trespass also; for in the Trespass he should recover the Value of the Debt. 49 E. 3. 12 b.

3. If two deliver an Obligation in which one is bound, into an Indifferent Hand, if the Obligee releases all Debts, this will bar him of Derinse when the Obligee comes by Garnishment. 49 E. 3. 13 b. Debitatur. 2 H. 4. 16. Admitted.

4. If the Lord releases to his Tenant the Distress for the Services, If there yet the Services remain. 1 H. 4. 1 b. 3 b. and the Tenant holds 3 Acres by 3. and the Lord releases all his Right in one Acre, all the Seigniory is extinct, and yet if he grants all the Services, offering out of one Acre, nothing shall pass. Co R. on Fines 7. cites 20 H. 6. 54 Ait. pl. 15. 4 E. 4. So if the Lord releases all his Right to the Land, his Seigniory is gone. Admitted, Arg. Win. 122. per Hutton J. Hill. 22 Jac. in Case of Cooper v. Elgar.

5. So if he grants in Fee that he will not Distrain. 1 H. 4. 1 b. 3 b.

6. So if he holds by Homage, Fealty and Rent, and the Lord grants that he shall not do Fealty, yet the Resto remains. 1 H. 4. 1 b.

7. If a Man brings Appeal of Malheur, and after releases the Action, this Release shall bar him to have an Action of Battery of the same Battery. 43 Ait. 39.

8. If Distinete releases to Distinete all Actions Personal, yet he may enter into the Land. 19 Ait. 3.

9. If a Rent-charge issues out of 3 Acres of Land, and he who has the Rent releases all his Right in one Acre, the Rent is all extinct; because all issues out of every Part, and it cannot be apportioned. 21 E. 3. 58 b. 34 Ait. 15. per Thorpe.

10. If a Company of a Statute Merchant be in Execution, and his Land also, and the Company relieves to him all Debts, this shall discharge the Execution; For the Debt was the Cause of Execution, and of the Continguence of it, till the Debt was satisfied, and therefore Officinante Contus efficit Effetiones. Co Litt. 76 a.

11. A Release of a Condition is not a Release of the Obligation. 12 Mod. 93. In Case of Cage and Alton. 4 Y. (K. A)
(K. a) How it shall enure; In what Cases jointly, and in what Severally.

1. If a Man releases to two all Actions quas Conjunctim haberant against them, this shall enure only jointly. 19 H. 6. 4.

2. If a Man releases to J. S. and J. D. all Actions which he has against them, or either of them, this shall enure Severally as well as Jointly. 19 H. 6. 4.

3. If a Man releases to J. S. and J. D. all Actions, Suits and Demands, which he has against them, vel eorum alterum, this shall enure Severally as well as Jointly, and shall discharge all (e.) which he has against any of them. 19 H. 6. 4. Cull.

4. So would it be if the Words (vel eorum alterum) were out of the &c. Deed. 19 H. 6. 4. - Br. Releases, pl. 21, cites 19 H. 6. 3. S. C.

5. If a Man makes a Release to another by Name of J. S. Executor, this shall release all Actions which he has in his own Right as well as those which he has as Executor. 19 H. 6. 4.

In Modum recipientis.

6. If a Release be made to 3 Tenants in Common of Land, this shall enure to them in Common, according to their several Interests. 19 H. 6. 4. b.

7. If I bring Trepass against N. and after I release unto him and W. S. I shall be barred against N. Per Newton quod conceditur. Br. Releases, pl. 21, cites 19 H. 6. 3.

8. A Release of all Actions, which the Releasor hath against the Releasor and another; this releaseth only the Actions which he had against the Releasor, because the Deed shall be construed most beneficially for him to whom it was made. 3 Nelf. Abr. 72. pl. 3. cites 3 Rep. 7. In Justice Windham's Cof.

5 Rep. 7. b. (d) in That in this Case, notwithstanding the joint Words, all Actions which the Releasor has against the Releasor solely (separately and distinctly) are releasted, most beneficially for him to whom the Release is made, and most strongly against him who makes it; and that joint Words of Parties shall be taken, in some Cases by Construction of Law, respectively and severally.

And agreeable to this is 9 E. 4. 32. cited by Brooke tit. Releases, pl. 29

(L. 3) 70
(L. a) To Tenant for Life, where it shall accrue to him in Reversion or Remainder.

1. In Affidavit, the Tenant pleaded Release with Warranty of the Ancestor of the Plaintiff whose heir he is to one, Sue Ejector he has to him and his Heirs, Judgment &c. and the Plaintiff said that he to whom the Release was made, was Tenant for Life, the Remainder in Tail to the Plaintiff, and that the Tenant for Life, who got the Release, is dead, and be entered as in his Remainder, and so the Warranty determined; and the Tenant said that the Remainder in Fee for Default of Issue of the Plaintiff was to the Tenant for Life, and his Heirs; et non Allocatur; But the Opinion of the Court held Contra, and the Reason seems to be inapposite as that which is released shall accrue to all the Estates, and the Warranty is determined by the Death of the Tenant for Life; For the Warranty cannot enlarge the Estate of the Party, nor shall accrue to the Rent. Br. Releases pl. 6. cites 45. E. 3. 10.

2. If a Devisor makes a Release to one for his Life, Remainder to another, it is a Devisity, and make a Lease for Life, and the Devisor releases to Tenant for Life all his Rights &c. this Release shall ensue as well to him in Remainder as to Tenant for Life, because the Tenant for Life comes to his Estate by Court of Law, and therefore this shall accrue by way of Extinction to the Right of Devisor &c. And by this Release Tenant for Life hath no greater Estate than he had before the Release made him, and the Right of Devisor is altogether extinct; and inasmuch as this Release cannot enlarge the Estate of Tenant for Life, it is Reason that this Release shall accrue to him in Remainder &c. Litt. S. 583.

3. Where a Release is made to Tenant for Life in Tail, this shall accrue to them in Reversion, or to them in Remainder, as well as to the Tenant of the Feehold; and they shall have as great Advantage thereof as if they knew it. Litt. S. 453.

4. If there Lord and Tenant and the Tenant makes a Lease for Life the Remainder in Fee if the Lord releases to the Tenant for Life, the Rent is wholly extinguished, and he in the Remainder shall take Benefit thereof. Co. Litt. 279. b.

5. So when the Heir of a Devisor is deceased, and the Devisor makes a Lease for Life, the Remainder in Fee, if the first Devisor releases to the Tenant for Life, this is said to accrue by way of Extinction, because it shall accrue to him in the Remainder, who is a Stranger to the Release, and yet in Truth the Right is not extinct, but follows the Possession. Co. Litt. 279. b.

6. If the person upon Condition makes a Lease for Life, the Remainder in Fee; if the Feoffor releases the Condition to the Lessee for Life, it shall accrue to him in Remainder, as well as in the Cate of the Right or of a Rent &c. Co. Litt. 279. b.

7. If a Feoffee by Deed makes a Feoffment in Fee to the Use of A. for Life, and after the Use of herself in Tail, and the Remainder to the Use of B. in Fee, and then makes Husband the Devisor, and he releases to her all his Rights. This shall accrue to B. and to his own Wife also; For by Littleton's Rule it must accrue to all in the Remainder. Co. Litt. 279. b.

(M. a) To
Releafe.

(M. a) To Reversioner or Remainder-Man, Where it shall enure to Tenant for Life.

1. Every Releafe made to him which has a Reversion or a Remainder in Died, shall aid him who has the Freehold, as well as he to whom the Releafe was made, if the Tenant hath the Releafe in his Hand to plead. Litt. S. 552.

2. It is a Diffessor be, and they make a Leave for Life, and the Diffessor releaseth to any of them, this shall enure to them both, and to the Benefit of the Lettice for Life also; For he cannot by the Releafe have the Pole-Pollit and Eifate; for Part of the Eifate is in another. Co. Litt. 276. a.

(N. a) To one Diffessor. Enure how. By way of Entry and Feoffment.

1. Two Diffessors are, and the Diffessor releaseth to one of them upon Condition, now he to whom the Releafe is made shall hold his Companie out; but if afterwards the Condition be broken, they are Joint-tenants again. Co. R. on Fines. 6. cites 17 All.

2. If my Tenant pays my Rent to 2, and I releaseth to the one of them, this Releafe shall vest the whole Rent in him to whom the Releafe is made. Co. R. on Fines 6. cites 18 All.

3. Where there are 2 Coptarceners, and the one enters into all in the Name of both, and the other releaseth to her, this countervails Entry and Feoffment; For such Entry makes the other Coptarcener feilled with her, and there the Entry of the one in such Manner is the Entry of both, and the Seffion of the one is the Seffion of the other; And a contrari, where the one enters into all, claiming to herself, there if the other releaseth, it is but only an Extinguishment of Right, and no Seffion in the other, who did not enter. Br. Entre Cong. pl. 30. cites 21 E. 3. 27.

4. Releafe by him who has Entry lawfull, is not always as an Entry and Feoffment. Br. Releases, pl. 24.

And there-fore the ancient Law was, That if the Diffessor had made Feoffment in Fee with Warranty, and there was a Dis-appointed Party, or a Party interested in the Patent, who might protest against it, the patentee might after the matter was disputed, grant a New Feoffment to one of them, and quenche the Action. But if the seised Party consent, then the Patentee shall have a right to have another Feoffment made, and to the Benefit of the Patentee and his or her Heirs. Br. Releases, pl. 24.

5. In all Cases where a Man is in of such Eifate, to which a Warranty may be annexed at the Time of Creation of the Eifate; if the Releafe be made to such Eifate, such Releafe shall not enure by way of Entry and Feoffment; For this is the Reaon of the Diverity put by Littleton, &c. When the Diffessor inco life, if the Diffessor releaseth to one of them he shall hold his Companie out; The Reaon is, for the Possibility of the Warranty; For if this shall enure by way of Entry and Feoffment,
it shall destroy the Warranty, which was much favour'd in ancient entry, or Books. Co. R. on Fines 6. cites 21 H. 6. 41. & 22 H. 6. 22.

had given in

Franklin.

which implies a Warranty, the Diffielle could not have enter'd upon him for Salvation of the Warranty, as it is held in 1 Aff. 13. 27 Aff. 54. and an ancient Book in 25 H. 7. and 8 Th. Afhis 432. Co. R. on Fines 6.— But in all Cases where 2 are in merely by Tort, without any Title, there (as Little can say) a Release made to the one shall enure only to him, and he shall hold his Companion out. Co. R. on Fines 6. — And therefore if Leafe for Years makes Feoffment in Fee to 2, and after the Leafe releases to one of them, he to whom the Release is made shall not hold his Companion out, and yet they are Diffielle. Co. R. on Fines 6. — But if a Man makes a Leafe for Life, and after the Leafe makes Charter of Feoffment to 2, and a Letter of Attorney to the one to make Lessee, who makes it accordingly; and after the Leafe releases to one of them, he to whom the Release is made shall hold his Companion out, For this puts the Right only to him to whom the Release was made. Co. R. on Fines 6.

6. When the Entry of a Man is lawful, and he releases to him who is not in by Tort, and without Title, such Release countervails Entry and Feoffment. Br. Releases, pl. 92. cites Littleton tit. Releases.

7. If a Diffielle releases to one of the Diffiellores, to some Purpose this But not as to shall enure by way of Entry and Feoffment, viz. As to hold out his Compa-

7. If a Diffielle releases to one of the Diffiellores, to some Purpose this But not as to shall enure by way of Entry and Feoffment, viz. As to hold out his Companion. Co. Litt. 278. a.

charge granting by him; For if the Diffielle had enter'd and infeft'd him, the Rent-Charge had been avoided. Co. Litt. 278 a. b. — But it is a certain Rule when the Entry of a Man is coaggivable, and he relieves to one who is in by Life, it shall never enure by way of Entry and Feoffment, either to avoid a Condition with which he accepted the Land charg'd, or his own Grant, or to hold out his Companion. Co. Litt. 278. b.

8. An Life cannot be out of a Release by the Diffielle; For such Release to such Purpose shall not enure as an Entry and Feoffment. Arg. Le. 148. in the Cafe of Read v. Naill, cites to E. 4. 5.

(O. a) To one Diffiello. Enure to his Companion.

1. If a Man be diffiell'd by 2, and he releases to one of them, he shall hold This is to be his Companion out of the Land; and by such Release he shall have the fee Pofsession and Estate in the Land. Litt. S. 472.

simple is diffiell'd, and releases; For if Tenant for Life be diffiell'd by 2, and he releases to one of them, this shall enure to them both; For he to whom the Release is made has a longer Estate than he that releases, and therefore cannot enure to him alone, to hold out his Companion; For then should the Release enure the way of Entry and Grant of his Estate, and consequently the Diffiello, to whom the Release is made, shall become Tenant for Life, and the Reversion revert in the Leaflor; which strange Transmutation and Charge of Estates, in this Case, the Law will not suffer. Co. Litt. 275. b.

2. If Done in Tart be diffiell'd by 2, and releases to one of them, it shall enure to them both. Co. Litt. 276. a.

3. But, if the King's Tenant for Life be diffiell'd by 2, and he releases to S.P. Because he can only be diffiell'd of an Estate for Life, since the Reversion in the King cannot be devolved. G. Treat of Ten. 54.

4. If Tenant for Life be diffiell'd by 2, and be in the Reversion and To— But if Tenant for Life join in a Release to one of the Diffiellores, he shall hold his Companion out, and yet it cannot enure by way of Entry and Feoffment. Co. Litt. 276. a. For in the Reversion, generally release their several Rights, their several Releases shall enure to both the Diffiellores. Co Litt. 276 a.
5. If 2 Men gain an Adverse by Uprising, and the right Patron relates to one of them, he shall not hold out his Companion; but if the Clerk came in by Admission and Institution, which are judicial Acts, they are not meerly in by Wrong; For an Uprising shall cause a Remitter, as appears in F. N. B. 13. (Al) Co. Litt. 276. a.

6. If a Man be diffized by 2 Women, and one of them takes Husband, and the Diffizor relates to the Husband, this shall enure to the Advantage of both the Diffizors, because the Husband was no Wrong Does, but in a Manner in by Title. Co. Litt. 276. a.

7. If 2 Diffizors make a Lease for Years, and the Diffizor relates to one of them, this shall enure to both; For by the Release he cannot have the sole Possession. Co. Litt. 276. a.

8. Mortgagee upon Condition, having broke the Condition, is diffized by 2. The Mortgagor having Title of Entry for the Condition broken, releases to the one Diffizor. Although they are in by Wrong, yet the Release shall enure to them both for 2 Causes, 1st, They are not Wrong Does to the Mortgage but to the Mortgagor, and by Littleton’s Case it appears. That Wrong is done to him that made the Release. 2dly, He that makes the Release has but a Title by Force of a Condition. And Littleton’s Case is of a Right. Co. Litt. 176. a.

9. If 2 Jointtenants make a Lease for Life, and after do diffize the Tenant for Life, and he releases to one of them, he shall hold out his Companion; for the Diffizor was only of an Estate for Life. Co. Litt. 276. a.

10. If two Jointtenants are diffized by two, and one releases to one of them, he shall not hold out his Companion, because he cannot hold him out of the whole; for he has not the whole Right, and so there can be no Act of Notoriety whereby the Estate may appear to be in one Diffizor. G. Treat. of Ten. 54.

(P. a) To one Fee of a Diffizor enure to his Joint Fee of a.

S. P. Litt. 8. 1. If a Diffizor infozfs two, and the Diffizor relates to the one Fee of a all his Right; this shall enure to both, and is as an Extinquent of the Right. Br. Releases, pl. 23. cites 21 H. 6. 41. and 22 H. 6. 22.

by the legal

Notoriety of a Feeholder, That must be defeated by an Act of equal Notoriety, before the Title can be altered; because the Feeholder must have good, as an Act that gives Warning to all Persons in whom the Feehold subsists, till by some Act of equal Notoriety it appears that the Feehold is in another. G. Treat. of Ten. 53. — So if the Diffizor makes a Lease for Life, and the Lease infozfs two, and the Diffizor relates to one of the Fees, this shall bar the Diffizor, but yet he shall not hold his Companion out. Co. Litt. 277. a. — Le. 262. pl 349. Anon. And 43. S. C. Martin v. Savery.

2. Where
1. **If** Diffeifie makes a Feoffee in Fee upon Condition, and the Diffeifie releaves to the Feoffee, and the Condition is broken, the Diffeifie may enter notwithstanding the Release; for the Condition ellops the Feoffee. Br. Releases, pl. 46. cites 9 H. 7. 25. 

Justice—Here the Entry of the Diffeifie is coagamble, and yet the Release does not avoid the Condition, because the Feoffee is in his True, and may have a Warranty. Co. Litt. 277. b. ——If Diffeifie releaves to the Feoffee with Warranty, and Diffeifie enters for Condition broken, now Diffeifie shall reenter by the Warranty, and not vouch. Per Southcot J. 2 Le. 218. in Humfrton's Case.

2. Littleton expresses a Diversity between a Condition in Deed and in Law; for where the Diffeifie releaves to the Feoffee of the Tenant for Life, the Condition in Law is taken away. But otherwise in Case of a Condition in Deed. Co. Litt. 277. b.

3. If the Feoffee upon Condition makes a Feoffee in Fee over, without any Condition, and the Diffeifie releaves to the 2d Feoffee, the Condition is destroyed by the Release before the Condition broken, or after; for the Estate of the 2d Feoffee was not upon any express Condition, and he may have Advantage of the Release, because it is not against his own proper Acceptance. Co. Litt. 277. b.

(R. a) Of Diffeifie. Enure to avoid Grants &c. to, or by the Diffeifie, by Alteration of his Estate.

1. If a Man is diffeifie of Lands, and the Diffeifie grants a Rent-Charge Here is im- out of the same Land &c. tho' the Diffeifie afterwards releaves to the Diffeifie &c. yet the Rent-Charge remains in Force; because a Man shall not have Advantage by such Release, which shall be against his own out of the Grant. Litt. S. 477.

is, because he shall not avoid his own Grant by a Release which he himself has acquired since the Grant. Co. Litt. 277. b. ——But if the Diffeifie after his Grant of the Rent-Charge be diffeifie, and the Diffeifie releaves to the 2d Diffeifie, he shall avoid it (as appears by Litt. S. 477.) Co. Litt. 278. a. ——So if A and B are joint Diffeifie, and B grants a Rent-Charge, and the Diffeifie releaves to A. all its Right, A shall avoid the Rent-Charge, because it was not granted by him. Co. Litt. 278. a.

2. If there are two Diffeifie, and they are diffeifie'd, and they releaves to their Diffeifie, and alter diffeifie him again, and then the Diffeifie releaves to one or both of them, yet the 2d Diffeifie shall re-enter; for they shall not hold the Land against their own Release; for Litt. here says that they shall not avoid their own Grant, and by like Reason they shall not avoid their own Release. Co. Litt. 278. a.
3. If the Lord before the Release had confirmed the Estate of the Diffeifor to hold by lesser Services, the Diffeifor shall take Advantage of it; and so of Trustees to be burnt in the House, and so of a Warranty made to him. Co. Litt. 278. b.


(S. a) To him that is in by Wrong. Enure to purge and toll all Mensue Estates, and Titles.

* S. P. Br. Release, pl. 92. cites Lib. Litt. Tit. Releases: for when the Entry of a Man is lawful, and he relea[...]

1. If I be dis[...]

2. If my Diffeifor hits the Tenements, whereof he disfasses me, for Life, and after the Tenant for Life aliens in Fee, and I release to the Al[...]

3. If Diffeifor dies, his Son being within Age, and the Diffeifor dies seized, and the Land descends to his Heir, and a Stranger abides, and after the Son of the Diffeifor at full Age releases all his Right to the Abator, in this Case the Heir of the Diffeifor shall not have an All[...]

4. If a Man be disfessed by an Infant, who aliens in Fee, and the Al[...]

The Reason of this Case is, because the Entry of the Heir is cong[...].

If the Heir of the Diffeifor be disfessed, and the Diffeifor relea[...]

But in this Case if the Diffeifor releases his
or a Writ of Right against the Heir of the Alienee, and which Writ of
then shall chuse he ought to recover by the Law &c. and also he
may enter into the Land without any Recovery; and in this Cae the

Writ of Right against the Heir of the Alienee, and he joins the Mile upon the meer Right &c. the
Great Alien ought to find by the Law that the Tenant his meer meer Right than the Diffeife &c. for
than the Tenant hath the Right of the Diffeife by his Release, the which is the most ancient and most
meer Right; for by such Release all the Right of the Diffeife passes to, and is in the Tenant Litt. S.
478.—S. B. Br Releases, pl. 92. cites Lib. Tit. Releases.—For in this Case, if he bring his Writ of
Right, the Diffeife shall be bane'd, but if he hath entered upon the Heir of the Alienee, he shold have en-
joyed the Land for ever; for in that Case the Heir of the Alienee, after such an Entry, shall never have
a Writ of Right. Co. Litt. 278. b.

5. If A. disjjeife B. who infeoffs in C. with Warranty, who infeoffs D. with
Warranty, and E. disjjeife D. to whom B. the first Diffeife releaes. This
debits all the mean Eftates and Warranties; Because the Release of B.
is made to a Diffeife, and his Entry is lawful. Co. Litt. 276. b.

6. If a Makes a Leafe for Life, and the Lessee for Life is disjjeife, and that
Diffeife is disjjeife, and he in the Reversion releaes to the 2d Diffeife,
the first Diffeife shall enter upon the 2d Diffeife, and his Entry is
lawful; and it the Leeffee for Life re-enter, he shall leave the Reversion
in the first Diffeife; And the Reason is, Because the Entry of the Dif-
feife at the Time of the Release made was not lawful. Co. Litt. 277. a.

(T. a) What shall be laid to be released, in Respect
of the Words.

1. A

A

Vowry for reaounable Aid to make his Son a Knight, who was of 15
Years of Age, and that the Plaintiff held of him by Fealty
and 4 Marks Rent, and the Vill is of the Annual Value of 15 l. and the
Plaintiff pleaded Release of the Ancestor of the Defendant, and Confirmation
in bold by Fealty and 4 Marks, for all Actions and Demands; And Per
Thorp, He shall not have Aid to make his Son a Knight, by Reason that
all is released except Fealty and 4 Marks Rent; But contra Wich and the
belt Opinion; for this Thing was not in Effe at the Time &c. And also
it is Incident to the Seigniory, and no Part of the Services; and therefore
cannot be released but by express Words; And he said, such a Deed was
pleaded in Avowry for Tenure in Socage for Relief of Double the Rent
after the Death of the Tenant in Socage, and Release of all Actions,
Services and Demands except Fealty and Rent was pleaded in Bar; and
notwithstanding this, Return was awarded. But it was agreed, That
by express Words the Incident may be released. And Per Cur. If a
Man holds by Homage, Fealty, and Rent, and the Lord releaseth, the
Fealty is not void; Because it is incident to the Seigniory, and cannot
be severed. Br. Releases, pl. 5. cites 40 E. 3. 22.

2. If a Man leaves for Life, and after releaseth all his Right to the said Ten-
ant for Term of Life of the same Tenant, and that be nor his Heirs will not
Demand, Challenge, or Claim any Right in this Land for Term of Life of
the Tenant; and after be dies, and the Tenant does Waife, and the Heir
brings Waife, and the Tenant pleads the same Release: And it was held no
Bar; For nothing was extinguished by this 2d Release, but that which
was in Action at the Time of the Release made, and so was not this
Waife; and yet he might have granted for him and his Heirs, That he
should not be impeached of Waife. And so a Diversity between Grant
and Release; For by this Release he shall not have a greater Eftate than
5 A

he had before, and the Fee remains in the Lessor. Br. Releases, pl. 65. citations 42 E. 3. 23.

See (A. a) pl. 1.

3. If a Man releaseth to me all Actions and Demands by the Name of J. S. Executor of W. P. by this all Actions which he has as Executor, and all other Actions are releaseth. Br. Releases, pl. 21. cites 19 H. 6. 3. Per Auce.

S. C. cited 4 Rep. b. 3 Rep. in the Commonwealth's Cafe, That it shall be taken most beneficially for the Releasee, and most strongly against the Releasor. — Otherwise it is if it had been All Actions against him and C. by this all Actions which I have against B. alone and jointly, are extinst; Per Needham, Littleton, and Moile J. Br. Releases, pl. 29. cites 9 E. 4. 42.

4. There is a Diversity between a Releaso and Pardon of the King and of a Common Fron; and yet if the King pardons to J. N. Omina Debita, and does not name him Sheriff, yet if it be Ex certa Scientia, et merto Morte, it shall serve as well for his proper Debts as for the Debt as Sheriff. Br. Releases, pl. 40. cites 1 H. 7. 13.

A. is bound in a Bond dated the 2d of January, and by Release dated the 1st Day of the same Month, released all Actions &c. from the Beginning of the World until the present Day, and deliver'd the Release after he had delivered the Bond. Per Coke Ch. J. A Release of all Actions until the Date shall not discharge a Duty after, but a Releaso Ug. Confession Prosnation discharges Duties after the Date, and before the Deliver}'; but he conceived, That the Day of this present Time shall be the Day of the Date; and it shall not be awru'd, That it was delivered 20 Years after; and it shall not wait on the Deliver}' of the Deed. 2 Brownl. 500. Anon. — Cro E. 14. Patch. 25 Eliz. C. B. Sir William Drury's Cafe, S. C.

5. Account was stated, and the Defendant gave Bond for the Balance, with Surties — 2 Days after, some Things being forgot, a further Accompt was adjusted, and General Releases given to each other, which were not intended to releaseth the Bond; And it appearing to the Court by several Circumstances, it was decreed, That the said Release should be set aside, and no Advantage taken of it as to the Bond. N. Ch. R. 48. 1649. Merrick v. Harvey.


7. Account was stated, and the Defendant gave Bond for the Balance, with Surties. — 2 Days after, some Things being forgot, a further Accompt was adjusted, and General Releases given to each other, which were not intended to releaseth the Bond; And it appearing to the Court by several Circumstances, it was decreed, That the said Release should be set aside, and no Advantage taken of it as to the Bond. N. Ch. R. 48. 1649. Merrick v. Harvey.

Release.

the Plaintiff did, by Indenture made between him and the Defendant, release to the Defendant all Matters of Action, Suitts, Debits, Debts, Sums and Sums of Money, and all Demands whatsoever, which he ever had on, or in, his Heirs, Executors, or Assigns, ever should have, or or by reason of any Thing, Matter, or Demand whatsoever. Upon Over of this Deed of Release, it did make the said Mensage, and released all Precedent therein, and all his Eate, Right, Title, and Interest in the said Cafe, both in Late, and in Eternity. There follows the following Clause. — And upon this the Plaintiff demurs, and Judgment for the Plaintiff in C. B. 'Twas agreed per Cur. That the Promise was not discharged by this Release. It was urged at the Bar, That if the Plaintiff might have founded an Action upon a mutual Promiss and Agreement, before any Performance on his Part, that certainly this Release would have barred; and the Consequence is very true and necessary, if that were the Case; And by the same Reason, if he could not bring an Action before such Time as he had made a Release, there is no Colour for the Release to bar him; For till he makes the Release in this Case if he has no Title to the ; if he, then till Release there is no Right of Action; and then they do not lie in Demand till Release, and that a Release of all Demands will not release a Thing that does not lie in Demand at that Time. 12 Mod. 453, 459, 460. Pacli. 13 W. 3. Thorp v. Thorp. — S. C. 1 Silk. 171. — Laww. 245. accordingly. — Ed. Raym. Rep. 255. 662. accordingly. — S. C. cited 8 Mod. 295

9. A. was Tenant for Life, Remainder to B. his Son in Fee; and in ; Keb. 245. the same Deed was a Grant of an Annuity of 100 l. per Ann. to B. during nature. S. C. Ador. the Life of A. — B. released to A. all Arrears of Rent, Annuities, Titles, in this Case and Demands, which he had by Virtue of that Deed. The Question was, Hale Ch. J. Whether this Release passed the Inheritance as well as the Annuity? Hale Ch. J. thought a Release of all Demands would not extinguish a Rent, but that it had been of all Demands out of the Land, it had been for Life, another Thing; and ask'd the Countel what he said to this Release of Remainder all Titles; For he said, It appear'd in express Terms, That B. released not only the Arrears of the Annuity, but the Thing itself; and not only so, but all other Titles by Virtue of that Deed; That B. had a Title to all the Title of the Annuity, and a Title to the Remainder; And here he released the which he has by Virtue of that Deed; And then ask'd Whether this had not past B's Eate for Life. Mod. 105.

(U. a) Where to pass a Fee by Release there must be Words of Inheritance.

1. If the Difee releases to the Difee for Life or in Tail, this shall put the Right in the Difie for ever; Because a naked Right passes from the Difiee, and not any Thing in Possession. Co. R. on Fines 7. cites 6 E. 3. 45 E. 3.

2. If there be Lord and Tenant, and the Lord releases all the Right which he hath in the Land, or all the Right which he hath in the Seigniory to the Tenant by Deed or by Fine, the Seignior is extint for ever without these Words (his Heirs.) Co. R. on Fines 7. cites Litt. 112. 26 H. 8. 42 E. 3. 13 E. 3. 18 E. 3. 11 H. 4. Br. Releases 86.

3. If there are 2 Jointenants in Fee, and the one releases to the other all but if there is his Right, and does not lay, To have and to hold, to him and to his Heirs, yet this Release gives a Fee-Simple. Co. R. on Fines 7. cites 19 H. 6.

Right, an Eate in Fee-Simple shall not pass by such Release. Co. R. on Fines 7.

4. When a Release ensues by way of Enlargement of an Eate, no Inheritance either in Fee-Simple or Fee-Tail can pass without apt Words of Inheritance. Co. Litt. 273. b.

5. Regularly.
5. Regularly when a Man, to whom a Release is to be made, has a Fee-simpul at the Time of such Release made of all Right &c. there need no Words of Inheritance. Co. Litt. 274. a.

6. A Mortgagee by Leave for 500 Years, designing that the Mortgagor should release unto him his Equity of Redemption, and to make the Term absolute, obtained a Release from the Mortgagor of all his Right, Title and Interest in the Land; this Release did extinguish the Term for Years, and turned it into an Estate for Life; For no Estate being expressed, it is intended an Estate for Life. Freem. Rep. 473, 475. pl. 650. Mich. 1678. gives it as a Memorandum of an Opinion of Mr. Sanders upon a Case he was advised with upon.

(W. a) Relation.

1. I F A. and B. conspire to indiiff C. by Means whereof C. is indicted; and C. releases to them all Actions, and afterwards he is arraigned and found Not Guilty; per Keble the Release is good, but Gawdy contra; but per Omnes, if it had been of all Manner of Conspiracies before the Acquittal, it had been good. Kelw. 113. b. pl. 48.

2. If A. is bound to B in 20l. to be paid 1st. May, and before the Day B. releases to A. all Actions, the Release is good; For when the Day of Payment is come, it shall have Relation to the Commencement; per Keble. Kelw. 113. b. pl. 48.

3. If A. forges false Deeds of B.'s Land, and B. releases to A. all Actions, and afterwards A. proclaims the Deeds, the Release is no Bar in Writ of Forger of False Deeds; because the Proclaiming, and not the Forger, is all the Cause of my Action. Kelw. 113. b. pl. 48.

(X. a) Pleadings.

1. Ord, Mefne and Tenant, the Lord avows upon the Mefne for rea-
soundable Aid to make his Son a Knight, where the Lord has released to the Mefne &c. There the Tenant cannot plead this Release, but may pray the Mefne to join to him, and upon the Joinder they may plead the Release; and if he refuses to join, the Tenant shall have Writ of Mefne and re-
cover Damages; For to such Joinder is the Joinder of the Mefne to the Tenant, to plead such Pleas as the Tenant cannot plead; for a Stranger cannot plead in Bar to it. Br. Mefne, pl. 12. cites 39 E. 3. 34.

2. In Quare Impedit, the Plaintiff alleged that two had the Adwesen, and made Composition to present by Turn, that the one presented, viz. A. and the other, fail. B. granted to the Plaintiff the next Prejudicitation; and after the Church became void, and the Plaintiff presented, and A. disturbed him; and A. pleaded a Release from B. of all his his Right, Judgment &c. It seems that it is no Plea if he does not say that he released before the Grant made to the Plaintiff, and the Plaintiff said that he did not release before the Grant, and the other e contra, quod nota; because the other Party had alleged that he released before the Grant, and per Belknap, as fully as he alleged it, so fully may the other traverse it. Br. Negativa, pl. 29. cites 39 E. 3. 37.


4. If
4. If Defeise release to Defeiser all his Right, the Defeiser in Writ of Entry after this Release shall be supposed to be in the Per, by the Defeiser. Br. Releases, pl. 22. cites 19 H. 6. 17. 23.

5. Entry &c. the Tenant pleaded a Lease for Years, and Release in Fee to his Poffeeion; and the Opinion was that he shall plead certain what Day the Lease lasted; for it may be that it was made to commence 4 Years to come, and then a Release made Mifne is not good, quod nona. Br. Headings, pl. 154. cites 32 H. 6. 8.

6. Where a Man pleads Release of all his Right which he has in all those Lands which he had of the Gift and Feoffment of R. he ought to aver that those Lands at the Time of the Release were the Lands which he had of the Gift of the aforesaid R. Br. Releases, pl. 49. cites 2 E. 4. 28.

Ibid. 395. a. S. P. in Case of the Earl of Leicester v. Heydon. — But if he releases all in Rent which he has in one Acre in B. called S. which has was R. H.'s when it never was R. H.'s; yet the Release is good, because there is a special Name; otherwise it is as above of general Words. Note the Divercity. Br. Releases, pl. 49. cites 2 E. 4. 28. —— D. 52. b. pl. S. Mich. 53 H. 8. S. P. by Howwood, Attorney-General.


9. In Trespasses, it the Defendant pleads a Release of the Plaintiff, he ought to say that it was after the Trespass. Br. Headings, pl. 69. cites 3 H. 7. 2.

10. In an Affiis of Novel Defeisus, a Release of Actions Personal is a A Diffessor that has no Good Plea; because it is mixt in the Reality and in the Personality; but if such an Affiis be arraigned against the Defeiser and the Tenant, the Diffesor may well plead a Release of Actions Personal to bar the Affiis; cannot plead but not a Release of Actions Real; nor shall plead a Release of Actions Real in an Affiis but the Tenant. Litt. S. 494.

11. In such Actions Real which ought to be sued against the Tenant of the Freehold, If the Tenant has a Release of all Actions Real from the Demandant made unto him before the Writ purchased; and he pleads this, it is a good Plea for the Demandant to say, That he who pleaded the Plea had nothing in the Freehold at the Time of the Release made; for then had he no Caufe to have an Action Real against him. Litt. S. 495.

12. If a Diffesor makes a Lease for Life the Remainder in Fee, and the Diffesor releases all Actions to the Tenant for Life; After the Death of the Tenant for Life, he in the Remainder shall not plead the said Release. Co. Litt. 285. b.
13. If the Diffeefee releafe the Diffeefor all Actions Reels, and the Diffeefor makes a Feeoment in Fee, and an Affide is brought against them, the Feeophysical shall not plead a Release to the Diffeefor, because he is not prioty to the Release; For a Release of Actions shall only extend to Privies. Co. Litt. 283 b.

14. A recoveres the Arrears of Rent at Nisi Prins, but before the Day in Bank A. releaves to Defendant all Demands. Per Hobart, if it had been in the Cafe of the King, the Defendant at the Day in Bank might have pleaded it; For he cannot have Audita Querela against the King; but otherwise in Cafe of a Common Perfon. 'Noy 26. Ford v. Mead.

15. In Debt or Trepaes, the Defendant pleaded a Release of all Actions in B. and upon Oyer it was enter'd in ex Verba, and it appeared that there were some Exceptions in the Release, and therefore the Plaintiff had Judgment; For by Sir R. Crew this could not be intended to be same Release, by reafon of the Exception; And per Whitlock, for any Thing which appears, it might be that this very Action is excepted; And because it shall not be intended the same Release the Plaintiff had Judgment upon Demurrer. Palm. 411. Pafch. 1 Car. B. R. Marjorum v. Avis.

16. A Release of a Recognizance was pleaded to be Ante Emberationem Seire Facias, which is Naught; For it might be made before the Action brought, and the Plea true, and then the Release is void. 10 Mod. 87. Pafch. 11 Ann. B. R. Rogers v. Wood.

(Y. a) Relieved or set afe in Equity.

1. THE Defendant would avoid the Payment of Money upon a Bond, because the Plaintiff made a Release the fame Day after the Bond entred into; relieved here. Toth. 89 cites Mich. 12 Car. Top v. berts.


3. Ifone will fee a Release or other Affurance to one in Possfeffion for never fo unequal a Consideration, it shall not be relieved by Reason of a New Title difcovered, unlefs there be some spezial Frauds; As if A. having Title, and B. in Posseflion, B. conveys the Land to A. in Truft for B. and then gets A. to convey the Land to him as in Execution of the Truft whereby A. extinguifhes his Title. Per North. K. 2. Chan. Cales. 162. Hill. 35 & 36 Car. 2. Hobert v. Hobert.


5. A Man posseffed of a Leaf for 3 Lives of a Reffory, devised the Reffory by his left Will, but that being void, it came to his 3 Daughters as Coheirs and spezial Occupants. There being a Suit touching this Reffory in Chancery, the Husband of one of the Daughters fearing to be in Loco, and being made to believe that he should be forced to pay Cafes, releaved the Arrears that should be coming to him for his Share of the Reffory to the other Sifers, who were to bear the Charge of the Suit; his Share of the Arrear amounted to 1000 l. This Release was set afe, and Lusford's Cafe cited that a Mefappreffion in the Party shall avoid his Release. Vern. 32. pl. 28. Hill. 1681. Gee v. Spencer.

6. A
6. A Mother having Right of Dower was prevailed upon, by False Sugges-
tions of a considerable Legacy being left her by her Husband's Will in Lieu thereof, to releasle the same, whereas such Sum was given her by his Will but not meant nor intended to be in Lieu of Dower. The Son being about to marry this Releafe to the Femme and her Relations, and then the Marriage was had, and a Joynure made. The Mother is bound by it; Per Lds. Commissioners. 2 Vern. 133. pl. 129. Hill. 1690. Beverley v. Beverley.

7. Obligee on Payment of 201. to the Obligee who was superannuated and very weak and forgetful and incapable of transacting any Business, procured a Bond and Notes for about 2501. to be delivered up to him, on Presence of Poverty and Kindred, to the Obligee; but neither being proved, he was ordered to account for the Bonds and Notes. 9 Mod. 118. Mich. 11 Geo. Lucas v. Adams.

(Z. a) In what Cases a Release and Confirmation differ. Confirmation good where a Releafe is not.

1. F I let Land to J. S. for his Life, and J. S. leaves to another for 40 Years, by Force of which he is in Possession, if I by my Deed confirm the Estate of Tenant for Years, and after the Tenant for Life dies during the Term of Years I cannot enter into the Land during the said Term. Litt. S. 516.

2. But if I by my Deed of Release had releas'd the Tenant for Years in the Life-Time of the Tenant for Life, this Releafe shall be void, because then there was not any Privity between me and the Tenant for Years; For a Releafe is not available to the Tenant for Years, but where there is a Privity between him and him that releas'd. Litt. S. 517. That a Releafe shall not only take away the Right to the Land, but by that means may consequnently strengthen the Estate; but a Confirmation primarily strengthens the Estate, and consequently so far as the Estate continues, makes it good against the Confirmor. G. Treat. of Ten. 69.

3. If I be difficult, and the Diffieror makes a Leave to another for Years, I cannot releasle to the Tenant, this is void; but if I confirm the Estate of the Termor, this is good and effectual. Litt. S. 518.

4. If I be difficult, and I confirm the Estate of the Diffieror, he hath a Conform.-
good and rightful Estate in Fee-simple, but in the Deed of Confirmation no Mention be made of his Heirs, because he had Fee-simple at the Time of the Confirmation; for in such Case if the Diffieror confirm the State of the Diffieror, to have &c. to him and his Heirs of his Body engender'd, or to him for his Life, yet the Diffieror hath a Fee-simply, and is feil'd in his Demesne as of Fee, because when his Estate was confirm'd he had then a Fee-simply, and such Deed cannot change his Estate without Entry made upon him. Litt. S. 519.

5. If the Estate of the Diffieror be confirmed for a Day, or for an Hour, G. Treat. he has a good Estate in Fee-simply, because his Estate in Fee-simply was once confirmed. Quia Confirmita ident eit, quod firmum facere &c. Litt. S. 520. because the Diffieror by the Fee; and when that Estate is affected to, the Diffieror can never afterwards destroy it. But if he confirm the Term or the Lease of the Diffieror for some Part of the Years, he cannot
Remainder.

It defeat it during the whole Term, because the Term is confirmed; and the last Words being derogatory from his own Grant, must be rejected; but if he confirms the Land to the Term, for Part of the Term, and no longer, this is good, because the Party that had Right did not totally affluent by express Words, as he did in the two former Cases; for if he did, no derogatory Clause from such Affent could be admitted; but his Affent was originally but Partial, and not to the whole Estate, and therefore it cannot, contrary to the express Words, be carried any further. G. Treat. of Ten. 71.

6. If my Dotee or makes a Lease for Life, the Remainder over in Fee, if I release to the Tenant for Life, this shall ensue to him in the Remainder; but if I confirm the Estate of the Tenant for Life, yet after his Decease I may well enter, because nothing is confirmed but the Estate of the Tenant for Life; to that after his Death I may enter. But when I release all my Right to the Tenant for Life, this shall ensue to him in the Remainder, or in the Reversion; because all my Right is gone by such Release. Litt. S. 521.

S. P. And a Confirmation of the Remainder must imply an Affent to all Means necessary to support it. G. Treat. of Ten. 71.

7. But if the Dotee confirm the Estate and Title of him in the Remainder, without any Confirmation made to Tenant for Life, the Dotee cannot enter upon the Tenant for Life, because the Remainder is depending upon the Estate for Life; and if his Estate should be defeated, the Remainder should be defeated by the Entry of the Dotee; and there is no Reason that he by this Entry should defeat the Remainder against his Confirmation &c. Co. Litt. S. 521.

For more of Release in General fee Conveyances, Fines, Grant, Surrender, and other Proper Titles.

Remainder.

(A) Remainder. What Persons may make a Remainder to whom, and by what Names.

[What shall be said a Remainder, and what a Reversion.]

D. 7 El. 237. 51. Fine is levied to Baron and Feme, and to the Heirs of the Baron, he being sole seised before, and they render to the Conoufor for the Life of the Baron, Remainder to a Stranger for Life, Remainder to the right Heirs of the Baron. The Baron dies; he in Remainder for Life dies. By the Opinion in the Court of Wards, and the 3 Chief Judges, this is no Remainder, but the ancient Reversion, because the Baron cannot have a Remainder to his own right Heirs, where the Fee never was out of him; yet it was ad-
Remainder.

5. A man made a present of his property to a stranger in fee simple, who died before the remainder vests, and the property vests in the remaindermen as remaindermen.

6. Where the estate is limited in manner that the land could be in fee simple, the remainderman's interest vests during the life of the remaindermen.

7. A man made a present of his property to a stranger in fee simple, who died before the remainder vests, and the property vests in the remaindermen as remaindermen.

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374. Remainder.

S. P. in the name Court, and same

own Acl., and therefore he may alien the Land. And. 256. pl. 264.

Anon.

Year. Oliver Bree's Cafe. — Ibid. 54. pl. 78 the same Cafe reported in the same Words — S. P. By Coke Ch. J. Roll R. 259. in Cafe of Lane v. Pannel. — S 1st. S Mod. 25. Mich. 7 Geo. 1721. in the Cafe of Smith v. Trigg.

S. C. By the Name of Manchell v. Doderton. And. 197. pl. 252.

9. A makes a Lease to B. for 31 Years; afterwards A. devolves that B. should hold for 31 Years reckoning the Years of the first Term not expired as Parcel of the said Term of 31 Years &c. and devolves the Inheritance to a Stranger. By the better Opinion of the Court, the Fee-simple passed in Point of Reversion; for if it should be a Remainder, then the Rent which is reserved upon the Lease by the Will, shall not be incident to such Remainder, and therefore the Law shall qualify it into a Fee-simple. 2 Le 33. pl. 45. Hill. 29 Eliz. C. B. Machel alias Michel v. Dunton.

10. A the Grandfather, B. the Father, and C. the Son. A. being seized of Land in Fee, devolved it to B. for Life, Remainder to C. and the Heirs Male of his Body. Remainder to his own right Heirs Male, and the Heirs Male of his Body begotten. A. and B. died, C. died without Issue Male, leaving only D. a Daughter, D. and her Husband sold the Lands to J. S. in Fee. It was argued that this was a Fee-simple, because immediately upon the Death of A. the Remainder vested in B. as right Heir, and vested in him as Fee-simple, which could not be turn'd into an Estate Tail by any subsisting Matter. And so it was adjudg'd. Cro. Eliz. 96. pl. 12. Patch. 30 Eliz. B. R. Smith v. Haws.

11. A Fine was levied, and the Uses declared to the Use of his Wife for Life, and after to B. his Son, and the Heirs Male of his Body, Remainder to the Use of the Right Heirs of the Confounder. This upon Conference of all the Judges of England was adjudg'd a Reversion. Mo. 254. pl. 437. S. C. Patch. 32 Eliz. B. R. Fenwick v. Mitford.

12. A. is seized of Land in Fee, makes a Fine to the Use of himself and Wife, and the Heirs of their 2 Bodies begotten, the Remainder to the right Heirs of the Husband, and the Husband dies, an Heriot shall be paid; For the ancient Use of the Reversion was never out of the Husband. Owen 152. Patch. 36 Eliz. Butler v. Archer.

S. C. 2 And. 197. pl. 17. among the Cafes in the Court of Wards. Jenk. 258. pl. 58. S. C.

13. A. infeoff'd J. S. and J. N. in Fee, to the Use of himself for 40 Years without Impeachment of Walf during the Life of A. and afterwards to the Use of C. 2d Son of A. in Tail Male, and for Default &c. to the Use of the Right Heirs of A. for ever. Resolved by the major Part of the Justices; and decreed, That the Use limited to the Right Heirs of A. was the old Use, and not a new Use; And that C. dying without Issue Male has to determined the particular Frankenement, upon which the Remainder to the right Heirs stands, that the Remainder by this reverts to the Donor. Mo. 718. pl. 1066. the Earl of Bedford's Cafe.

14. Fine Sur Conformance &c. Come eco &c. The Converse renders to another in Tail, referring Rent; and by the same Fine grants quod Tenement, præf. can Feritum, remanentur to Conuor and his Heirs; this

This is a Reversion; For being one Fine it
15. If A. covenants to stand feised or makes Feoffment to the Use of the Son or the 1. Remainder, and of the D. of the Cyne, to the Use of and the Heirs of of A. and his Heirs, and of the Heirs, to the Use of the Life and her Heirs. A Remainder in this Case limited to his own right Heirs is void, and is the old Remainder, and not a Remainder. Mo. 742. pl. 1022. Mich. 41 & 42 Eliz. Barto- 

Remainder.

in the Court of Wards. Hill. 42 Eliz. in the Case of Leigh v. Lepton.

16. A. feised in Fee before 27 H. 8. insoff'd divers Persons in Fee, to the Use of himself and Wife, and the Heirs of their 2. Bodies begotten; and for De- 

fault of such Wife, to the Use of A. and his Heirs in Fee; and after the 1. Nature of a Reversion, and not as a Remainder; Because the Limitation of the Use of the Fee was void. But Dyer makes a Quare; For he lays, It seems to him, that this Use in Fee-simple is created De Novo upon a Feoffment in Fee, which Use never was before; and that it is not like to Buckland's Case, who had Feoffees to his Use in Fee, and the Feoffees executed an Estate in Fee to the Use of his Wife for Life, the Remainder to B. and his Heirs, and B. died, his Heir within Age, there perchance the Heir should be in Ward in his Mother's Life; Because the Use limited in Remainder was void as a Remainder, but was the ancient Use, and so descended in Nature of a Reversion; Ideo Quare bene. D. 133. b. 154. a. pl. 6, 7, 8. Mich. 5 P. & M. Anon.

17. Fine Sur Coercasur de Droit come cæ &c. by A. to B. who render'd to A. in Tail, Remainder to himself in Fee: A. died without Issue, and B. &c. but seems imperfectly filled. A. brought a Scire facias to execute the Remainder. This was held to be a Reversion and not a Remainder in B. For by this Fine the Reversion is executed, and to a Scire facias will not lie to execute the Remainder as it would on a Fine Executory, but he shall be driven to a Formedon in Reverter. D. 199. pl. 55. Gale v. Gale.

18. If I insoff J. S. to the Use of himself in Tail, Remainder to my own right Heirs, this is a Reversion. Hob. 29. in the Case of Roll v. Osborn, b. 38. ——

19. A. feised in Fee of Bl. Acre, covenants to levy a Fine to J. N. & J. S. G. Equ R 20 and their Heirs to the Use of himself for Life, and alter to such Use as be B. and A. being feised in Right of M. of Wh. Acre in Fee, they by Deed and Fine convey'd it to T. R. and W. R. and their Heirs, in Trust to L. Keep the Use of A. for Life, then of M. for Life, Remainder to B. in TailMale, ordered a Remainder to the right Heirs of the Survivor of A. and M. for ever. Al. Case to be tried on A. M. and B. (on the Marriage of B. with N.) and W. R. and T. R. by their Direction, convey Bl. Acre and Wh. Acre, and other Lands, to G. and H. and their Heirs; as to Bl. Acre, to the Use of J. N., for 69 Years, if he so long live. Remainder to Trustees to preferve Contingent and then be Re- &c. Remainder to N. for Life, Remainder to B. for 99 Years, it &c. Remainder to Trustees and their Heirs, during his Life, and after his Death without support &c. Remainder to N. for Life for her Jointure, Remainder of the

remainder, would
Remainder.

1. D. 8 Eliz. 253, 102. A Leafe by Indenture was made to Cecil pro Termino 41 Annorum, it ran diu vixierit; and if the dies within the Term E. shall have the Termini pro Reditu Termini; Per Catan et Dyer, This Remainder is void; Because the Term cannot remain for the Reditus after it is determined, and the same Case in Effec: Rep. 153 b. per Terc. Rettore of Credingtons Cafe. But the Remainder is limited Pro & durante Reditus dicti Termini predicitorum 80 Annorum, and yet not good; But where it is during tot Annis de predictis 80 Annis, his otherwise; for there is a good Remainder.

2. A Rent De Novo may be granted for Life, the Remainder over, and this shall be a good Remainder. 7 P. 4. 6. b.

The Grant for Life and the Remainder, being both by one Deed, was held good. Br. Dane &c. pl. 58. cites 5 H. 4. 19. But Ibid. pl. 54. cites 17 E. 4. 9. contra; For that which commences by the same Grant for Term of Life cannot remain to another. But Brooke makes a Quere. Such Grant was held good by Littleton; But Brian e contra. Br. Grants, pl. 54. cites 17 H. 4. 8. but Brooke thought it good if all is by one Deed.

If a Rent De Novo be granted out of Land by A. to B. for Life or in Tail, Remainder to C. in like manner, it hath been held, That tho’ this Limitation to C. cannot be good by way of Remainder, because A. had no Estate in the Rent remaining in him when he made the Grant to B. yet it should be good by way of New Grant and Creation to commence futurly; But this cannot be so but with a Difference; For if the Grant were by Indenture between A. of the one Part, and B. only of the other Part; Now C. being no Party to the Deed, can take nothing by it, except by way of Remainder; but if he were Party to the Indenture, or if the Grant were by Deed Poll, to which all Men are alike Parties, then it may perhaps endure as a future Grant to C. Wentw. Off. 254, 255.

(B. 2) Remainder of Terms by Deed. Good.

A Signee of a Leafe in Trust to align it over to Trustees to Uese agreed upon, in which himself was to have Estate for Life, and alter to his Children, and for Default, to his Sistres, aligns the Leafe with
with Limitations in Tail, Remainder over, (in Truitt) which, tho' void in Law, yet is good by Intent in Equity, and the Assignee's Executor shall not have it, yet such Executor shall pay the Tcntator's Debts out of the Profits, if he hath not Affets. Chan. Rep. 15. 2 Car. 1. Powel v. Moulton.

2. Remainder of a Term limited to Baron and Feme, and to the Children of their 2 Bodies to be begotten, is no Entail in Law, nor have the Feme living at the filling of the Remainder any Joint Eatee with Baron and Feme. Chan. Rep. 111. 13 Car. 1. Ireland v. Pain.

3. The Lord Chancellor and the Judges did deliver this general Opinion — That the Limitation of a Term to several Persons in Remainder one after the other, if such Persons be all in * Being, and particularly named, can in no wise tend to the Entail of a Chattel, or creating of a Perpetuity, but the limiting of it to a Person not in Being, does; And where a Person has such a Truitt of a Possibility in the Remainder of a Term limited after Persons all in being, he has good Power to declare and make a Disposition of the Truitt of such a Possibility, but the Limitation of a Remainder in Possibility of a Chattel Real to the Heir of a Person limiting a Term may be limited to divers Persons, that are in Being one after another, because the same is transferable, yet it cannot be good beyond 3 Limitations to a 3d Person not in Being. Chan. Cafes 35. in the Case of Sackvill v. Dobson. It was agreed per Counsel, and so declar'd per Car. That the General Rule that had hitherto obtained, was, That you might limit a Term to as many Persons as you would, or after another, that were in Fity at the Time of the Limitation, and one may further to a Person not in Fite; but that there could not be but one Assignent Remainder of a Term for Years. Verm. 255. Parch. 1684 in the Case of Maffenburg v. Mr.

4. Limitation of the Truitt of a Term was to Baron and Feme, and the longest Liver of them for Life, and after to the Eldest Feme of them, they had then no Truitt. This is a good Limitation; and the Limitation to Baron and Feme, and the longest Liver of them, is but one Limitation. Chan. Cafes 54. Mich. 15 Car. 2. Sackvill v. Dobson.


6. A. having Issue B. and C. and the Defendant D. his Sons, and Chan. Cafes being putted, several Boiories of Salt Water for several Terms of 20 Years, by 2 Deeds affigned the same to T. W. and T. S. in Truitt for dignity — Limit to 50 Years if he be long lived, and after in Truitt for M. his Wife. S. C. cited for 60 Years, if he be so long lived, and afterwards as to Part in Truitt for B. in case he bebarred A. and M. for the Redue of the Terms, and directs the Trustees to assign to B. accordingly, and if B. dies, living A. and before Assignment, leaving a Son, then to assign the whole Term to B.'s eldest Son, and if no Son to his Daughters if any, and if B. dies without Issue before Assignment, or having Issue, if his Issue die before Assignment, then in A's Truitt for C. and the Heirs of his Body, and for Defaults of such Issue, in Chan. Rep. Truitt for D. for the Redue of the Term; and as to the Redue after the 25th in S. C. Deaths of A. and M. and in Truitt for C. in case he survive A. and M. for all 2 Wms's the Redue of the Terms, and directs the Trustees upon Request to assign the same accordingly; and if C. before Assignment dies having Issue, in the Case then assign to his eldest Son, if any, and if none, to his Daughters, of Sannip and if C. dies without Issue and before Assignment, or having Issue, and the Master of his Issue dies before Assignment, then the Trustees to permit B. and the Heirs of the Roll of his Body, and for Wills thereof to D. and the Heirs of his Body, and for cited this Want thereof to the Executors &c. of C. to hold the same during the Case of Redeue of the Terms. B. died without Issue in the Life-time of A. and M., and then A. and M. died, and C. jurisdict, entered, and enjoyed the Whole, and died before any Assignment made to him without Issue in the Case, and Administration of his Eatee was granted to the Plaintiff E.licabeth her Chart.
Remainder.

Elizabeth his Relict. The Lord Keeper, affixed by Mr. J. Twifden, Mr. J. Rainesford, and Mr. J. Wild, agreed in Opinion, and declared that the Estate limited to B. being but in Nature of a Contingency, no Estate ever vested in him, and that Elizabeth, as Administratrix of C. was well intitled to the Trusts of all the Term, and decreed the same accordingly. Poll. 35, 56. 1 July 21 Ca. 2. Wood & al. v. Saun.

He observed, That in that Case there was a Double Contingency precedent to the vesting the whole Trust of the Term (viz.) not only its being without Issue but die Allotment; but if he had died, the dying of such Issue bore Allotment; if he had Issue a Son, that Son would not have taken at his Birth, but if he had died before he had or could have taken any Allotment of the Term, and the Father had without another Issue, the Trust of the Term would have gone to C. Besides, these were yet without Issue of B. precedent to C's taking, which perhaps might take to Grandchildren as well as to Daughters; but the Contingencies being of Necessity to happen within the Complus of a Life, and to contingent Estate ever vesting, this Colon Resolution held the Limitation to C. to be a good LImit.

S. C. Med. 114, 115. Lord Keeper Finch held it void a Limitation. Because it both depend upon many, and such remote Contingencies, for otherwife it would be a Perpetuity; And he said he would allow any Contingency to be good, viz. That to the 1st Son, that the 1st Son was not in Issue at the Time of his Death; And he, he did deny my Lord Coke's Opinion at 3. 2d Ed. Coke, which says that in Case of a Life settled to one, and the Heirs Male of the Body of such Life, 2d &c. Sons, and if no Sons, then to Daughters. A. and his Wife died; there was a Daughter living at the executing the Trusts, and she was the only Child, and living at the Death of the Father and Mother, decreed the Limitation to the Daughter void. Poll. 40. 23. May 1674. Burgess v. Burgess. C.

7. A poftessed of a Trust of a Term, settled the land by Deed to himself for Life, then to his Wife for Life, then to 17½, 2d &c. Sons of their Bodies, and the Heirs Male of the Body of such Life, 2d &c. Sons, and if no Sons, then to Daughters. A. and his Wife died; there was a Daughter living at the executing the Trusts, and she was the only Child, and living at the Death of the Father and Mother, decreed the Limitation to the Daughter void. Poll. 40. 23. May 1674. Burgess v. Burgess. C.

S. C. accordingly — S. C. cited by the Master of the Rolls. 2 War's Rep. 624. Mich. 1754. In the Case of Stanley vs. Leigh. The Matter of the Rolls, in the Case of Stanly b. 2 Leigh, Mich. 1752. cited this Case of Burgess v. Burgess. C. and remarked upon it, that it ought to be considered that this was a Deed of Life, occurring in a College, and at the Time when the Principle laid down by him afterwards in the Duke of Norfolk's Case, of a Man's having as much Power over a Term as over an heriture, had not obtained, nor is it very probable that it did occur to him now, that it is easy to imagine it would make large Concessions in order to lend the Nature of Resolutions he was to encounter in the Duke of Stirling's Case; if there the Conditions were made in the full Argument, and the 2d Argument showed plainly that he grew stronger in his Opinion as to a Man's having as much Power over a Term as an inheritance. 2 War's Rep. 625.

8. A assigns a Term in Trust that himself should receive the Profits during his Life, then B. his Wife should for her Life, then that B. his 1st Son should for his Life, and alter B's Decease that C's Child or Children should for Life, and for Want of such Issue, or after the Death of such Issue to permit C. &c. as is limited above to B. and then to permit D. during her Life, and at the end of the 1st Issue, and after, in the same Manner as above B. and for Want of such Issue, or after the Decease of such Child or Children of D. to permit the Executors or Administratrix of M. Wife of the said A. to receive the Profits during the Residue of the said Term, and then to permit another, and so on. The Lord Keeper declared that the several Trusts being express limited for Life do not tend to a Perpetuity, and to the Remainders are all good. Poll. 38. Mich. 1674. Oakes v. Chelton.

their Affigns, to enjoy the same for the Residue of the 80 Years, and
for Devise of such Issue, then to permit the Heirs of the Joint A. and their
Executors &c. to enjoy the Premises for the Residue of the Term then
to come. B. entered and enjoyed, and made his Will, and the Defen-
dant M. his Executrix, and died; the proved his Will; C. was the only
Issue and Heir of B. and survived his Father, and afterwards died with-
out Issue, and Administration of his Estate was granted to the Defendant M. Afterwards A. made his Will, and the Plaintiff R. his Executor,
and died, and they proved his Will; The Lt Keeper declared the Li-
timation in Trust to the Heirs of A. which is to take Place after the
Mische Remaniders of B. and M. cannot by Preemution of Law take
Place during the 80 Years, and tends to a Perpetuity, and therefore
void, and the whole Interest vested in the Defendant and her Affigns,
and allowed the Pt, and as to the Leale diminished the Bill. Polles.

10. A Remainder after Limitation of a Term to an Issue Male is void in
Law. 2 Chan. Rep. 120. 23 Car. 2. Still v. Linn.
11. A being entitled of a Term of 200 Years, settled it by Deed S. C. argued
upon such Trusts as he should afterwards declare by another Deed.
by Sir I. F. A. by another Deed declared and limited the Trust of the Term to
C. his 2nd Son, and the Heirs Male of his Body, provided if B.
his eldest Son die without Issue, or his Issue, surviving him, was not the
Earldom of Arundel dependent on C. then the said Term shall remain to D.
his 3rd Son, and the Heirs Male of his Body, with like Remainders in
Trust to his other Sons successively; Afterwards B. the eldest Son died with-
out Issue in the Life-time of C. so that the Contingency of the Earl-
dom defending on C. did happen; The Question was, Whether this Li-
timation of the Term in Remainder to D. was good or not, it being not
void to vest in him till after the Death of B. without Issue, and living C.
Ld. Chan. Finch decided this a good Limitation, tho' the 2 Chief Judi-
tices and the Chief Baron, who assisted him, were of a contrary Opin-
nion. 3 Chan. Ca. 1. &c. 34 Car. 2. The Duke of Norfolk's Case;
or, the Doctrine of Perpetuities

12. There is a great Difference as to Limitations of Terms in Great
The Trufi
such as attend the Inheritance; The 1st cannot be limited to one after
another in the same Generation, but the latter may, if the Inheritance
be fo limited, but not eile. Per the 3 Ch. J. 2 Ch. R. 233. 34 Car. 2.
in the Case of Howard v. D. of Norfolk.

Grants can be limited in Law. Per Ld. C. Nottingham. 2 Ch. R. 253. in the Case of Howard v. Duke of Norfolk.

Life, Remainder to 1st Son till 21. then to such 1st Son for the Remainder of 25. S. C.
the Term, but if to the 1st Son die before 21, then to the 2d, and every
other Son in the same Manner; And if no such Son, or if all die before 21, Judges were
then to 7. S. This is a good Remainder. Vern. 234. 304. Pulch. of Opinion

14. A Term was limited to to A. for Life, then to B. for Life, then to
such Child as B. should live at his Death, and for 21 Years to such Child to C.
—quire if the Remainder to C. be good. Vern. 461. Trin. 1687. Hey-
ward v. Rogers.
15. A. policed of a Term for Years grants the Term to B. for Life Remainder to C. the Remainder is void; But in the Case of a Will, or an * Affidgment by way of Trust, the Remainder over is good. Arg. 2 Vern. 332. pl. 316. Mich. 1696. in the Case of Hide v. Parrot.

16. A. policed of a Term for 999 Years, demised to J. S. for 990 Years in Trust for her self for Life, then to B. her Son for Life Remainder to M. the Wife of B. for Life, then to the 1st Son during the Residue of the Term, and in Default of Issue of such 1st Son, then to the 2d, and other Sons of B. and M. equally to be divided between them, and in Default of Issue of B. and M. then to B. during the Residue of the Term. Ld C. Cooper was of Opinion that as there never was any Son, but only a Daughter, the Limitation was good to the Daughter; that in case of an express Devise to the 1st Son during the Residue of the Term Remainder to the Daughter, if there be no Son, the Remainder to the Daughter will take Place; and where it is devised to the first Son in Tail, that gives him the whole Term only by Construction in Law, and an Estate by Construction of Law cannot be greater, or of more Force to make void a Remainder, than an express Limitation of the Remainder of the Term. 2 Vern. 625. Mich. 1707. Higgins v. Dowler.

Notes
But agree that the 2d printed Books (viz. Vern and Salky) differ in wording the Limitations, yet they agree in the Point resolved by Ld Cooper, and the only one argued before him, which was, That the Limitations of the Trust of a Term by a Marriage Settlement to the Father for Life, Remainder to the first, and other Sons, and the Heirs of their bodies respectively, Remainder to the Daughters, were good, and there happening to be no Son, the Remainder to the Daughters would take Effect; That none of the Reports for what became of it, but all agree that the Point was so resolved; and that by some Notes taken by Mr. Goldesborough the Register then in Court, of which his Honour had a Copy, it appeared to have been already so, and according to those Reports as to the Estate vesting, or not vesting; But as to what Salky lays about reading the Settlement, and finding the above Words in it, and that by reason of them the Limitation to the Daughters was held void, that that could be no Ingredient in the Judgment of Court; For on arguing the Demurrer the Court cannot go out of the Pleading; and so that this must be Miftake, and that he suppresses the Bill was real, and not the Deed. 2 Wm's Rep. 626, 627. Mich. 1732.

17. A. on Marriage of B. his Son with M. with whom he had 250l. Portion, alligned of a Term of 1000 Years, in Trust to permit B. to take the Profits for his Life, and after to permit M. for her Life, Remainder to the Heirs of the Bodies of B. and M. for the Remainder of the Term. M. cites leaving Issue. B. alligned to J. S. who brought a Bill, but upon the Reason of the Case of jStockock and Sponser, in which it was decreed that the Heirs of the Body should take as Purchasers, it was disallowed at the Rolls; But upon Appeal to the Ld Keeper, and after Search of Precedents, it was decreed for J. S. the Allignee, that the whole Term vested in B. and that the Heirs of the Bodies of B. and M. could not take as Purchasers, That if the legal Estate had been so limited, B. must have taken the Whole, and the Trust of a Term must be governed by the same Rule. 2 Vern. 680. Mich. 1710. Webb v. Welch.

2 Vern. 692.
S. C.
Remainder.

Ld. C. Cowper held that it may be good by way of Covenant, tho' it might not be so by way of Limitation. G. Equ. R. 97. Trin. 1 Geo. Bate v. Grey.

19. A. seised in Fee, grants to J. S. his Executors &c. for 99 Years in Trust for B. and M. his Wife for Life, and after the Death of the Survivor, for the Heirs of their 2 Bodies, and after in Trust for the Heirs of the Body of A. and in Default of such Issue in Trust for the Heirs of the Survivor of A. and M. They have Issue B. a Son. A. alone, then B.'s Issue Infant without Issue. M. dehants to A. and B. and assigns to J. N. The Question was if the Assignment was good to J. N. or if the Term should be attendant on the Reversion and go to the Heir at Law; But on Consideration of this Case the Master of Rolls decreed for J. N. the Assignee of M. and that the Term should not be attendant on the Inheritance; For that the Party who raised this Term, and had Power to Sever it from the Inheritance, swayed his Intention to do by limiting the Trust to the Survivor of him and his Wife, and the Heirs of the Survivor, which tho' it was a void Limitation, yet justified to shew his Intent to sever such Term from the Reversion. Wm's Rep. 350. 376. Trin. 1717, Haytov. Rod.

20. A. pollister of a Term of 1000 Years devised it to Trustees for so many Years thereof, as B. his Son should live, and after his Death in Trust for the Issue Male of B. lawfully begotten for so many Years of the same as such Issue should live; And when the Issue Male of B. should happen to be extinct, then in Trust for his 2d Son C. for Life, Remainder in Trust for the Issue Male of C. for so many Years &c. the Issue to be preferred before the Youngest. Remainder to the Issue Male of the Name and Family of the Cleres, which should be next of Kin for all the Remainder of the Term; And made B. his Executor and Residuary Legatee. A. died. B. died without Issue Male. Ld. C. Talbot said that two Questions had been made. 1. Whether B. took Estate Tailor for Life only. 2dly, Whether if he took for Life only, the subsequent Accident of his dying without Issue Male, or rather his never having had any Issue Male would let in the Limitation to C. the second Son; As to the first, he was of Opinion that B. took but an Estate for Life, and distinguished this Case from that of King v. Hilling, which was in Case of a Freehold, which may and must defraud the Issue; but in the Principal Case it is only of a Leasehold, which, without a particular Provision cannot be denied, but must go in a Course of Administration, and here it is expressly limited to B. for Life, and shall not be infringed by any subsequent Words, especially when in the Limitation to C. he explains what he meant by Issue in the first Part; For there he gives it * To the first and every other Son, and the Heirs Male of their Ladies; So it is plain that he intended that every Issue to be born of B. should take, and to the Limitation to C. too remote, and cannot take Effect. 2dly. That the subsequent Accident of B.'s dying without Issue will not better the Case; And decreed the Term [as belonging to B. he being Residuary Legatee of A.] his Father, and from him to the Plaintiff, who was B.'s Executor. Cases in Chan. in Ld Talbot's Time. 21 to 27 Pasch. 1734. Clare v. Clare.

(C) Upon what Estate it may be be limited.

1. A Remainder is not good without a particular Estate in the Creation. If a Grantor of a Rent-charge grants it to the Tenant of the Land for Years, the Remainder over to another, this is not a good Remainder,
Remainder.

Remainder, because the particular Estate is suspended in the Commencement. D. 3 and 4 Id. 140, 41.

3. If a Seigniory be granted to the Tenant for his Life, the Remainder over, this is a void Remainder. D. 3 and 4 Id. 140, 41.

4. If I lease Land to a Man who is not capable as to a Monk for Life, the Remainder over in Fee, the Remainder is not good, because there is not any particular Estate. 9 H. 6. 24. b.

If there is an Abbot made during the Life of the Tenant, the Remainder is not good, because the Intent shall be taken in a Devise. 9 H. 6. 24. b.

5. So if a lease be made to J. S. for Life, where there is not any such in rerum Natura, the Remainder over, the Remainder is not good, because there it is not any particular Estate. 9 H. 6. 24. b. Devise tumulum

6. But if a Man devise to one for Life who is a Monk, the Remainder over, the Remainder is good, because the Intent shall be taken in a Devise. 9 H. 6. 24. b.

If Tenant for Life be in Rerum Naturae at the Time of the Devise, and be in Remainder not, yet this is good if he in Remainder be in Life at the Time when the Remainder falls; as a Lease for Life to J. N. the Remainder to the right Heirs of W. N. who is alive at the Time &c. Br. Devise, pl. 5, cites 9 H. 6. 23.

7. So if the Devise be to J. S. for Life, where there is no such in rerum Natura, the Remainder over, the Remainder is good. 9 H. 6. 24. b.

If a Man leases for Life, and after confirms the Estate of the Lees, Remainder over in Fee, this is a void Remainder, because this cannot commence but with the making of the Estate; but where a Man leases for Term of another's Life, and after confirms the Estate of the Tenant of the Land for his Life, the Remainder over to Fee, this is a good Remainder, for there the Estate of the Land is changed and enlarged; and yet there are no Words of Gift nor of Grant. Br. Done &c. pl. 45, cites Dook. &c. Lib. 2. cap. 20. fol. 94. — For the Confirmation does not enlarge nor change the Estate Precedent. Br. Eates, pl. 85. cites S. C.

8. If the Estate of Leesee for Life is confirmed in Tail, the Remainder over this is a good Remainder. 21 E. 3. 49. b.

9. A Man leased to a Feuee for Years, and hee took Baron; the Leesor by Deed of Convey, remits & quietly confirm confirm his Eate to them, and to the Heirs of their Bodies, the Remainder to the right Heirs of the Baron, it is a good Tail, and a good Remainder. Br. Eates, pl. 85. cites 6 E. 3. 19.

10. A granted the Reversion of a Tenant in Dewer to B. for Life, Remainder to J. S. in Fee, this is a good Remainder. Br. Done &c. pl. 53. cites 41 E. 3. 28.

11. If an Estate be made to J. S. and his Heirs during the Life of J. N. this is only an Estate for Life, upon which a Remainder may depend by the Common Law; per Coke at the End of Chudleigh's Cate. 1 Rep. 146, b. cites 11 H. 4. 42. a. 39 E. 3. 25. b. 7 H. 4. 46. a. 8 H. 4. 14. b. 7 E. 3. 43. b. D. 253. a.

12. If there be Mayor and Community of D. and the Mayor dies, a Grant made to the Mayor and Community of D. is void, but in that Case, if a Lease for Life be made, the Remainder to the Mayor and Community of D. the Remainder is good, if there be a Mayor elected during the particular Estate. Co. Litt. 264. a.
Remainder.

13. Covenant to stand seised to the Use of himself for Life, Remainder to B. for 89 Years, if C. so long should live, Remainder after C.'s Death to D. In Tid. Adjudged, that the Remainder to D. is good, it being upon a Term of 89 Years, which is longer than the Law intends a Man can live, so that the Law takes Notice of the Life of a Man, but if it had been for 10 Years, if C. so long shall live, then the Remainder had been a void Remainder. Arg. Litt. R. 370. 34 Eliz. C. B. in Keeble's Case cites Lord Derby's Case.

14. A is lessee at Will, Lettor leaves to A. for Years, Remainder to B. in Fee, this is good without Livery ; but for Possellon countervails Livery. D. 259. b. pl. 25. Marg. cites Patch. 35 Eliz. C. B. Cooper v. Cal. Lambill. that a Gift in Tail &c. to Leesee at Will, or Tenant at Sufferance, is good without Livery and S. ain. Nov. 46. Cooper v. Columbel.

15. Covenant to stand seised for Acquaintance Stake, to the Use of A. for Life, and after for Confguinity to the Use of B. in Tail or Fee ; the Remainder is good, and yet the particular Estate is not altered, but remains in the Covenantor during the Life of the Ceify que Vic. Arg. Mo. 310. in Englefield's Case.

16. A Remainder cannot be limited or exprest on a limited and qualified Fee-simple ; for all the Estate of the Land is in the Feoffee. 10 Rep. 97. b. A Note of Ed Coke in Seymour's Case.

17. If Lands are given to one and his Heirs as long as J. S. has Life in Fee, the Remainder over, this is a Fee-simple determinable, and the Remainder is void ; Per Dodsridge J. 3 S. B. 184. Trim. 14 Jac. E. R. in Case of Cooper v. Franklin.


18. A feisd in Fee made a Lease to J. S. and W. R. to hold them for 40 Years, if A. so long live'd, in Tuit for A. to receive the Profits during her Life, and that after her Decease one Money should be to B. and the other Money to C. their Executors, Administrators and Assigns severally and respectively, for the Term of 1000 Years. The Court did objeet, and doubt that the Remainder was void, because, 1st. It should not pass to them by Way of present Estate, because they were not Parties to the Deed. adly. It cannot be a Contingent Remainder, being a Remainder for Years depending on an Estate for Years, and cannot be a Contingent Estate for Years, because a Lease for Years operates by Way of Contract, and therefore the particular Estate and the Remainder Estate operate as two distinct Estates grounded on several Contracts. Raym. 140. 150. 151. Patch. 1653. C. B. Corbet v. Stone.

19. Devise to A. for 15 Years, Remainder to the right Heirs of J. D. is not good, but a Devise to A. for 15 Years, Remainder to the first Son of J. D. is good, because Devilor takes Notice that he hath nor a Son, and intends a future Act. Per Bridgman Ch. J. Raym. 83. Mich. 15 Car. 2. C. B. in Case of Bate v. Amherit and Norton.

20. A Devise to an Infant En Vente la Mere, for 15 Years, if it be with a Remainder over, is good by Way of Executory Devise. Per Bridgman Ch. J. Raym. 83. Mich. 15 Car. 2. C. B. in Case of Bate v. Amherit.


22. An Estate for Life settled by Deed of A. to B. will not support a Contingent Remainder given by Will of A. to B. See 4 Mod. 316. Mich. 6 W. & M. B. R. Moor v. Parker.

23. If a Gift be made to A. and his Heirs while such a Tree stands, no Remainder can be over, and yet there may be a Possibility of Reverter.
Remainder.

C. 2. Where it may be limited without a particular Estate.

1. A Particular Estate is not necessary in a Devise; for if a Devise be to A. for Life, where there is no such Person, Remainder to B. in Fee, B. shall take, tho' there is no Estate precedent. Per Harper J. Pl. C. 414. Mich. 13 & 14 Eliz. in Cafe of Newys v. Larke.

2. If Land is devised in Tail, Remainder in Tail, and the first Devisee discharges, he in Remainder shall have it. Per Harper J. Pl. C. 414. in Cafe of Newys v. Larke.

3. Remainder to a Use does not want a particular Estate to support it, for they are two several Estates; so that there is no Necessity by Way of Use for the one to have Aid of the other. Arg. Mo. 310. in England's Cafe.

4. A. devised Lands to M. for 5 Years, to commence at Michaelmas next after the Death of Eestraint, Remainder to N. and his Heirs, A. died before Michaelmas; this cannot take Place to Eestraint, that A. died, because of the Term for Years coming between A's Death, and the Commencement of the Lease; but being in the Cafe of a Devise, the Freehold in the mean Time shall descend to the Heir of the Deviseor; and so the Remainder adjudg'd good. Cro. E. 878. pl. 8. Pasch. 44 Eliz. B. R. Pay's Cafe.

5. Husband and Wife covenant to levy a Fine of the Wife's Land to the Ufe of the Heirs of the Body of the Husband on the Wife begotten. Here is no Estate for Life to the Husband by Implication, because the Estate was the Wife's, to which he is a Stranger; and so the Limitation void; for taking it as a Remainder, there is no precedent Estate of Freehold to support it. 2 Salk. 675. Hill. 3 W. & M. B. R. Davies v. Speed.


6. A Grant of a new Office in Futuro, is good and is not a Grant of a Remainder or Reversion, so as to need the Support of some particular Estate, but it is only a Grant of a Future Interest, or of an Interest to commence in Futuro, when there is one in Possession. Carth. 350. Trin. 7 W. 3. B. R. in Cafe of the King v. Kemp.
C. 3) What is a sufficient Particular Estate. Want of Freehold.

1. A. Seis'd of Lands in Fee, makes a Lease for Years to B. Remainder in Tail to C. Remainder to the right Heirs of B. in this Case B. Remainder has nothing in the Fee, it is a Contingent Remainder to the Heir of B. If C. dies without Issue in the Life-time of B. the Remainder is void, for the Foundation and Support of this Contingent Remainder falls, because it came to have a Freehold to support it when the Remainder falls out; and in this Case it is not fo, for C. died without Issue in the Life-time of B. and B. during his Life cannot have an Heir; in this Case a Lease for Years made by B. is of no Effect any longer than for the Years first limited to him, for he has nothing in the Remainder. Jenk. 248. pl. 38.


2. A. levied a Fine to B. and C. with Remainder to A. for 80 Years, if he should so long live, the Remainder to D. All the Justices held, That if all the Remainders are void, because the Estate of Franktenement during the Remainder of the Life of A. does not pass by Render out of the Conueses; but the compleat Inheritance remains in the Conueses. No. 488. pl. 686. Pash. Years, and by other Indentures, the Uie declared over from the Conueses, if this had been a good Uie by the Principles of the Law ibid.

3. A. devised to Trustees and their Heirs till 27. S. shall be 21, and then to 27. S., and for want of such Issue then to 27. N. J. S. died before 21. Per Maynard Ld Commissioner, This is not such a Remainder as tho' the Particular Estate fail, the Remainder shall be void. The Fee is devised to the Trustees, and lodged in them, and no absolute Term carried out, but only a Direction how to dispose the Profits till J. S. be 21. 2 Vern. 138. pl. 137. Pash. 1690. Levet v. Needham.

4. A. feised in Fee, by Deed and Fine conveys to Trustees for 70 Years. But where if A. so long live, Remainder to Trustees for 3000 Years, and after the Death of A. then to his first &c. Sons in Tail Male, whether this is a good Remainder to the first &c. Son? The Court took Time to consider it. 2 Vern. 370. pl. 334. Mich. 1699. Penhay v. Hurrell.


5. A. feised in Fee devised to B. his eldest Son for 50 Years, if he so long should live; and as for my Inheritance after the said Term, I devise the same to the Heirs Males of the Body of B. and for default of such Issue, then to C. This Devise to the Heirs Males of the Body of B. is void in its Creation; Because for Want of an Estate of Freehold to support it, it is void. 2 Vern. 1754. pl. 639. Mich. 1717. Ehe v. Osburn. And in Case of Scattergood v. Edge. 1 Rep. 155. Per Gawdy J. in Chudleigh's Case.

For it is limited expressly as a Remainder. 12 Mod. 53. S. C——— Comb. 244. adjourn'd Pash 6 W. & M. B. R. — Skin. 498. S. C. And for default of Issue of B. the Heirs of A. for Life, and after C.'s Devise to C.'s Son in Tail, and toon. B. offered a Recovery, and died. It was held that this Recovery did not bar C. for B. had no Freehold, but was only Tenant for Years with a Contingent Remainder, which was void, not having a Particular Estate to support it; so that the Franktenement was vested in C. and tho' the Fee devides to B. yet he remains Tenant for Years, and there can be no Remainder for B. has the Franktenement — 2 Vern. 1754. in the Case of Newcomen v. Bankham, cites the Case of Long v. Remainent in the House of Lords, where a Devise was to the Heirs Males of Elis. Long fully been gotten, and for Want of such Issue to his own right Heirs; and that it was there held good, after it was not said (to the Heirs of B.) and that the Description spoiled the Want of those Words, and they were made good by Words Tantamount. — And see Abr. Equl. Caflis 212. S. C. where it is.
Remainder.

adjudged in the Exchequer causa to the Cafe of Godrich Griffith, but that Judgment was revers'd in the Exchequer Chamber; and that Reversal was revers'd in the House of Lords, the Judges were of Opinion that the Devise was void. Mich. 12:12, between Beaumont and Long.—Wms's Rep. 229. S. C. in the Exchequer, by the Name of Darbyton v Beaumont, but S. P. not taken Notice of.

6 Mod. 154
160. 226. S. C. but a different Point.

6. In a Scire Facias on a Judgment against Tenants, it was found by Special Verdict, That one S. being set in Fee, conveyed by Lease and Releas to Trustees and their Heirs, to the Use of himself for 99 Years, Remainder to the Use of Trustees for 25 Years, Remainder to the Heirs Male of his own Body, Remainder to his own right Heirs; the Question was, Whether S. was Tenant in Tail, or only Tenant for Years: And the Court held the Limitation to the Heirs Male of the Body, to be void, because there was no preceeding Estate of Freehold limited to support it, and it shall not be implied contrary to the Intent of the Conveyance; and if it could be implied, it must be out of the Estate given to the Heirs of the Body, which cannot be, because this is a new Use, whereas a Resulting Use is always from the old Estate and Parcel of the old Use; and here the Estate takes Effect by Transmutation of Possession out of the Sein of the Trustees, and not like FEETH and Mitarbeiter's Cae, where the Owner covenanted to band felled to the Heirs of his Body: And yet per Powel J. Even in that Cafe, if there had been an express Estate limited to the Covenantor, it had been otherwise. 2 Salk. 679. 680. Hill. 1 Ann. B. R. Adams v Tenants of Savage.

(C. 4) What is a sufficient Particular Estate, where there is a Freehold.

1. Lease to one for Life, Remainder to the right Heir; this is a good Remainder to vest on the Death of Leesee for the Inception in his Life, Roll. R. 215. Per Coke Ch. J. Trin. 13 Jac. B. R. in Cafe of Harris v Austin, cites 7 H. 4.

2. A leafes Land for Life to B. the Remainder to the Heirs of the Body of J. D. B. in the Life of J. D. surrenders to A. the Leafee; the Leafee, notwithstanding the Surrender, shall support the Contingent to the Heirs of the Body of J. D. so that if J. D. dies, having Issue, in the Life-time of B. the Issue of J. D. shall take the Estate. Jenk. 248. pl. 38.

3. Leesee for Life, Remainder for Life, Remainder to the right Heirs of J. S. Leesee for Life makes a Feoffment in Fee; J. S. dies in the Life-time of him in Remainder for Life; this Right of Remainder for Life supports the Contingent Estate. Jenk. 248. pl. 38.

4. If a Lease be made to A. for the Life of B. the Remainder to C. in Fee, A. dies before B. An Occasent enters; here is a Remainder without a particular Estate, and yet the Remainder continues good. Co. Litt. 298 a.

5. A Rent is granted to the Tenant of the Land for Life, the Remainder in Fee; this is a good Remainder, albeit the particular Estate continued not; for Eo Infantae, that he took the Particular Estate, Eodem Infante the Remainder vested; and the Suspension in Judgment of Law grew after the taking the Particular Estate. Co. Litt. 298 a.

6. If a Man grant a Rent to B. for the Life of A. the Remainder to the Heirs of the Body of A. this is a good Remainder, and yet it must vest upon an Infant. Co. Litt. 298 a.

7. If Leesee disaffees his Tenant for Life, and after makes a new Lease for Life to him, the Remainder in Fee, this Remainder is void, because the Tenant for Life is remitted to his Estate, which was made long before the Remainder appointed; so that the Estate Precedent was not made at the Time of the Remainder, and therefore the Remainder is void. Arg. Pl. C 25. b. Pach. 4 E. 6. in Cafe of Colthirt v Bejulbin.
Remainder.

8. If the Heir endows his Mother, the Remainder in Fee, the Remainder is void, tho' Livery and Seisin is made to the Feme, because the Dowry has Relation to the Death of the Baron, Causit qua supra. Arg. Pl. C. 25. b in Case of Colthirt v. Bepthyn.

9. If Tame is Tenant for Life, and Confirmation is made to her and her Husband, this enures as a Remainder to the Husband, and yet it does not pass out of the Leifor at the Time of the first Estate. Per Hales J. Pl. C. 31. b. in Case of Colthurt v. Bepthyn.

10. A. for Advancement of his Son, and of his Name, Blood and Purity, covenanted to hand feiled to the Ufe of himself for his Life, and after the Life of his Son and such Wife as he shall marry, and the Heirs Male of his Body. A. dies, and the Son marries; the Confirmation raises the said Ufe to the Wife, and the Estates of the Son will support this Contingent Remainder to the Wife till the Marriage, and then the Estate of the Son will change from Estate Tail to him alone to a Joint Estate to him and his Wife, and the Heirs Male of his Body. Jeuk. 328. pl. 52. cites Trin. 5 Jac. in the Court of Wards.

11. A. Case upon a Demurrer, by Directions out of Chancery for the S.C. v. Ceb. Opinion of the Judges was, viz. A. feid his Lands, tertled them to the 545-554 Ufe of himself in Tail, Remainder to Trustees, in Trust to make Leases as a Provision for his Neighbors and Nieces, and in Default of such, for a Provision for the same Sitters; and in Case none of his Brothers or Sitters, or any of their children be living, then immediately, or after the Term of 21 Years ended, to the Ufe of B. and C. and D. his Brothers successively in Tail Male, Remainder to the Leifor of the Plaintiff. A. died without Issue, B. and C. died without Issue Male, but B. had Issue a Daughter, and A. himself and Sitters living. Revald per Cur. That all this is one Sentence, and a Condition precedent, that none of his Brothers or Sitters, or any of their Children be living, which is not in the Case, and to all the Remainders void, and Judgment for the Defendants. 2 Lev. 157. 158. Hill. 27 & 28 Car. 2. B. R. Comberford v. Birch.

12. Estate for Life given by Deed will not support a contingent Remainder given by Will, in which there is no particular Estate to support such Remainder; so that in such Case no Estate Tail passes, but he has only Estate for Life. 4 Mecli. 316. Mich. 6 W. & M. Moor v. Parker.

former Deed will not support a Remainder which was not created with it, but was created by an after Deed. Arg. and the Court seem'd to think the Remainder void; (but no Judgment was given) 2 Jo. 122. Inman. Trin. 50 Car. 2. B. R. Key v. Gamble — Feme Tenant for Life, Estate derives to the Heirs of the Body of the Feme, if they attain to 14 Years; she has children and Issue, but before this Issue comes to 14 Years the following Recovery: this is not a Remainder, but an executory devise, and tho' the Wife has Estate for Life, yet this is a new devise to take place a fee for Death, and is not as a Remainder joined to an Estate. Lev. 155. 156. Snow v. Curle — Raym. 62. S. C. — Stat. 155 S. C.

13. A. upon the Marriage of B. his Son with C. settles Lands to B. for Life, Remainder to C. for Life, Remainder to the Heirs of their two Bodies, Remainder to B. in Fee. B. and C. by Deed and Fine mortgaged in Fee; and subject to the Mortgage, the Lands are dealt to the Ufe of B. for Life, and after B's and C's Death, to the Heirs of the Body of C. by B. to be begotson, Remainder to the right Heirs of B. After the Death of B. C. recovers a Common Recovery: The Question was, if the Estate to C. for Life by the first Settlement, and the Limitation to the Heirs of her Body by the second, did consolidate; and if it did, Whether C's Estate was alienable within the Statute of 11 H. 7. 22. Ld. Wright doubted if they did not consolidate, tho' by several Deeds, and said the Authorities are only in the Narrative, that if by the same Deed, they shall consolidate, not Negatively, that it by different Deeds they should not; and cited the Case of 19 Eliz. 11. 200, where no express Estate for Life was limited, but were by Impropriation, and there it was held that the Estate was consolidated. 2 Vern R. 456. pl. 441. Hill. 1704. Clifton v. Jackson.
Remainder.

A. devised all his Freehold, Copyhold and Leasehold, and all his Real and Personal Estate not before devised, to 3 Trustees, their Heirs, Executors and Assigns, in Trust to pay his Son B. an Annuity; and if he should have any Child or Children, he gives the Reit, and Residue of the Rests &c. of his said Trust Estate during B.'s Life, for the Education and Benefit of B.'s Child or Children; and then goes on, and gives after B's Decease a Majority of the Trust-Estate to such Child and Children as B. shall leave, their respective Heirs &c. and gives the other Majority to the Child and Children of C. his Grandson, and every other Child and Children of D. his Daughter, their Heirs &c. And if B. dies without Issue, he gives the first Majority to C. and other Child and Children of D. and their Heirs, &c. and directs an annual Payment to such Wife as B. shall marry. A. died; B. married and had Issue a Son and a Daughter, and died; afterwards C. married, and had Issue K. a Daughter, and died. It was objected that this Limitation was not good for the Daughter of C. to take by it; because the Trust Estate determining upon B's Death, the Limitation to C's Children was of a legal Estate, and being per Vero de Præsent, could ensue only as a contingent Remainder, and consequently K. the Plaintiff, could never take, because not in Effe at the Determination of the particular Estate by the Death of B. But Ed Chancellor said, The Whole depends upon the Trustees' Intent, as to the Continuance of the Estate devised to the Trustees, whether he intended the whole legal Estate to continue in them, or whether only for a particular Time or Purpoze: If an Estate be limited to A. and his Heirs, in Trust for B. and his Heirs; then it is executed in B. and his Heirs; but where particular Things are to be done by the Trustees, as in this Case, the several Payments that are to be made to the several Persons, it is necessary that the Estate should remain in them, so long at least as those particular Purposes require it; that no Authority has been cited to warrant the Doctrine, that in case of such a general Limitation to Trustees as the present Case is, that they should have but a particular Interest, and then that Interest to determine; such a Case might indeed be framed, but was never intended here, there being many Purposes to take effect, which might endure longer than the Life of B. and the taking it in fo confined a Sense, would be making a forced Construction to disappoint the Testator's Intent, which was to make an inteire Disposition of the Legal Estate to the Trustees; and that the Whole therefore being in the Trustees, supports the several Ufes that are to arise out of their Interest, which continuing in them 'till the Birth of the Plaintiff, is good either Way, whether it be taken as a future Limitation, or as a contingent Remainder of a Trust. Cases in Equ. in Ed Talbot's Time. 145. Mich. 1735. Chapman v. Blliet.

(D) To whom it may be limited.

A. the Copy. If a Donor leaves for Life, the Remainder to the right Heirs of the Donor, this is a void Remainder; because he cannot make his Deed a Burthen without departing from the Fee out of him. D. his Wife for Life, Remainder to first Male to B. his Son, Remainder to his own right Heirs. B. died without Issue; A in the Life-time of M. the Tenant for Life made a Lease for Years and died; Adjudged, that this Lease was good, for he had in Reversion, and the Limitation to his own right Heirs is void. Cited in Bingham's Case. 2 Rep. 91. b as adjudg'd. Trin. 51 Eliz. B. R. in Case of Penwick v. Mitford. — S. C. Lea 182. pl. 216. Adjudged a Reversion and no Remainder; and Gadowd said, that this Limitation is merely void; and Wray said, It was as if he had made a Fee-mean to the Ufe of one for Life, without any further Limitation—Mo. 283. pl. 45; S. C. that upon Confes of all the Judges of England, it was adjudg'd that it shall be taken as the ancient Use, and that the Confltute had never sev'ed it from his Peron. But Anderson, Periam, Walmley and Fenner, were a contr, and
Remainder.

2. A Remainder may be limited to the right Heirs of J. S. J. S. The right being dead, and his right heir shall take it. * 8 D. 4. 74. By this

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Rhine. 9 D. 6. 24.

Furthermore, he must have his Age. Br. Done &c. pl. 11, cites S. C. If a Lease for Life be made, the Remainder to the right Heirs of J. S. if S. being then alive, it sufficeth that the inheritance passeth presently out of the Legisl., but cannot vest in the Heir of J. S. Because, living his Father, he is not in the same Natura, nor not all Heirs existents; for as the Remainder is good upon this Contingent viz. if J. S. die during the Life of the Lessee. Co. Lit. 52. 11.

So if, a Rent be granted for Life unto the right Heirs of J. S. who is alive, the Remainder to T. K. Now all the Grant is void, because there is not any Person who may take immediately, and the Remainder cannot be good but in Respect of the particular Estate, unless in special Cases. Perk. 25. S. 52.

2. So if J. S. was alive at the Time, if he dies before the particular S P. For the Estate determines, for the apparent Expectancy which the Law has, that he shall have an Heir. 9 D. 6. 24. Contr. 11 D. 4. 74.

Br. Done &c. pl. 25, cites 12 H. 7. 27. — Ibid. pl. 52, cites 12 E. 4. 2. pl. 57. cites 52 H. 6. — S. P. But if there was no J. S. in the Time of the Remainder made, but an J. S. is born afterwards, and he dies, and dies before such Time as the Lessee for Life dies, yet in such Case the Heir of J. S. shall take nothing after his Death. Br. Done &c. pl. 22. cites 2 H. 7. 15. — Br. Grants pl. 131. cites S. C.

4. If the Estate be made to one for Life, Remainder to another, Remainder to the right Heirs of the Lessee, this is a good Remainder in Fee. 11 D. 4. 74. Agreed.

5. If a Miss inserts a Copyhold to the use of J. S. for Life, the Remainder to the use of an Infant en Vente a Mere, this is a good Remainder. * viz. he was not born at the Time of the Creation thereof. Mich. 13 32. B. R. Agreed.

6. If a Rent be granted unto J. S. for Life, the Remainder in Fee unto him who shall first come to Pauls the next Day in the Morning, this Remainder is good upon Condition, viz. if J. S. do not die before the Time, and also if one come to Pauls the next Day in the Morning, and he who first comes is not a Monk, or other Person who is disabled to take by the Grant. Perk. S. 56.


(E) By what Words it may be created.

1. If a Man leases for Life, and that after his Death, the Lands S. P. by Redibunt to another, this is not a good Remainder, tho' it be Redibunt instead of Remainder. 13 E. 3. 28.

Br. Done &c. pl. 11. cites S. C.

2. A gives Land to J. S. in Tail, and for Default of Issue to W. N Habendum in Feil. It is a good Remainder by this Habendum, without a Word of Remainder; per Cur. and well, for the first Words of Qist extend to both. Br. Done &c. pl. 38. cites 9 E. 2. & Fitz. ut Feoffments &c. 107.

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Remainder.

3. If Land be given to the Baron and Feme, and to the Heirs of them, at aliis Hereditibus curam in Heredes de Cooperibus curam autem caesarum deagenta; if the Son of the Baron and the Daughter of the Feme intestate, and the Baron and Feme die without Issue of their Bodies, the Son of the Baron and his Feme (Daughter of the Feme) shall not inherit, and yet the one is Heir to the one, and the other is Heir to the other. Per Proctor. Quæque fuisse inde, et fide, for this seems to be a Remainder in Fee which shall survive. Br. Tail & Jones &c. pl. 12. cites 5 11. 5 6.

4. Leafe for Life to A. and that afterwards B. shall have the Profits, is a good Remainder. Per Halatton. J. Roll. R. 319. cites 38 H. 8. b. and lays it is much stronger in a Devise.


1. F. A Copyhold be surrerred to the Use of a Feme Covert and a Stranger, the Remainder to the Right Heirs of the Bodies of the Baron and Feme begotten, and after the Feme dies having Issue by the Baron, yet he shall not have the Remainder during the Life of the Baron; For he ought to be Heir of the Bodies of Eth, who shall have it. Reports 13. 1a. Lane v. Pannell. 14. 1a. Abjudged.

2. So if the Baron makes Fesoffment to the Use of his Wife for Life, the Remainder to the Right Heirs of the Bodies of the Baron and Feme the Issue of their Bodies shall not have the Remainder during the Life of the Baron, that the Baron has not any Estate in the Land. D. 1 9d. 99. 71.

(F) Whom shall have the Remainder.

S. C. Roll. Rep. 258. pl. 6. Mich. 13. B. R. &cibid. 217. pl. 28. Hill. 13. B. R. &cibid. 428. pl. 3. Hill. Jac. B. R. But the Report there (as it is printed) is not very clear, there being in the State of the Case, the Words (surrered) twice, which, in the 2d Place where it is mentioned, confounds the Sense; but after wards the Stranger surrered his Moietie to the Baron and Feme and their Heirs, and they were admitted accordingly, after which the Baron surrendered his Fee to J. D. who was admitted; after which the Feme died leaving Issue, and then the Baron died. adjudged per t. Car. That the Issue cannot have Trepass'd; For when the Stranger surrered his Moietie to the Use of the Baron and Feme, this was a Severence of the Jointure between them and the Feme, and the Baron aliening the Whole, the Alienee had a Moietie for the Life of the Feme defeasible by the Feme, and the other Moietie for the Life of the Stranger, and when the Feme died, the Estate of the Defendant (the Purchaser) is determined as to one Moietie, and then the Remainder of that Moietie ought to vest (if at all) but the Issue (who was the Plaintiff) being Heir of the Body of the Feme begotten by the Baron could not take the Remainder limited to the Right Heirs of the Body of the Baron and Feme during the Baron's Life; For during his Life he cannot have an Heir, and he that ought to take the Remainder must be Heir of the Body, both of the Baron and Feme, or otherwise he shall not take (as the Court held strongly) and therefore the Remainder of the Stranger as to this Moietie (is gone) and consequently this the Baron afterwards died yet (the Issue shall never have it.)

3. If a Man devises Lands to 2 for their Lives, Remainder to their 2 Sons, equally to be divided, and to their Heirs, and each to be the other's Heir, and that if they both (naming them) die without Issue, that it shall remain to another; By these last Words this is an Estates Tail, and after that one dies without Issue, his Part shall go to him in Remainder. P. 12. L. 5. Related per Cur. between J o h n

4. If a Man devises to J. his Son in Tailie, and that if he dies without Issue, it shall remain to the Right Heirs and Portion of the Devisee, and his Name for ever equally to be divided between them, Part and Part alike, and dies, and after J. dies without Issue, there being at the Time of his Decease and at his Death 2 Daughters of the Sister of J. and one G. the Uncle of J. in the Case the Uncle, the he 3 is more near of the Name to the Devisee, yet maintained as he is not Heir to the land, the Daughters being alive he cannot take it by the Devisee; and therefore the Devisee is void, and the Dwarshells shall have the Land as next Heirs of the Common Law. P. 12. L. 5.

5. If a Gift be to A. for Life the Remainder to the Heirs Males, or Heirs Females of J. S. and J. S. dies, he who shall have this Remainder ought to have the Heir at Common Law to J. S. and the Partmale or female, according to the Case, or otherwise he shall not have the Remainder. 1 Rep. 193. A. G. Chell's Case.

6. Where a Lease is made for Term of Life Remainder to the Heirs of W. J., there were to take the W. if J. be dead at the Death of the Tenant for Life, that have Fee Simple by these Words (to the Heirs of W. J.) without more. Fr. Estates, pl. 4. c. 22. H. 6. 15.

7. Tenant in Tail funded a Recovery to the Use of himself and Wife, Remainder junior in the Body of the Husband in Tail Remainder over; and afterwards the said Husband and Wife revived the Fine to the Use of himself and his Wife for Life and for such remainder, Remainder to the said Child of the Husband in Tail, Remainder over; The Wife diet, and 5 Years passed. The Husband married again, and had issue a Daughter and a Son afterwards, and then the Father diet; and then 5 other Years passed; Adjudged that the Son shall have the Land and not the Daughter, by Reason of the first Limitation Senior to the Child [Powers]. Jul. 10. 1710. L. 175. 1. Tomlins.

The Case is cited in the 2d Book of Realists, and as such is in the Report of the Judge of this Time and Term, the Court, thinking it was infinuated in his Abridgment upon the Report of some other Person, and not by himself, and to confirm this, a Report was thrown by Dollon J. in a very fair MS. of a Case between 2128, B. and 2128, B. Owners of the Land, and Terms, and in the same Court which the Judge thought to be the Case intended in the Abridgment; But the Case was of a Surrender of Common Lands, and not upon a Devise: And it was agreed upon the Trial at the Bar, That if a Copyhold be surrendered to the Use of 2 Sons in Joint, and if one dies without Issue, the other shall be the Heir, and if both die without Issue, then to the Wife of another in Fee, and after one dies without Issue the survivor shall have the Whole. 2 Jac. 2. 2 B. R. in the Case of Williams v. Meynell — 4 Show 148, 159. Mich. 52, Cur. 2. B. R. in S. C. by Pemberton in Ch. J. accordingly, and that Roll was scarce of Age sufficient to report at that Time — Kaym. 433 in S. C. accordingly.

4. If a Man devises to J. his Son in Tailie, and that if he dies without Issue, it shall remain to the Right Heirs and Portion of the Devisee, and his Name for ever equally to be divided between them, Part and Part alike, and dies, and after J. dies without Issue, there being at the Time of his Decease and at his Death 2 Daughters of the Sister of J. and one G. the Uncle of J. in the Case the Uncle, the he 3 is more near of the Name to the Devisee, yet maintained as he is not Heir to the land, the Daughters being alive he cannot take it by the Devisee; and therefore the Devisee is void, and the Dwarshells shall have the Land as next Heirs of the Common Law. P. 12. L. 5. Related per Cur. between J o h n

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8. Leafe for Life to J. S. Remainder to the Right Heirs of J. B. who has Issue 3 Daughters, and dies, the eldest shall have the Remainder, and not the other with her; because he is the most Worthy. Per Wray Ch. J. 2 Le. 219. pl. 275. Patch. 16 Eliz. B. R. in Humphreton’s Cafe.

9. A setoff of certain Lands, and having 2 Sons, devised Part of his Lands to his eldest Son in Tail; and the other Part of his Lands to his youngest Son in Tail, with this Clause in the Will, That if any of his Sons died without Issue, then the whole Land should remain to a Stranger in Fee, and died, the Sons entered into the Lands devised to them respectively, and the younger Son died without Issue, and he to whom the Fee was devised entered; it was adjudged, That this Entry was not lawful, and that the eldest Son should have the Land by the Implicative Devise. 4 Le. 14. pl. 51. Mich. 32 Eliz. C. B. Anon.

10. A devised his Estate to Trustees to convey the same to B. for Life, Remainder to Trustees during his Life to preserve contingent Remainders, Remainder to his 1st Son &c. in Tail Male, Remainder to his Daughters &c. And if B. died without Issue, then he devised that the Premises be settled in Fourths, viz. one 4th to C. in Fee, another 4th to D. in Fee, another 4th to E. in Fee, and the remaining 4th to F. in Fee; and in Case the said C. D. E. and F. or any of them should be dead at the Time when the Settlement his Estate was to devolve upon them, then the 4th Part which the Person so dead should have been intitled to, if living, should be conveyed to the respective Heirs of the Person so dead. C. B. E. and F. were Sisters of B. afterwards F. died leaving B. It was objected, That the 4th Part of E. was not to descend to B. her Brother and Heir at Law, but be subject to an executorial Devise to such Person as would be Heir at the Death of B. without Issue as aforesaid, and not to vest in the mean Time; but Lu C. Parker field that this Remainder in Fee of the 4th Part vested in B. as Heir of his deceased Sister; For there being a Devise of the 4th Part to her in Fee, the Words directing a Conveyance to be made to her Heir in case of her Death, are no more than what would otherwise have been implied, and Expreffo curum quae tuto objecta ministraverunt. Wha’s Rep. 600. 606. pl. 175. Hill. 1719. Blackborv v. Edgley.

(G) How it may be created. What shall be said a Remainder, and what an Estate in Possession.

1. If a Gift be to the Feme and to the Heirs of the Body of her Baroness (who is dead) of her Body begotten, this is not a Remainder in their Blue; but he shall take jointly with her. 5 D. 4. 3 Millar. 119. T. 26. Per Hunte.
2. In this Case the Blue and the Feme shall be Jointenants for Life, with the Remainder to the Blue in Tail. 2 C. 3. 28. Aitkyn.
3. If a Gift be to one for Life, the Remainder to his Right Heirs, this Remainder is executed immediately, and does not rest in Contingency, because he has the Franktenement to whole Heirs the Remainder is limited. 11 D. 6. 13. 33 Eliz. 3. 26. B. R. Agreed per Cur. between Clark and Dally.
4. So if a Gift be to one for Life Remainder to his Heirs Males, this is a Fee Simple executed. 11 D. 6. 13.

[Note: Where A. married to the Wife of himself in Tail, Remainder to B. and the Heirs Male of his Body, Remainder to C. in Tail, Remainder to F. to his own Right Heirs, with a Power of Recession as to the Remainder to B. only, and to limit new Uses; and A. afterwards reciting his Power, but misdirects the Estate of B. by omitting the Words of his Body begotten, he declared he revoked the said Uses to B. and his Heirs Male; and in the same Deed limits the said Estate to the said B. and his Heirs Males, without saying of his Body]
5. When the Ancestor, by any Gift or Conveyance, takes an Estate \( \text{ll.} \) in
Franktenement, and in the same Gift or Conveyance an Estate is
immediately to his Heirs in Fee or in Tail, the Heirs
(Heirs) is a Word of Limitation, and not of Purchase; For his Estate s p. —
shall be in by Defective, and to the Remainder executed.
\( \text{Rep. 129. Co Litt. 5.} \)
\( \text{Shelby's C. A.} \) 40 C. 3. 9. b. 45 C. 3. 17. 17 C. 3. 43. b. 64. b. S. P.
in
Words it is limited by way of Remainder —— As Tame was levied to the Father for Life, the Remainder
to the Eldest Son in Tail, the Remainder to the right Heirs of the Father, and the Father died, and after the Eldest Son died without Issue, the Youngest Son shall be adjudged in as Heir to his Father of the Fee-
Simple, and not as Purchaser, by Name of Right Heirs to his Father, and the Father had only for Life.
\( \text{Br. Estates. pl. 6. cites 40 E. 5. 9.} \) But if the Eldest Son had died without Issue in the Life of the
Father, there the Father had been in Fee; For it was agreed, That where a Man gives Land to me for Life, the Remainder to my right Heirs, there I have Fee-Simple; quod nona.
\( \text{Br. Estates. pl. 6. cites 40 E. 5. 9.} \)
\( \text{Br. Dicten. pl. 6. cites S. C. accordingly,} \) the Younger Brother nipt.
That he was in as Purchaser; because an Estate Tail, and an Estate in Fee, could not be in his Brother
\( \text{Brothers} \) 
S: & Semel —
\( \text{Br. Relief. pl. 2. cites S. C.} \) — Br. Done &c. pl. 6. cites S. C. — Br. Nuper
\( \text{Obit. pl. 6. cites S. C.} \)
A convey'd to the Use of himself for Years, Remainder to his Eldest Son in Tail, Remainder to the
\( \text{Heirs of} \) A. the A's Meaning was, (as appears by the Words) That his Heir should take as a Purcha-
sor, yet it was ruled according to the Rules of the Law, and not according to his Meaning, S. T. That
he should take it as a Fee-executed in Hsl.
\( \text{Bro.} \) 5. 146. Trin. 56 Eliz. C. B. in the Case of 
Fridrich v. Fridrich, cited as ruled by the Advice of the Judges in the Court of Wards, in the Earl of Bedfor's Case.

6. If a Gift be to A. for Life, the Remainder to the right Heirs of
him and B. (B. being alive at the Time). It these that this is
credited for a Money; for if A. had not had a particular Estate limited to him before, his right here and the Fee of B. should have it in
Common; and the here this shall be executed by Operation in Life,
yet he shall not have the Issue because of the other's not being yet
fulfilled for it was not limited to himself. Dunciature. B. 37 Eliz.
\( \text{B.} \) between Clark and Daby.

7. If a Man die to R. his Daughter for Life, and if the marry Mo. 592. pl.
after his Decease, and have Heir of her Body, that then that Heir shall be Clark
have it after her Death, and the Heirs of her Body; that then that Heir he Dapy.
shall have it after her Death, and the Heirs of their Bodies, (per Ed. added in Fee
per verba) and it the happen to die without Issue, then I devise it to
P. my Daughter; This is an Estate Tail executed in R. and the Hei-
\( \text{Fee} \) of R. shall not have this by Purchaser upon a Contingency; For
the Word (Heir) is Nomen Collectivum, and as much as it he
had laid (here) malnuch as he had after (and if the he after
the Fee).
Dunciature. B. 37 Eliz. B. R. between Clark and Daby.

If the above of her Body, lawfully begotten, then I will, That her Heir after my Daughter's Death shall have the
Land, and to the Heirs of their Bodies begotten, the Remainder to a Stranger in Fee. It was adjudged, that
she had no Estate Tail, but for Late only; and that the inheritance was in her Heir by Purchase, it re-
maining in Abeyance all her Life, and settling in the In infant of her Death, and therefore her Baron was
not Tenant by the Curtesy. —— S. C. Cro. E. 515; pl. 5. Hill. 46. Eliz. cites it as Mo. 598 does, and
there Gawdy and Fenner held, That R. had an Estate for Life only, it being limited expressly by
then her Heir shall take it as a Purchaser; But Popham Contra; For the Estate is limited to the Ance-
tor, and afterwards limited to the Heir, and shall execute in the Ancestor, especially the Words be ing
(If she have any Heirs) and therefore intended that any Heir shall have it. Adjudicator. —
\( \text{Gawdy} \) and
\( \text{Fenner held, That the Issue was a Purchaser; but Popham and GleNich held it an Estate executed in R.}
\( \text{Ow. 128. S. C. by Name of Lilly v. Taylor} \) —— S. C. cited by Ed Ch. J. Raymond; who laid, That
the Cafe is really C. V. Dapy, and is enter'd on the Roll Hill. 46. Eliz. 490. That the same
Cafe is reported in Ow. 149. Mo. 591. and in 1 Ro. Ab 8. 52. K. the Cafe was Joan Marsh davided
Lands to Rob's Daughter for Life, and if she have Heir of her Body, then will, That the Heir
after my Daughter's Death shall have the Land, and to the Heir produce begotten, and for De-
fault of such Blue, Remainder ever. It is laid in Croke, That it was at first agreed by all the Judges,
That a Devil to one and the Heir of his Body, is an Estate Tail, and shall go to all the Heirs of the
Body, Heir is Nomen Collectivum; so says 1 Ro. Ab 8. 52. K. according to Popham Ch. J. and Fenner,
Sed Adjudicator. Moor, who is a very good Reporter, says, It was adjudged, She had not an Estate for life.
Purchaser's estate in Abeyance all her Life, and settling in the
\( \text{Infant} \) of her Death. When Croke reported this Case he says, 'there is a Man, w. a woman, who,
and began to study the Law, and had this Case only by Hearing; Judgment is not enter'd upon the Rolls,
but Moor says it was adjudged; which is agreeable to my Lord Hale's Manner of citing it, who

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Remainder.

And so is the Case of Cloth and Way; but this is not truly timed in any of the Books. Moor comes the nearest to "as it is on the Roll. The true State of the Case was; M. filed in Fec. deviet Lands to her Daughter Rule for Life; and if she marry after my Death, and have any Heirs lawfully begotten, I will, That her Heir shall have the Lands after my Daughter's Death, and the Heirs of such Heirs; so that upon the Whole, Issue is not properly a Word of Limitation, but may be taken either one Way or other. In a Conuenance it is a Word of Purchase, and not of Limitation; but in a Will it is given to and directed by the Intent of the Party; Here it is Deligatnfi Person. Gibb. 24, 25. Peth. 1 Geo. 2. B. R. in the Case of Shaw v. Weigh.

A Devise to A. and to the Issue of his Body makes an Estate Tail, if A. has no Issue at the Time; but if he has Issue, then it is a Joint Devise. But if it be after His Death to his Issue, he having Issue at the Time, they take by way of Remainder Per Hale Ch. J. 259. and said, This will Point was the only Point attained in * Whiff's Cafe, and there also against the Opinion of Popham and Gawdy. 9 6 Rep 17.

S. P. Br. De- vice. pl. 14. cites 7 H. 6. 57. But that in Estate, it is contra upon a Gift;

For there if the first refutes the Livery of Seisin, he in Remainder has no Remedy; because it cannot take Effect but by the Livery.

S. P. as to the Devise's Rep 101. a. in Shiffly's Cafe, cites 7 H. 6. 56. a. and that so it is in the Cafe of a Peacemont to the Use of One for Life, and after to the Use of another in Fee. And says, So note, That the Limitation in Uses and Estates given by Devils are suspect together, and that so the Judges there took the Constructious of Devils, and of Estates executed in Ue, to be all one, viz. According to the Meaning of the Parties.

Geo. E. 269. 8 C.

10. The Law delights in vesting Estates, and Contingencies are odious in the Law, and are the Causes of Troubles, whereas the vesting them is the Cause of Repose and Certainty. Per Coke Ch. J. 2 Buld. 131. cites 35 Eliz. Vaux's Cafe, and Truepenny's Cafe, alias, Baldwen v. Lock, and Justice Windham's Cafe.

11. Where Gift is made in Tail by Fine, Remainder to Tenant in Tail in Fee; the Tenant had Issue 2 Sons by divers Venter's, and died, the Edist enter'd and died without Issue, and his Hear Collateral enter'd, and the Young' Son brought Sure factors to execute the Remainder in Fee, and had Execution; For the Fee was not executed in the Edist Son, by Reason that he was fled of the Tail, and the Fee was in Abeyance, and yet was in him to give, charge and forfeit. Br. Execution, pl. 67. cites 24 E. 3. 39, 31.

12. 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 meane Remainder; quod nota. Br. Done &c. pl. 55. cites 24 E. 3. 70. & P. 5 E. 4. 10. 2.

13. A. devised Land to his Wife for Life, fo that if she be disturbd, then the Land to remain to J. S. in Fee; Here is no Remainder till the Wife be disturbd. Arg. 3 Le. 182. pl. 233. in Large's Cafe, — cites 24 E. 3. Fizh. Formdon 69.

14. Land was given by Fine to A. B. and C. and to the Heirs of the Body of C. and for Default of such Issue Remainder to the right Heirs of A. C. dy'd without Issue, B. dy'd, and afterwards A. dy'd, his Hear brought a Scire facias out of the Fine. Adjourn'd, That it does not lie; For the Fee was vested in A. the Defendant's Father, tho' Ex vi Verbi the Remainder was limited not to the Father but to his Heirs. Per Manwood J. 3 Le. 20. in Cranner's Cafe, — cites 40 E. 3. 20.

15. If a Man leaves his Lands for 9 Years, on Condition that if the Lease be disturbed within the Term, that the Lease shall have Fee; if the Termor aliens within the Term before Disturbance, this is a Differtin to the Lessor, by which he may enter or have Affile; For the Fees is not
in him till the Condition is broken. Br. Conditions, pl. 121. cites 43

16. In Dower Land was given to the Baron and Feme in Tail, the Re- in this Case

mainder to the Heirs of the Body of the Baron; and after the Feme died, without Issue, and he took other Feme and died, the said Feme shall be en- doved. For the Remainder in Tail created in the Baron, by reason that the

Donee was only Tenant for Life in Eftate, after the Death of his


17. If a Man leases to A. for Life, the Remainder to B. in Fee, and after the

Tenant for Life leases to the said B. for the Life of B. and D. dies, his

Feme is barred of Dowry, and so fee that B. was not fee'd in Fee, nor was it a Surrender; for if A. surviv'd B. then A. should re-have the


18. Where Eftate is made to the Baron and Feme for Life of the Feme, the

Remainder to the Baron in Tail, the Remainder to the right Heirs of the

Baron, he has but an Eftate for the Life of the Feme during her Life.

Br. Estates, pl. 45. cites 8 E. 4. 29.

19. If a Man gives Land to One who has a Feme, and to a Feme who has A Device as a Baron alive, and the Heirs of their Bodies begotten, this is a good Tail. For the Feme of the Man may die, and the Baron of the Feme also, and then the Man and the Feme may intermarry, and so they are fee'd in Tail immediately. Br. Estates, pl. 22. cites 15 H. 7. 10.

executed, the the Device has a Wife at the Time. Per Hale Ch. J. Vent. 238. Mich. 24 Car. 2. B. R. in the Cafe of the King v. Melling.

20. Gift to Baron and Feme, and to the Heirs of the Body of the Surviv- because it is uncertain who shall survive, the Eftate Tail is not vest-

ed. 10 Rep. 51. in Lampert's Cafe, cites Reg. Orig. 239. b.


22. Lands were affiured in Fee to Fine to A. to the Ufe of B. and his Wife, for their Lives, and of the larger Liver of them, Remainder to the Ufe of C. and his Wife in Tail; and for Want of such Issue, to the Ufe of B. and his Heirs for ever; provided, that if B. should have Issue of his Body, or any Wife, which he should have at the Time of his Death, should be Enfient by him, then after the Birth of such Issue, and after 500 Marks paid to J. S. within 6 Months after such Issue born, the Ufe of the said Lands would, after the Death of B. and his Wife, and after the 6 Months ended and expired, be to the said B. and the Heirs of his Body; and in Default of such Issue to the right Heirs of B. The Wife died, and the Husband married again. It seemed to Plowden and Dyer, that before Performance of the Contingent B. had not any larger Eftate than he had before. D. 314. a. pl. 96. Trin. 14 Eliz. Anon.

23. There is a Diference when a Remainder is joined to the particular A. bar an Eftate by the Act of the Grantor himself, and when by any Pupport, Grant, Eftate for any Aff after; for in the first Case the Remainder shall be executed, and in the other Case not. Per Manwood. 2 Le. 8. pl. 16 Eliz. C. B. in Cranmer's Cafe.
Remainder.

Power to make a Jointure to any second Wife, and then devises to the first and other Sons of A. in Tail Male; and if he die without Issue, then he devises the Land over in Fee; the Testator die, A. having no Son at the time of the Testator's Death. A. suases a Recovery. The Question was, What Estate A. had, whether Fee, Fee-tail or for Life. Holt Ch. J. seemed to think this a Fee, and said that admitting that (Issue) would be an Implication of an Estate to the Heirs of the Body of A. yet he could not be Tenants in Tail, for if one be Tenants for Life by Deed, and Reversioner devises to his Heirs of his Body, this being by several Conveyances, the Estate is not executed. Skim. 4th Mich. 6 W. & M. B. R. Morris v. Parker—S.C. 4 Mod. 316. accordingly.—Ld. Raym. Rep. 5. 1. Pfefch. W. 3. Advertis. But by Holt Ch. J. It is impossible to make this an Estate Tail in B. for nothing is given to him by this Device, but he has only the Estate that he had by the first Settlement. And he cited 29 Ed 5 where Estate for Life is given to A. is impossible to the Heirs of the Body of B. A. assigns his Estate to B. by which B. becomes Tenant for the Life of A. Remainder to the Heirs of his Body, yet he has not an Estate tail executed in himself, but the Remainder continues in Contingency. So here, being there two several Conveyances, this Device cannot be tack'd to the Estate for Life limited by a different Conveyance; quod suit conceditur by the other Justices.

24. As a Lease is made to A. for Life, Remainder to the right Heirs of B. B. purchases A.'s Estate, the Estate in Remainder is not executed; for it is not conveyed by the Grant of the first Grantor, but by the Act of another Person after the Grant. 2 Le. 7. Per Dyer Ch. J. in Crammer's Cafe.

25. A. makes a Lease for Life to B. Remainder to A.'s Executors for 20 Years, Remainder in Fee to a Stranger, the Remainder for Years is good; for the Lessee cannot limit such an Estate to himself, and the Executors shall take the Estate as Purchasers, and the Term shall be in Abeyance till A.'s Death. Per Dyer Ch. J. 2 Le. 7. in Crammer's Cafe.

26. Feoffment in Fee to the Use of his Will, and devised the Feoffees shall stand feised to the Use of his eldest Son B. for Life, without Impeachment of Wafe, and after his Death to the next Heir of the Body of B. and M. his Wife, lawfully begotten, for the Term of the Life of the same Heir, and after the Death of the same Heir to the Ufe of the next Heir of the same Heir lawfully begotten, and for Default of such Issue to the Use of the Heirs of the Body of B. and M., and for Default to the right Heirs of B. Proprio on any Alienation &c. by any of the said Heirs, the Use so limited to be void, and the Feoffees to be feised to the Use of the Heir Apparent of such Offender, as tho' he were dead; B. had Issue C. and D. a Son, and died; C. had Issue two Sons E. and F.—C. alien'd by Fine to J. S. Afterwards D. levied a Fine, and therein releas'd with Warrant to J. S. At the Time of the Fine levied by D. his Heir Apparent was E. but afterwards D. had Issue two Sons F. and G. Jeffery's, thought that the Limitation from Heir to Heir was in Effect an Estate Tail, and that the special Words will not make another Estate to pass than what the Law wills. Per Gawdy J. Every Issue begotten between B. and M. shall have an Estate for Life successevly, and a Remainder in Tail expectant as right Heir of the Body of B. and M. and this Estate Tail shall not be executed in Possession, because of the Meane Remainder for Life limited to the Heir of the Bodies of B. and M. and that thefe Meane Remainders, tho' Contingent only, shall hinder the Execution of the Estates for Life, and in Tail in Possession. Southcot J. to the fame Purpofe. Per Wray Ch. J. B. and C. have but for Life, for they are Purchasers by the Name Heir in the Singular Number, but when he adds (for Want of such Issue to the Heirs of the Body of B.) in the Plural, now B. has an Inheritance, and C. being the next Heir of the Bodies of B. and M. has an Estate for Life, and alla being of the Body of B. has a Remainder in Tail to him limited, and the Meane Remainder limited to others viz. to the next Heir of the Body of B. being in Abeyance, because limited by the Name Heir (his Father being alive) shall not hinder the Execution of these Estates, but they shall remain in Force according to the Rules of the Common Law; and that by B.'s levying a Fine the Ufe was valid in C. and when C. levied a Fine the Ufe was vested in D. who was then next Heir, and shall not be devested by the Birth of E. and F. afterwards, but that the Forfeiture was only of the Freehold, and not of the Estate;


pl. 6. cites 35 H. 6. 5 —
pl. 6. cites 40 E. 3. 9.

The subseuent Words do merege and deffroy, hy turning it into an Elize; and the Reoff in, because such subseuent Words are expref. But it is otherwife where the renting an Elize in Tail &c. would contriduct the expris Limitation, and confequently the Intent of Tenlizer &c. See Wm's Rep. 56. Hill. 1702. Bampfield v. Popham.

28. But Lease for Years to B. Remainder to his right Heirs, and Li- verry accordingly, the Remainder is void, because there is no Perfon in Elize that can take by the Livery, and every Livery must have its Ope- ration preffently. 4 Le. 21. and 183. Per Dyre and Manswood. Anon.

29. A. makes a Feefficient in Fee, to the Ufe of himfelf for Life, and But if the after his Death to the Ufe of his Heirs, the Fee Simple is executed. Arg. 1 Rep. 95. b. Trin. 23 Eliz. in Shelley's Cafe.

29. A. does not marry; but if she does marry, then he will'd that B. his eldest Son shall prefently enter after her Marriage, and enjoy the Premilies to him and the Heirs Males of his Sone; and for Default of such Issue to his Son C. and the Heirs Males of his Body &c. this was an Elize Tail executed in B. Raym. 427. 428. Hill. 52 & 53 Car. 2. B. R. Brown v. Cutter.— 5 Show. 132. pl. 132. Brown v. Curter. S. C. accord- ingly by 3 Eliz. — Raym. 430. says the Ch. J. did not fit all that Term.— Luxford v. Check, S. C. 3 Lev. 157. Mich. 34 Car. 2. C. B accordingly.

30. A Devife to a Woman for as long as the fball remain Scele, and then to A. devifed Remainder to B. this Remainder shall not begin till the Marriage. Arg. 3


31. A. leaved by Indenture to B. C. and D. Habendum for 3 Lives, and Le 517: the Life of the Survivor ; provided nevertheless, and it is granted and S. C. agreed, that, during B.'s Life, either C or D. fball take any Profit of the Land. Adjudged that the Provilo does not make the Elize to enure by Way of Remainder, but is merely a Collateral Covenant, and B. C. and D. notwithstanding the Provilo, take their Elizes in Jointure. No. 267. pl. 418. Mich. 30 & 31 Eliz. Leverlage v. Cable.

32. A. makes Feefficient in Fee to the Ufe of himfelf for Life, and after to 1 Rep. 155. the Ufe of his first Son which shall be in Tail, and for Default of such him to C. in Fee, and for Default of such him to the Ufe of B. in Tail. For then if afterwards A. has him to Sone, then the Possibility which the Feoffor had, Ue cannot come to an Elize in Law, and now the Statute executes the Poffeffion, according to the Limitation of the Ufe; but if A. be difeized before the Birth of the fift Son, and after he has him to Son, now nothing vests in the Son, because it ought to be an Ufe in Elize before the Statute can execute the Poffeffion, Arg. 1 Rep. 130. b. Hill. 31 Eliz. in Chudleigh's Cafe.

33. A. devifed to B. and C. Lands for Payment of Debts and Levées, and afterwards to D. for Life, Remainder to the first Son of D. in Tail, Remainder to the Heirs of the Body of B. This Elize Tail is not executed for the Possibility of the Maje Elize that may interpose, and therefore is always joint'd during the Life of D. so that of that Elize his

Wife.
Remainder.

Wife cannot have 


34. If a Limitation be to the right Heirs of J. S. and he has Issue a Daughter, and dies, his Feme covert with a Son, who is afterwards born, yet the Daughter shall retain it; for the Estate was executed in her. Per 2 Jul. Cro. E. 334. Trin. 36 Eliz. in the Cafe of Frederick v. Frederick.


35. Land was given to Baron and Feme for their Lives Et Dintius curum Viccivs. Remainder to the Heirs of their Ladies. This is an Estate Tail executed by Realeon of the immediate Remainder. Arg. Bufl. 220. cites it as 36 Eliz. B. R. in the Cafe of Cheek v. Dale.


If B. had died in the Life of A. then A. had a Fee-simple. Br. E., pl. 5. cites 33 Hil. 6. 5. — S. P. Br. E., pl. 59. cites 46 Eliz. 5. 16.

The Estate Tail is executed Sub Male, viz. till the birth of the first Son, and then by Operation of Law the Estates are divided, i.e. the Baron and Feme become Tenants for their Lives, Remainder to the Issue Male in Tail, Remainder over: For the Estate for their Lives is not absolutely merged, but with this implied Limitation till they have Issue Male. 11 Rep. So. Lewis Bowles's Cafe.

37. A Man in Consideration of Marriage covenanted to stand feised to the Ufe of hisfelf and M. whom he intended to marry for their Lives, Remainder to their first Son of their Bodies begotten in Tail, and the Heirs Male of his Body, and so on to the 4th Son &c. Remainder to the Heirs Male of the Body of Baron and Feme &c. Per Haughton, Dodridge, and Coke, before the Birth of the first Son the Baron and Feme have Estate Tail executed notwithstanding the contingent Male Remainder. Roll. R. 177. Patch.


38. Feoffment to the Ufe of A. for Life, Remainder to the Right Heirs of J. S. Remainder to J. D. and his Heirs, it seems to be the better Opinion that the Fee is in J. D. Per Crooke J. Litt. R. 161. Mich. 4 Car. 2. C. B. in the Cafe of Barron x. Nichols & Smith.

39. A. Tenant for Life, Remainder to his Wife for Life, Remainder to the Heirs of their 2 Bodies Remainder over, the Estate Tail is not executed in A. because of the * intervening Estate for Life limited to the Wife, so that a Fine and Warranty by A. and his Wife makes no Discontinuance, nor the Warranty any Barr. Lev. 36. Trin. 13 Car. 2. B. R. Stephens v. Brittridge.

* But where the intervening Estate is for Years, it shall be of Impediment, but that the Feehold was sufficiently joined in the Husband Simul & Simul, so as to settle the Wife to Dower, the Coifet Executo till the End of the Term. N. Law. 225. cites Perk. S. 356. (355)
Remainder.

Estate Tail executed Sub Aide, viz. Not as to the Division of the Jointure, but to other Purposes. Raym. 126. Parch. 17 Car. 2. B. R. Nicol v. of these Remainders to the Heirs of the Wife begotten by the Husband, Remainder to the Wife for Life.

41. A. devised Lands to J. S. and his Heirs for the Life of B. in S. C. Free of Error, Rep. 418. pl. 626. &c. but B. has illibe C. a Son then living, this is an Estate for Life to B. S. C. but not C. and C. takes the Remainder immediately, and not as a contingent Remainder. 2 Lev. 232. Mich. 50 Car. 2. C. B. James v. Richardson. 2 Jo. 99. S. C.

Vint. 354. S. C. — Poloff. 24. S. C. — Raym. 330. S. C. — This Judgment was reversed in Cam. Socce. but that Reversal was reversed in the House of Lords. Poloff. 469. and 2 Lev. 255. Carth 155 S. P. (and was for another Branch of the same Estate) says That B. R. and Exchequer Chamber, and Parliament all held clearly, That it was a Remainder veiled in C. immediately on A's Death, and that the Words (Now being,) were a sufficient Description of the Person of B. and that the other Words (viz.) to the Heirs Male of the Body of the said B. did not only help to make up the Description of the Person of B. but were a good Limitation of an Estate Tail to him. Batcher v. Durand. — This Case of * Burdett v. Durand was decided to be Law Per Holt Ch. 1. 2 Sal. 8d. in the Case of Broughton v. Langley. — 2 Vent. 511. S. C. in Socce. Trin. 2 W. & M. and there as to the Point whether the Remainder to the Heirs of B. now living did rest in C or was a contingent Remainder, the Ch. B. Atkins and Justice Powell seemed to be of Opinion that the Remainder was contingent; but in regard the Point had been based upon a Writ of Error brought in the House of Lords upon a Judgment given in B. R. in another Case upon the same Issue Will adjudge to be a Remainder veiled, they conceived themselves bound by that Judgment in the House of Lords.

42. A. seiled Lands in Fee made a Deed Poll as follows, viz. Know ye &c. that in case I die without Issue that my Lands may continue in my Blood, and for the Natural Love which I bear unto my Niece J. S. Have given, granted, and Confirmed, and do give &c. to my said Niece S. S. all my Lands to the Uses after-mentioned, i.e. To hold to the Use of the said A for the Time of my natural Life, and after to the Use of the said S. S. my Niece, and the Heirs of her Body &c. No Livery was made. Afterwards A. made a Feoffment to a Stranger, S. S. entered upon the Feoffe as for a Fortitude, and the Court declared they were all of Opinion for S. S. the Plaintiff in Equity, viz. that the Confinement, and the Deed itself were sufficient to raise an Uie in Remainder in Tail to the said S. S. by way of Covenant to stand seised. Carth. 38. Trin. 1 W. & M. B. R. Harrison v. Aitlin.

43. A. on Marriage settles Land on himself for 99 Years, if he live so long, Remainder to Trustees and their Heirs to prefer Contingent Remainders during his Life, Remainder to the Heirs of his Body by the Wife; They have 2 Sons B. and C. — A. is barely Tenant for 99 Years, if &c. and the Estate Tail is vested in B. in Equity, and a Fine and Feoffment by A. and B. and the Trustees is a Bar, and no Breach of Truth. 2 Vern. R. 754. Mich. 1717. Elie v. Osburn.

(H) What shall be said a Remainder Attached, and what a Remainder in Abeyance.

1. If the Baron seiled in Fee of a Copyhold, surrendered it to the Life of his Feme and J. S. for their Lives, the Remainder to the Right Heirs of the Body of the Baron and Feme begotten, this Remainder is not attached in the Feme, but is in Abeyance; For he who shall have it, ought to be heir of the Body of both, and the Baron cannot have been during his Life, and he may survive the Wife, and then none shall have it, therefore it is Abeyance. By Reports 13. Ta. Lene. v. Pannel. 14 Ta. Abjudged.

2. So if the Baron makes Feoffment to the Life of his Wife for Life the Remainder to the Right Heirs of the Body of the Baron and Feme, this Remainder is Abeyance. D. 1. Sta. 99. 71.

3. When
Remainder.

3. When the Ancestor by any Gift or Conveyance takes an Estate of Franktenement, and in the same Conveyance or Gift, there is an Estate in "Fee, or in Tail to his Right Heirs mediatly (by where there is an Estate for Life, or Tail interpolated between the said Estates) yet this Remainder shall attach immediately in the Ancestor, and shall not be in Abeyance. 1 Rep. 104. Shelly's Cases, 40 C. 3. 10. Adjudged. 11 H. 4. 74. 24 C. 3. 56. 27 C. 3, 87. 6.

If a Leaf be to one for Life, with divers Remainderers over Remainder in Fee to the Right Heirs of the first Tenant for Life, if all die the Heir shall be as Heir; for by Possibility his Father might have had the Possession. Br. Done &c. pl. 11. cites 11 H. 4. 74.

Where Land is given to W. N. for Life, the Remainder to J. S. for Life, the Remainder to the Heirs Male of the Body of the said W. N., who has 2 Sons, the eldest has Issue for a Daughter, and dies, and J. S. dies, the youngest Son shall have the Land as Heir Male, yet he is not Heir in Fact, but his Niece is Heir to his Father; for neither the first Velling, nor the Remainder is Material. Br. Notice pl. 40. cites 57. H. 8.

For where the first Estate for Life is executed, the Remainder over Ut supra, the Remainder may depend in Abeyance till &c. Ut supra, but causes of Remainder to the Right Heirs; for none can have this but he who shall be Heir in Fact. Ibid. — See (I) pl. 1.

4. But when an Estate of Franktenement is so limited to B. and a Mediate Remainder to his Right Heirs, that it may be that all the Estates may determine in the Life of B. and the Estate of A. also, there the Remainder to the Right heirs of B. is in Abeyance, and shall not attach in the Life of B. because during the Life of B. he cannot have an Heir to take the Remainder.

5. As if a Settlement be made to the Use of A. and B. during their joint Lives, and after the Death of either of them to the Use of C. for Life, and after to the Use of the Heirs of the Body of B. tho' B. has a Franktenement in his Heirs of his Body separate, yet this Remainder does not attach, but is in Abeyance; because if A. and C. be in the Life of B. the Estate of B. is determined, and the Remainder to C. ended, and yet the Remainder to the Right heirs of B. cannot take Effect, because B. cannot have an Heir during his Life, and a Remainder shall not attach, but shall be in Contingency, collect in Abeyance, when it may happen that it shall never take Effect.

6. If a Man leaves to B. for Life, the Remainder to his Executors for 14 Years; the Term for Years shall be taken immediately in B. to that he shall forfeit it, or may grant it: For as the Ancestor and here are Correlatives in Case of Inheritance to make a Remainder to the Right Heirs of him, who has a Franktenement before limited to him, to attach; so the Testator and Executor are Correlatives as to a CHArlot to make the Remainder for Years to be in the Testator, as if he made the Remainder for Years to be in his Executors. Co. Litt. 34. 4. where are cited Nich. 49. and 41 Eliz. 5. Rot. 2215. between Sprake and Sprake. Hill. 42. Eliz. in the Court of wards Sir John Savage's Case.

Sir John Savage's Cafe.

7. Scire
Remainder.

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7. Sci. fac. upon a Fine that was levied to J. and A. his Feme in Tail, the Remainder to A. in Fee; the Baron and Feme had Issue a Son; the Baron died, and after the Fee took another Baron, and had Issue another Son; and died; the Eldest Son entered and died without Issue, and the Heir Collateral of the Eldest Son entered as in the Remainder in Fee, against whom the Youngest Son of the Half Blood brought Scrive facias to execute the Fee-Simple; and the best Opinion was, That it well lay; for the Fee-Simple was not executed in the Eldest Son; for he was feated in Tail, and the Fee was in Averance; and therefore it was not executed in him, and now the Youngest Son of the Half Blood is Heir to A. of the Fee-Simple, therefore he shall execute it. Br. Seire facias, pl. 126. cites 24 E. 3. 30, 62. & 37 E. 3. Atth 4. Where it is adjudged for the Youngest Son, and yet the Eldest Son might have given the Fee-Simple, or * charged it, or forfeited it by Attonder of Felony, but yet it was not executed in him, therefore whatever is Heir to the Ancestor when the Fee falls he shall have Execution thereof; quod nota.

or Recognition., and they were so feited that it's Writ of Right had been brought against them they might have join'd the Mife upon the meer Right, which proves that they had a Fee, and that it was expectant on an Estate Tail, and he who claims the Retorion as Heir ought to make himself fo to him who made the Gift. Per Eyre J. 3 Mod. 256. in the Case of Kellow v. Rowden.

8. A. devis'd Bl. Acre and Wh. Acre to M. his Wife for Life, and after her Death Bl. Acre to B. and Wh. Acre to C. and his Heirs for ever; Item, I will that the Surviver of them shall be Heir to the other, if either of them die without Issue; This is an immediate Estate Tail. But if it had been, That it he die without Issue in the Life of the other, or before such an Age, that then it should remain to the other; it might perhaps be a Contingent Devise in Tail if it should happen, and not otherwise; But as it is it is an absolute Estate Tail immediately, and the Remainder limited over. Cro. J. 695. Mich. 22 Jac. B. R. Chadock v. Cowley.

9. A. feited in Fee, had Issue 2 Sons, B. the Eldest, and C. the Youngest, S. C. Raym., and devised the Land to B. for Life, and if B. dies without Issue living at his Death, that then the same shall remain to C. in Fee; but if B. shall have Issue living at his Death, then the Fee shall remain to the right Heirs of A. for ever. B. entered and tutor'd a Common Recovery, and died without Issue; whereupon C. entered upon the Defendant, and Jas'd to the Plain Tiff. Relev'd per rot. Cur. That B. took only Estate for Life, the Remainder to his right Heirs, and tho' B. be Heir, to whom the Retorion descended, yet this shall not merge the Estate for Life, but is contrary to the express Devise and Intent of the Will, but shall live an and the Opening, (as they term'd it) for the Interposition of the Reminders, when they should happen to interpose between the Estate for Life and the Fee; and compare it to Arch'ts Cafe, Co. 1 Rep. Where the Robert the Owing Device for Life was Heir, yet the Remainder to his next Heir Male &c. And was contingent, and not an Estate for Life merged by Descent of the Retorion; and so here B.'s Estate being only for Life, the Remainder all of the other Judges were to C. was a Contingent Remainder, and bar'd by the Recovery. Lev. 2. 11. 12. Hill. 12 & 13 Car. 2. B. R. Plunket v. Holmes.

Nis &c. — S. C. Sid. 47. accordingly, and that a 2d Resolution was, That fee is not a Contingent upon a Contingency, for if it had been so, it would have been void according to Esteban's Case &c. But that it is One and the same Contingency operating several Fees, &c. If B. has Issue, then to him in Fee, and if he has not Issue living &c then to C.

10. Baron and Feme, Tenants for Life, Remainder to the Heirs of the Bar- ren; Baron devises to the Heirs of the Body of the Feme, if they attain to 14 Years, and dies; She marries again, and has afterwards Issue; but before this Issue comes to 14 Years, the fuller a Recovery; This, if good, is not good as a Remainder but as an Executory Devise; and the Issue of the Wife who has Estate for Life, yet this is a new Devise to take Place after her Death.
Remainder.

11. A. intending to levy a Fine and suffer a Recovery, declard they should be to the Use of Baron and Fine for their joint Lives, and after the Decease of either of them Remainder to the Heirs of the Wife, begotten by the Husband; Remainder to the Wife for Life; Baron dies. The Court agreed, That here was no Contingent Estate but that it is Estate Tail executed. Sid. 247, pl. 12. Patch. 17. Car. 2. B. R. Merril v. Runyfe.

12. A. feied in Fee by Deed and Fine, settled Lands on his own Marriage to the Use of himself and his Heirs, until the Marriage take Effect and afterwards to the Use of the Wife for Life; and after her Death then to the Use of the Children in the Fine and their Heirs during the Life of A. upon Trust, to permit and suffer him to take the Profits &c. and afterwards to the life and every son of that Marriage in Tail Male; and for Want of such Issue, to the Heirs of the Body of the said A. and for Want of such Issue to the said A. and his Heirs for ever. A. had no Issue Male, but had Issue Female one Daughter; The Daughter shall take by Purchase and not by Defeas, so that a Fine levied by A. will not bar her; for the Remainder to the Heirs of the Body of A. on Failure of Issue Male, was a Contingent and not a Veiled Remainder; and the Limitation being of an Estate Tail, cannot be any Part of the old Estate; For that was a Fee-Simple. Carth. 273. Patch. W. & M. B. R. Tippin v. Coln.

13. J. S. made his Will thus, viz. As concerning my Manor of P. and W. after my Debts and Legacies paid, I devise them to A. for Life without Impeachment of Waife; and if he shall have Issue Male, to such Issue Male and his Heirs for ever; and in Case A. dies without Issue Male, to B. and his Heirs (A. has only Estate for Life.) A. pulls a Common Recovery to the Use of himself and his Heirs, and dies without Issue Male. One Question was, Whether this was a Contingent Remainder to the Issue of A. and his Heirs, and to the Remainder to B. devolved by the Recovery of A. before it happen'd; or whether it was an Executory Devise? This Case was twice argued, but before Judgment the Parties agreed and divested the Estate. 3 Lev. 432. Mich. 7 W. 3. in C. B. Lodddington v. Kine.
Remainder.

(H. 2) What is. Where the Visiting of a Subsequent Remainder depends on the Performance of a Condition, or the Happening of a Contingency annex'd to a Mecine Remainder.

1. A Had Issue B. a Son, and C. a Daughter, and devised Land to J.S. for Life, upon Condition, That if B. disturbed J.S. or the Executors, of their Administration, then the Land should remain to C. and died; Afterwards J.S. died, and C. brought Formented in Remainder against B. and alleging'd, That he had disturbed J.S. and the Executors. B. travers'd it, and issue thereupon was joined; And so the Condition took the Fee away from B. and put it in C. by the Allowance of the Law in Performance of the Intent of the Devise'r, tho' the Remainder did not vest when the first Estate took Effect. Per Harper J. Pl. C. 414. a. b. in the Cafe of 

2. A Fine was levied of Lands in Tail, upon Condition to carry the Standard of the Conforcer; and for Default thereof Remainder to W.N. And Per Fitzh. J. the Remainder is good, and is in the Grantee presenty before the Condition broken, or never; For if the Remainder be not good at first, it never shall be good. But Per Montague Serj. contra; And Fitzh. after doubted. Br. Done and Remainder, pl. 3. cites 27 H. 8. 24.

3. If A. makes a Feezment to the Use of B. till C. shall come from Rome into England; and after such Coming from Rome into England, to remain over in Fee, this Remainder depends in Contingency; For it is uncertain whether C. ever shall come into England, or not. Arg. Quod suft Concessum per tot. Cur. 3 Rep. 25. in Boralton's Cafe.

4. A. leaves for Life to B. upon Condition, That if he pays 10l. at Michaelmas to the Leisor, that he shall have the same to ban in Tail, the Remainder to J. D. in Fee. The 10l. is not paid; If now he in the Remainder shall have the Fee, or if the Contingent and Accrue extend as well to the Fee as to the Eate Tail, or if the Fee veale presently? Popham said, That is a Moor Point; But Anderson said, You will not be able to prove that by any Book of Law, but if you were to read it is a good Point for you. Noy 46. Anon.

(I) At what Time Remainder shall attach.

1. If Leafe for Life or in Tail be, the Remainder to the right Heirs Br. Done of J.S. and Tenant for Life dies, or Tenant in Tail dies without fee. pl. 6. Issue living J.S. the Remainder is void; Because J.S. cannot have Fee during his Life, and maimuch as this does not take Effect during
Remainder.

Remainder, that does not follow the particular Estate, it shall never take Effect tho' he dies after
and has an Heir. 9 H. 6. 23. b. 11 H. 4. 12. b.

If J. S. was alive at the Time: For if it cannot take Effect at the Time of the Livery, it will be hard to
prove that care is taken. 11 H. 2. 3. b. pl. 2. 12.

The Remainder is in Abeyance till J. S. dies, and therefore good; and yet no Heir is in Este at the

If J. S. be afterwards attainted of Felony, and dies; and after the Tenant for Life dies, the Remainder
shall not take Effect; because none can be Heir to a Man attainted. Br. Dene &c. pl. 42 cites 37 H. 8.

S. C. cited by the Muller of the Rolls, who said, That tho' the Remainder in Fee is in Abeyance, yet there is a Possibility left in the Heir, and
that where the Tenant for Life dies, living J. S. the Grinner shall have his Lands again for want of another

It was found by a Special
Verdict before Baron
Tyrton, That a De-
vise was to a
Remainder in
the first Sum
in Fee. Remainder to B. — A. dies, no Son being then born, but afterwards a Son is born; B. enters before the son born. Judgment was given for B. in C. B. and affirmed in B. upon Error, for 2 Reasons; i. This is a contingent Remainder to the son of A. and he being not born when the particular
Estate determin'd, it became void, 2dly. The next in Remainder being B. and he having entered before the Birth of A's first Son, was in by Purchase, and shall not be put out on a Heir born afterwards.
2. Lev. 4 S. Mich. 6 W. & M. Rear v. Long. — But this Judgment was reversed by almost all the Lords in Parliament; because being in a Will they took it according to the Intent and Provisions thereof, which they said could not be disaffirmed by the Heir of the Name and Family of the Devisee by such Nickery. But all the Judges were greatly dissatisfied with this Judgment of the Lords, and did not charge their Opinions thereupon, but greatly blamed Baron Tyrton for permitting it to be heard, specially where the Law was to certain and clear. Eid. — 4 Med. 292. S. C. — 1 Silk. 29. G. -

See (E) pl. 16.

4. If a Feoffment be made by A. to B. to the Use of himself for 21 Years, Remainder to the use of C. in Tail, Remainder to the use of the right Heirs of A. and C. dies without issue in the Life of A. during the 21 Years, this Remainder in Fee is void; Because this was a Contingent Remainder, and A. has not any right during its Life; and the Estate for Years being no Frankenheit, cannot support this Remainder till the Death of A. Revold v. Siphams. Reports between the Earl of Bedford and Rulic.

Poph. 7.

S. C. Mich. 54 & 55.

Fitz. in the Court of
Wards; and after upon
Conference with the
Judges and Barons, Re-
feiled by all (but Baron Clarke) accordingly. — S. C. 2. And 197 pl. 17. among the Cases in the Court of

S. C. — See Cases (2 S.) pl. 7.

So where A. feied in Fee of Lands, makes Lease for Years to B. Remainder to C. in Tail, Remainder to the right Heirs of B. In this Case, B. has nothing in the Fee, it is a Remainder contingent to the Heir of B. If C. dies without issue in the Life of B. the Remainder is void; Because it has no power to support it when the Remainder falls; for C. died without issue in the Life of B. and cannot have
Heir during his Life. Jenk. 244. pl. 58. 2d Part.

5. Where Land is given to a Man and his Fame for Life, the Remainder to the Heirs Male 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 Feme. Br. Nonne, pl. 49. cites 37 H. 8.

6. Every Remainder which commences by a Deed ought to vest in him to whom it is limited, when Livery of Seisin is made to him that holds the particular Estate. Co. Litt. 378. 2.

7. If Lands be granted and render'd by Fine for Life, the Remainder in Tail, the Remainder in Fee; none of these Remainders are in them in the Remainder until the particular Estate be executed. Co. Litt. 378. 3.
Remainder.

(K) At what Time it must, or may attach. What Remainders are in Contingency and not attach'd.

1. W H E R E it is dubious and uncertain whether the Estate limited in Future, shall ever vest in Estate or Interest, or not, there the Estate is in Contingency. 3 Rep. 20. * Boraston's Case. was this; viz. A. left ed of Soke
Lands in Fee
devoted them
for 8 Years

2. As it the particular Estate (upon which the Remainder depends) may determine before the Remainder may commence, there the Remainder is contingent. 3 Rep. 20. Boraston's Case.

his Estate to perform his Will till C. should attain his Age of 21 Years, and when he should attain that Age, that he should have it to him and his Heirs for ever. A. died, and C. died at 9 Years old. It was produced by the Council, and agreed by the Court, That the Executors had a good Term for 12 Years, which was not determined by the Death of C. So that the Remainder commences in Possession at the End of the Term; and as to the Adverbs of Time, viz. (When) and (Then) they do not amount to make any thing proceed the settling the Remainder any more than in the common Case, where one leaves for Life or Years, and after the Decline of the Lesser, or Determination of the Term, the Remainder to another, yet this Remainder vests immediately; for when Adverbs refer to a Thing which must necessarily happen, they make no Contingency; and it is certain that every one must die, and every Term must end, to that only demonstrate when the Remainder to C. shall take Effect in Possession. And Judgment accordingly. 3 Rep. 19 a. to 21. b. Hill 29 Eliz. B. R. Boraston's Case — S. C. cited per Car. Cro. J. 51. Mich. 16 Jac. B. R. in Case of Sheriff v. Wrotham. If one make a Lease t. J. S. for Life, and after the Death of Y. D. to remain to another in Fee: this Remainder depends in Contingency; for if L. S. dies before J. D. the Particular Estate is determined before the Remainder can commence. Arg. Quod futurum conceditur per Car. 3 Rep. 20 a. in Boraston's Case — Whatever cannot accrue at the Time of the Death of the Party who first dies, cannot afterwards by any Act be revived, but is absolutely extinguished. Per Car. Cro. C. 132. pl. 3. Hill 5. Car. in the Exchequer Chamber, in the Case of Biggot v. Smith, which was adjudg'd upon this Reason.

3. A Fine was levied to the Use of A. and the Heirs Male of his Body, till he or the Heirs Male of his Body had done such a Thing; and after such a Thing done, to the Use of B. in Tail, and dies without Issue without any Thing done. Adjourned the Remainder was in Contingency, and never fell; the Estate was Contingent, and there must be a Contingency happen to put it in Life. Cart. 203. cites Acton v. Hoar, as cited in Lovers's Case. 10 Rep.

4. A. devised Lands to E. for Life, and after her Death to the eldest Male of her Body, and to the Heirs Male of such Heir Male, so that he be 24 Years old at E.'s Death, but if he be not of that Age, then to her Husband till the Sex come of that Age, and the Profits to be disposed amongst the younger Children. E. died, her Heir Male being under 24. It was argued that these Words (So that he be 24 Years old at the Death of E.) if the Devise had refeled there, would have been a Contingent Limitation upon the being 24 at that Time, but that by disposing the Profits in the Interim, his Intention appears to be not to make that Limitation a Contingent to the Remainder, but upon that Suppofal to provide for the younger Children. Adjournatur. All. S. Patch. 23 Car. B. R. Taylor v. Utherwood.

6. A. devise to a Man for Life, and after to his Heir, this is an Estate Leasing in Fee; but if it be, and to the Heirs of such Heir, (such) there, is a Contingent Remainder. Per Holt Ch. J. Skin. 559. Mich. 6 W. & M. B. R. in Case of Moor v. Parker.

S. C. cited by the Master of the Rolls. 10 Mod. 422. in Case of Marks v. Marks, cites Show. Parl. Rolls. 137. Loyd v. Carew. In which Case a Year was held a reasonable Time. Ibid.

5. The Law is now settled, that in Case of a Contingency that cannot in the Nature of it precede the Death of a Person, a reasonable Time may be allowed subsequent to the Decease of that Person for Performance of the Condition, and a Fee limited thereupon is good. Per Jekyl, Master of the 2 Wms's Rep. 622. Mich. 1752. in Case of Stanley v.
Remainder.

(L) Contingent, or other Remainder. *Verses at what Time.*

1. A Makes a Lease for Life on Condition to B. that if B. has Issue in his Life, the Land shall remain over to W. N. in Fee; B. does *Wills.* A. brings a Writ of Wills, and has Execution; B. has Issue and dies. No Action of Foremoden accrues to W. N. because the Issue remains in A. until B. has Issue, and then the Recovery defeats the first *Lease.* Br. Lect. Star. Limit. 54.

2. Lands given to A. and the Heirs Male of his Body, Remainder to the right Heirs of B. A. died without Issue; B. had Issue two Daughters L. and M. [B. died.] L. died, M. died; this Remainder is as a Purchase, and the *Survivor* takes Place; so that the Foremoden lies only for the Heir of Survivor, and it is not like as it Land were given to A. for Life, Remainder to B. for Life, or in Tail, Remainder to right Heirs of A. For in this Case the said Remainder is vested in the Tenant himself, and he is the Purchaser of it, and from him it shall descen to his Son. Otherwise here; for it Land is given to A. for Life, or in Tail, Remainder to the right Heirs of J. S. and after J. S. dies, his Wife present is certain with a Son, and the Remainder falls, and after the Son is born, the Daughter shall retain the Lands against the Son for ever. Dal. 69. pl. 39. 6 Eliz. Stowell & Bannfield v. Earl of Hartford.

4. If a Devise or Ufe be limited to A. for Life, Remainder to B. in Tail; if A. dies, the Remainder vests presently. *Per Coke.* Arg. Le. 195.

5. N. demised Lands to J. S. till B. (A's Son) comes of Age, the Remainder vests presently. Arg. Le. 195. in Lord Paget's Cafe.

6. Covenant to stand as to the Use of Salisbury Plain for the Life of J. S. Remainder to W. R. W. R. shall take presently. *Per Manwood* Ch. B. Le. 195. in Lord Paget's Cafe.

7. A leaves for Life, Remainder to himself in Tail, Remainder to a *Springer in Fee,* the Methfe Remainder to A. himself is void, and the Remainder over shall be immediate to the Bifate for Life. *Arg. Le. 197.* in Lord Paget's Cafe.

8. A Rent was granted to J. S. per ater Vic, with Remainder over. If Grantee dies, the Remainder shall take Place presently, because the Rent for Life determines by the Death of the Grantee. *Per Popham.* No. 664. pl. 597. Trin. 4 Eliz. B. R. Salter v. Butler.

9. Peovietion to the Ufe of A. for Life, then to the Ufe of Feoffsors for 99 Years, if A. so long live, and after A.'s Death to E. in Tail. *Adjoungd.*
Remainder.

Adjudged that the Remainders went: presently, and that the Possibility Hill v. Car. that A might over-live the 99 Years, will not make the Remainders Napper v. Contingent. Hutt. 119, cited per Cur. as the Lord Derby's Case. And that upon a Special Verdict found at Lancaster, in a Case between Fairingdon, and another, about $ 1000, and often argued at Sergeant's Inn, it was afterwards adjudged a good Remainder, and not Contingent.

10. A. left a Fine to the Use of himself and the Heirs of his Body, but otherwise and for Default of such Issue to the Use of B. and the Heirs Male of his Body, until B. should go about to Sell, Alien &c. and after the Estate of B. is determined, and the Heirs Male of his Body by such Attempts determined &c. Law, and then to the Use of the Heirs Male of the Body of B. And for Default of such years Life then to the Use of C. in Tail, until &c. as before, and after to the Minority of D. in Tail, as is before limited to C. It was agreed per Cur. Cane. That no Remainder can ensure to C. without an Attempt precedent by B. to determine his Estate, because the Estate of C. is not limited to begin, but upon such an Attempt precedent. Pop. 97. Arton v. Hare.

11. A. seized in Fee has two Sons, B. and C. A. makes Fecomon to B. for 25 Years, and the Use of himself for Life, and after to C. the Dot Son for Life, Remainder to D. to fence his Body after his Death to the Use of the 3d Son of C. which would have Issue to the High Male of his Body and to his Heirs for ever, and for Wint of such Issue the 3d Son C. B. Remainder to the right Heirs of C. for ever. Adjudged that this Remainder to the younger Son who should have Issue is, but a Contingent Remainder, and a Remainder to the right Heirs vested in C. Cro. Car. 36. 1. Nicholas & Patch. 10 Car. B. R. Boreton, or Morton, or Bawton v. Nicholas &c. Tingley, Bollard Cane.

—Could J. in Case of Fee v. Cane, cites S. C. and says the Quetion was, if it was an Estate tail by the Limitation, or a Contingent Fee simple? And that it was held an Estate Tail; for if it had been a Contingent Fee, the Remainder over had been void. Whm. Rep. 1. A 3 in page 99. Hare Ch. J. cites that the Words (Neat. Issue) must there be taken to be the Male of C. as 37. 4. says, he has heard that it is a Contingent Estate, but yet it might be a Contingent Estate void. 37. 4. Powell. J. cites S. C. and says, it was not necessary or material to go to determine whether the Estate limited was a Fee Simple, or a Fee Tail; for if the Remainder was Contingent it was as sufficient, and in the meantime the Remainder in Fee was executed, and the Contingent remainder never happened. And the the Limitation to the first Son of C. which should have Issue Male &c. was only a Description of the Person, yet the Words (such Issue) might likewise well enough refer to the Words (Heirs Male) which may help the Resolution.


13. A. surrendered a Copyhold Tenement to the Use of himself for Life, Edwards v. and after to the Use of his Youngest son, and the Heirs of his Body. If B. Le. 152. attain to the Age of 28 Years; and if he die before he attain to that Age, Trin. 35 without Issue Male, then to his [A's] Right Heirs. The Question was Car. 2. C. B. if this was a Contingent Remainder, or if it should attach immediately to be upon the Death of Tenant for Life? And held that it attach'd imm. S. C. that same, because of the Intent of the Party, and held to be the same, with Sir Julius Caesar's Case, in Jo. 389. 2 Show. 393. pl. 379. Alich. S. B. 36 Car. 2. B. R. Stocker & UX. v. Edwards.

the Subject mentioned to be made to the Use of A. for Life, and after to the Use of his eldest Son and his Heirs (which in Effect is the Same Point) if &c. as in the other Case, and that the Issell at 17 Years of Age brought an Expuit, and it was held, That the by the first Words, that being a Condition precedent, yet on all the Words taken together, it was not so, but a Devise to the eldest Son immediately, but to be defeated by Condition subsequent, if he does not attain the Age of 18. And re-
Remainder.

fumbled it to the Cave of * Spring v. Cedar, and so it was adjudged in Mich. Term following.—* See Condition (r) pl. 12.

14. Devise to A. for 60 Years, if A. so long live, and from and after the Death of A. to B. his eldest Son in Tail, whether this be a Contingent or a Vested Remainder? Per Lds Commissioners, It would be hard to construe the Meaning of the Words to be from and after his Death within the Term; for suppose A. should outlive the Term, should B. take in the Life of A.? That would be contrary to the Words and Intent of the Testator. Suppose it had been 6, 7, or 8 Years instead of 60, could there be any Room then for such Constructions? And at what Number of Years is such Construction to begin? 2 Vern. 131. pl. 129. Hill. 1690. Beverly v. Beverley.


16. Contingent Remainder must vest during the Particular Estate, or Estate, that it determines. 1 Salk. 228. Palch. 6 W. & M. B. R. Reeve


— 2 Rep. 51. (g) Cholmley's Cave —2 And, 39. Baldwin v. Smith, als Archer's Cave.— Cro. E. 453. S. C.—1 Rep. 66. b. S. C. —2 Lea, 39. Purefoy v. Rogers.— But the Statute to & 21 W. 3. cap. 16. § 1. Enacts that where any Estate is by Merit or other Settlement limited in Remainder to, or to the Use of the fift or other Sons of the Body of any Person, with Remainder over to, or to the Use of any other Person, or in Remainder to, or to the Use of Daurhers, with Remainder to any other Persons, any Son or Daughter of such Person born after the decease of the Father, may take such Estate in the same Manner as if born in the Life-time of the Father, altho' no Estate be limited to Trustees to preserve the Contingent Remainder.

17. After a Contingent Male Remainder is once limited, no Estate after limited can be vested, but when a Contingent Male Remainder is not in Fee, but only for Life, or in Tail, an Estate after limited by subsequent Words may be vested. Adjudged. 3 Salk. 300. Doddington v. Kyme. [but should be Doddington v. Kyme]

And therefore a Limitation to A. for Life, Remainder to B. (the Wife) for Life Remainder to all the Issue Female of their 2 Bodies, and to the Heirs Male of the Bodies of such Issue Female; A. and B. have Issue a Daughter. Refolv'd the Remainder in Tail is not so attached in this Daughter, as not to be divisible for a Moity by an After-born Daughter; for this Limitation being by Way of Use, springs out of the Estate, according to the Capacity of the Person in whom it is to rest. Comb. 407. Hill. 10 W. 3. B. R. Matthews v. Temple.

If N. yet the Heirs of J. N. shall take, then't be vested in the one before the other hath a Capacity to take; but had the particular Estate determined after the Death of J. S. and before that of J. N. there perhaps the Heirs of J. N. should never take; and in this Cave they are Jottennants for Life, and Tenants in Common of the Inheritance. Comb. 407. Matthews v. Temple.

(M) Contingent Remainder. What is.

It's being uncertain whether the Remainder will vest Ex- demi Infants, that the precedent Particular Estate shall end or not, makes it a Contingent Remainder. Arg. Raym. 143. cites; Rep. 39. Barnum's Cave, and to Rep. v. Lampert's Cave.

A Contingency is when it is uncertain whether the Thing will take Effect, or not; as when an Estate is limited to a Person not in Estate, as a Lease for Life, Remainder to the right Heirs of J. S. who is alive; for it is uncertain whether J. S. shall ever have an Heir. 2dly. When there is a Constitution precedent, or some other Accident, which ought to happen before it can take Effect, which is uncertain whether ever it will
Remainder.

will happen or no. As if a Leafe for Life be made, and that if J. die 1st, then the Remainder to the said Heirs of A., or of B., forever, then the Remainder to the right Heirs of B. In these Cases it is uncertain whether the Money will be paid, or the Accident happen. 9thly When a Remainder is so limited that it is uncertain whether it will continue during the Contingence of the particular Estate; for if it cannot well during the particular Estate, or immediately when the particular Estate determines, it is void. Arg. Polio. 56. 57. in Cae of Wedle v. Lower.

2. By Indenture between J. of the one Part, and A. B. C. and D. of the other Part, J. demnifies Land to A. for 80 Years, if A. should live so long, and should not alien the Term; and if A. die or alien within the Term, then J. granted the Premises to B. for so many Years of the said Term as should be able to come, if he should live for ever, and not alien, and in like Manner to C. and if C. die or alien, then J. granted it to D. his Executors and Aliens, for so many Years as should be able to come. Adjudged that this is a good Possibility in D. to have Term for Years, but B. and C. dying in the Life of A. the Possibility to D. could not take Effect, because the Contingency is to D. upon the Ceilier of Estates of B. and C. who never had any Estates, because of their dying in the Life of A. Mo. 476. pl. 684. Mich. 37 & 38 Eliz. B. R. Loyd v. Wilkinson.

A. had 2 Sons B. and C. and levied a Fine to the Use of himself C. S. C. died for Life, Remainder to B. his eldest Son for Life, and after to the first Son of the Body B. and his Heirs Male, and to 4 Sons successively in Tail, after his Death. And if it should be made to die without his Male, then to remain in C. A. dies. B. dies without Male, leaving a Daughter. Adjudged that the Ue veils in C. tho' B. had no Male, and B.'s having Male was no Condition precedent. Mo. 456. pl. 686. Patch. 38 Eliz. Holcroft's Case.

4. Devise to A. in Tail, provided if A. or any of his Issue alive, then for C. J. 61. Default of such Issue the Premisses to remain to B. in Tail. Per omnes J. pl. 7. Hilts for Act. Chit. S. C. and S. in part. that Daniel, Kingdon, and Andrew for held as here, and that so it is a Conditional Limitation which is void and repugnant to make Remainder to commence after the Alienation of an Entail; but that Walsingham and Warber were held on an Effectual Limitation of the Entail, and of the Remainder expectant thereupon, and not to begin upon the Alienation, and Judgment was given according to the Opinion of the 3 Justices. — But Mo. 72, says, That the Judgment was reversed in B. R. Mich v. Jac. — S. C. to Rev. 8. Patch. 14 Jac. and there Pg. 86. The Ch. J. was of the Opinion of the 3 Justices, but says that this Point was not referred. — Brown. 165. S. C. argued, but no Judgment.

5. A Fine was declared to the Use of A. for Life, Remainder to the Ue of the Heirs Males of A. on the Body of B. begotten, Remainder to J. S. in Tail, Remainder to the Right Heirs of A. in Fee; and if the said A. should happen to die the said M. then the Fine should be to the Use of the said M. for Life, and after for Devise to Uses a'ordain'd; Resolved, That A. dying, living M. the has an immediate Estate for Life, and so settled by the Law. — Ley. 54. Mich. 14. Jac. Botick's Case.

6. Devise to A. for Life, then to B. in Tail, and if my 3 Daughters, and Roll Rep. either of them over-live A. and B. then they have it, and after them I give it to J. W. &c B. died, and 2 of the Daughters died, living A. then A. died. The Question is, If this was a Contingent Estate, and if A. after, whether it were performed by 2 of the Daughters dying in the Lifetime of B. And it was resolved that it was no Contingent Limitation, but only thes when it should commence, which is well enough performed. Cro. J. 416. Hill. 14 Jac. B. R. Webb v. Herriing.

7. A Fine is levied by A. to the Ue of himself for Life, Remainder to his 1st Son, and to the Heirs Males of his Body begotten &c. and so on to his 6th Son Adjudged, Remainder to the Right Heir Male (in the Singular Number) of the Consort, to be begotten after the said 6th Son, and of his Heirs Male, S. C.
It was ruled upon Evidence at Bar, That this Limitation to the Heir Male was only a Contingent Remainder, and not an Estate Tail in the Heir Male, because it was limited to particular Perfons. Palm 339. Patch. 18 Jac. B. R. Walker v. Snow.

8. A. settled in Fee of 2 Acres, in Specif'd G. and H. whereof 2 Acres were to the Ufe of his Male for Life, and the 2d Acre to the Ufe of his Female for Life, and after the Death of B. then the 3d Acre was to be to the Ufe of K. the Wife of B. for Life; and the other 2 Acres after the Death of A. and M. to the Ufe of B. for Life, and after the Death of A. and M. to the Ufe of K. and of such Issue Male or Female, as the said B. would begot on her, until such issue should be of the Age of 21 Years, and no otherwife; And if B. should have no Issue by her, then to the Ufe of K. for Life, and after the Death of A. and M. and all the Lands to the Ufe of B. and the Heirs Male of his Body, to be begotten on K. and for Default of such Issue to the Heirs of B. for ever. B. has Issue C. a Daughter yet living, and makes a Leafe of all the Lands by Indenture to the said G. for 500 Years to commence after A.'s Death, and after grants by Fine to the said G. for 500 Years, and then he and M. die. Upon a Reference out of Chancery to the Lord Ch. Hale, he held, That as to the 3d Acre limited to K. for Life, the Remainder therein was not Contingent, but was vested; Because by the Limitation after the Death of A. and K. being construed Distributively, it shall be taken that as to the 3d Acre the Estate of B. commenced in Possession after the Death of A. and K. only; For in this Acre M. had nothing; and as to the other 2 Acres where M. had an Estate for Life, there it shall be taken commence after the Death of A. and M. Pollexf. 54 & 67; Jan. 3. 1672. Weale v. Lower.

9. A. made a Feoffment to the Ufe of his Male for Life, and after the Death of his M. and his Wife to the Ufe of B. (eldest Son of A.) for his Life, and after the Death of A. and B. to the Ufe of B. and the Heirs Male of his Body, and for Default of such Issue to the Ufe of the Heirs of B.—B. had Issue a Daughter, and then by Fine and Indenture granted to G. for 500 Years. B. dies. M. dies. A survived. Upon a Reference out of Chancery to the Lord Ch. 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. Pollexf. 55 & 65; Jan. 3. 1672. Weale v. Lower.

Ch. J. Hale said, the Ufe shall not be contingent; but the mentioning that the Commencement thereof should be after the Death of M. is only an Expression when B. should take the Profit in Possession, and not a Contingent. Pollexf. 66. S. C.

10. Leave to A. for Life, and after the Death of A. and M. his Wife, the Remainder to B. his Son and his Heirs, this is a Contingent Remainder; For the particular Estate being only for the Life of A. and the Remainder not to commence till after the Death of A. and M. this may determine by the Death of A. before M. And it would have been in such Case at Common Law; And tho' it had been by way of Ufe, yet could not the Remainder be preferred without a particular Estate. Admitted. Arg. Pollexf. 57. in the Case of Weale v. Lower.

11. Lord Ch. J. Hale took a Difference between a Contingent Remainder by way of Ufe, and a Future Ufe, or an Estate in Future by way of Ufe. Pollexf. 65. in Case of Weale v. Lower.

12. As if a Feoffment be made to the Ufe of A. for Life, and after the Death of A. and B. to the Ufe of C. in Fee, this is a Contingent Remainder to C. Pollexf. 65. Weale v. Lower.

13. But if a Feoffment be made to the Ufe of C. and his Heirs after the Death of A. and B. this is no Remainder, but a Future Ufe, and the Feoffee is settled in Fee-Simple, and not of a Freehold dienteable, determinable upon the Deaths of A. and B. Pollexf. 65. in Case of Weale v. Lower.
15. So if the Limitation of an Ufe be that after 3 years, or after the Death of J. S. it shall be to the Ufe of J. N. in Fee, the Feudor has the Fee-simple remaining in him until this future Ufe comes in Eliz. Pollexf. 67. Weale v. Lower.

16. It a Lease be made of Bl. Acre to A. of Wh. Acre to B. and of Gr. Acre to C. and that after the Death of A. B. and C. it shall remain to D. and his Heirs; in this Case D. shall not have a Contingent Remainder, but the Construction shall be Relative. Pollexf. 67. in the Case of Weale v. Lower.

17. A. died in Fee of Lands in Osborn, devised them to B. for Life, if he should be living at the Death of A. the Teftator; but if not, then to C. for Life, if he should be then living; and if not, then to remain to the next Heir Male of the Body of C. and for Default of such Male, to the next Heir Male of the Body of B. Remainder over in Tail Male, to the Intent that his Land might (if place God) continue in his Name for ever. A. died, then B. died leaving Issue of C. and the Question was, Whether C. took any Estate by this Will? It was argued that he did not; for by the Express Words nothing was given to him unless B. had died in the Lifetime of A. which he did not, for he survived; neither could he take by the Devise to the Heir Male of the Body of B. his Father; because it is a Limitation by way of Remainder, which with the particular Estate is but one Estate, and if the one does not vest, the other never shall; and (if C. dies) shall be intended (if he dies before A.) and not generally, it being certain that he shall die; and that no Remainder shall take Effect till C.'s Death, and that not happening before or at B's Death, when the particular Estate determined, it never shall take Effect: But it was answered, That the Clause (And for Default of such Issue then to the Heirs Male of B.) is not Contingent but stands absolutely, and is a good Limitation, and after B's Death took Effect in C. the Defendant; The Court was of Opinion that C. the Defendant had an Estate by the Devise; And Judgment was given, Quod querenas nil capit per Billam. 2 Jo. 111. Trin.


18. It was held, That if Land be given to the Feme appro priata vidit etate, but if Land and atter to the Heirs of her Body, that this is an Estate Tail executed in the Feme, and not Contingent, Sid. 247. in Case of Merrill v. Rumley.

Creator's Remainder to the Heirs of the Body of the Baron, this hath been held to be a Contingent Remainder. Per Jones 3d. sid. 247. in Case of Merrill v. Rumley, cit. 4th. 5. 20. 21. Finch. Breve St. 62. Perkin 8. 53.

19. Devise of a Term to his Wife for Life, and after her Death to the Chin Prece.

Child she was then Enfeint, with, and if such Child died before 24, then he devised one third Part to the Wife, her Executors &c. and the other two Parts to other Persons, and made her Executor. The Wife's being Enfeint, is not necessary to attile her to the 3d Part. G. Equ. R. 741. Hill 8 Ann. Jones v. Weitcomb.

20. A. conveyed Lands to the Use of himself for 99 Years, if he so long live, Remainder to Trustees and their Heirs during his Life &c. Remainder to the Use of the Heirs of his Body, Remainder to himself in Fee. Lord C. Cowper said, That this was plainly a Contingent Remainder being limited to the Heirs of the Body of A. who can have no Heir during his Life; for Nemo est Heres Viventi; and that the Meaning of the Limitation is to carry the Settlement as far as may be, and beyond the Limitation to the first Son. Wins's Rep. 387. 388. Mich. 1717. Elie v. Osborn.

(N) Cont-
A Right of Allion cannot support a Contingent Remainder; but there must be a Particular Estate actually in Being, or a present Right of Entry, but a Future Right of Entry is not sufficient. Vent. 159, in Marg. says it was so held per Cur. in the Case of Thomson v. Leach.

6. A Term of Years will not support a Contingent Remainder, tho' the Term and Remainder are both devised by a Will. 4 Mod. 255. 

7. A devised Lands to Trustees and their Heirs for 500 Years for the Payment of 50 l. per Annu. to B. his eldest Son for Life, Remainder from and after the Determination of the said Term to the Use of the Freehold Son of the Body of B. in Tail, Remainder to C. the 2d Son of A. in Tail, Remainder to D. the 3d Son of A. in Tail. B. had no Son born at A's Death. The Judges of B. R. thought the Remainder to the first Son of B.
B. void, and that the Remainder to C. was a veiled Remainder; but Park
c. inclined to support it, if possible. But then the Dispute was

and that an Intestate till the Birth of a Son of B. (and who is since born) descended
the Contingent Remainder supported. (Ut Audivi)

S. A special Verdict found as follows, viz. A. and B. his Son and
Heir apparent, being feited in Fee of Lands in S. and T. by FeeHold
and common Recovery, in Consideration of a Marriage intended
between B. and M. and 5000 l. Portion, settled the Premises to the following
Ufe, viz. To the Ufe of A. till the Marriage, and after, as to the
Lands in S. to the Ufe of B. and his Alligns for 99 Years, if he should
fo long live, and from and after the Death of B. or other sooner De
determination of the ESTATE to him limited, to the Ufe of Trustees and their
Heirs, during the natural Life of said B. to support the contingent Remainders,
 Remainder as to Part to the Ufe of M. in Jointure; and as to all the
Rest of the Premises to A. for Life, Remainder to the Ufe of the said B. for
99 Years, if he should fo long live, Remainder to Trustees to support Con
tingent Remainders, Remainder to first &c. Sons of B. by M. in Tail
Male, Remainder to the Ufe of first &c. Sons of B. by any other Wife in
Tail Male, Remainder to A. for Life, and after his Decease to the Ufe of C.
2d Son of A. and his Alligns for 99 Years, if C. shall fo long live, and
from and after the Death of C. or other sooner Determination of the
Estate herein limited to C. for 99 Years as aforesaid, then to the Ufe of
Trustees and their Heirs, for and during the natural Life of C. upon
Trust to support Contingent Remainders, and to make Entries as Occasion
shall require, but to permit the said C. and his Alligns to take the Rents &c.
during the Term of his natural Life; and after the End, or other sooner Determination of the said Term, to the Ufe of the first, and other
Sons of the said C. in Tail Male, and after several other Male Remainders
to E. Father of the Leilor of the Plaintiff, for 99 Years, if he shall fo
long live, Remainder to Trustees to support &c. Remainder to first &c. Sons in Tail Male.
C. by the Deaths of the preceding Remainder
Men, because posseffed of the Premises for 99 Years, if he shall fo long
live, Remainder as above limited. C. had a Son D. and no other
issue Male. C. being so posset'sd, afterwards he, together with D.
his Son, leased a Fine, and suffered a Recovery of the Premises, D. died
without issue in the Life of said C. Afterwards C. died without issue
Male, leaving 4 Daughters, H, I, K, and L. The Leilor of the Plain
tiff, the nearest surviving Remainder-Man, made his actual Entry within
5 Years, and being so feited, demised to the Plaintiff &c.
The Question was, Whether the Common Recovery suffered, in which D.
was vouch'd, was a good Bar. The Tenant to the Precept was
made by C. (who was a Lease for 99 Years, it he fo long lived) and by D. the
Son, so that the Remainder was limited in Tail. And tho' C. was only
Tenant for 99 Years, if he be so long lived, yet it was intitled, 1. That
by this Fine a Frehold pas'd; for that it was not void, but voidable.
2dly. That tho' the Fine levied by C. did convey no Frehold, yet that
D. Joining in the Recovery, there was a good Tenant to the Precept,
notwithstanding the Limitation to the Trustees for preferring the Conti
gent Ufes; for that the Limitation over to them, was either a void
Remainder in it's Creation, or else it was Contingent and never Velled.
And it was likewise sufficiently, That the Limitation passed no Estate to the
Trustees, but only a Right of Entry. But to this it was said by the Ch. J.
who delivered the Opinion of the Court, That 1st. As to the Fine
levied by C. no Cafe has been cited to prove it good; and the Law is
now clear and lefttled, that such Fine of a Tenant for Years, by Reason
of the Imbecillity of his Estate, Nihil Operat, and that it will be a
good
good Plea in such Cafe Quod Partes Finis nihil habeercnt; So is 5 Co. 124, 3 Co. 78. Hard. 400. And fo it was held in the Cafe of Quinte. 2 Neuir, Sulk. 339. which he said he cited from a MS. of Lord Holt, where, upon taking Notice of the different Operations of a Fine and of a Feoffment, he says that if Tenant for Years makes a Feoffment in Fee, the whole Estate of him in the Reversion is divested; but if he levy a Fine Nilhil Operator, by which Words it is plain that he meant no Freehold pass'd, for he puts a Feoffment in Opposition to a Fine; and therefore since a Feoffment does divest the Estate, there can be no Doubt but that Nilhil Operator must signify that the Fine divests no Estate. And this Opinion of Lord Holt is likewise agreed to be Law by Ld. C. Macclesfield, in the Cafe of Carter h. Barnardifon, P. Win's Rep. 519. and such Fine is said to be void. So that here is the Opinion of Lord Coke, Lord Holt, and Lord Macclesfield, with the Concurrence of several other Judges in Support of this Side of the Question, and not one Authority to be found to the contrary. Taking it then, that this Fine had no Effect to pass the Freehold, the next Thing to be considered is the Consequence of D.'s joining in the Recovery. And as to that, it is certain that if there was any Freehold in D. this Recovery will be a good Bar. If he had not, then the Title will be in the Leifor of the Plaintiff. And said, that the Court were all of Opinion that the Freehold was not in D. and that the Remainder to the Trustees was not void, nor Contingent; nor is this Limitation to be construed as giving only a Right of Entry to the Trustees, as has been intilled at the Bar. 11. It is not a void Remainder. The true Description of a Remainder is, That it is a Remainder or Remnant of an Estate in Lands or Tenements, expectant upon a particular Estate created together with the same, and at the same Time. Co. Litt. 143. And it is so expectant upon the Particular Estate, that unless it can take Effect when the Particular Estate determines, it is void. The Reason given to prove this a void Remainder is, That the Remainder to the Trustees being limited to the Trustees to commence after C.'s Death, and then afterwards to hold during his Life, this was repugnant; and were there no other Words in the Settlement, possibly there might be some Force in that Objection. But here are other Words in the Limitation; for it is from and after the Death of C. or other sooner Determination of his Estate, then to Trustees. And he apprehended that those Words, (Or other sooner Determination of the Estate) are a full Answer, because by them there is plainly a Remainder limited, which may take Effect by Surrender, or Forfeiture, or Disjunction of Time in C.'s Lifetime; and so here are Words to make this a Reasonable Limitation, and Possible to take Effect. Upon this Head was cited by the Counsel for the Defendants the Cafe of Cumberland and Birth, 2 Lev. 157, to prove, That where there is an Estate limited upon two Disjunctives, which cannot stand together, (because if one happens the other cannot) that in such Case it shall take Effect upon neither, but the Settlement shall rather be construed to be void. There the Settlement was with a Provifo, That if none of the Brothers of the Grantor, or their Children, were living at such a Time, then to his Brothers succesively. And the Court held it a void Limitation. But that Cafe does not come up to the present; for the true Reason upon which the Court then founded their Opinion was, That the Death of the Brothers and their Children was considered as a Condition precedent; and it appeared in the Case, that the Children of the Brothers were living, and so the Condition not performed on which the Remainder was limited; and it was not determined upon the Foot of the Necessity of the Remainders taking Effect upon both Disjunctives. Now here, by (the Death of C. &c.) it was never intended that the Remainder should vest on the Death of C. but (as appears by the express Words) on a Determination of the Estate for 99 Years before his Death. 2dly. But it is said, Supposing that this Remainder is not void in its Creation, and that it might have taken Effect one Way or
or other, yet it was Contingent, and is now become void by Event, because it is not limited to commence absolutely from the End of the 99 Years, but from some other fooner Determination, which is uncertain, and not only as to the Time when such Determination may happen, but whether it ever may happen. For C. may well have been prelumed to have outlived the Term. But he thought that this is a Mistake, and that there is no Warrant for such a Position by any Rules of Law. Contingent Remainders are of 3 sorts. 1st. When it is a Limitation to the not in Effet; for in that Case the Remainder-man never does come in Effet, it is a void Remainder. 2dly. When the Particular Effet may determine before the Remainder can commence, as an Effet to A. for Life, and from and after the Determination of his Effet, then to C. during the Life of A. This is good by Contingency; that is, if A. forfeit his Effet by Alienation, or otherwise, in his Life-time. 3dly. When there is a Limitation Precedent, or something to happen (before the Remainder can take Effet) which may never happen. As a Remainder to commence when J. S. shall return to England from Rome. Now the present Remainder cannot be said to be Contingent within any of these Descriptions; for, 1st. Here are Perls in Effet to take. 2dly. The Remainder does not depend on the Death of C. but it is expressly limited from &c. other fooner Determination; so that immediately from the Expiration of the Particular Effet, the Remainder is to commence. 3dly. Nor is here any precedent Condition to be performed, in Order to give the Trustees Title. But it only depends on such Facts which determine the Particular Effet from the Nature of the Effet itself, and which were understood to be so when the Remainder was originally created, viz. That all Estates for Years, if the Party so long live, may determine not only by the Death of the Party, or Effluxion of Time, but by Surrender or Forfeiture: And such Determinations the Law takes Notice of, and will expect, as appears by 2 Co. 51. &c. as a Lease to A. for Life, Remainder to another during the Life of A. this is good, because by Possibility the Remainder may take Effect by the Tenant for Life’s aliening or committing a Forfeiture; and this Possibility is therefore considered as an Interest in the Grantor, which he may limit, and is that Sort of Effet which Trustees have for preferring Contingent Uses, and it is not a meer Right of Entry, nor a Contingent Remainder, but a vested Effet to take Effect by those Ways and Methods of Determination to which the Particular Effet was subject when it was created. And for this Co. Lit. 42. puts a Case, which he apprehended explains this very much, viz. If Tenant for Life makes a Lease by Deed, or without Deed, to him in the Remainder, or Reversion in Tail, or in Fee, for the Life of him in the Remainder or Reversion, and after he in the Remainder takes Wife, and dies, his Wife shall not be endowed; for the particular Tenant shall enjoy the Land again; because it cannot be a Forfeiture, he in the Remainder being privy, and it cannot be a Surrender, because his whole Estate was not given. Now in the present Case what is there remaining in the Grantor? It is a Possibility of the Lease’s dying in the Life-time of the Leesor, or of his Forfeiting or Surrendering the Effet. And yet my Lord Coke says, This is a Freehold, and gives this as an Instance, that where there may be several Freeholds derived out of the same Effet, tho’ at the same Time, it is but a Possibility, and sufficient to prevent the Wife of him in the Remainder from being endowed; and agreeable to this is Mr. Duncombe’s Case. 3 Lev. 437. A. Tenant for Life, Remainder to J. S. and his Heirs for the Life of A. Remainder to A. in Tail. The Court held there, that the Remainder to J. S. (tho’ but a Possibility) was such an Interposing Effet between the first Effet limited to A. for Life, and the last Effet limited to him in Tail; that A. could be considered as no more than a bare Tenant for Life, and that consequently his Wife could not be endowed, which seems to be our Case as to this Point; for he took it that J. S. could be no other
there than a Trustee for preferring the Contingent Uses. Having said thus much to shew upon what Grounds Limitations to Trustees made in common Form must operate, he said he would consider what Construction the Limitation in the present Case ought to have; and he thought they always operate in the Manner express'd in this Limitation, viz. That Part of the Limitation which is called Contingent, from the Words (Or other fooner Determination.) The Common Kind of Limitation is first to A. for Life, and from and after the Determination of his Estate, then to Trustees for the Life of A. or to A. for 99 Years, if he long live, and from and after the End of that Term, then to Trustees during the Life of A. Now in the first Case the Remainder limited to the Trustees being to continue during the Life of A. cannot take Effect upon the Natural Death of A. nor otherwife than by a Surrender or Forfeiture of his Estate. Nor in the 2d Inftance, otherwife than by Effluxion of Time, or by Surrender or Forfeiture, and perhaps in both Cafes by Civil Death. And he thought that the fome Objections which have been made in the prefent Cafe, might with equal Reafon be made to every Limitation for preferring Contingent Remainders. For tho' thefe Words, (Or other fooner Determination, are not always inferred, yet there is no Settlement to be found which does not import as much. And fo in Bridgem. 334 there is a Settlement without thefe Words indeed; but yet the Construction upon it muft be the fame as if they were inferred, because there the Remainder is limited only during the Life, as it is here, and confequent ly muft be confined to commence on a Determination of the Particular Estate before the Death of A. The true Meaning therefore of thefe Limitations is, That when an Estate is given to A. for Life, the Limitor has notwithstanding an Intereft remaining in him to enter upon Alienation, Forfeiture &c. which Intereft, when conveyed to Trustees, is a Remainder or Legal Estate, which they are faid to have for preferring Contingent Remainders; and fo it is called by Lord Cowper 2 Vern. 755. Elie v. Osbourne. So that in the common Cafe of Marriage Settlements, where an Estate is limited either to the firft Taker for 99 Years, or for Life, with Remainder to Trustees to support the Contingent Remainders during his Life, they were of Opinion that by fuch Limitation a prefent Freehold pallets to the Trustees subject to the Term of 99 Years, in fuch Manner that it cannot take Effect till the Determination of that Term; But that Determination muft always be in fome Manner or other fooner than the Natural Death of the Particular Tenant; and tho' this Remainder may depend on the Trustees coming into Possession, and upon Surrender or Forfeiture, which Facts may or may not happen, yet fuch Facts are in Law Possibilities not remote, and not merely Contingencies; and it would be of the moft dangerous Confequence, and might overturn moft of the greatest Estates in the Kingdom, if another Construction were to prevail, because it would then be in the Power of Caffy que Ufe to bar any Settlement whatever, without the Conitent of the Trustees. For thefe Reasons his Lordhip faid they were all of Opinion, That a Freehold vested in the Trustees undisturbed, and that no Freehold ever was in D. and therefore he was no good Tenant to the Plaintiff, and confequently that the Lessee of the Plaintiff must have Judgment. Mich. 14 Geo. 2. B. R. Smith of the Denife of Dormer v. Parkhurst & al.—This Judgment was affuir'd in the Houfe of Lords.

(O) Re-
Remainder.

(O) Remainder destroyed by Act of the Party.

1. There is a Difference between a Limitation of Use by Feoffment &c. and a Devise. If there be Devise to A. in Fee, and after to B. in Fee, there is no Means to destroy the 2d Fee. But if a Feoffment be to the Use of A. and his Heirs, and if A. die without Issue, then to B. in Fee &c. Feoffment by A. will destroy the Fee to B. So Feoffment to the Use of A. when he marries my Daughter, if I fell the Land before A. marries her, and after he marries her, A. shall not have the Land. But if it be by Way of Remainder then there is no Difference between Use and Will, or Estate at Common Law. Arg. Litt. R. 234. Patch. 5 Car. in Beck's Cate, cites Pell and Brown's Cate, and Archer's Cate.

2. Baron feised in Fee makes Feoffment to the Use of himself and his S. C. cited Wife, and to the Heirs of the survivor of them. Baron makes another Feoffment, and dies; the Wife enters and dies. Adjudged that the future Contingent Ue of the Fee is destroyed by this Feoffment, and Judgment affirmed in Cam. Scac. Cro. C. 102. Hill. 3 Car. C. B. Biggett v. not reft in the Peone by her Entry.

after the death of her Baron; for that she had no Right, because the Baron had destroyed the Contingent Ue by the last Feoffment; so that it could not accrue to her at the Time of his Death. — S. C. cited by Holt Ch. J. in Case of Thompson v. Leach, who laid, That it is Nice to an Infant; for the Right ought to be precedent to support the Contingency, and that therefore in that Case because the Right arose to the Wife En Infainting, that the Contingency happened, the Remainder was adjudged to be destroyed; and that the Case has always been held for Law. Lud Raym. Rep. 310. Hill 9 W. 3. — S. C. cited 12 Mod. 174. Per Cor. And they laid it is a Remarkable Case, and that it was held that this Contingent Remainder could not arise out of the Wife's Estate, because during the Contingency she had no Right of Estate or Allure, but the Husband had Power of the whole Estate, and that her Estate and the Contingency happened from the Infant, yet this was not sufficient, because the Particular Estate which should support the Contingency, ought to be precedent.

A. feised of Land levied a Fine, 3d Eliz. to the Ue of A. (himself, as I suppose) and his Wife for their Lives, and to the Heirs of the Survivor of them; afterwards A. made a Feoffment, and died, and resolved that it was Contingent for the Fee simple. Cited in Beck's Cate Litt. Rep. 291. as Parkinsoo's Cate in the Exchequer.

3. A. was a Copyholder for Life, with Remainder to his 1st, 2d &c. Sons in Tail, Remainder to B. in Fee; A. before a Son born, gets a Conveyance from the Lord of the Manor of the Reversion in Fee of the Copyhold, as thinking that would merge his Estate, and destroy the Contingent Remainder; The Contingent Remainder is not destroyed, the Freehold being in the Lord. Admitted by the Proceedings. 2 Vern. 243. pl. 228. Mich. 1691. Mildmay v. Hungertord.

4. Where a Remainder does not take Effect presently, but vests in the Survivor, it is as an Executory Devise, and a Recovery is no Bar. Arg. 2 Lutw. 1224. in the Cate of Weekes v. Peach.

(P) Remainder. Destroy'd by Act of Law.

A. Had 3 Sons B. C. & D. and devis'd Bl. Acre to B, Gr. Acre to C. Bulk 61. S.C. and Wh. Acre to D. and that if any of them died the other surviving — S. C. cited should be his Heir. A. died, B. died. Fleming Ch. J. thought that Bl. Pellan. 59. Acre would vest in C. & D. by way of Remainder, and that they should take, tho' the Freehold by the Defent of the Fee was drowned. But all 3 in the Cate of Pure. v. Rulve, the Reversion in Fee depending upon B. had drowned it for Life, gen. — 5 O and
Remainder.


2. A. covenants to stand seised to the Use of himself for Life, Remainder to B. for Life, Remainder to the 3rd Son of B. in Tail; A. was attainted and executed for Treason before a Son born to B. Resolv'd, The Son after born was bar'd, and the Crown has the Fee-Simple, dícharg'd of all the Remainers limited to the Son not then born and. Mo. 815. pl. 1103. Trin. 9 Jac. in the Star-Chamber. Sir Tho. Palmer's Cafe.

But where A. was Seiz'd for Life, Remainder to his Wife for Life, Remainder to his v. c. etc. Sons m. Tail, Remainder to the right Heirs of A. and A. committed Treason, and then had a Son, and then was attainted. It was held, That whether the Son was born before or after the Attaint, the Contingent Remainder to him was not discharged by the Velling in the Crown during the Life of A. because of the Wife's Elate, which is sufficient to support it. 2 Selk. 376. Pach. 5 & 6 W. & M. B. R. Carver v. Tichborne.

3. A. the Grandfather seised in Fee conveys to the Use of himself for Life, Remainder to B. the Father for Life, Remainder to the 3rd Son of B. in Tail, Revolution to A. in Fee. (The Grandfather) A. dies leaving B. but no Son then born to B. but afterwards a Son is born, named C. Whether by the Death of A. before the Birth of C. by which the Revolution in Fee descended to the Contingent Remainder was destroy'd, was the Question. It was argued, That this was a Deceit, which will injure no Man; and, as in Lewis Bowles's Cafe it is laid, That the Tail is vested Sab Medo in the Father; and after, when the Estates before united are divided, to in this Cafe shall it be by the Deceit of the Revolution, (which is an Act in Law, and does not operate on the Conveyance) tho' the Estate for Life is merged in the Fee. But on the other Side the Cafe of Lewis Bowles was argued, For there the Intent of the Conveyance should be destroy'd by itself and the Contingent Estate should not vest by the Birth of the Son; But here the Deceit consolidates the Inheritance, and tho' by an Act out of the Conveyance itself. And the Cafe being clear upon this Point, it was adjudg'd, That the Remainder was destroy'd; and to former Judges in Ireland affirm'd. 2 Jo. 76. Intrat. Hill. 26 & 27 Cat. 2. Hartpole v. Kent.

S.C. Pollexf. 479 to 489. That the father's Part should go to the others. It was argued, That the Revolution descends upon the Elders, and that this destroys the Contingent Remainder to the others; which was admitted by the Counsel of the other Side, but
but said, That it might be good by way of Executory Device. Adjo-

Accordingly

but the Reporter says, He heard that it was afterwards adjudged

for the

Plaintiff.


If Tenant for Life with Contingent Remainder be, and Tenant for Life
makes a Feoffment in Fee on Condition, and the Contingency happens before
S. & P.—the Condition is broken, the Contingency is for ever destroy’d; Because
there must be a particular Estate in Being, or a Right of Entry when the
S. & P.—So if before the Contingency happens the Reversioner enters for a Forfeiture the Contingent Remainder is destroy’d. Per Holt

6. If there be Tenant for Life with contingent Remainder to A. and
Tenant for Life is dispossessed, and alter that a Defendent and 5 Years past; The
Contingent Remainder is gone, Because there is nothing left to support it; For
the Right of Entry is turned into a Right of Action. Per Holt Ch.
J. 2 Salk. 577. Thomp. v. Leach.

in Right, and might have been revealed. 1 Rep. 66. in Archer’s Case.—

Poph. 83.—1 Rep. 135. b. (f)

(Q) Remainder. Destroy’d by Alteration of the Part

icular Estate. And what shall be said such Alteration.

1. It is regularly true, That when the Particular Estate is defeated A if the
Remainder thereby shall be also defeated; but it falls in divers
Cases; For where the Particular Estate and the Remainder depends upon one
Title, there the Defeating of the Particular Estate is a Defeating of the
Remainder; But where the Particular Estate is defeasible, and the Remain-
der by good Title, there tho’ the Particular Estate be defeated the Remain-
der is good. Co. Litt. 298. a.

A. re-enters and defeats the Estate for Life, yet the Remainder to C. being once vested by good Title shall not be avoided; For it was against Reason, That the Leafe should have the Remainder again against his own Livery, and this is well warranted by the Reason of Littleton in this Case. Co. Litt. 298. a.

So it is if a Lease be made to an Infant for Life, the Remainder in Fee, the Infant at his full Age dis-
gress to the Estate for Life, yet the Remainder is good; For that it was once vested by good Title, to
in both those Cases there was a particular Estate at the Time of the Remainder created. Co. Litt. 298. a.

2. If A. makes a Lease for Life, Remainder to the right Heirs of J. S. if A. and
Leetice for Life makes Feoffment in Fee in the Life of J. S. A. may en-

Lease for Life to B. Remainder to the right Heirs of J. S. if A. makes Feoffment in Fee, J S dies in the Life of B. This Right of Remainder for Life supports the Contingent Estate. Jenk. 248. pl. 38.

3. If any Alteration of Estate be before the Issue of the future Use, then the Use shall never be transferred in Possession before the Impediment remov’d, and the Estate re-continued. 1 Rep 138. 31 Eliz. in Chud-
leigh’s Case.

4. Land given to A. in Tail, and if J. S. comes to Westminster-Hall
such a Day, to J. S. in Fee; if the Estate Tail descends to 2 Coparceners, who
Remainder.

who make Partition. Now if J. S. comes to Westminster-Hall, the Fee shall not accrue; because the particular Estate is not in the same Plight it was before. 4 Le. 236. pl. 374. Anon.

5. Land given to A. & B. for the Life of C. Remainder to the right Heirs of A. or B. who shall survive.— A. releas'd to E.— The Remainder is defeas'd. 4 Le. 236. pl. 374. Anon.

As if a Wife be Tenant for Life, Remainder in Fee, upon Condition that the Feme continues a Widow; if she marries and the Heir enters, he defeas'd the Estate of the Feme, and the Remainder also. But if the Estate was made to the Feme during Witwes, Remainder over, and she marries, her Estate determined by the Limitation, and the Remainder over shall be good. Jo. 58. per Cur. in the Cafe of Foy v. Hinde.

6. Estate for Life on Condition, Remainder in Fee; By the Breach of the Condition the Entry of the Heir defeas'd not only the Estate for Life, but the Remainder also; For Condition defeats the Estate and all Remainders depending on it. Otherwife it is of a Limitation. Resolv'd Jo. 58. Mich. 22 Jac. B. R. in the Cafe of Foy v. Hinde.

7. M. a Feme Covert was Tenant for Life, Remainder to her first Son; The Reverfioner in Fee, before any Son born, convey'd the Inheritance by Fine to M. and her Husband; A Son was afterwards born, and then M. died. Per Cur. Tho' if M. had furviv'd her Baron the might have avoided and wav'd the Estate taken by the Fine, yet the Contingent Remainder to the Son is utterly defeas'd, he not being in Effe when the Contingent happen'd; For M. and her Baron took by Entireties, and so M.'s Estate was merv'd before the Contingent happen'd; and the Possibility which the had to wave the Inheritance, and fo to take back her Effe, Life, will not preterve it; For it the particular Estates which support Contingent Estates are not in Effe when the Contingent happens the Contingent Estate can never arife, whether it happens by Surrender, Merger, Feoffment, or any other Way: And Judgment accordingly. 2 Lev. 39. Hill. 23 & 24 Car. 2. B. R. Purefoy v. Rogers.

As if Tenant for Life, Remainder in Tail in Contingency. Remainder in Tail to Effe, be, and the Tenant for Life, Remainder in Tail in Effe, has a Fine, this is no Discontinuance nor Defeas'd of any Estate. Per Hale Ch. J. 2 Saund. 386. in the Cafe of Purefoy v. Ro-

8. In all Cases where the particular Estate is merv'd in the Reverfion there the Contingent Remainder is gone, tho' there is no defeas'd of any Estate. Per Hale Ch. J. 2 Saund. 386. in the Cafe of Purefoy v. Ro-

S. P. 5 Rep. 75. b. Per Coke Ch. J. in Lt. Stafford's Cafe. 2 Jo. 136. S. C. that the Contingent Remainder was not defeas'd, and per fuit the Effe, and the Remainder notwithstanding the Release, which only changes the Quality, nor the Substance of the Effe, and this shall preterve the Contingent Remainder. — 2 Show. 91. S. C. says, That it was adjudged that the Remainder was defeas'd, and says that afterwards it was adjudged it was not defeas'd. — Vent. 345. S. C. adnornatur; but says it was afterwards adjudged that the Remainder was defeas'd. — S. C. Freeman. Rep. 344. pl. 664. argued, but Curia adverfari null.


10. A. and B. Jointenants for Life, Remainder to the first Son of B. in Tail, Remainder to the other in Fee; B. surrenders to A. by the Words Give, Grant, Remile, Release to him and his Heirs. This continues the same Effe in Quality; tho' not in Quantity, and Release of one Jointenant to the other will not defeas'd a Contingent Remainder depending upon it. Raym. 413. Mich. 32 Car. 2. B. R. Harrison v. Belley.

11. A Tenant for Life of B. Remainder to the Right Heirs of B. and after A. grants his Estate to B. so that he had a particular Estate of the Frankenheit for his own Life, Remainder to his Right Heirs, yet the Remainder continued a Contingent Remainder. Skim. 408. Hill. 3. W. & M. B. R. in the Cafe of Goodright v. Cornth cited by Holt Ch. J. as a Cafe in E. 3.
12. A Tenant for Life, Remainder to his 1st &c. Sons in Tail Remainder over in Tail. A recovery to 1st. A makes a Lease for Years by Deed to J. S. who afterwards gave up the Deed of Lease to A. who cancelled it by tearing off the Seal with Content of J. S. But J. S. continued in possession, and during his possession, A. made a Lease to J. S. of the same lands for 3 Lives with Livery and Seisin, and afterwards A. marries and has a son B. This was a Case referred to Lt. Ch. B. Gilbert for his Opinion, which was, that if the Lease for Years was still subsisting notwithstanding the giving the Deed back, and its being cancelled, as he thought it was then the Interest which patted from A. to J. S. did not pass by Livery and Seisin so as to work a Discontinuance of the Estate for Life, but only by way of Release to the Tenant for Years, and by way of enlarging his Estate; for it was a Reversion depending on a Lease for Years, and passes by way of Grant and Appomnent to a Stranger, and by way of Release to the Tenant himself; and such Grant and Release transfers no more than the Tenant for Life might lawfully pass (viz.) an Estate during the Life of the Tenant for Life, and consequently the particular Estate for Life was in Being, when the Contingent Remainder came in Efflue. G. Equ. R. 235. Cases in the Exchequer in Ireland in the Time of Geo. 1. Magennis Lefee of Clove, Maccallough.

13. Devise to W. R. and W. S. and their Heirs in trust and to the Use of D. the Devisee’s Sister for Life, Remainder to W. R. and W. S. and their Heirs during the Life of D. to preferre &c. Remainder to the use of the first &c. Sons of D. in Tail Male, Remainder to J. N. in Fee. B. married D. Afterwards B. and D. and J. N. (D. being enfeited of a Son soon after born) joined in a Feoffment to other Trustees to the Use of B. and his Heirs, and vested a Fine to the new Trustees to the same Uses. About a Fortnight after a Son was born named C. Afterwards B. died having devied the Lands to E. a younger Son. D. died. C. brought his Bill to have the Benefit of the Devise, which was decreed; but as to this Point, it was resolved by Ld. C. King assisted by Raymond Ch. J. and Reynolds Ch. B. that the Feoffment and Fine by B. and D. did not destroy the Contingent Remainders to the 1st &c. Sons of D. but that the Right to the Freehold in the Trustees supported it. 2 Wm’s Rep. 610. 612. Mich. 1732. Manfell v. Manfell.

(R) Remainder Barred or Destroy’d by Fine, or Recovery. See (Q.) pl. 7, 8. —— And for none of this, see Pures.— Recovery Common.
neither was, nor could be discontinued. Per Wray Ch. J. 2 Le. 218, 219. pl. 275. Pack. 16 Eliz. Humphreton's Cafe.

3. There is great Difference between a collater al Life which does not depend on the other Estates, and an Estate limited in Couplc of a Remainder; I agree if they are Contingent Remainders, the Fine will destroy them, but if there be a Collateral Clause, by which a Life is limited, as if there be a Provls that if such Money be not paid it shall be to such a Ufe, that Contingent Ufe is not destroyed by Fine. Arg. Het. 98. cites 1 Rep. 130. 134. Chudleigh's Cafe.

Sic. 7 C. S.

4. Devise to A. (being Heir at Law) for Life, and if he die without Issue living at his Death, Remainder to L. in Fee: But if A. shall have Issue living at his Death, the Fee to remain to A. Recolved it is a Contingent Remainder, and barred by the Recovery of A. dying without Issue. 1 Lev. 11. Hill. 12 & 13 Car. 2. B. R. Plunket v. Holmes.

5. 22 & 23 Car. 2. 24. Enacts, That no Tenant in Tail of any Fee, Farm Rents shall be enabled by this Act to bar the Remainder, nor shall have greater Power over the said Rent than he had before.

6. A. fell of the Manors of P, and W. devised them to B. for Life without Waste, and if he should have Issue Male, then to such Issue Male and his Heirs forever, and after B's Death in case he should leave no Issue Male, be devised P. to C. and W. to D. and their Heirs. Upon an Appeal to the Houfe of Lords, it was held, upon taking the Advice of all the Judges, That the Remainder to C. in Default of B's leaving a Son was a Contingent Remainder, and consequently barred by a Recovery suffered by B. whereupon they revered a Decree of Ld Cowper's. Wm's Rep. 505. 509. cites 22 May 1717. Coppen v. Barnardiston & al.

(S) Contingent Remainder; Determined, or Revived.

1. A. Tenant in Tail to the Heirs Males of his Body dies, leaving a Daughter who has Issue a Son, and then the dies, living the Son, yet the Son shall not take. Arg. Yelv. 149. in the Cafe of Pool v. Needham.

2. For such Collateral Determination being once interrupted shall never be Revived. Arg. Quod juris concepsum per tot. Cur. Yelv. 150. in the Cafe of Pool v. Needham.

3. A Man destroyed a Contingent Remainder by levying of a Fine. Afterwards the Fine is annulled by Act of Parliament; It was held that the Contingent Remainder was revived; But if it had been reversed for Error it had been otherwise. cited by Northey Ld. Raym. 314. in the Cafe of Thompson v. Leech, as held by Hale Ch. J. Mich. 24 Car. 2. B. R. in the Cafe of Colev. Levingstone.

4. If A. be Tenant for Life with a Contingent Remainder, and A. makes a Suit in Fee upon Condition; if A. enters for the Condition broken before the Contingency happens, the Contingent Remainder shall be revived, and the Contingency, if it happens, may yeft. Per Holt Ch. J. Ld. Raym. Rep. 314. Hill. 9 W. 3. in the Cafe of Thompson v. Leach.

(T) Remainder; Good, in Respect of the Limitation.

1. Seized in Fee makes a Lease for Life to B. Remainder to himself for Years or Life; the Remainder is void, because he has an Estate in Fee, and he cannot referee a less Estate than he had before. 2 Mod. 210. Arg. in the Cafe of Southcot v. Stowell. cites 42 Atl. 2.

2. Lands
Remainder.

2. Lands are given to the Husband and Wife, and to the Heirs of the Body of the Husband, the Remainder to the Husband and Wife, and to the Heirs of their two Bodies begotten. The Husband dies without Issue; the Wife shall not be Tenant in Tail after Possibility; For the Remainder in special Tail was utterly void; because it could never take Effect; and so long as the Husband should have Issue, it should inherit by Force of the General Tail, and if the Husband die without Issue, then the Special Tail cannot take Effect, as much as the Issue which should inherit the especial Tail, must be begotten by the Husband, and so the General, which is larger and greater, hath frustrated the Special, which is left, and the Wife in that Case shall be punished for Waste. Co. Lit. 29. b.

3. A Lease to A. for Life, Remainder to A. for Years, is a good Remainder. Jenk. 248, pl. 37.

4. Lease to A. for Life; Remainder to the Right and next Heirs of A. in Tail, is a void Remainder; because during the Life of A. it cannot possibly have a Being, so as he may take or have Estate by or in the Remainder, during the Life of A. the particular Tenant. 2 And. 154, pl. 56. in Case of Arden v. Darcy. cites it as 16 Eliz.

5. If a Gift be made in Tail, and that if the Donor die without Issue, the Remainder over, is a void Remainder. 2 And. 141, pl. 82, in Corbet's Case.

6. If a Remainder be limited to one for Term of Life of the Tenant for Life, the Remainder is good for this only Reason, fail. because there is a Possibility that Tenant for Life may alien in Fee, and so forfeit his Estate; and that he in Remainder may enter for the Forfeiture, and enjoy the Estate during the Life of the Tenant for Life so forfeiting. Arg. Saund. 151. cites 2 Rep. 52, 51. Cholmeley's Case.

7. If the Estate is limited to A. for Life, and after the Death of A. and one Day after, to remain to B. for Life, it is a void Remainder. Arg. Raym. 144, in the Case of Corbet v. Stone cites Pl. C. 25. [b] Colthrit's Case, where that Case is put, and says it is good Law; Because there is not Probability for the Remainder to vest when the Particular Estate ends, which is a necessary Incident to every Remainder.

8. If a Lease be to A. for 20 Years if B. so long shall live, and after B's Death, Remainder over in Fee; this is a void Remainder, because if it was good then the Fee-simple should be in Abeyance, which the Law will not suffer; but if it had been a Remainder for Years it had been good; For that may be in Abeyance. Arg. Raym. 144 in Case of Corbet v. Stone.

9. J. S. levied a Fine to the Use of himself for Life, and afterwards to the Use of his two Daughters, till A. his Son return from beyond Sea, and come of Age, or Die, which should first happen; and then to remain to A. Afterwards A. returned from beyond Sea; Adjudged that this was a good Remainder; for tho' his Returning from beyond Sea, or coming of Age, was uncertain, yet it is certain he must die, and so it does not merely depend upon Uncertainties. Cro. E. 269. Hil. 34 Eliz. in the Exchequer. Lord Vaux's Cafe.

(U) Good,
(U) Good, in Respect of the Limitor.

1. Covenant by Tenant in Tail to stand seised to the Use of himself for Life, Remainder to A. in Tail, is void; because the Remainder is to take Effect after his Death. 2 Salk. 619. Trin. 1 Ann. B. R. Machil v. Clerk.

2. If Tenant in Tail Covemants to stand seised to the Use of J. S. who is of his Blood, for his Life, with Remainder over to another, and dies before the Remainder happens, yet the Remainder is good, till it be avoided by actual Entry of the Issue; otherwise it will exist after the Death of the Issue, because the Estate for Life had taken Effect; and the Remainder might have taken Effect during the Life of the Tenant; per Holt Ch. J. 7 Mod. 27, 28. Trin. 1 Ann. in B. R. in Case of Machil v. Clerk.

3. So if Tenant in Tail make a Lease and Release to the Use of himself for Life, with Remainder over to another, the Remainder over is good till avoided, tho' it be to Commence after the Death of the Issue in Tail; and the Reason is, because it issues out of the Estate by Lease and Release, which is good till avoided by Entry; per Holt Ch. J. 7 Mod. 29. Trin. 1 Ann. in B. R. in Case of Machil v. Clerk.

It has been a Question, if Tenant in Tail makes a Grant with Livery, Bargain and Sale, Lease or Release, whether it gives the Grantee, Bargainee &c. any greater Estate than for Life of Tenant in Tail; but it has been held, that it creates a bare Fee in such Grantee &c. which is against the Opinion of Litt Sect. 649, 650. and the Reason for it have been these: 18. Because Tenant in Tail has more than an Estate for Life, he has the Inheritance in him, as appears by Co Litt fol. 18. a Saily. He has the whole Estate in him, and therefore these Sort of Conveyances are Incidents to it. 30. It is no Prejudice to the Heir in Tail, nor against the Statute de Donis; the parting the Issue to a Person, is no Breach of the Statute de Donis, 56 it does not put him to an Entry; cites to Co. 66. Seymour's Case, and 5 Co. 84. the Case of Fine; 6 such Bargainee has a defeasible Estate, and his Wife shall be endow'd of such Estate. Littleton says the Estate of such Releasee or Bargainee is determined by the Death of Tenant in Tail; but, by these Opinions, it is not determined till the Issue enter, the Issue is not barred of his Jur Recuperandi, but till he fails that, the other has a good Estate; and so is Winch's Rep. 5. Bridgman 92. Per Holt Ch. J. 11 Mod. 19, 20. Trin. 1 Ann. B. R. in Case of Machil v. Clerk.

(W) Good or Void. In its Creation, or by Event.

1. In Affile; W. M. granted 10 l. Rent to N. D. out of his Land for the Life of A. the Remainder to R. for his Life; and after A. died, and W. M. after the Death of A. released by another Deed to the said R. all his Right in the Rent, and granted that whensoever the Rent shall be Arrear, that the said R. and his Heirs may distrain; and held a good Title to R. for the Rent in Fee, by all the Justices, and yet by the Death of A. the Rent was extinct; for the Remainder was void by Reason that the Rent was extinct before by the Death of A. But because the last Deed has this Clause of Grant to R. that he and his Heirs may distrain when the Rent is Arrear, therefore this is a new Grant; quod nota. Br. Rent. pl. 19. cites 8 H. 4. 19.

2. If a Man by Fine grants his Seigniory to one for Life, the Remainder over in Fee, and the Tenant for Life dies, and the Tenant Attornies to him in Remainder, this is good; for the Services pulled before by the Fine; but it is contrary upon such Grant by Deed, for there if it 000 in the Grantee for Life, the Remainder cannot take Effect. Br. Grants, pl. 6. cites 20 H. 6. 7.
Remainder.


his His fe he or if S. shall have Heirs of his Body, and if S. dies without Heirs of his Body, that then it shall ren. to C. in Fee; this is a void Remainder by Reason of the Contrary estate.

For the first Estate was Fee simple determinable, upon which a Remainder cannot depend. Pl. C. 29. b. by Hales J.

— So if Lease for Life is made upon Condition that if a Stranger pays to the Leifer 20l, then immediately the Lease shall remain to the same Stranger, this Remainder is void for the Contrary estate. For the Tenant for Life ought to have it during his Life, and during that Time the Stranger cannot have it; but had it been limited that after the Death of the Tenant for Life, it should remain to the Stranger, then it had been a good Remainder; For there is no Contrary estate. Pl. C. 29. b. by Hales J. in Cate v. Coldhurt v. Beujhin.

4. A Remainder limited on an * Impossibility Precedent, or upon a Thing * S. P. Arg. against Law, is void. le. 189. pl. 289. Granted Arg. in Lord Page's Cate.

5. A Remainder ought to pass at the first by the Livery, and shall not be. Pl. 6 &c. take Effect with a Condition precedent, nor shall begin on such a Condition; and tho' * Colchurch's Cate gives Colour to the contrary, yet in that Pl. C. 32. b. Point Anderdon Ch. J. held that Cate not to be Law; For a Remainder Le. 283. depending on a Condition precedent, is merely void; And Per Beaumont J. a Prerogative cannot create a Remainder, tho' it may determine a Remainder, and Judgment accordingly. Cro. E. 362. Mich. 36 & 37 Eliz. C. B. Cogan v. Cogan.

6. A Grant with Condition precedent may be as well of Things lying in this Cate Ch. J. in Grant as of Land which lies in Livery, and may as well be annex'd to that Cate, as an Estate Tail, which cannot be merg'd as to an Estate for Life or Years, which may be merg'd by Accession of a greater Estate. But such Increment of Estates by Force of a Condition precedent must have 2 Incidents.

1. It must have a Particular Estate as a Foundation whereupon the Increment of the greater Estate shall be built. 8 Rep. 75. a. Trin. 7 Jac. in Le. Stafford's Cate.

2. therefore if one grants an Actuanny to another, at Will, upon Condition that if he does such an Act that he shall have Fee, in this Cate the Estate at Will is not such Foundation as the Law requires to support an Incr. of the Freehold or Inheritance; For the Grantor may determine the Will before the Condition performs, and to avoid his own Grant, and a Lease at Will cannot support a Remainder over. 8 Rep. 75. a. in Le. Stafford's Cate.

And if one grants Adowen or Rent Sec. for Years upon Condition that if the Leifier pays 20s within a Year he shall have Life, and it after the Year he pays 20s he shall have Fee; and the Leifier pays 20s within the Year, and after the Year he pays the 20s. according to the Condition, yet he shall have for Life only; Because the Estate for Life was in the Grant, and was Contingent, only, which is not a Foundation for a greater Estate to increase upon; For a Possibility cannot increase upon a Possibility, and the Estate in Fee-Simple cannot increase upon the Estate for Years. For this is mixed by the Acc. of the Estate for Life: 8 Rep. 75. a. b. Trin. 7 Jac. in Le. Stafford's Cate.

21dly, That such Particular Estate shall continue in the Leifier or S. P. Cate. Grantor still take the Increase happens. 8 Rep. 75. a. in Le. Stafford's Cate. 22. a. in the Cate of Coldhurt v. Beujhin. — If the Leifier for Life or Years, or the Donee to Fall, who has such Condition annex'd to his Estate, after the Condition performs'd, or if Leifier for Life or Years foregoes to the Leifier, he never shall take Benefit of the Condition afterwards. For the Priority of the Estate in such Cate may continue, because the Increase of the Estate must ensue upon the Particular Estate as at a Foundation; and therefore if in such Cate the Leifie for Life or Years, or the Donors alters all their Estates and re takes Estates again, and afterwards performs the Condition, yet nothing shall accrue to him thereby; because by the absolute Allocation the Priority was once absoledly destroy'd, which cannot by any Taking of the Estate be recover'd; As, if one Coauthor after Partition makes a Fee-dolt in Fee, and re takes Estate to him again and to his Heirs, yet the Priority of the Estate to have Aid to design the Warranty Preamble is destroy'd. Per Coke Ch. J. 8 Rep. 75. b. in Stafford's Cate, cites * H 4 52. b & 52 E 3 26. b.

But if a Man makes a Gift to one and the Heirs of his Body of his Wife begotten, by the absolute Condition, and after the Wife dies without Issue, to be that he is now become Tenant in Tail after Partition: in this Cate, that the Estate be chang'd, yet though the Priority remains he may by performing the Condition have Fee afterwards 8 Rep. 75. b. so if Lease be made to B, with Condition to have Fee, and the one dies, the Survivor may perform the Condition and have Fee; But if the same Jointtenants make Partition of the Term, the Condition is destroy'd: For the Estate in Fee must increase to those jointly, and not to Severalty. 8 Rep. 75. b.


7. 8. 30ly,
Remainder.

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8. 5thly, It must vest at the Time of the Contingency happening, or otherwise, if the Grant by the Queen the Condition be that when A. shall pay to B. 20 l. he shall have Fee, that immediately by the Payment, by the Operation of the Law, the Fee should be devolved out of the Queen and vested in A. And this for Benefit: For if it shall not vest at the Time of the Condition performed, it shall never vest; so that it in the Case of a Grant by the Queen upon such Conditions, any Thing, as Office, Pension &c. or other Circumstance, be necessary, the Increase of Estate will never vest; for if it the Enlargement cannot be at the Time appointed, it never shall enlarge; and therefore in respect of the Necessity, the Fee Simple in the principal Case was reduc'd to put out of the Queen without any Circumstance; For the Law never requires Circumstance when it will subvert Substantial. S. Rep. 4. in Ld. Stafford's C afe.

Every Remainder must always be appointed and limited to take Effect after the Particular Estate ended and not during the Particular Estate; For should it take Effect during the Particular Estate it would be utterly void, as repugnant to the first Estate. Pi. C. 24. b. in the Case of Coldhird v Bearfin.

S. P. Pl. C. 24. a. in the Case of Colthrift v Bc.

9. 4thly, The Particular Estate and the Increase must take Effect by one and the same Instrument or Deed, or by several Deeds delivered at one and the same Time, and not by several Deeds delivered at several Times. S. Rep. 75. a. in Ld. Stafford's Case.

For when an Estate is to be determined by a Remainder depending on that, then the Remainder is not good: As, if a Man gives Land to A. for Life, and the Condition that if J.S. pays me 40 l. before such a Day, that the Remainder shall be to him. This is a good Remainder. Het. 81. Pathe. 4. Car. C. B. Groves v. Osborn.

10. Where a Remainder depends on a Determination of another Estate, to that none shall take any Estate by the Remainder upon Condition, then the Remainder is good: As, if a Man gives Land to A. for Life upon Condition that if J.S. pays me 40 l. before such a Day, that the Remainder shall be to him. This is a good Remainder. Het. 81. Pathe. 4. Car. C. B. Groves v. Osborn.

11. Devise to A. in Tail, Remainder to B. Remainder to C. &c. and after the Devise by express Words devis'd an Estate in Possession to B. This is a Revocation of all the Remainders; For the Remainder not determining by Death, but by Codicil & Interspension of another Estate, upon which the Remainder did not depend, the Remainder could not stand; But in a Conveyance to Uses there may be Interspensions of other Estates, and the Remainder stand good; because this Remainder depends and hangs on the first Root; But in a Will, the Remainders settled must follow the Rule of Law; for after the Death of the Devisee there is then no Root nor Spring. Per Bridgman Ch. J. Cart. 175. Hill. 18 & 19 Car. 2. C. B. in the Cafe of Randall v. Ely.

12. A settles Land to himself in Tail, then to Trustees, and of the Residue to make Leaves for 21 Years, upon Trusts for his Brother's Children; and falling such, for his own Sistors; And if none of his Brothers or Sistors, or any of their Children, be living, then immediately, or after the 21 Years ended, to the Use of J. & R. and others his Brothers issue of the blood Male; the Remainder over. A. died without Issue, and to did J. & R. and all the Brothers, without Issue; but 2 Daughters of J. and 2 Sistors of A. are living. Revol'd, This is all one Sentence, and a Condition precedent, (That none of the Daughters or Sistors, or any of their Children, are then living) which is otherwise here, and to all the Remainders void. 2 Lev. 157. Hill. 27 & 28 Car. 2. B. R. Comberford v. Birch.


13. A. by Lease and Release, convey'd Lands to the Use of himself for 99 Years, if he so long lived, Remainder to B. for 99 Years, Remainder to Trustees to support Contingent Remainders. Remainder to the 14, 15, 16.
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34. &c. Sons of B. in tail Male, Remainder to A. in Tail, Remainder to A. in Fee. B. had Issue C. D. E. &c. and afterwards A. by his Will reciting this Settlement, devis'd these Lands after the Death of B. his eldest Son, dying without Issue Male, to D. and after the Death of D. without Issue Male, then to E. and if E. die without Issue Male, none of his Brothers being then living, then to F. and his Heirs for ever. A died, B. died a Common Recovery, and the Lessee of the Plaintiff, who was the only Son of F. claimed under that Recovery, and Likewise by the next of kin under Wills; and the Defendant claimed under a Fine levied by D. The Questions were, 1. Whether the Remainder dev'd to F. was Contingent? And this depended upon these Words (If none of his Brothers be then living.) The Court held, That these Words did not alter the Cafe, because the Sentence had been the same if they had been omitted, and this had been like all other Limitations of Remainders; and it is plain the Limitation to F. cannot take Effect till all are dead, and the other Con-dition would destroy all the expressly Estates before dev'd. 2dly. Whether it is an immediate Estate vested or Executory? Because A. having an Estate Tail in Remainder, with a Reversion in Fee expectant; This Devise cannot take Effect till the old Estate Tail be spent; so that if ever it takes Effect, it is to commence after a Dying without Issue, which is a future void Executory Devise; But Per Cur. Here is an immediate Devise of a present Reversion, and the Words (After) or (From and After) are only to denote when they are to take Efect in Possession. And as to a 3d Question Holt Ch. J. agreed, That the Estate Tail dev'd to C. D. & E. could never take Effect; Because the Estate Tail in A. must depend on them, and would always interpose and keep back the Estate Tail dev'd by the Will, which being no larger must spend Aquis Paribus with the old Entail, and therefore it can never have Effect; And on that Reason he agreed, That such Devise of a Remainder would be void. But he held it otherwise of a Reversion, which is also in this Cafe; Because there is a Seigniory and a Tenancy created; for Tenant in Tail must hold of him in Reversion, and he of the Supreme Lord; So that this Devise has a Real Efect as to the Tenure, which is after hereby; 3dly. When the Judgment was affirmed, there, Ex Relatione M'r Barcombe Bury. 14. A Special Verdict finds a Settlement in Consideration of natural Love and Affection, to himself for Life, then on Trustees to preserve Contingent Remainders, Remainder to Tail Male: Provided, if Tenant for Life die without Issue Male of his Wife, and having Daughters, the Trustees to stand fideled for 31 Years, with Intent to raise Issue and such Legacies to the Daughters: Provided also, That if the next Issue Male in Remainder, within 5 Years, pay the Legacies, that then the Trustees should stand fideled to such Issue Male as should pay the Legacies, with Reminders over; Tenant for Life dies without Issue Male or Female. 'Twas objected, That if the Term never accord the Remainders are void; and cited 3 Cre. 465. & Dyer 34. b. Holt Ch. J. said, Tho' the Contingent Term never arose, yet the Remainders are good if the Precedent Estate to the Term for Years be sufficient to support the Remainders. Eyres argued, That this Remainder can never arise, it being a Condition Precedent, and 'tis not found that the Legacies are paid; and that the Remainders are void in their Creation. If the 1st Remainder be Contingent, all the others issued must be Contingent. There must be an intermediate Time between the Payment of the Legacies, being precedent to the Veiling of the Remainders; and to void, it not veiling at the instant. 'Twas said, That the 1st Remainder was not conditional, viz. That if he die without Issue Male, that then his next Issue Male in Remainder &c. whether the Term arises or not the Law to us is the same; if the Condition be impossible no Estate can grow there-upon, and neither the Act of God nor of the Party can dispense with this Condition.
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Condition, if it be precedent. Holt Ch. J. said, The Payment of the Money was to let the Issue Male into Possession, notwithstanding the Term; and no Payment was intended unless there was a Dying without Issue Male, leaving Daughters. The Clause (And for Default of Issue Male, Remainder to the Issue Male) should have been (Heirs Male in Remainder) and then there had been no Doubt. And it was adjudg'd, That the Remainder was good, and well vell'd. 11 Mod. 119. Trin. 6 Ann. B. R. Hardwick v. Gambull.

15. Devise to his Daughter for Life, and after that to A. the eldest Son of his Daughter and his Heirs, and for Default of such Heirs Remainder to the right Heirs of J. S. — J. S. being alive when the Partition was to commence, it was void by this Event; And (the Heirs of the eldest Son) comprehending Heirs general, according to the legal Sense of the Words, the Limitation to A. and his Heirs was a Fee-Simple, and to the Remainder to the right Heirs of J. S. void in its Creation. 1 Salk. 233. pl. 17. Hill. 7 Anne. C. B. Aumable v. Jones.

(X) Cross Remainders.

Note, That 1. Where Land is devised to 3 Brethren in Tail, and that one should be Heir to the other, this makes Cross Remainders. Hob. 34. cites 7 El. 6.

(II) That every
one shall be Heir to the other) imply a Remainder, that every one shall be in Remainder after the other.

Br. Done &c. pl. 44. cites 7 El. 6.

See 2 Lev. 25.

Section: Forefex v. Abbab.

2. A feised of Land, and having 5 Sons, devise'd, That one Part should desend to his Son and Heir, and the other 2 Parts he devise'd to his 4 Younger Sons, and the Heirs Male of their Bodies begotten; and if they all die without Issue Male of their Bodies, or any of their Bodies, lawfully begotten, then he will'd, That the said 2 Parts should revert, remain, and come to the Right Heirs of the Devisee for ever. Afterwards 3 of the Younger Brothers died without Issue. The Court were of Opinion, That the Survivor shall have Estate Tail in the whole 2 Parts; and so long as any Issue Male be of his Body, no Part of the said 2 Parts shall revert or remain to the Heirs; For this was the very Meaning of the Devisee by the Words of the Will. D. 303. b. pl. 49. Mich. 13 & 14 Eliz. Anon.

3. A has a Son and two Daughters B. & C. by 3 several Venters. — The Son died leaving 2 Daughters M. & N. — A. devised Lands to B. and her Heirs for ever, and other Lands to C. and her Heirs for ever; But if B. dies living C. — C. shall then have B's Part to her and her Heirs; and if C. dies before 16, B. should have C's Part in Fee also; and if both B. and C. died without Issue of their Bodies, then his Son's Daughters should have the Lands. C. died without Issue after her Age of 16. Refolv'd, That the Words (If B. & C. died without Issue of their Bodies) did not create, by Implication, Cross Remainders in Tail to B. & C. whereby B. should take C's Part, but C's Part should go to the Heirs at Law M. & N. according to the Limitation of the Will, and those Words were but a Designation of the Time when the Heirs at Law should have the Lands. Note, That C. dying without Issue, the Heirs at Law by the Will had her Part without staying till the other Daughter died without Issue. Per Vaughan Ch. J. 'Vaugh. 267. cites D. 330. b. Clatch's Cafe.
Remainder.

4. No Implication will make a Cros Remainder where there is a 4. as if a De- Special Limitation made by the Tcefator himself. Per 3 justices. D. 331. 

Brothers in vote be to 2 pl. 20. Hill. 16 Eliz. in Chatcl's Cafe.

the Remainder; if one dies without Issue, the other shall not have his Part, and it is no Cros Remainder, the one is Heir to the other. Because there is an express Effate, and therefore it shall not be taken by Implication. D. 526. Marg. cites Patch. 2 Jac.

If a Stratum or is made to the Ufe, of A. or B. in Tail; and if they both die without Issue, the Remainder in C. there shall be no Cros Remainder by Implication; but otherwise it would be in the Cafe of a Will; and if there it were in the Cafe of a Will, the aforefaid Difference was taken bewixt a Device to 2 and a Device to 3. Freem. rep. 382. pl. 651. in the Cafe of "Holmes" v. "Gilbert," cites it as the Opinion of the Ld. Ch. J. Hale. Hill. 13 Bar. R. In the Arguing of the Cafe of Holmes v. Robinson.

In Escutcheon upon a long and intricate Special Verdict, (the Ch Jufd. said, Never was the like in Winleifman-Ball) these following Points were refolved by the Court, and declared by Hale as the Opinion of himself and the fett of the Judges; 1. That where one covenants to lend fized to the Cafe of a Will, the Heirs of the Heirs of his Body, and if they die without Issue of their Bodies, then that it fhall remain &c. and of another Part of his Land to the Heirs of C. B. & E. and the Heirs of their Bodies, and if they die without Issue of their Bodies, then to remain &c. That there are no Cros Remainders created by Implication; For there fhall * never be such Remainders upon Confutation of a Deed, that sometimes there are in Cafe of a Will; and cites 1 Roll. 87. 2dly, As this Cafe is there would be no Cros Remainders if it were in a Will; For Cros Remainders fhall not the 7 between 5, unless the Words do very plainly expose the Intent of the Devizor to be 6; As where B. Acre is deviz'd to A. W. Acre to B. and Gr. Acre to C. and if they die without Issue of their Bodies with alternat coron, then to remain; there by reason of the Words (Alterius corum) Cros Remainders fhall be, and cites 154. 3dly. But other Words would not, and cites Gilbert v. Gilbert and others, 2 Cro. 653. And in this Cafe, therefor the Limitations are between 2, there shall be no Cros Remainders in them; Because there are others between 3, and the Intent shall be taken to be the fame in all. 1 Vent. 224. Mich. 24 Car. 2. B. B. Cole v. Livington.


† Cros Remainders will not arise to more than 2 by Implication. 8 Mod. 260. Shaw v. Way. —— Per Raymond J. Raym 455. Holmes v. Meynell.

5. A. feiled of Copyhold Lands, surrendered them to the Ufe of B. Eliz. in his Will, and deviz'd them to his Sons severally, viz. Black Acre to B. and White Acre to C. and Green Acre to D. And if B. C. or D. live to 21, and have Issue of their Bodies, then I gave the Land Lands to them and their Heirs, in Manner as aforeland, to give and fell at their Pleasure; but if one of them dies without Issue of his Body, then I will that the other Brothers or Brother have his Share, in Manner as aforeland; and if all the without Issue, then to be feld by his Executors &c. and the Money to be given to the Poor. D. died within Age. Agreed by all, That by the first Words B. C. and D. had Estates for their Lives only; But afterwards the Justices refolved, That no Estate Tail is created by the Will, but that the Fee-Simple is fettled in them when they come to their lawful Age, and have Issue; to as the Residue of the Devizor is void. And Judgment accordingly. 2 Le. 68. pl. 92. Trin. 27 Eliz. C. B. Brien v. Caution.

6. Deviz. of Bl. Acre to A. the Fidct Son, Gr. Acre to B. and Wh. Geldob 102. Acre to C. and if any of my Sons die without Issue, then the Survivor shall be each other's Heir. The Court conceiv'd, That the Devizor limited Remainder to the Survivor &c. is a Fee-Simple; Because of the Words (Each other's Heir) And also, That both the Survivors could not have the Land; Because contrary to the express Words of the De- vize, which are (The Survivor shall be each other's Heir) in the Singular Number. Le. 126. pl. 250. Mich. 30 & 31 Eliz. C. B. Hambleton v. Hambleton.

Footnotes, and thou'lt be (Survivor) in the Singular Number, yet upon the whole Matter it is to be confidr'd in the Plural Number. 5 Le. 262. pl. 552. Mich. 32 Eliz. C. B. C. S. C. —— S. C. & S. P. Cro. E. 181. pl. 1. Mich. 31 & 32 Eliz. —— Savil. 93. S. P. and seems to be S. C. But Windham J. thought that the Eldest Survivor only should take. Anderton Ch. J. thought the Devizor void for the Uncertainty. Periam J thought that the 2 Survivors should be Jointenants, and to the Devizor pre- serv'd. —— 'Twas held, That the Survivors were Jointenants. Ow. 27 S. C.
Remainder.

S.C. Cro. E. 7. A. seised of Bl. Acre, Gr. Acre, and Wh. Acre, devis'd all 3 to his Wife for Life, and then Bl. Acre to B. his eldest Son, Gr. Acre to C. his 2d Son, and Wh. Acre to D. his Youngest Son; and if any die, but Part shall remain to the Survivors, and if any have Issue and die before he comes, his Issue shall have it. C. had Issue. The Wife dy'd, and C. dy'd. And adjudg'd, That his Issue should have nothing. Arg. Bridgn. 86. cites it as the Case of Bacon v. Hill.

2. Roll Rep. 281. S.C. Adjulg'd accordingly, Part between 5 the Law will not ensure a Crofs Remainder, by reason of the Construction which will ensue.


Two Crofs Remainders may well stand together, but 3 cannot well stand together; For that would make such Confusion as the Law abhors, and that was the Reason of the Judgment in the Case of Gillett v. Griffith, which Pemberton Ch. 1, said he took to be sound Law. 2 Show. 159. in the Dealing the Judgment of the Cour in the Case of Holmes v. Meynell.

9. A. devis'd to his 2 Daughters and their Heirs, equally to be divided between them; and if they die without Issue, then he gives all his Land to his Nephew Francis in Tail Male, Remainder over. Raymond J. conceived, That Francis shall take nothing till both are dead without Issue; And Judgment accordingly. Raym. 452. Mich. 33 Cat. 2. B.R. Holmes v. Meynell.


Mich. 1660. Holmes v. Gillett. Adjudg'd; but seems to be S. C. — S. C. cited, and is observed in the Margin, That it is not sound, if either of them die without Issue. 9 Mod. 258, in the Case of Show v. Wau. — S.C. cited Arg. Gibb 12. Because whenever the Issue claim they must claim as Heirs to their Mother, which cannot be till after their Mother's Decease. — S. P. Adjulg'd accordingly, tho' the Words were If any die without Issue. 4 Le 14. 52 Eliz. in C. B. Anon. — S. C. cited Per Raymond just. Raym. 554.

But where the Devise was To 2 Dezervers and their Issue, and in Defeas of Rich. Issue to J. S. they have a Joint Issue for Life, and several Inherances; and if one dies, without Issue there shall be no Crofs Remainders, but her Moity shall go over to the Remainder-Man for want of issue, viz. Such respective Issue Per Le. Cowper. Pech. 1756. 2 Ver. 545. pl. 494. in the Case of Cook v. Cook.

A. devis'd his Land to his Nieces E. and F. equally to be divided between them during their Joint Lives, and after the Devise of them 2, then to the Heirs of 3; — J. died in the Life of E. This was adjudg'd a Jointure,

And Per Holt Ch. 1. As to have it a Crofs Remainder it is an awkward Sort of a Thing, the Cafe of Holmes v. Stoull has prevailed, and is not fit to be sturd now. And Powell J. said, That that Case never went down with him, tho' affirmed in a Writ of Error; and he had heard Learned People speak against it. Holt's Rep. 570, 571. Pecch. 6 Ann. Tuckerman v. Jefferson.

10. The Testatrix having two Sons A. and B. and 4 Daughters E. F. G. and H. devis'd his Estate (being in Housels) thus, viz. I give to my Son A. my Housel in W. and if he die, then I give my Estate to my 4 Daughters E. F. G. and H. Share and Share alike; and if any of my said Daughters die before Marriage, then I give her or their Part in the rest pursuing; and if all my Sons and Daughters die without Issue, then I give my Housel to my Sister Anne Warner, and her Heirs. A. entered and died without Issue; afterwards E. died leaving a Son, the Legatee of the Plaintiff. In this Case the Court took Notice of the Case of Gilbert and Witty, and said, That in that Case the Estate was limited distinctly
Remitter.

(A) Remitter for Infancy [or Coverture.]

1. If Tenant in Tail infalls his Issue within Age and a Stranger, and dies, the Issue is remitted that the Estate of the Stranger is defeated thereby. Contr. 39 Eliz. 3. 30.

A later Title, yet the Law will adjudge him in by Force of the Elder Title; because the Elder Title is the more pure and worthy Title; And then when he is adjudged in by Force of his Elder Title, it is said a Remitter in him; for that the Law doth admit him to be in the Lands by the Elder and Senior Title; so if Tenant in Tail dispossesses the Tail, and after he infalls his Discontinuance, and the Tenant is not recovered within his Force of the Tail, in this Case, this is to him to whom the Tenements descend to his Issue or Coverture, inheritable by Force of the Tail. In this Case, this is to be to him whom the Tenements descend to his Issue or Coverture, inheritable by Force of the Tail. In this Case, this is to be to him whom the Tenements descend to his Issue or Coverture, inheritable by Force of the Tail.

Because the Law shall put and adjudge him to be in by Force of the Tail, which is his Elder Title; For if he should be in by Force of the Discontinuance, the Discontinuance might have a Write of Entry for Discontinuance in the Person against him, and should recover the Tenements and his Damages &c. But inasmuch as he is in his Remitted by force of this Tail, the Title and Interest of the Discontinuance is quite taken away, and defeated &c. Litt. &c. 679.

Regularly to every Remitter there are 2 Incidents, viz. An ancient Right and defensible Estate of Freesaid coming together. Co. Litt. 535. a.

2. If a Baron makes Feoffment in Fee, and within Age re-takes Estate to him and his Wife for Life, he shall be remitted, that he had but a Title of Entry for his Monage; Because no Folio can be imputed to him by these Retaking being an Infant. 41 Eliz. 3. Remitter 11. Issue thereupon. 19 C. 3. Remitter 14. Abounded.

3. If a Feme makes Feoffment to 2, upon Condition to re-invest her upon Request, and after takes Baron, and they make Request, and one relieves, and the other of them invests them of the Whole; Tho' they do not claim to be in of their first Estate, yet the Feoffment shall be a Remitter to the Society of him who relieves, for which the said Title of the Entry thereto for the Condition broken at the Time.
Remitter.

Time of the Acceptance of the Feoffment; And no Folly can be imputed to a Feene Covert for the Acceptance of the Feoffment, 35 Aff., 11. Adjudg'd. 35 E. 3. Remitter 17.

4. A Feene sealed took Baron at 15 Years of Age, who alien'd immedi-ately, and retook to them in Tail; The Feene died without Issue. The Baron entered, The Heir of the Feene outdid him, and he him re-outted; and the Heir brought Allife, and recover'd. The Reason seems to be; Because the Feene was remitted as well for Coverture as for Nonage. Br. Entre Cong. pl. 73. cites 35 Aff. 12.

5. It seems, That when an Infant makes a Feoffment, and the Feoffee gives to him again in Tail, he is remitted in Fee by reason of the Nonage. Br. Traverfe per &c. pl. 219. cites 5 E. 4. 5.

6. An Infant, who is in by Defent, and a Feene Covert, to whom Enter-ance is faved by the Law, if a Stranger be remitted by Title Paramount to, their Entry is taken away. Br. Entre Cong. pl. 117. cites 11 E. 4. 17.

4. 1, 2. It seems, That if the Diffidor infeoff the Issue of the Diffidtee within Age, and after the Father dies he shall have his Age; and the Reason seems to be, Because the Infant is remitted. Br. Remitter, pl. 37. cites 21 E. 4. 75. Per Choke and others.

8. An Infant Issue in Tail, who enters for Condition broken, made by his Father when in In Fee after a Diſcontinue, shall be remitted by the Nonage. Contrary at full Age. Br. Coverture, pl. 45. cites S H, 7.

9. Where Tenant in Tail infeoffs his Issue within Age, and the Right of the Entail after descends to the Feoffee, whether within Age or of Age, at the Time of the Diſcontinue; and notwithstanding he might have wair'd the Estate gained by the Feoffment after he was of full Age, yet shall he be remitted; Because such Waiver would have been to his Lofs, and no Folly could be imputed to him when he took the Estate. Litt. S. 660. Hawk. Co. Litt. 37.

10. Tenant in Tail infeoffs his Heir Apparent in the Tail within Age, and another Jointenant in Fee, and the Tenant in Tail dies; the Heir in Tail is in his Remitter as to the one Moity, and as to the other Moity he is put to his Writ of Forfaved &c. Litt. S. 632.

If the Diffidtee after the Death of the Tenant in Tail makes a Feoffment to the Issue in Tail, being within Age, who has a Right, and to a Stranger in Fee, and makes a Witneff to the Infant in Name of both; the Issue is not remitted to the whole, but to the Heir; for, 18. He takes the Fee-Aimple, and after the Remitter is wrought by Operation of Law, and therefore can remit him but to a Moity. Co. Litt. 359. 4.

11. But if Tenant in Tail infeoffs his Heir Apparent, the Heir being of full Age at the Time, and dies; this is no Remitter to the Heir, because it was his Folly, that being of full Age he would take such Feoffment &c. but such Folly cannot be adjudged in the Heir being within Age at the Time of the Feoffment &c. Litt. S. 664.

S. P. For where the Right of Poffeion is diſtained from the Right of Propriety; there, if the Proprietary re-obtains the Right of Poffeffion by Agreement, for the other having the Right of Poffeflion, and transferring it to the Proprietary, such Proprietary must take the Right in the fame Manner as the other was conveyed; for it is of his own Folly and Laches, that he would contrive about such Right of Poffeion, and not affir his Proprietary in a Proper Action; but when he has contracted for such Right of Poffeion, and such Right of Poffeion is transfer'd, he must be kept to the Terms of the Bargain, and he leaves all the Right in the Feoff he has not con-tracted for. G. Treat, of Ten. 121. 122.

If Tenant in Tail infeoffs his Issue, being within Age, and his Wife in Fee, and

12. If a Woman feied in Fee takes Husband, who alls to another in Fee, the Aisence lets the fame Land to the Husband and Wife for their two Lives, saving the Reversion to the Lessor and his Heirs; the Wife is in her Remitter, and he is feied in Faet in her Demenefic as of Fee, as she was before; because the taking back of the Estate shall be adjudged in Law the All of the Husband, and not of the Wife; no Folly can be adjudged in
Remitter.

in her being Covert. And in this Case the Lessee has nothing in the Reversion, for that the Wife is seized in Fee &c. Lit. S. 606.

So, it would be, that's the Feoffment had been by Indenture, or by Grant and Render in a Fine. Hawk. Co. Litt. 442.

If the Husband discontinues the Land of the Wife, and goes beyond Sea, and the Discontinuance lasts the Land to the Wife for her Life, and dispose to her Seisin, and after the Husband comes back, and agrees thereto, he is remitted; and yet if she had been Sole at the Time of the Lease not devest made to her, this should not be to her a Remitter; but being Covert Baron, the Remitter at the Time of the Lease, and Livery made unto her, this was a Remitter to her, because a Female Covert shall be adjudged as an Infant within Age in such Case &c. Quære in this Case, if the Husband when he to the Wife, comes back, will disaffirm to the Lease and Livery Seisin made to his Wife in his Absence, if this should cult his Wife's of her Remitter, or not &c. Lit. S. 677.

defeated, and therefore no Disaffirmation of the Husband can devest the State gained by the Lessee, which by the Remitter was devest before. 2dly. For that the Law having once restored her ancient and better Right, will not suffer the Disaffirmation of the Husband to devest it out of her, and to revive the Discontinuance, and revest the wrongful Estate in the Discontinuance. 3dly. For that Remitters tending to the Advancement of ancient Rights, are favored in Law. Co Litt S. 536 b. 557 a.—So it is for the same Cause, if the Wife forwive her Husband, she cannot claim by the Presumption made during the Coveture, but the Law adjudges her in in her better Right. But if both Estates be waivable, there, albeit the Wife, Prima facie, is remitted, yet after the Decree of her Husband there, the Estates will; As if Lands be given to the Husband and Wife, and their Heirs, the Husband makes a Feoffment in Fee, the Feoffee gives the Land to the Husband and Wife, and the Heirs of their two Bodies, the Husband dies, in this Case the Wife may elect which of the Estates she will; for both Estates are waivable, and her Time of Election and Power of Waiver accrued to her till after the Decree of her Husband. Co Litt S. 557 a.

If the Husband discontinues the Land of his Wife, and after takes Albeit there lack an Estate to him and his Wife, and a 3d Periwm for Term of their Authority, and for the Solicitor, the mutt after the Death of her Husband, his the Writ of Cui in Vita. Lit. S. 676.

Here are Easitc to him of his, Remitter to his Wife for Life; this had been no Remitter to her during his Wife's Life, because while he lived the had no Freehold. Lit. S. 680 Hawk. C. L. 453.

17. But upon his Death the Freehold in Law, cast on her against her Will, had been a Remitter; and yet no Allied lies for one that is entitled of a Freehold in Law) for there is none against whom he could bring her Action, and she was Tenant to the Precipit; nor did her Power to waive such Estate prevent the Remitter, tho' she was Sole, and of Age at the Time when the Freehold was cast on her. Lit. S. 681.
Hawk. C. L. 453.

S. 18. A.
Remitter.

18. A seised of Lands in Right of his Wife, for the Life of his Wife, makes Feoffment in Fee, to the Use of the said Wife for his Life. It was held that the is remitted; and it is not like Amy Townfield's Case. 1 & 2 P. & M. Pl. C. 113. For in that Case the Entry of the Wife was not lawful, because she was Tenant in Tail, which Estate was discontinued by the Feoffment of her Husband. 3 Le. 93. pl. 134 Mich. 26 Eliz. C. B. Anon.

19. If a Man enfeals an Infant or Feme Covern (that has Right of Propriety) for Life, for Years, or on Condition, they are remitted to their ancient Right, and all such Conditions vanish; for to a Feme Covern, or Infant, no Folly or Laches can be imputed, nor can their Acts turn to their Prejudice; so that when they have acquired the Right of Possession, they are restored to their ancient Right of Propriety; and being not capable of contracting, the Terms and Conditions of the Feoffment do not bind them. But if they were of full Age, or Discover, then they leaves in the Feoffor all the Right of Possession, that is not transferred to them by the Contract, and must hold the Right in the Manner transfered to them; for since they have no Right of Possession but from their Bargain, it is fit that they should hold according to such their Contract; but in the other Cases, it was the Folly of such Parties to transfer the Right of Possession to such Infants as were the Proprietors, to hinder them from their Action. G. Treat. of Ten. 123. 124.

(B) In what Cases a Man shall be Remitted against the Statute of 27 H. 8.

1. If Tenant in Tail makes Feoffment to the Use of himself and his Heirs, and dies; tho' he himself was not remitted by the Statue, yet his Issue shall be remitted; for the Statue does not direct the Possession upon the Decent, but only upon him upon whom the first Attachment of the Use is. B. 13 Ja. 25. R. between Bridgman and Charleton. Per Curiam agreed.

2. If Tenant in Tail makes Feoffment in Fee, to the Use of himself for Life, the Remainder to B. for Years, and lays nothing of the Reversion, and after dies, by which the Reversion descends to the Male in Tail; the Male is remitted, and shall avoid the Lease for Years, until such as he has the Reversion by Decent. B. 19 Ja. 29. in the Eschequer. Adjudged per Curiam between Wentworth and Stanley.

3. If the Issue in Tail, infeals'd by his Father, grants a Rent or Common out of the Land, and then the Right of the Tail descends to him, he shall hold the Land discharged; for the State which he had when he made the Grant, is utterly defeated. Litt. S. 660. Hawk. Co. Litt. 437.

Since Littleton wrote, and after the statute 27 H. S. cap. 10, it is not in Possession, but a Lease in Remainder.

Since Littleton wrote, and after the statute 27 H. S. cap. 10, it is not in Possession, but a Lease in Remainder.
Remitter.

that the devise, his Issue shall be remitted, because a State in Feoff-simple at the Common Law defended

4. If Tenant in Tail had made Feoffment to his Use in Fee, before the Sta-
tute of Uses made Anno 27 H. 8. and died before the said Statute, his Heir
within Age, and after the Statute is made, before the full Age of the Heir,
by which the Heir is in by the Statute, he shall not be remitted by this. D. 54 b. pl.
Contia of Deficient since the Statute; for this shall make a Remitter. Br. N. C. 53.
5. Tenant in Tail before 27 H. 8. made a Feoffment to the Use of his Wife
for Life, Remainder to his Son and Heir in Fee. Then the Statute is made,
the Husband and Wife die; the Son enters, he seems he is not remitted;
for the Statute makes the Possession in him as the Use was before, and this
was of Fee-simple. But his Issue shall be remitted. D. 54. pl. 21. Mich.
34 H. 8. Anon.
6. H. 8. gave Land to A. and M. his Wife, and to the Heirs of A. who
made a Feoffment to the Use of himself and his Wife for Life, and after their
Decease to the Use of their youngest Son for Life, and after his De-
cease to the Use of himself and his Heirs. A. died, his Heir within Age; the
Woman held in claiming her ancient Estate. She is remitted, and the 3d
Part shall not be in Ward; For the Wife had Election to be in accordance
with the Statute of 27 H. 8. or by the Statute of 52 H. 8. inasmuch as her Entry
was thereby congeable. D. 191 b. pl. 22. Mich. 2 & 3 Eliz. Haw-
treys Cafe.

7. If Diversities of Estate Tail enfeoff the Issue within Age, and Ten-
ant in Tail dies, the Issue shall be remitted in an Infant; But this is
not Deficient of the Tail within the Statute. Agreed by the Justices.
8. A Tenant in Tail makes a Feoffment in Fee, to the Use of himself for
his Life, the Remainder in Tail to his eldest Son, with divers Remainders
over; with aProvido, That if any of the Entailles do any Act to interrupt
the Course of any Entail limited by the said Conveyance, then the
Use limited to each Person shall cease, and go to him who next is Inheri-
table; And afterwards, A. dies, his eldest Son to whom the Use in Tail
was limited enters, and does an Act against the said Provido, and yet
held himself in and made Leaves; the Leaves enter, the Lessee enters, the Lessee's dies,
His Heir being within Age, and in Ward to the Queen; it was held
by Shuttleworth Serjeant, Yelverton, Godfrey, Owen and Coke, who
were of Council with the Heirs General of the Defendant, that here is
a Remitter, for by this Act against the Provido, the Use, and so the
Possession does accrue to the Infant Son of him to whom the Use in Tail
was limited by the Tenant in Tail; Then when the Tenant in Tail, after his said Feoffment holds himself in, this is a Dilemma; For a Ten-
nancy by Sufferance cannot be after the Celler of an Estate of Inheritance,
but admit that he be a Tenant at Sufferance, yet when he makes
Leaves for Years the same is clearly a Dilemma, and then upon the whole
Matter a Remitter, and alio the Infant takes by the Statute, yet the
Right of the Tail, descending to him afterwards by the Death of his Father
does revert him. 1 Le. 91 pl. 117. Mich. 29 & 30 Eliz. At Serjeant's Inn.
The Earl of Arundel v. Ld Dacres.

9. As if Tenant in Tail makes a Feoffment in Fee to the Use of him-
self for Life, the Remainder in Tail to his eldest Son inheritable to the
first Entail, notwithstanding that the eldest Son takes his Remainder by
the Statute, and so is in by Force thereof, yet when by the Death of his
Father the Right of the Entail descends to him, he is remitted. 1 Le.
Dacres.

10. A Grandfather tenant in Tail, before the Statute of 27 H. 8. made a N. Tenant
in Feoffment to the Use of himself for Life, the Remainder to a Stranger in Tail,
the Remainder to the Right Heirs of the Grandfather; the Grandfather died,
the Father died before the Statute, after the Statute the Stranger dies jefffed of an
deceit. 7 & 8. Eliz.

Estate which a Gry.
Remitter.

Estate Tail executed by the Statute without Issue, his Wife being with Child; the Son entered as Right Heir of the Grandfather; afterwards the Issue in Ventre &c. is born. Quere if the Son be remitted, he being the first in whom Remitter in Possession vested by the Statute, and this is of a Fee-simple, in which Estate he must necessarily be deemed in, wherefore &c. D. 129. pl. 63. Hill. 2 & 3. P. & M. Bonvil v. Payn.

The Remitter.

11. Baron and Femme tenants in Special Tail of the Provision of the Baron, Remittor to the Heirs of the Baron; They have 2 Sons, and make Feoffment in Fee to themselves for Life, Remittor to the 2d Son in Fee. Baron dies; the Wife enters and enfeals the 2d Son in Fee. The Wife, upon her Baron's Death is remitted; for tho' the comes in by the Statute by Way of Ute, she cannot be remitted by the Limitation of Ute by the Statute according to Townend's Case Pl. C. yet her Entitlement is lawful, she is remitted by her Entry, and then if this 2d Feoffment by her makes a Discontinuance, the Entry of the first Son was lawful as for a Forfeiture by the Statute of 11. H. 7. and if it was not a Discontinuance (as they held it was not, being made to him who had the Reversion in Fee by the first Feoffment) nor forfeited, then the Entry of the Eldest Son is lawful, as Heir to the first Entail, the first Discontinuance being purged by the Remitter of the Femme, so that either Way the Entry of the first Son was lawful. Lev. 49. Mich. 13 Car. 2. B. R. Jones v. Philpot.

(C) In what Cases a Man shall not be Remitted for Collateral Respect. For Covin.

If a Man who has Right of Action to certain Land cause another to diffeile the Tenant to the Intent and of Covin to recover it from him, and he recovers it from him accordingly by Action try'd, yet he shall not be remitted to his ancient Right by Reason of the Covin. 41 Stat. 28. Adjudged.

We were Instructed to try the Issue of Action, and made a Entry, and anffd the Tenant a-

2. Affise against N. and M. where M. is Tenants, and he infessed N. pending the West, and brought Formedon against him, and recovered upon Elder Gift, and pleaded this, and the Issue of the Plaintiff/ Affise &c. It is a Good Plea that M. infessed N. pending the Affise, and the other brought Formedon by Affise and Covin between them, and recovered. And the Plaintiff in the Affise recovered. Br. Remitter, pl. 22. cites 25 Stat. 1.

3. Tenant in Tail by Fine aliened in Fee with Warranty, and died, his Issue with Age, and J. S. onffed the Allene, and caused the Infant to bring Scire Facias against him upon the Fine, and recovered, and it was held by some, that the Infant was remitted, by Reason of the Nomage, notwithstanding the Covin, and the Alienation was with Warranty, and
Remitter.

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Affects descended. Brooke says, Tannen quare, for the Book is not found where much to the Purpuse thereof. Br. Remitter, pl. 44. cites 27 Aff. 74. A. the Baron brought Ac- 

4. Tenant in Tail discontinued in Fec., and died, and B. by Covin entered to 

the Intent to issue the Heir within Age, and after he issued the Heir in 

Tail within Age, which Heir was not of Covin's, and yet by 6 Justices the Intent is 

this is no Remitter, because he who is in him who did the Covin, not remitted 

shall be in the same Plight as he who did the Covin; but Engell, and 

Porrington Costra. Quere. For it seems that it is a Clear Remitter. 


England — Pl. C. 51. Arg. cites 8 C — But if the Son procure others to diffuse the Discon- 

inue and issue Aim (he then being삭임 되게) he shall not be remitted; Because this Diffus is a 

Tort, which commences by the Intent himself. Arg. 2. And. 59. pl. 25. in the Case of Landerley v. 

Truxell.

5. A Fœdus within the Statute of R. 2, 9, will not make a Remitter 

in Premise of a 3d Person, as it seems. Br. Fœdusment, pl. 19.

6. If the Husband discontinues the Lands of his Wife, and the Difcon- 

tinuance is diffused, and after the Diflief or leaves the same Lands to the His- 

band and Wife for Term of Life, this is a Remitter to his Wife. But if 

the Husband and his Wife was of Covin, and Consent that the Diflief 29, pl. 25 — 

should be made, then it is no Remitter to his Wife, because he is Diflief- 

forests; But if the Husband was of Covin, and Consent to the Diflief 

and not the Wife, then such Leave made to the Wife is a Remitter, for 

that no Default was in the Wife. Litt. S. 678.

7. A. and B. Jointenants are intituted to a real Allion against the Heir of the 

Difflief. A. caused the Heir to be difsised, against whom A. and B. 

recovered, and the Execution B. is remitted; for that he was not Party to the 

Covin, and shall hold in Common with A. but A. is not remitted, for 

the Reason that Littleton here helows. Co. Litt. 357. b.

(D) Remitter by Defect. Discontinuance of Other 

Ancestor.

1. If the Baron discontinues the Land of his Feme, and retakes to 

him in Fee, and after the Death of his Wife, dies, by which it be- 

scends to the Heir of the Feme (that is to say) their Son, who enters, 

he is remitted to the Estate in Right defended by his Mother. 21 

E. 3, 36. b.

2. In Dower; Baron and Feme Tenants in Tail had Issue 2 Sons; the Baron S. P. For it 

died, the Feme legaded to the eldest Son for Term of Years, and after releaded 

it seems that the Reliefs 

rants of the
Remitter.

If one, and after the Mother dy'd, and the youngest Son entered, and the Feme of the eldest Son brought Wit of Dower, and recovered by Award, which was against the Opinion of the several; For, as it seems, the youngest Son is remitted to the Tail Quaquumque Via Data, which is eldest than the Title of the Feme Demandant. Br Remitter pl. 14. cites 23 E 3. 23 58.

3. If the Fishe in Tail diffuses the Discontinuance of his Father, and thereof a younger his Father, and the Father dies seised, and the Fishe in Tail enters, he shall not be remitted &c. Perk. S. 202. cites 18 H. 8. 5.

4. If the Husband and Wife be Tenants in Special Tail, and they levy a Fine at the Common Law, and after the Husband and Wife take back an Estrate to them and their Heirs; in this Case the Estate Tail is not barr'd, and yet against a Fine levied by herfelf, she cannot be remitted, because therupon she was examined; but in that Case, if the Land descends to her Fishe, he shall be remitted. Co. Litt. 353. b.

5. An Erroneous Fine binds till it is revers'd, and he who has Title to reverse a Fine by Error, has not thereby directly a Title to the Land; for if it descends to him, it works no Remitter. Skin. 14. Arg. cites Ow. 21. Agreed.

(E) What shall be a Remitter.

Bromley

Leafe for Life be, Remainder in Special Tail to the Baron and Feme, Baron dies, and a Stranger enters and seizes the Feme, and then Leefe dies; the Feme is not remitted to the Tail. (For the has the other Estate by Title.) 49 C. 3. 22. b. Assumed.

2. If Leefe for Life, the Remainder for Life are, and he in Remitter diffuses the Leefe, and then the Leefe dies, he in Remitter shall be remitted to his Estate, and the Reversion in Leefe. 19 D. 6. 22.

3. In Affile the Case was, That Baron and Feme seised in Tail, the Baron made Fossement, and the Baron and Feme had Fishe two Sons, who had Fishe two Sons; the Baron died, the Feme entered upon the Fosse with his Affile, claiming only at Will, and died, and the two Sons died, and the one Son entered upon the Fosse claiming to the Use of him and his Companion; the Fosseee brought Affile against him who entered, omitting the other, and good, and had Judgment to recover; for by the Entry of the Fosse as above, she did not gain Franktenement, and then by her Death there is no Defent nor Remitter to the Heir, and then the Entry was not lawful; and therefore the Claim did not velt any Thing in his Companion, and therefore he need not to name the Companion in the Affile. Contra if the Entry had been lawful, as it seems there. Br. Remitter, pl. 13. cites 24 E 3. 42.

4. O. S. brought Affile against E. And the Case was, That B. was seised of the Land, and held of E. the Defendant, and gave the Land to R. T. Bafford, and to J. his Feme, and to the Heirs of R. and R. and J. had Fishe Cecile; R. died; and J. survived; and after O. the Plaintiff took C. to Wife; and then J. the Mother of C. gave the Land to C. and O. her Baron now Plaintiff in Tail, saying the Seisin to her self for Term of her Life, the Remainder over to O. the Plaintiff in Fee, and C. was now within Age; and after C. died without Heir of the Part of the Father, but had Heir of the Part of the Mother; the Lord entered for Jfickent, because C.
Remitter.

It had no Heir of the Part of the Father, and by his Pretence E. was relieved, and in her right Right by the taking of the Full Tail, with her Land, from J. which made a Forfeiture, and gave Cause of Entry to C. and then, when the Issue, in the Law adjuges her in her right Right; and of this Issue E. brought Affile against E. the Lord; and by the bell Opinion, if a Forfeiture the Issue is remitted, and fee Lib. Afill, the Plaintiff is defeated, But quare of the Forfeiture during the Life of the Baron, C. must take with his Issue, there can be no Remitter nor Forfeiture during his Life; for the Issue has no Power during the Life of the Baron is clearly by Forfeiture, and the Baron invoids the Issue, and none held that it was a Surrender, but quare inde; for the Baron took with the Issue, and thence it seems no Surrender during the Life of the Baron, the Issue quare. Fr. Remitter, pl. 15. cites 39 E. 3. 29.

5. In Quod et Deforciat, the Case was, That a Man was seized in General Tail by Issue, and made Forfeiture, and reverted in Special Tail to him and his first Issue, and bad Issue; the Issue died, and he took another Issue, and died, the King seized by Seizure in Capite, and endowed the Issue, the Issue came and freed the Special Tail, and had Seize facias against the Issue, and recovers them by his Default, and he took another Baron, and the and the second Baron brought Quod et Deforciat against the Heir, and he parted the Special Tail, and fe quod he could have remitted the Heir by the other Tail, and so concluded him to say, but that his Baron was always seized in General Tail; & no special Issue; for per Thorp clearly, The Baron was not remitted, and then the was not seized of such Estate whereof the Issue may be endowed; for of such Special Estate her Issue is not inheritable, nor the Dowable, by which he aver'd Continuance of the Possession by the first Tail, and so to Issue, quod nota. Br. Dover, pl. 9. cites 94 E. 3. 30.

6. Where an Alot has an Advowson, and at the Advowson the King presents, and again at another Advowson, there the Abbot is put to his Petition for the Advowson, yet if the King restores the ancient Right of the Alot, and grants the same Advowson to the Abbot and his Successors, the Baron is remitted to his ancient Right. Br. Remitter, pl. 31. cites 2 H. 7. 17.

7. If Tenant in Tail infellos a Woman in Fee, and dies, and his Issue within Age takes the same Woman to Wife; this is a Remitter to the Infant within Age, and the Wife then has nothing; for Husband and Wife are but as one Perlon in Law; and the Husband cannot sue a Forfecon, unless he sue against himself, which would be inconvenient; and in this Case the Law adjuges the Heir in his Remitter, for that no Folly can be adjudged in him being within Age at the Time of the Eipoulds, etc. And if the Heir be in his Remitter by Force of the Entail; it follows that the Wife has nothing &c. for Husband and Wife being as one Perlon, the Land cannot be parted by Moteicies, and therefore the Husband is in his Remitter of the whole. But otherwise it is if such Heir was of full Age at the Time of Eipoulds, for then the Heir has nothing but in Right of his Wife, &c. Lit. S. 665.

8. If Tenant in Tail of Land descivable discontinueth, and retakes in Fee, and devises to a Stranger, and dies, the Heir is not remitter; for nothing is defended to him; for the Death tells the Defeat. Br. Remitter, pl. 52. cites P. 4. M. 1.

9. If Feme Life for Life lasts by Default in a Feign'd or False Action, the Leitor's Reversion is diverted, and he cannot bring Waifs while the Recovery continues in Forse; but if the Feme marries, and the Recoveror makes a Lease for Life to the Husband and Wife, the Wife is remitted and the first Leitor also, and then he may have an Action of Waifs. But if the Recoveror bring Waifs against the Husband and Wife, the Husband has no Remedy but to make Default, and suffer the Wife to be recivi'd. The Cause why the Wife is remitted in this Case is, for that the may have a Quod et Deforciat against the Recoveror by Welch. 2. 4. which gave
Remitter.

S. C. 3 Le. 92. pl 76. Mith. 15. Eliz. C. B. 
For the Right of the Heirs of the Manor, made a Feoffment, and consequently the Right could not be remitted. Hawk. C. L. 447. 448.

10. A seised in Fee, made a Lease to J. S. and his Wife for Life of the Wife, Remainder to the right Heirs of the Manor; afterwards the Baron made a Feoffment to the Life of himself and his Wife for their Lives, the Remainder to his right Heirs, and died; the Wife held in. The Court thought that the Lease was not remitted, but was in, according to the 24 Feoffment. Quere the Reason? for Harper said that the Discontinuance was out of the Statute of 32 H. 8. Dal. 100. pl. 32. 15 Eliz. Valor's Cafe.

11. Neither Action without Right, or Right without Action, with a Defect &c. shall make a Remitter, the 1st is apparent, and reolv'd per Cur. 3 Rep. 3. Marq. of Winchester's Cafe.

12. Where a Judgment and my Right do meet together, I shall be in my Right. Per Coke Ch. J. 3 Ball. 47.

13. There is a naked Possession, distinct from the Right of Possession and Propriety, or else there is a Right of Possession distinct from the Right of Propriety; Now where there is a naked Possession, distinct from the Right of Possession and Propriety, as between Diffeifer and Diffeise, where the Entry is congeable; there if the Diffeise takes back the Possession from the Diffeifer, he is remitted; For it cannot be otherwise, than that when he has taken back the Possession he should be seated in his old Right; For he who has really the Title, cannot claim from a Diffeifer that has no Title at all; and it would be very absurd and unreasonable, that the Diffeise by accepting his own Possession should transfer back any Right to the Diffeifer; But where the Diffeise transfers it back for Life, or Years, by Deed intented, or by Matter of Record, there the Diffeise is not remitted; For if a Man by Deed intented takes Lease of his own Lands, it shall bind him to the Rent and Covenants; Because a Man can never be allowed to affirm that his own Deed is inessential, since that is the greatest Security on which Men rely in all Manner of Contracting; The fame Law, if it had been by Matter of Record; For that is of its own Nature uncontrollable Evidence, which a Man cannot be allowed to controvert. G. Treat. Ten. 122, 121.

(F) In what Cases there shall be a Remitter.

Cra. E. 966. 1. If a Man leaves for Years to commence at a Day to come, and the Lease enters before the Day, by which he is a Diffeifer, he shall not be remitted to his Term if he continues the Possession after the Day; For the Law will not deject a Tortious Fee for a lawful Term, which is but a Chattel, and not executed in Law. D. 27. El. B. R. between Scarle and Fuller adjudged. D. 7. G. 6. 89. Lord Clifford's Cafe. D. 32. El. B. R. between Alexander and Dyer. Per Curiam agreed.

2. Where a Man seised in General Tail makes Feoffment, and retakes to him and his right Ene in Special Tail, and has issue, and the Ene dies, and he takes another Ene and dies, the King seizes for the Ward, and enlows
endows the Feme, against whom the Illue recovers by Seire Facts by Default, against whom the brings Quod of Deforcur, now he shall not have Dam; For the the Heir be remitted, yet his Father was not remitted, but was sealed of such Special Tail whereof the Feme is not Doable; For Thorp clearly, by which the Feme averred the Continuance of Possession in her Baron by the first Tail, and so to Illue; Quod nota Br. Remitter, pl. 12. cites 19 H. 6. 59.


Where no Possession is in one Person or by, then Right only does not make a Remitter without lawful Possession also. Br. Enter Cong pl. 55. cites 19 H. 6. 59.

Where the Proprietary comes to the Right of Possession, without any fault of Bolly of his own: As where the Right of Possession is kept upon him by the Lees, or he the comes to the Right of Possession by Possession in Act, or during Leases, where no folly can be imputed there; such Proprietary is remitted and feated in his grant and former Right; For the Deed in the bare more actuate, is the draft subject to End of; And therefore when the Proprietary has to such manner availed the Right of Possession, it is extinguished, for the Repose of the Inheritance, to be only a Remission of the Old Act, and not is renew a New one, and the rather, because there is no grants in the Proprietary. And when any Person has thus acquired the Right of Possession, if any Person will controvert it in any other Action, it is fit he should fit upon the Title, that the more Right may be decided. Thus if the Heir of the Dispossession, be bestowed in the Dispossession, he be fit from Wrong, and injustice cannot again the Right of Possession. For an Act of Disposal can never give any Right; But if such Disposal be folied, then the Heir has the Right of Possession, and hence, then both the Right of Possession, and the Disposal, it is folied in his ancient Right, for the Reason above-mentioned. C. Tract of Ten. 122, 123.


If the Heir comes upon the Land, and is not of Dispossession, this is a void S. P. For Feoffment, and a Remitter. Br. Property. pl. 27. cites 7 E. 4. 15.

The Distress has a Right of Entry before. Br. Remitter, pl. 52. cites 34 H. 3.

6. After Discomfiture of a Mower to which Advowson is appertaining the S. P. For a Heir in the Tail presented, and his Clerk dy'd [and the question was] Whether his Illue in Tail be remitted to the Adowson notwithstanding that the Mower to which &c. be not re-continued, And the best Opinion the thing was, That a Man cannot be remitted to that which is Incident or Appendant, as to Adowson or the like, till he has the Principal, but he may be remitted to a Perch as to an Acre of the Mower &c. For Adowson is not Purposely Appendant. Br. Remitter, pl. 32. cites 51 H. 7. 35.

Therefore of the Discomfiture of a Mower to which &c. grant the Adowson to Tenant in Tail and his Heirs, and he dies, yet is not the Illue remitted; But a Remitter to the Principal in Remitter to the Appendant, the they were seved before the Remitter. As if the discomfiture grants the Mower to Tenant in Tail and his Heirs having the Adowson, and the Tenant in Tail dies, and Mower defends to the Illue, he is not only remitted to the Mower but to the Adowson also; so if a Distress is an Unpropriate, and Distress re-comes into the Mower, to which &c. he re-continues the Adowson. Hawk. Co. Litt. 439, 440.

7. He who takes a Gift by Act of Parliament of any Land shall not be *S. C. cited remitted nor his Heirs: For where the Land is given expressly to any Ass. 176. 39. to Person by Name by Act of Parliament, which is a Judgment, he nor His Heirs shall not have other Estate than that which is given by the Act. A. Br. Cates of Al-

* Cates. Remitter, pl. 49. cites 29 H. 3. per Englefield f.

Remitter.

8. If the Discontinue be an Infant, or a Feme covert, and Tenant in Tail after Discontinue differs Item, and dies disfeted, the Heire shall be remitted without Respect of the Privilege of Intancy or Coverture. Co. Litt. 348. a.

9. An Action without a Right can not make a Remitter. Co. Litt. 349. b.

10. Nor a Right without an Action cannot make a Remitter. Co. Litt. 349. b.

11. Tenant in Tail makes Possession in Fee to the Ufe of himself and his Heirs, and after makes his last Will in Writing, and devises the Land to his Wife in Fee, and dies, the Sons shall not be remitted to the Entail, because no Freehold descends to him by Restion of the Devise. Held by 3 Juslices, and affirmed by 4 others; And yet there is a Dying feitel in the Father of a Fee-simple, but the Devise cut off the Devize.


12. No Remitter shall be but where it the Right and Possession were in several Persons, he that has Right may have Action to recover the Possession; For by Litt. 147, one of the principal Cattle why the Entail Tail shall be remitted, is because there is * no Person against whom he may sue his Formended. 3 Rep. 3. as in the Marquis of Winchester’s Cafe.

And 35; pl. 109 S. C. cited And. 172; in the Cafe of Zochel v. Barnfield. — S. C. cited 2 And. 177; pl. 99. in Danvers’s Cafe.—Bendl. 122, pl. 156. Trin. 4 Eliz. S. P. And (were it not for the difference of the Year) seems to be S. C. — S. C. cited out of Bendl. 5 Rep. 91. a. in the Cafe of Fines.

13. Tenant in Tail differs Discontinue, and levies Fine to a Stranger, and retakes Entails by Render in Fee, and before all the Proclamations passed the Discontinue enters and makes Claim, and after the Proclamations passe, and within 5 Years after he enters and makes Claim, and after Tenant in Tail dies seised, the Heir is not remitted, and this by the Statute of Fines 32 H. 8. which bars him and his Heirs by the said Fine. Mo. 115. pl. 257. Patch. 20 Eliz. Anon.

14. In some Cases a Remitter may be against the King. Arg. Godb. 312. cites Pl. C. 488, 489. 555. But that is where the King is in by Matter of Law by Conveyance, but not where he is in by an Act of Parliament. Ibid.


16. If Issue in Tail differs the Discontinue, and enfeoffs the Father who dies seised, and the Land descends to the Heirs, the Heir shall not be remitted. 2 And. 39; pl. 25.


18. Lord Ch. J. Saunders declared, That there can be no Remitter against a Party’s Non-Acceptance, where the Person is of full Age, and his Entry not lawful. 2 Show. 245. pl. 243. Mich. 34 Cur. 2. B. R. in Cafe of Harte v. Pawling.

(C) Where:
(G) Where a Man shall be Remitted, upon Taking an Estate. Where Title of Entry.

1. If an Infant aliens in Fee, and retakes at full Age an Estate to him and his Wife; this is not any Remitter. 41 C. 3. Remitter 11. Issue thereupon. 19 C. 3. Remitter 14 Issue thereupon.

2. If an Infant aliens in Fee, and at full Age retakes an Estate without Deed, because he had but a Title of Entry for Infancy, yet he shall not be remitted; for he had Election to make the Feoffment good, the which is affirm’d by this Acceptance. Contra 3 H. 6. 19.

3. But if a Ward intollis his Guardian in Secage, and at full Age accepts an Estate of the Guardian, he shall be remitted, because the Grant of the Guardian upon the Feoffment of the Ward, was a Dictum, and to the Ward had a Right of Entry. 35 H. 8. adjudged.

4. If a Man who has Title of Entry into Land for a Condition broken, retakes an Estate to him, if he does not claim to enter for the Condition broken, but by the Estate, he is not remitted, because the Estate is not void till Election, which is not yet made. 35 H. 11. adjudged.

5. If a Man of Non Sane Memorie makes Feoffment, and retakes an Estate for Life, he shall not be remitted, because he cannot not undo his own Feoffment, for that he was Non Sane Memorie. Contra 5 M. 4. Remitted 25 C. 3. Remitter 23.

6. If a Man leaves Land for Years to him that has Title of Entry for a Condition broken, he is not thereby remitted, unless at his Pleasure, if he will claim to be in or of the said Estate. 44 C. 3. Remitter 22.

7. If he who has a Title of Entry for an Escheat, takes an Estate of the Tenant, it is not a Remitter. 34 H. 8. 352. because he had but Title of Entry.

8. So if he who has Title of Entry for Alienation in Mortmain, takes Estate of the Land; this is no Remitter, because he has but a Title to it, and no Right. 34 H. 8. 352.

9. So if he who has Title of Entry by the Statute of R. 2. for the Confent of a Feme to the Rавisher, takes Estate of the Land, yet 32 H. 252. shall not be remitted. 34 H. 8. S. 252.

10. In Affiiss; Land was given in Tail to the Baron and Feme, and to the Heirs of the Body of the Feme by Fine, who had issue a Daughter named A. ter, pl. 12, and the Baron died, and the Feme took another Baron, who levied another estate cit. 8 C. Fine, and retake to them by the same Fine, and to the Heirs of their two Bodies, who had issue another Daughter named K. and died, and the youngest Daughter entered, and the eldest entered with her, and the William v. the youngest outed her, and the eldest brought Affiiss. And per cur. Car. The Entry of the Plaintiff is not lawful; for tho’ the youngest Daughter be remitted to the Moity, inasmuch as the Right of the Moity and the entire Possession extended to her, yet because nothing descended to the eldest Daughter but the Right of the Moity, and no Possession, and no Remitter may be but in Respekt of a Right and Possession, therefore her Entry is not lawful; wherefore she brought a Formed, and relinquished the Affiiss; quod nota. Br. Entire Cong. pl. 33. cites 19 H. 6. 59.

11. If I have Right to enter, and after the Possession is cast upon me by Course of Law, I shall be remitted whether I will or no; as if my Father...
ther defeis me, and after dies seised, this is a Remitter whether I will or not; but where I come to the Possession by divers Means by my own Act, and take as Feoffee, if I please, and A. shall be bound by his Warranty; but if I will I may claim by my Entry, and to be my Remitter Agreed per tot. Cur. Kelw. 41. pl. 17. Mich. 17 H. 7. Anon.

12. If Tenant in Tail has Issue 2 Sons of full Age, and he lets the Land to the eldest Son for his Life, the Remainder to the younger Son for his Life, and dies; in this Case the eldest Son is not in his Remitter, because he took an Estate from his Father; but if the eldest Son dies without Issue of his Body, then this is a Remitter to the younger Brother, because he is Heir in Tail, and a Freehold in Law is liethered and call upon him by Force of the Remainder, and there is none against whom he may sue his Action. Litt. S. 682.

13. So if Diffeifor dies seised, and the Tenants descend to his Heir, and he makes a Lease to a Man for Life, the Remainder to the Diffeifor for Term of Life, or in Tail, or in Fee, the Tenants for Life dies. Now this is a Remitter to the Diffeifor &c. Caufa quia supra &c. Litt. S. 683.

14. Note, If Tenant in Tail seised his Son and another by his Deed of the Land intailed in Fee, and Levery of Seifin is made to the other according to the Deed, and the Son not knowing of this, agrees to the Feoffment, and after he which took the Levery of Seifin dies, and the Son does not occupy the Land, nor takes any Profit of the Land during the Life of the Father, and after the Father dies, now this is a Remitter to the Son, because the Freehold is call upon him by the Survivor; and no Default was in him, because he did never agree &c. in the Life of his Father, and he has none against whom he may sue a Writ of Pardedon &c. Litt. S. 684.

Here appears a Difeifor between a Right of Entry, and a Right of Action; for if the Son be Contumacious, and agrees to the Feoffment &c. this is no Remitter to him. And therefore if the Feoffment was made by Deed indented, and the Son with the other seals the Contour, and then the Prefix makes Levery to the other according to the Deed, and the other dies, the Son is not remitted, because he was Contumacious of the Feoffment, and agrees to the same; and Littleton saith in the Case that he puts. That there was no Default in the Son, because he agreed not to the Feoffment in the Life of the Father; And so it seems, that if A. be seised in Fees, and has Issue 2 Sons, and by Deed indented between him of the one Part, and the Sons of the other Part, makes a Lease to the eldest for Life, the Remainder to the 2d in Fee, and dies, and the eldest Son dies without Issue, the 2d Son is not remitted, because he agreed to the Remainder in the Life of the Father; Or if the Life of the Father the Tenant for Life had been implanted, and made Defeiture, and be in the Remainder had been received, and thereby agreed to the Remainder after the Death of the Father, and the eldest Son without Issue, the 2d Son should not be remitted, because he agreed to the Remainder in the Life of the Father; all which is well warranted by the Reason yielded by our Author in this Section. Co Litt. 559. b.

15. Where the Entry of a Man is congeable, tho' at full Age, he takes an Estate to him for Life, in Tail, or in Fee; this is a Remitter, if such Taking be not by * Deed indented, or by Matter of Record, which shall conclude or estop him; for if a Man be defeised, and takes back an Estate from the Diffeifor without Deed, or by Deed-poll, this is a Remitter to the Diffeifor &c. Litt. S. 693.

If a Man of full Age having but a Right of Action, takes an Estate to him, he is not remitted; but where he has a Right of Entry, and takes an Estate, he by his Entry is remitted, because his Entry is lawful; and if the Diffeifor estops the Diffeifor and others, the Diffeifor is remitted to the whole, for his Entry is lawful. Otherwise it is if his Entry was taken away. Co Litt. 563. b.

A. is defeised of a Manor whereunto an Advowson is appertaining, an Advowson appertains the Manor, if the Diffeifor estops the Manor, the Advowson is recompenced again, which was vested in the Diffeifor and others. And if it is, if Tenant in Tail be of a Manor whereunto an Advowson is appurtenant, the Tenants in Tail defeit, the Diffeifor estops the Advowson, he is thereby remitted to the Advowson; and in both Cases he that Right has, have present when the Church becomes void. Co Litt. 563. b.

The Patron of a Benefice is outlawed, and the Church becomes void, an Edgerator of Mercy, and 6 Months pils, the King recovers a Quare Impediment, and removes the Incumbent &c. the Advowson is recompenced to the rightful Patron. Co Litt. 563. b.

* Here it appears, that if the Diffeifor by Deed indented makes a Lease for Life, or a Gift in Tail, or a Feoffment in Fee, whereunto Levery of Seifin is requisite, yet the Deed indented shall not under the Levery

Remitter.
Remitter.

16. If a Man leaves Land for Life to one who alienates to another in Fee, and the Altemee makes an Estate to the Leafe, this is a Remitter to the Leafe, because his Entry was congeable &c. Litt. S. 694.

17. Where a Man lets his Tenements decay, or converts Tillage Land into Paffure, against the Statute of 4 H. 7, and makes an Estate for Life to his Lord, he shall not have other Estate; for he had only a Title of Entry, and not Right of Entry. Quere; for it was not adjudged. Br. Remitter, pl. 50. cites 34 H. 8.

18. Tenant in Tail hath Issue two Sons B. and C. and Issue of C. of the S. C; i.e. entail'd Lands, and died, leaving his Wife Enfeint. B. entered, and afterwards the Issue was born. The Issue cannot re-enter, because the eldest Son was remitted, and in of his ancient Right before the Issue any Thing had; for then was not any Person capable to take by Deescent, or otherwise. And. 31. pl. 76. Hill 1 & 2 P. & M. in C. B. Anon.

19. A. was Tenant for Life, Remainder to B. his Son for Life, Remainder to the Right Heirs of the Body of A.—A. & B. issue'd A's Brother and Uncle of B. in Fee. A. died. The Uncle died without Issue. The Question was, Whether B. who was Heir in Tail to A. his Father, and also Heir at Law to the Uncle, as to the Fee descenced, be now remitted? Because, if he is, it will hinder the Uncle's Wife of Dower; but if the Livery, in which B. join'd with A. be the Livery of B. that will prevent the Remitter, so as during his Life he shall be adjudged kiled of the Lands in Fee-Simple by Deescent from the Uncle, and then Dower lies; for that is the fame Estate whereof he demands Dower. The Court doubted if it was the Livery of B. or not; and note, that the Fee compact is without Deed. Le. 37. pl. 48. Mich. 28 & 29 Eliz. C. B. Partridge v. Partridge.

20. Upon Evidence, it was said per Cur. aitence Poph. That if Tenant in Tail, Remainder in Fee, discontinues, and makes an Estate in Fee, and devises it to his Wife for Life, Remainder to B. for Years, Remainder in Fee to Law that had the Remainder in Fee before, and dies without Issue; the Wife enters and dies; he in Remainder is remitted, and may enter upon the Device for Years, and will avoid the Leafe, tho' his Remainder be created by the same Will. Noy. 48. Rooke v. Sprat, cites 9 H. 6. 43. Remitter avoids a Leafe for Years without Entry. 15 Eliz. 4. 6.

21. If Baron leases Fine of his Wife's Land, and dies, and the Feme accepts a Leafe for Years of the same Land; this is a Remitter. Cited by Harrison in his Reading at Lincoln's-Inn, in Lent 1632, as resolv'd Trin. 15 Jac. Rct. 983. Duncomb's Cafe.

22. A. Tenant in Tail, Remainder to B. in Tail, Remainder over &c. A made a Leafe to J. S. for the Life of J. S. not warranted by the Statute, and dies without Issue, leaving B. the Remainder-man his Heir, to whom the Receipt in Fee descends. B. (being now Tenant in Tail, with the Remainder in Fee) leases to W. R. (J. S. still living) for 99 Years, to commence after the Death of J. S. referring Rent. J. S. surrenders to B., and then in-
Remitter.

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and C. (a Stranger) upon Condition, and dies. It was inferred that by the Surrender B. was remitted, and that the Condition was no Hindrance, and that as to the Rule, that when a Person of full Age takes an Estate to which he could not enter, there is no Remitter, it is to be intended where the Estate has Continuance, but that here the Estate for Life by Surrender is merged, and that the Condition could not hinder its merging, and so by Consequence B. is feited again in Tail. But the Court held plainly that B. was not remitted by accepting the Surrender. Skin. 2. Mich. 33 Car. 2. B. R. & 62. Mich. 34 Car. 2. Paulin v. Hardy.

23. If Tenant in Tail discontinues for Life, and grants the tortious Reversion to a Stranger, and Tenant for Life surrenders to that Stranger, now Tenant in Tail is feited again in Tail. Sic dictum fuit per Pollexen. Skin. 3. in Case of Paulin v. Hardy.

(G. 2) Where a Man shall be Remitted upon taking an Estate. Where Right of Entry.

1. In Affile it was found, That Land was given to Baron and Feme in Tail, the Baron went of the Country, the Feme infefted O. who leased to the Feme for Life, the Baron died, and the Feme died without Issue, and the Donor entered, and O. ousted him, and the Entry of the Donor adjudged lawful; for the Feoffment of the Feme was a Disfeftion to the Baron, and by the retaking of the Estate she was remitted, and therefore the Reversion in the Donor, and his Entry lawful. Per tut. Cur. Br. Remitter, pl. 17. cites 9 Aff. 20.

2. In Affile, if the Baron and Feme purchose in Fee, the Baron after aliens in Fee, and after they enter with the Affent of the Affile who is within Age, and the Baron dies, the Feme is not remitted; for they were Disfeftors by their Entry, inasmuch as the Affent of the Infant is void; but M. 9. in Cui in Vita, if the Baron and Feme had been infefted, and after the Baron died the Feme had been remitted. Br. Remitter, pl. 18. cites 11 Aff. 14.

3. If the Tenant for Life loses by Judgment, and after he reverses this Judgment, by this the Reversion is veiled in him in the Reversion again; quod nota. Br. Remitter, pl. 19. cites 16 Aff. 16.

4. Where Baron is seised and takes Feme, and be aliens and retakes to him and his Feme in Tail, and dies, the Lord enters for Ward, and loses the Ward to J. N. who endows the Feme of the third Part, which he accepts; this is a Remitter to the Feme, and she may recover the other two Parts by Affile, and the Acceptance of the Dower no Impediment. Br. Remitter, pl. 20. cites 17 Aff. 3.

5. Baron and Feme seised in Jure Usoris, the Baron made Feoffment, and the Affile Re-conseffed the Baron and Feme, and the Heirs of the Feme; and she dyed without Issue, and her Heir Collateral ousted the Baron, and he brought Affile and recovered; for tho' the Feme by the retaking was remitted, and the Heir might have entered if she had survived the Baron; yet now as the Baron survived, therefore because she shall lose the Warranty if the Heir shall have the Remitter, for that Restion for Safe-guard of the Warranty the Baron recover'd; Quod Mirum. Br. Remitter, pl. 21. cites 21 Aff. 2.

6. Land descended to 2 Femes, and they made Purparty, and the one took Baron who alien'd in Fee, and re-took an Estate to him and his Feme; and
and after the Feme dy'd without Issue, by which the other Sister enter'd, and the Baron brought Affile, and the Affile awarded and that it shall not be a Remitter, by Reason of the Warranty of the Baron made to him, upon the Gift to him and his Feme, which shall be left by the Remitter, if he should be remitted. Whereinde, because it is contrary at this Day. 

Br. Remitter. pl. 41. cites 21 E. 3. 26

7. If the Differfor infeoffs the Differsee, and two others, the Whole accurses, It Differ for infeoffs the Differsee, and nothing vests in the others; For his Entry was lawful, and he remitted, and then the Livery is void. Contrariwise, if his Entry had not been lawful. Br. Remitter. pl. 23. cites 29 All. 26.

But contra, where the Entry of a Man is tol'd, as by Difentoucem, Difer &c. and Efface is made to him within Age, and to another, there he who has the Right of Action is not remitted unless for a Moiety. ibid.

8. In an Affile it was found that the Feme infeoff'd two upon Cautum, to re-infeoff her when she should require them; and after she took Baron, and then she required them to re-infeoff her, and the one re-infeoffed, and the other re-infeoff'd the Baron and Feme of the Whole; by which the Baron and Feme held them in of the Whole, and the other re-infeoffed them, and the Baron and Feme brought Affile and recovered by Award; and yet it was found that the Baron and Feme never claim'd the other Moiety by Entry, but enter'd by the Infeoffment; and yet because his Entry was lawful in the other Moiety, therefore by Award they shall be adjudg'd in, in their joint Right, and recover. Br. Remitter. pl. 45. cites 35 All. 11.

9. In Fermedon, Tenant in Tail made Ferifment and dy'd, and the Ferifment in fer infeoff'd the Issue in Tail within Age, it he is impaled, he shall hold Tail of the Whole, by Fure, and have his Age; for he is remitted upon this Matter pleaded; for there is after he no Folly in him; and he cannot waive the Tenancy, and has not any against being to the Issue to bring his Action, nor that can render to him his Demand, and therefor.e is remitted. quod nota. Br. Remitter. pl. 3 cites 40 E. 3. 43. for Terra of Life, and last, the Alliance brought Scire facias to execute the Fine, and the Heir in Tail shew'd this Matter, and pray'd his Age, and had it; for it was adjug'd a Remitter by the Nomage. Br. Remitter. pl. 38. cites 22 E. 4. 7.

10. In Affile the Cause was, That the Baron seifed in Juris Usuris made Ferifment in Fee, and veto'd to him and his Fene, and to the Plaintiff in the Affile, and after the Baron and Feme levied a Fine to the Tenant with Warranty; the Baron dy'd, the Feme survived, and the Tenant held himself in, and all this Matter was found by Affile awarded at large, because the Plaintiff was an Infant; and it was awarded that the Fene by the Restaking was remitted to the Whole; and therefore all pass'd by the Fine, and so the Plaintiff took nothing by his Writ, quod nota; but Appellate that she had not recovered a Moiety; For per quiet, in his Chapter of Remitters, the Fene is not remitted but to one Moiety only. Br. Remitter. pl. 6. cites 44 E. 3. 17 & 44 All. 2.

11. If Land be intided by Fine to the Baron and his first Fene, and the Heirs of their two Bodies, and they have Issue a Son, and the Baron and Fene discontinue by Fine, and veto'd to them and to the Heirs of the Body of the Baron, the Remainder to the Right Heirs of the Baron; the Fene dies, and the Baron takes another Fene and dies, and the second Fene brings Writ of Dower against the Son; But per Cur. he shall be barr'd, for the Heir is remitted by the first Tail, of which the Fene is not Dowerable, and so in by elder Title than the Fene can demand Dower of; For the cannot demand Dower but upon the second Tail General, which is gone by Remitter, and so the Heir in by elder Title, quod nota. Br. Remitter. pl. 7. cites 44 E. 3. 26.

12. In
12. In Waft, it was faid that where Feme is in with her Baron by Leaf of F. for Life, and the Baron dixcstentc to W. and W. makes another Leaf to the Baron and Feme for Life, and the Baron dies, the Feme in Walf shall be alleged to be in by the first Leaf, and not by the second Leaf, by Reafon of the Remitter. Br. Remitter, pl. 8. cites 46 E. 3. 20.

13. In Formedon: Baron was feife in Fee in five Unions; they had iffe a Daughter; the Baron gave in Tail to the Daughter and her Baron; the Donor and his Feme dy'd, and the Baron of the Daughter dy'd, and the Daughter made Feezment in Fee and dy'd; the Son of the Daughter brought Formedon. And per Calpeter, he shall be barred, for his Mother was remitted to the Fee-fimple, and then the Feezment good, Quod Thirming non Negativ, by which the Demandant pleaded other Matter. Br. Remitter, pl. 10. cites 11 H. 4. 50.

14. A. was feife in Fee, and B. dixfeifed him, and compelled A. to Marry his Daughter, and after compell'd him * to take a Gift from B. of the same Land in Tail, by Menace of Death; and it was admitted, that becaufe his Entry is lawful, and he did not take the Eflate by Usu indented, now he is remitted to the Fee-fimple, quod nota bene. Br. Remitter, pl. 40. cites 12 H. 4. 17.

15. Formedon of the Gift of one R. to W. and E. his Feme in Tail, and conveyed to himself as Heir to the Donor; the Tenant faid that before the Gift of W. the Donee was feife in Fee within Age, and inoff't the faid R. and after R. gave to the faid W. and E. his Feme in Tail, and E. died, and W. survived, One Eflate the Tenant has; the Demandant faid that at the Time of the Gift W. was of full Age; and the others contra. Quære of this iffe; for it W. was within Age at the Time of the Feezment made to R. he is remitted, notwithstanding he was of full Age at the Time of the Gift; for his Entry was lawful; and then if he receiv'd within Matter of Conclusio, he is remitted. Br. Remitter, pl. 2. cites 3 H. 6. 19.

16. In Formedon the Tenant faid, That before the Gift the Donee himself was feife, and inoff'd the Donor, who gave to the Donor and his Feme, the Donee within Age, and they had iffe the Mother of the Demandant, and the Feme died, and the Baron took another Feme, and had iffe a Son now Tenant. Judgment &c. and this is by the Remitter; for the Entry of the Infant was lawful, and by the Gift he is remitted, and is not feife in Tail, and then the Son is Heir. Br. Remitter, pl. 34. (bis) cites 5 E. 4. 5.

17. Note, Per Vavifor, It was held by the Judges, in the Cafe of Biattou: That if Tenant in Tail diffeif his Diicontinuc, and his fife, and the Diicontinue dies, his Heir within Age, the Tenant in Tail dies, his Heir is remitted notwithstanding the Nonage of the Heir of the Diicontinue, and yet Deñcendent shall not bind the Infant. Contrary of Remitter; But if the fife in Tail was Party to the Diicifor, he shall not be remitted. Br. Remitter, pl. 34. (bis) cites 11 E. 4. 1.

18. Where a Man recovers upon faunt Title against Tenant in Tail, and he dies, before which the Receiver enters, by which the Heir in Tail enters, he is remitted; per Brian and Littleton; but per Choke J. Upon Recovery Executory he is not remitted as here, for the Entry of him who recover'd is Lawful, and the Heir in Tail is put to his Formedon to Eflate. Br. Remitter, pl. 35. cites 12 E. 4. 19.

19. If a Man diffeifs my Father, and I enter in the Life of my Father, and after my Father dies; now I shall retain the Land againft the Diicifor, and yet he shall have Trespa for the Time of my Father; For he may have Affife in the Life of my Father. Br. Remitter, pl. 36. cites 21 E. 4. 78. per Brian and his Companion in Bluet's Cafe. — And the like Matter was agreed for Law 30 H. 6. Ibid.

20. If the Diicifor inoff's the Heir of the Diicifor, and the Diicifor dies his Heir within Age, he shall have his Age; For he is remitted. And it seems [that he is] if he was of full Age; For the Right is de-
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referred to him from his Father; quod nona. Br. Remitter, pl. 43 cites
21 E. 4., 73.

21. Tenant in Tail made Feoffment and retook an Estate again, and obliged Br. Condition
himself in a Statute Merchant, and then made Feoffment in Fee upon Condition
br. S. C. — cites S. C.

And after the Recognition was put in Execution of the Statute Mer-
chant; and after he dy'd, and the Heir in Tail entered within Age for the pl. 53. cites
Condition broken. And Per Rede and others, This is a good Remitter S. C.
to the Heir in Tail; because he is within Age, and therefore Folly shall not
be adjudg'd in him, and therefore a Remitter; But if he was of full
Age, and entered for the Condition, and has Title of Formedon Paramount,
as above, there halt not be remitted; For he shall be adjudg'd in of
such Estate only, as he was who made the Condition, at the Time
when he made Feoffment upon Condition, which was Fee-Simple. Br.
Remitter, pl. 53. cites 8 H. 7. 7.

22. If the Son and a Stranger dispossess the Father, and after the Father
dies, the Son is remitted to all, and he shall be adjudg'd in as if he had

23. If Land be entailed to a Man and his Wife, and the Heirs of their 2
 Bodies, who have Issue a Daughter, and the Wife dies, and the Husband
takes another Wife, and his Issue another Daughter, and disentitles the
Land to the Heir; and after he dispossesses the Issue of the Literary, and dies intestate, the
Land, and disenchants the 2 Daughters. And in this Case, as to the Eisdem, and there
Daughter, who is inheritable by Force of the Tail, this is no Remitter
but of the whole; And as to the other Estate, he is put to the other Ac-
tion of Formedon against her Sister. For in this Case the 2 Sisters are
not Tenants in Parcenary, but they are Tenants in Common, for that they
are in by divers Titles; For the one Sister is in her Remitter by
Name without his
Folly; and
in this Case by Att in Law the Coparcenary is defeated; For the Daughters are in by several Titles
viz. The eldest Daughter is Tenant in Tail Per Formam Doni, by the Remitter of the one Moiety,
and the youngest entitled in Fee-Simple by Devise of the other Moiety, against whom the other Sister
in Tail may have her Formedon. Co. Litt. 320. a.

24. So if Tenant in Tail infringes his Heir apparent in Tail within Age, And is
and another Jointtenant in Fee, and the Tenant in Tail dies; now the Heir in the Devise
in Tail is in his Remitter as to the one Moiety, and as to the other
Moiety he is put to his Writ of Formedon &c. Litt. 603.

Charter of Feoffment to the Issue in Tail, being within Age, who has Right, and to a Stranger in Fee, and
makes Liberty to the Infant in Name of both; The Issue is not remitted to the Whole, but to the Half;
For first it takes the Fee-Simple, and after the Remitter is wrought by Operation of Law, and there-
fore can remit him on, to a Moiety. Co. Litt. 350. a.

(H) At what Time a Man shall be remitted.

1. If Tenant in Tail makes a Feoffment in Fee to the Use of him—See (K)
himself in Fee, and after Leaves for Years and dies, the Issue is
immediately remitted by the Devise of the Reversion before Entry
260. c. the Land, and the Estate of the Issue immediately changes into a
Tenancy at Sufferance. Mort. 13. B. R. between Bridgman and
Charriol. Adjudg'd upon Evidence.

2. Where

5 Y
Remitter.

2. Where the Issue in Tail enters as Heir of the Ancestor in Tail, who suffers a Judge Recovery, and the other quits him, he shall have Affile, and shall satisfy in Affile; and so he is remitted notwithstanding the Recovery, as it seems; but this is before Execution had. But if the Demandant had sued Execution against the Ancestor, there the Issue is put to his Formacion. Note the Diversity, Where he may enter and have Affile, and where not. Br. Remitter, pl. 9. cites Kn. 4, 17.

3. A Man can not be remitted after Collateral Warranty defended; For Linear Warranty and Affairs defended is only a Bar to the Tail, but Collateral Warranty is an Extinguishment of the Tail; so that tho' the Tenant in Tail or his Issue enter after this, and dies feigned, and his Heir is in by Defeunt, yet he shall not be remitted for the Reason aforesaid. Br. Garranties, pl. 31. cites 19 H. 6. 59.

What is here said of Non-Tenure, pleads must not be understood of a Simple Plea of Non-Tenure, but of Non-Tenure pleaded with a Disclaimer; For the Plea of Non-Tenure signifies no more than that the Tenant has not the Freehold, which may be true, yet he may have a Recovery in Fee expectant of an Estate for Life; so that in that Case, the Demandant re-entering, should not be remitted to the whole Fee. Hawk Co. Litt. 456.

5. So if a Defeise brings a Writ of entry sur disfesia against the Disfeiser's Heir, who disclaims, the Defeise may enter, and shall be remitted; or rather, shall recumvent the former Estate; For in these Cases the Demandant has no Right to 2 Estates. Litt. S. 692. Hawk Co. Litt. 456.

6 Note, in the Case of Feme Covert, the may be remitted in the Life of the Discontinuer; because the has a present Right. But in the Case of Tenant in Tail, the Issue cannot be remitted in the Life of the Discontinuer; Because the Issue has no Right until his Decesafe. Co. Litt. 352. 4.

(I) In what Cases a Remitter to one shall be to another, and in what Not.

1. Baron and Feme Tenants for Life, Remainder in Tail to the Eldest Son of the Baron, the Remainder to the Youngest Son of the Baron in Tail, with diverse Remainders over in Tail, the Remainder in Fee to the right Heirs of the Baron in Fee. The Baron makes Peoniment to the Life of himself for Life, the Remainder to the Youngest Son in Tail with Warranty, and dies; After what Death the Warranty depends upon the Eldest Son, and then the Feme enters by the Statute 32 H. 8. by which the is remitted; yet this shall not remit the Eldest Son to his Share Tail, which was bound by the Collateral Warranty of his Father. Between him and Kendall, Cl. Car. B.R. Adjudic upon a Special Verdict without Damia; And afterwards, vide aforesaid, 5 Car. adding upon Writ of Error in the Exchequer-Chamber without any Scruple, and the first Judgment affirmed. Intellatr. Cl. 3 Car. B.R. Rot. 746. Hill. 10 Car. B. R. between * Gunter and * Snedden, admitted and agreed by the Counsel and Court without Argument of this Point. Intellatr. Cl. 8 Car. Rot. 1000. I being of the Plaintiff's Counsel. See 19 H. 6. 5.

* Cro C. 201, pt. 2. Hill. 10 Car. B. R. between * Gunter and * Snedden, admitted and agreed by the Counsel and Court without Argument of this Point. Intellatr. Cl. 8 Car. Rot. 1000. I being of the Plaintiff's Counsel. See 19 H. 6. 5.

— Baron Tenant for Life, Remainder to his Wife for Life, Remainder to his first Son in Tail. — The Son is of Age, the Baron makes Peoniment in Fee with Warranty, and takes back in Estate to him and to his Heirs. The
The Bane. The Wife is remitted. But the Collateral Warranty binds the Son; for he is not remitted. Per Bilt. Ch. J. 11 Mod. 91. p. 14. cites Bullil. 165.

2. In Affile it was found, That the Lord Say gave in Tail, the Dovee died'd in her, and retook to him and his Wife in Tail, the Remainder to W. in fee; and had issue and dy'd. The issue of the Wife died without issue. W. by the Remainder entered, and the Donor called him, and his Entry lawful; because the issue in Tail is remitted. And this is a Remainder of the Reversion also; for Discontinuance cannot be of Estate Tail only, unless the Reversion be discontinuance also; So the Issue in Tail cannot be remitted without Recontinuance of the Reversion to the * Donor, or * Origin is his Heirs. Br. Remitter, pl. 27. cites 36 All. 4.

3. If Differ are entries, 4, upon whom the Differ re-enters, and one of the issue of the Keeps enters again, and the Differ brings Affile, he cannot plead a Closement jointunity with the other 3; For by the Entry of the Differ their interest was created, and therefore Regress of the one does not vest in the other, and others; For the Right is determined. Br. Remitter, pl. 16. cites 1 H. 6. are opposed, the Entry of the one revest all the others; For the Entry is lawful, and the Right remains. And in the other Cases e contra; For the Right, Interest, and Possession is delegated by the lawful Entry. I bid.

4. If Land be given to a Woman in Tail, the Remainder to another in For the E- Tail, the Remainder to the 3d in Tail, the Remainder to the 4th in Fee, Lives, and the Woman takes Husband, and the Husband discontinues the Land in Fee: By this Discontinuance all the Remainders are discontinuances. For as the Differ if the Wife dies without issue, they in the Remainder have no Remedy connivance but to sue a Formacion in the Remainder when it comes to their Time. And if the Wife die without issue, it is a Formacion in the Remainder. For Remitter for their two Lives, or another Man's Life, or other Estate &c. or of this being a Remitter to the Wife, is also all in the Remainder; for Remission after the Wife is remitted in her Remitter is dead without Issue, they in the Remainder may enter &c. without losing any Action &c. and it is of those who have the Reversion after such Entries. Litt. S. 673. for the Entry to the E- Tail should be a Remitter to them in the Remainder or Reversion. Co. Litt. 534 b.

5. If 2 Jointunities in Fee, the one being of full Age, the other within Par- Age, are different &c. and the Differ dies after, and his issue enters, the one of the jointunities being then within Age, and after comes to full Age, have the and then the Heir of Differ keeps to them for their 2 Lives, this is a Remitter (as to the Motiey) to him that was within Age, because he is the one and one feiled of the Motiey which belongs to him in Fee, for his Entry was con- geable; but the other jointunity has in the other Motiey an E n for his Lite only by Force of the L eaf, because his Entry was taken away to where the Entry is not in full, and they join in a real Action, and one is complicated and severed, and the other receivers, both issue enter; but when their Remitter are sever, as when 2 Partakers are different, and the Differ dies after, and the issue of one of them receivers, the issue of the other shall not enter without her. Hawk Co Litt. 338.

But here is the Case of frustrated, i.e. that he should have entered into the Whole, because he is now in Judgment of Law, solely as by the null Formacion, and he claims not under the Different Co. Litt. 564 b.— And claims nothing from his Co-Partner, who Right of Entry was bound by the Different Hawk Co. Litt. 339.

If A. and B. jointunity be defaced by the father of A. who does not his Son and their entries, he is remitted to the Whole, and his Co-Partners shall take Advantage thereof, otherwise he is in the Case of frustrated, i.e. that the Advantage is given to the Infant, more in respect of his Order than of his Right, wherefore his Co-Partners shall take no Advantage. Co. Litt. 564 b.— Serjeant Hawkins says, "Then in this last Case the Right of Entry which it had in Jeopardy with A. had not be lost by A. but by A's father to A in respect of the Briety between them. Hawk Co. Litt. 335.— But if the Grandfather had defaced the jointunities, and the Lord had decreed to the Father, and from him to A. and then A had died, the Entry of the father would be taken away by the null Decree, and therefore he would not enter with the Heir of A. Co Litt. 564 b.

6. A.
6. A Gift in Tail is made to B. the Remainder to C. in Fee, B. discontinues and takes back an Estate in Tail, the Remainder in Fee to the King by Deed involv’d; B. dies, his Issue is remitted, and consequent the Remainder. Co. Litt. 354. b.

7. *F. S. Tenant for Life,* the Remainder to A. in Tail, the Remainder to B. in Fee; *F. S. is dispossess’d.* A* collateral Ancestor of A.* releases with Warranty and dies, whereby the Estate Tail is barred; *F. S. re-enters,* the Disfier has an Estate in Fee-simple, determinable upon the Estate Tail, and the Remainder of B. is devested in him; and so note in this Case, the Estate for Life, and the Remainder in Fee are reverted, and remitted, and an Estate of Inheritance left in the Diffier. Co. Litt. 354. b.

(i. 2) Where the Issue shall be remitted against one, and not against another.

1. *If Tenant in Tail and his Issue dispossesses the Discontinuance to the Use of the Father, and the Father dies, and the Land descends to the Issue,* he is not remitted against the Discontinuance, in Respect he was Prey and Party to the Wrong; but in Respect of all others he is remitted, and shall deraign the 1st Warranty; And to note, A Man may be remitted against one, and not against another. Co. Litt. 357. b.

2. The Husband purchased Lands to [the Use of] himself and his Wife in Tail, they had Issue two Sons; then the Husband made a Feoffment to the Use of himself for Life, Remainder to his Wife for Life, Remainder to his second Son and his Heirs; and died; the Wife entered and made a Feoffment to the Issue of the second Son; and then the eldest Son entered for a Forfeiture upon the Statute of 11 H. 7. cap. 25. and adjudged without any Difficulty that his Entry was lawful, and that this Feoffment by her (that made to him who had the Reversion in Fee) is a Forfeiture within the Statute; For they all agreed, That by her Entry he is remitted, and that as to this there is no Difference between an Estate at Common Law, and this Estate limited to her by the Statute of Uses. Sid. 63. pl. 53. Mich. 13. Car. 2. B. R. Jones v. Philpot.

(K) What Charges shall be Defeate by a Remitter.

Charges of other than him who is remitted.

1. *It shall defeat all Charges of Strangers.

2. It shall defeat all Charges of his Ancestors.

3. As if Tenant in Tail discontinues and retakes in Tail or Fee, and grants Rent-charge, and dies, the Issue shall avoid the Rent. 44 C. 3. 26.

4. So if the Issue be remitted to a Special Tail, the Wife of his Father, who is not his Sister, shall not be endowed. 44 C. 3. 26. b.
Remitter.

5. So if Tenant in Tail discontinues and retakes in Tail, and dies, the Issue shall be in Ward to the first Donor by the Remitter. 44 C. 3.

6. Dubitatur.

6. If Baron left in Right of the Feme discontinues in Fee, and retakes in Fee, and after the Feme dies, and after Baron takes 2d Wife and dies, by which the Land descends to the Issue of the first Wife, whereby he is remitted, the Feme shall not be endowed. 21 C. 3. 36 b.

7. The same Law if the Issue be remitted by Recovery. 21 C. 3.

8. If Tenant in Tail makes Feoffment in Fee to the Use of himself in Fee, and afterwards leaves for Years rending Rent, and dies, the Issue being remitted by the Decision of the Recovery before Entry, the Estate for Years is also changed into a Tenancy at Sufferance, because there is not any Privy between this Estate and the Lease, and therefore no Acceptance of the Rent can continue it. 9. In Formendon, the Tenant pleaded in Bar that the Grandmother of the Demandant was seized in Fee, and took to Baron J. N. and had Issue E. Mother of the Demandant, and the said J. N gave in Tail to the said E. and her Baron, and after J. N. and his Feme died, and the Baron of E. died, and he survived, and enfeoffed the Tenant, Judgment &c. and a good Pike to bar the Tail by the best Opinion for the said E. was remitted to the Fee-simile, which voids the Tail. Br. Formendon, pl. 63. cites 11 H. 4. 50.

10. If Discontinuance of the Wife's Land by the Husband makes an Estate of Freehold to the Husband and Wife by Deed indented upon Condition, viz. ter pl. 51. cites Litt. Br. Remitter of Freehold to the Husband and Wife by Deed indented upon Condition, to pay the Discontinuance a certain Rent with a Clause of Re-entry, and because the Rent was behind the Discontinuance entered; she shall have No- vel Dilectio after the Death of her Husband against the Discontinuance; For the Condition was given by a Reallin she was in her Remitter, yet the Husband with his Wife could not have had an Affidavit because He was left offed &c. Litt. S. 679.

11. If an Abbot or Bishop had discontinued, and Discontinuance had charged the Land, and afterwards by Licence had unfeft the Abbot or Bishop, the Successor should have been remitted, and should have helden the Land discharged. Litt. S. 686, 687. Hawk. Co. Litt. 454.

12. If the Father disfesses the Grandfather, and grants a Rent-charge, and Nov can the dies, now is the Entry of the Grandfather taken away; if after the Grandfather dies, the Son is remitted, and he shall avoid the Charge. So as where Littleton puts his Example of a Fee-tail, it holds also in Cafe of a Fee-simile. Co. Litt. 349. a.

What
Remitter.

(L) What Charges shall be avoided upon a Remitter.  
[Charges of the Persons remitted.]

Mo. 615. pl. 1. If Tenant in Tail encoffs his Son within Age, who at full Age leaves the Land, and after is remitted by the Death of his Father, he shall not avoid his own Leaf.  W. 13 Ed. B. R.

that the Son's making the Leaf shall not hinder the Remitter, but that the Law is satisfied in making the Leaf to stand good against him, because all that the Law expected was, that he should not avoid his own Leaf—S. C. And upon the Death of the Son his life is remitted, and consequently the Leaf is gone and vanished, because the Reversion to which the Leaf was attendant, is gone. Per Coke Ch. J. Roll. Rep. 262. in Cafe of Bridgman v. Charlton.

2. If the Heir Apparent of the Differse diffuses the Differse, and grants a Rent-charge, and then the Differse dies, the Grantor shall hold it discharged; for there a new Right of Entry does descend unto him, and therefore he is remitted. Co. Litt. 349. a.

(M) Devonling of a Remitter. What may do it.

*Mo. 82. pl. 122. 4. Bill to Jac. the Cofe was, The Baron was Tenant in Tail, Remitter to his Wife for Life. The Baron made a Fiefement to the Life of his own, and Wife for their Lives for the Wife's Jointure, and after he died without Issue, and this Jointure was pleaded in Bar of Dower; but adjudged to Bar, for the Wife is remitted, and in of her first Estate, and the Jointure avoided —— Hoob. 4. pl. 84. S. C. accordingly.

It was held in B. R. that there against Mountague Ch. J. that Nolen Volens she is remitted, and in of her first Estate. Cro. J. 488. Wood v. Shirley. —— Jenk. 354. says John Say's Cafe has the same Point adjudged 41 Ed. 5. 17.

Baron and Farm Tenants in Special Tail, Remainder over, Baron discontinues and dies; After the Farm lingers a Fine. Per Cur. Here was a discontinuance, and the Fine has extinguished the Discontinuance; so that the Feme never can enter to be remitted. —— Husband and Wife Tenants in Special Tail, Husband leaves a Fine to his own Life, and after discontinues the Land to his Wife for Life, Remainder over, rendering Rent; Husband dies, Wife enters and pays the Rent, now the husband's Remitter. 45 Ed. 27. 2. cites D. 351. because the Issue is bound by the Fine —— Roll. R. 36. Per Dideridge J. in Cafe of Wood v. Shirley.

2. If an Ancient Right and Puffine Estate comes to a Man without Polly in him, the prima Facie the Law says, that he is remitted to the ancient (Right) because it is more worthy, yet he may claim to be in of the Puffine Estate; for peradventure he has Warrantly upon this and not upon the other.

3. As if Tenant in General Tail discontinues, and retakes in Special Tail, and dies, the Issue of the Special Tail being in of the General Tail may claim to be in of the one or the other. 41 Ed. 3. 30. b. 46 Ed. 3. 25. 24. b. 4. If the Father discontinues his Son and Heir within Age, and dies, the Heir may claim in of the one Estate or the other. 46 Ed. 3. 25.
5. If a Man conveys Land to the Use of himself in Tail, the Remainder to his Wife for Life, the Remainder to another in Tail and then makes Foolement of it to the Use of himself and his Feme for Life, without Impeachment of Wills &c. and after dies, his Feme entering claiming the 2d Estate, this shall defeat the first Estate; for there was no Remainder during the Coverture, much less as her ancient Estate was not an Estate of Frankenishment, but only a Remainder, and then both Estates coming together after the Death of the Baron, she has Election to claim either of them. Br. 13 Ed. 2. 2 M. H. C. cited Arg. 2 Roll. 57. p. 16 38 & 16 p. 36 10

6. Gift was made to Baron and Feme, the Remainder to J. S. the Baron discontnued, and retook to him and his Feme, the Remainder to W. N. and J. S. died, the Feme agreed to the second Estate, and surrendered Parcel to W. N. The Feme died, J. S. entered, and W. N. ousted him, and J. S. brought Affiff, and recovered; for by the Remitter of the Feme upon the second Estate, the Remainder to J. S. was restored, and therefore the Feme could not surrender to W. N. but [could only] grant her Estate, which is determined by her Death, and therefore the Plaintiff recovered; quod nato
And fo lice that the Agreement to the second Estate is of no Effect, unless it was by Matter of Record. Br. Remitter, pl. 29. cites 41 Att. 1.

7. A Man made a Foolement to 2, to re-enter to him and his Feme in Tail, the Remainder to A. his Daughter, and 4 Days after one of the two People died, by which the Fesfor enter'd, and required the Survivor to re-enter him, by which he made a Deed to him and his Feme in Tail, the Remainder to A. his Daughter in Fee, and delivered the Deed, and said, God gives you Joy &c. and therefore it seems this was upon the Land; for it was admitted that this was a good Foolement without Livery; and after the Baron discontnued to others, and retook an Estate to him and his Feme in Tail, the Remainder to R. in Fee, and died, and the Feme recovering by Deed that she held &c. the Remainder to R. surrendered to R. and after the Feme died; and by Judgment, because the retaining of the Estate by the Baron after the Discontnunciation &c. to him and his Feme, the Remainder to R. was a Remitter to the Feme, by Reason that the Feme recovered, therefore the Remainder to A. is remitted also, and therefore R. shall not have the Land. Br. Remitter, pl. 4. cites 41 E. 3. 17.

8. A Defeise is attainted of Felony, and the Land was helden of the Crown. The Defeise enters into the Land, and afterwards Office is found that the Deed was seised. The Remitter is devolved out of the Defeise; and there was a Right of Entry. Arg. Godb. 326. in Case of Ld. Sheffield v. Ratchell, cites 3 E. 4. 25.

9. A Tenant in Tail leaves a Fine, and disfesses the Cousin, and dies, the Issue is remitted, then Proclamations pass; now the Fine devolves the Remitter. So if he suffered a Common Recovery, and died before Execution, and the Issue entered, and then Execution is fixed, the Estate Tail is devolved by the Execution. Arg. Godb. 325. cites 1 Rep. 47.

10. Tenancy in Tail had Issue 2 Sons, and issue of his younger Son, and if Jamb be died, the younger Son died without Issue, having his Wfle Testament. Br. 1 Rep. 27.
Remitter.

Heirs To feint with a Son; the elder Brother entered; this is a Remitter, and shall not be avoided by the Birth of a Son after. 3 Le. 2. 1 Ph. & M. C. B. Anon.

Fugement in Fec, and takes back an Estate to him and his Heirs, and dies, having left a Daughter, leaving his Wife a Fugement Ejectment with a Son, and dies, The Daughter is remitted; and albeit the Son be afterwards born, he shall not devest the Remitter. Co. Litt. 557; a.

See (M) pl. 5

(N) In what Cases a Man shall be Remitted Nolens Volens. Remitter waived.

1. Baron and Feme Tenants in Tail were, the Remainder to 7. S. in Fee, the Baron discontinnued and retook an Estate to himself and his Feme, Remainder to 7. D. and died, the Feme is remitted Nolens Volens, and cannot waive it for the Benefit of J. S. Arg. 2 Roll. Rep. 34. in Case of Wood v. Sherley; cites 41 Aff. Jo. a. Stiles Case.

2. Dower, the Tenant said, That his Father, of whose Document &c. was seised, and inoff'd B. and re-took to him and his first Feme in Special Tail, between whom this Tenant is Issue; and the Feme dy'd, and the Baron op'd this Feme, now Demandant, Judgment &c. The Demandant said, That before the Baron any Thing had J. S. was seised in Fee, and gave to the Baron in general Tail; and after the Baron discontinnued and re-took in Special Tail as in the Bar, and to the Defcent to the now Tenant, Son of the Baron, a Remitter, Judgment &c. and pray'd her Dower; and to the would have remitted the Heir against his Will. And the Opinion of the Court was against the Demandant, and that the Heir may claim in by which Tail be pleased. Br. Remitter, pl. 39. cites 46 B. 3. 24.

3. Where a Man is remitted he cannot waive it if it be to the Prejudice of a 3d Person. Admitted and agreed. Arg. Kelw. 4. b. 5. &c. Hill. 12 H. 7. in the Case of Lord Brooke v. Lord Latimer.

4. Where the Discontinnue inoff'd the Tenant in Tail who has Issue and dies seised, the Issue, in this Case and in all other Cases of the like Nature of Remitter, has not any other Liberty to choose what Estate he will have but the more ancient Right then is the Estate Tail shall be adjudged in him, and no other Estate. Per Brian Ch. J. and agreed to by several others. Kelw. 29. in the Case of Ld. Brook v. Ld. Latimer.

5. If I have Right of Entry into certain Land, and after the Possession is cast upon me by Course of Law, I shall be remitted whether I will or no. Kelw. 41. pl. 7. Mich. 17 H. 7. Anon.


As if a Man disfises me and after inoff'd me by Dued with Warranty, there I may be in as Poecoff, and take as Poecoff if I please, and he shall be bound by his Warranty; but yet I may claim by my Entry, and so be in my Remitter &c. Kelw. 41. pl. 7. Anon.

Here it appears that the Husband against his own Alienation, if he

7. If Land be given to the Husband and his Wife, and to the Heirs of their 2 Bodies, and after the Husband dies in Fee, and takes back to him and his Wife for their 2 Lives, This is a Remitter in Fact to the Husband and his Wife, maugre the Husband; For it cannot be a Remitter in this Case to the Wife unless it be a Remitter to the Husband; Because the Husband
Removal.

Husband and Wife are one and the same Person in Law, tho' the Husband be entitled to claim it; and therefore this is a Remitter against his own Alienation and Reprisal. Litt. S. 672.

remitted. But when the Estate is made to the Husband and Wife, as well as to one Person in Law, and no Mutuities between them, yet because the Wife cannot be remitted in this Case, unless the Husband be remitted also, and for that Remitters are favoured in Law, because thereby the more ancient and better Rights are restored again; therefore in this Case, in judgment of Law, both Husband and Wife are remitted, which is worthy of great Observation. Co. Litt. 354 a.

8. Where a Man is remitted to a Right of Entry, whether by Act in Law or by his own Act, he cannot waive it, but where he is remitted but to a Right of Action he may waive it. Arg. 2 Roll. Rep. 34, and to held per tot. Cur. Ibid. 35, 36, 37, in the Case of Wood v. Shirley.

For more of Remitter in General, See Appendant, Discontinuance, Entry, Presentation, Remainder, Wills, and other Proper Titles.

(A) Of Poor Persons and others. In what Cases. And Power of the Justices as to Removals.

1. If a Man hires a House in A, and being there with his Wife and Children he afterwards binds himself as a Servant with one dwelling in B, yet are not his Wife and Children to be sent to B or placed there, but to remain still at A, where they were once settled. Otherwise if the Husband has hired a House in B. Dalt. Jutt. J. cap. 73.

52. cites S. C. — † In the Edition of 1742, it is Pag. 169.

2. A Man settled at D, marries a Poor Woman settled at E. Who has Shaw's Practice. And Children by a former Husband; such of them as are above 7 Years old shall not be removed; those under 7 shall be removed, but that is only for Nuisance; for they shall be kept at the Charge of the other Parish. 2. Sally. 482. Mich. to W. 3. B. R. Anon.


B. J. S. P. § 5. And the Parish of E. shall take them again when above the Age of 7 Years. Per Powell J. who said, That it has always been noted, that Children under 7 Years shall go along with the Mother; and if they become chargeable the Parish of E. shall pay for their Keeping, tho' they still remain with the Mother. To which Powell and Gould agreed. Holt Aben. 112. Mod. 267, 268. Hill. 5 Ann. the Parish of St. Saviour's Southwark v. the Parish of Cripplegate.

3. A Parishioner of the Parish of L. came to B. with a Certificate, and according to the late Act of Parliament and the Justices recking that a Certificator, Man, and because he was likely to become chargeable to B. remitted him back to L. It was moved to quash the Order; because a Certificator, Man, and because Law Matter, and because he was likely to become chargeable to B. remitted him back to L. It was moved to quash the Order; because a Certificator, Man, was remitted.
is not removable till he is actually chargeable by the express Words of the Act 8 & 9 W. 3; cap. 30. And per rot. Cur. the Order was quashed, Niti. 2 Salk. 538. Trin. 2 Ann. B. R. Parish of Little Kirke v. Woolfall.

4. The Sessions may remove any Man that does not Rent 10l. a Year, let him be worth ever so much; for his having a Freehold of his own is foreign; and if he has any, it ought to come of his Side upon the Appeal. Per Cur. 6 Mod. 88. Mich. 2 Ann. B. R. Anon.

5. A removed by Certificate from B. to C. takes an Apprentice, who serves out his Time at C. and lives there 2 Years, he cannot be removed with his Master. 11 Mod. 224. Hill. 7 Ann. B. R. the Parish of St. Gyles v. the Parish of Weybridge.

6. If an Estate falls to a Poor Man the Justices cannot send him to the Place where his Estate is; For he may let the Estate if he will. But if he goes to the Estate and stays there 40 Days, he cannot be sent from it. The Foundation of these Proceedings is the Statute of Car. 2. and thereby a Man must be resident 40 Days in a Place before he can be sent to it. MS. Cafes. Hill. 9 Ann. B. R.

7. It was held per Cur. That Justices of Peace have not a Jurisdiction at large in Cafe of Settlements, but only a particular Power of Removal where there is a Complaint made by the Churchwardens and Overseers of the Poor of a Parish of a Grievance there of a poor Person likely to become chargeable &c. whereupon the Justices may make an Order to remove the Grievance by sending the Party to the Place where he was legally settled; But if there be no Reason to remove him, they cannot adjudge the Parish complaining, or any other, to be the Place of his Settlement; the Justices have no Jurisdiction but what is founded upon a Complaint. MS. Cafes.

8. Where a Person is visited with Sickness by the Act of God, he ought not to be removed from the Place where he is, further, to endanger his Health, without an Order of 2 Justices, and an Information he is against any that do it; And if such Order is made by the Justices, knowing him to be sick, an Information shall go against them. 8 Mod. 326. Mich. 11 Geo. 1725. The King v. Edwards.

(B) Of Poor Persons to what Place.

1. If a Woman unmarried, being a hired Servant, is there got with Child, and after her Time of Service expired she goes into another Parish, and is there hired in Service, or is there otherwise settled by the Space of one Month, and then is discovered to be with Child, she is not to be sent to the Place or Parish where she was begotten with Child, but to the Place where she was lawfully settled. Dall. Jul. 222. cap. 73. cites Refol. 12.

If a Woman be settled in a Parish, and got with Child of a Baw, and is then preferred when near her Delivery, to another Parish, and there is delivered, it is good Reason for the Justices to return her, but that must be to the Place of her legal Settlement, (with her Child, come sensible) Comb. 36c. Hill. 8 W. 3. B R. The King v. the Inhabitants of Moreton.

2. If a Man, with his Wife and Children, takes a House in one Parish, and after the End of the Year is put out of Polefion, and then goes into another Parish, where the Woman in a Barn &c. is delivered of a Child: This thrusting out was an illegal Unfettling, and therefore such a one must be return'd to the Town or Parish where he or she was lawfully settled, and the Child also born in the Time of this Disturbance, must be sent with them. Dall. Jul. 222. cap. 73. cites Refol. 24.

3. Where...
Removal.

3. Where a Child is brought from A. to B. without legal Authority, they of B. may, by Warrant of 2 Justices of Peace, return the Child to A. tho' not the Place of last Settlement, because they have done the Wrong. S. C. Where the Child is first known to be, that Parish must provide for it till they find another. Per Holt Ch. J. Comb. 364. Paish. 8 W. 3. B. R. The Duke of Banbury v. Broughton Parish.

4. A Special Order of Sejmons was, That H. was bound Apprentice, and served 7 Years to a Hemp-dresser within the Precinct of Bridewell, and afterwards be lived 9 Years in Clerkenwell Parish, but gained no Settlement there. The Justices sent him to Bridewell as his last legal Settlement, by an Order, which set forth Bridewell to be an Extrapolochial Place. And per Holt Ch. J. If a Place is Extrapolochial, and has not the Place of a Parish, the Justices have no Authority to send a Man thither; and so it was resolved in the Case of Sir 366. Pohtibly a Place Extrapolochial may be taxed in Aid of a Parish, but a Parish shall not, in Aid of that. This is Cifus Omnifus, and the Order was quashed. 2 Salk. 486. Hill. 11 W. 3. B. R. The * Precinct of Bridewell v. the Parish of Clerkenwell.

1. A Servant well settled, being with a Master removable, cannot be removed with him by 43 El. but the Master may * complain on the Reeteiner. Comb. 478. Paish. 10 W. 3. B. R. Anon.

2. If one hires a Maid for a Year, and before the Year's End the is get with Child, the shall not for that be removed, but shall serve out her Time; there is a Year's continual Service to make a legal Settlement for the charging of a Parish, but till the Year be out none shall disturb the Party from serving. And since is not removable within the of her Service, the shall not make a Complaint of the Master without his Consent, she may be sent back to her Service, but then it is to serve her Time, and not a Charge to the Parish. Per Cur. 12 Mod. 493. Trin. 12 W. 3. B. R. in Cafe of the King v. the Inhabitants of Marlborough. Shaw's Parish Law 245. cites S. C. — So the Bookcase.

Parish where the Serv'd must provide for her, as in other Case of Casual Impotency. Shaw's Parish Law 241.
3. H. being single, was hired for a Year, and after he had served 3
Quarters of a Year he married, and the Justices removed him to his
Place of last Legal Settlement. And per Cur. The Contract being good,
the Justices have no Power to remove him from his Mutter before the End
of the Year; for they cannot annul the Agreement of the Mutter, unless
it be upon Complaint of the Mutter. 2 Salk. 529. Patch. 2 Ann. B. R.
Parish of Farringdon v. Walcot.

(D) Orders of Removal. Good as to the Form or Manner, where Children are to be Removed.

1. A Confable without a Warrant brought a Child from A. to B. and
2 Justices of B. made an Order (reciting the Fact) to return the
Child to A. there to be provided for according to Law. The Court held
the Order granted for returning the Child to the Wrong-doers, and therefore
that Part was affirmed; but it ought not to be said to be there provided for
&c. but they are to be left to take their Course according to Law;
so that Part was quashed. Cumb. 372. Trin. 8 W. 3. B. R. The King v.
The Inhabitants of Banbury.

2. An Order was made to remove three Men (naming them) with their
Families, from the Parish of Brandon to the Parish of Wangford. It was
expected that this Order is void for the Uncertainty of the Meaning and
Extent of the Word (Family) for Servants and Lodgers may be comprehen-
sed under that Word. But the Court was unwilling to quash the Or-
der upon this Exception, until they were better informed of the Truth
of the Fact; whereupon it was agreed on both Sides to produce Affidav-
its thereof, which was done, and the Fact was thus. Three poor Men of
Wangford came into the Parish of Brandon, and there married 3 poor Widows
of that Parish who received Relief &c. And each of the said Widows had
Children by their former Husbands, some under 7 Years and some above 7
Years of Age. And per Holt Ch. J. the Children are not removable to
Wangford to charge that Parish by settling them there; but as to the
Nine Children under the Age of 7 Years, they may be sent thither for their
Nurture, but still the Parish of Brandon must relieve them there, and as to
the Children above the Age of 7 Years, they ought not to be removed at all.
Therefore since the Justices have made an ill Use of this general Word
Family, per Cur. the Order was quashed. Carth. 449. Mich. 10 W. 3.
Removal.

3. An Order was made by two Justices, to remove H. with his Wife and Children, from Ware in the County of Essex, to Stintead in the same County. Exception was taken to this by Mr. Eyre. 11t. Because it was with Wife and Children. 2dly. Because it appears not to have been laid in an Examination before us or one of us &c. and the Examination ought to be before both, because both are to make the Judgment of Removal. 3dly. Mr. Cowper would have distinguished this as to the first Exception from the Cofe of Mich. 10 W. 3. Of his Wife and Family, because he might have Servants not removable, but Children ought to follow their Parents. To the 2d he said, That by 14 Car. 2. cap. 12. the Complaint is directed to be made to any Justice, and consequently one Justice may examine; and it was only necessary that two should join in Removing. But Cur. contra in both. To the first Holt Ch. J. said, Suppose H. had put his Son out to Service at 16 Years old at B. and accordingly he had served there a Year, and after the Father comes to live at B. himself, and the Son to live with him, such an Order would remove the Son too, tho' he be not removable. To the second Gould J. said the Statute directed, and the Practice was, to make Complaint to one Justice, and he grants his Warrant to bring the poor Man before two Justices; and then they two examine and remove. 2 Salk. 488. Trin. 12 W. 3. B. R. The Inhabitants of Ware v. Stintead Mount-Fitchet.

Family of such a one. MS. Caf. Parish of Kingsford v. Lyonsfell.

4. An Order to remove a Wife and Children to the Place of the Husband's last Settlement, and held bad as to the Children; for they might have a Legal Settlement different from the Husband, but it might stand as to the Wife: But another Exception was, That there was no Inducement, that any of them were likely to become chargeable to the Parish from whence they were removed; and tho' it was said that they came to settle there contrary to Law, yet for the last Exception the Order was quashed in toto. 12 Mod. 667. Hill. 13 W. 3. Parishes of Halstead and Shelton.

5. A Woman and her Child were removed to the Parish of Great Marcum, as being the Settlement of her Husband deceased. It was objected, that T. P. lastly deceased, that they might have gained a Settlement since the Death of the Husband. The Court ordered to shew Cause. Poor's Settlements 159. pl. 147. Parish of St. John's in Lincoln v. Great Marcum. It was shown E. and that he was last legally settled in H. Those are to remove Frances his Wife, and her three Children to H. to be settled there in Right of his Husband. It was objected, That the Order does not for forth, that she has not gained a Settlement elsewhere; for it is not a necessary Consequence that she is now settled where her Husband was, for she might have gained a Settlement elsewhere, especially now in regard her Husband is dead; and it was quashed per Car. Poor's Settlements 15. pl. 22. The Queen v. the Inhabitants of Everly.

6. Exceptions were taken to an Order for the Removal of a Female Child about a Year old. 16t. That it says, the Child is likely to become chargeable, but does not say where. 2dly. The Order says that St. John Baptist is the Place of her legal Settlement, being born there. 3dly. This is an Order directed to the Churchwardens and Overseers of the Poor of the Parish of Spalding, and to the Churchwardens and Overseers of the Poor of the Parish of St. John Baptist; and it says, Whereas Complaint has been made by you to us &c. and does not say which. Parker Ch. J. said, Surely that is well enough, for it is upon Complaint of the Right, if both complain. Mr. Jast. Eyres said, Indeed when it has been said that they do remove a Person there, because it is the Place of his Birth, and say no more, it has been held ill, because he might have another Settlement; but here it is said, the last Place of her legal Settlement being the Place of her Birth which is good till another is found out. Curia ton would not quash the Order. Foley's Poor Laws 267, 268. Mich. 9 Ann. B. R. Spalding Parish v. St. John Baptist in Peterborough.

6 B
Removal.

Upon an order of removal it was held, That if a Child of 8 Years of Age was removed with the Father, it ought to be alleged in the Order, that the Place where to be it removed, is the Place of his last legal Settlement, for at that Age he may gain a Settlement distinct from his Father; for the Age of a Nurse Child, or as to be removed with the Parents, is generally esteemed until 7 Years old; so the Child being 8 Years old, and no Mention made that that was his last legal settlement, the Order was quashed. Foley's Poor Laws 271, 272. Mich. 9 Ann. B. R. The Queen v. the Parish of Middleham in Yorkshire.

8. It was moved to quash an Order of Sessions. There was an Order made by 2 Justices, for removing an Infant from Rigmanworth in St. Alban's to the Parish of St. Giles, they appeal to the Sessions at St. Alban's, who confirm the Order of 2 Justices. Exception was taken that they have set forth that this Infant was born in St. Giles's, therefore they find him there; but in the Order they knew that his Father was last legally settled in the Parish of Rigmanworth; and that for this Reason the Order should be quashed; for the Place where the Child was born is not the Place of his Settlement if any other can be found out; now here is another, which is the Father's Settlement. Carta, The Birth of a bastard Child is its Settlement, but not of one born in Wedlock; but the Settlement of the Father shall always be esteemed the Settlement of an Infant born in Wedlock, if that can be found out. Let this Ord be quashed. Foley's Poor Laws 269, 270. Patch. 10 Ann. B. R. The Queen v. the Parish of St. Giles, Middlesex.

9. The Court was moved to quash an Order of Removal, which was to this Effect, viz. Upon Complaint that Samuel Rofs hath intruded &c. We do adjudge the said Samuel Rofs is likely to become chargeable to &c. and that his last legal Settlement was in St. Mary &c. he being serv'd as an Apprentice there; Therefore we do require you to convey the said S. R. his Wife and Family. Exception was taken, That the Complaint was only that S. R. was likely to become chargeable, and the Order was to remove him, his Wife and Family; and also, That the Order only said that he had serv'd as an Apprentice in &c. without saying that he had serv'd 20 Days, which is necessary by the 13 & 14 Car. 2, cap. 12, S. 1. But the Court overruled the Exceptions; because a Man and his Wife are not to be parted, and likewise because the Order had been good, tho' R.'s serving as an Apprentice had not been mentioned, the Justices not being obliged to give their Reasons for their Adjudication; and therefore their Reasons shall not be contradicted strictly, as where they state the Facts for the Opinion of the Court. MS. Cafes Mich. 5 Geo. B. R. The King v. the Inhabitants of St. Mary Calender's in Winchester.

Shaw's Parish Law 221. Giles S. C.— 2
Shaw's
Removal.

or serve for a Year, and so gain a Settlement else where; And for this

Reaion it was quitted as to the Children, but it was good as to the Fa-

ther and Mother. 8 Mod. 337. Mich. 11 Geo. 1725. The King v. * S. P. 10

mod. 26. 

Thir. 10

Ann. R. B. Pethworl Parth's Case, where the Court held this Exception good. — A Mother was to quash an Order of 2 Justices, which was made for the Removal of one Jane Smith and her 3 Chil-

dren. Exception; It's too uncertain, for it neither cites the Names or Ages of the Children; wherefore the Order was quashed as to the Children. Foley's Poor's Laws 278. Trim. 9 Ann. B R. Fletcher v. Rofton, Com. York.

Where the Juftices name the Children of a Perfon to be removed, their Ages need not be mention'd, because the Juftices determine their Settlement. Mc. Cases

II. An Order of 2 Juflices removed the Father and 3 Children from the one Parth to the other; and the r espective Ages of the Children were set forth in the said Order, viz. One of 6, another of 8, and the 3d of 9 Years. Upon Appeal to the Seftions the Order of 2 Juflices was reversed as to the Children, who were sent back to the Parth from which they were fo removed; but the Order was good as to the Father; And the said Orders being now before the Court by Certeiori, it was moved to quash the Order of Seftions; Because the Children being of tender Years, should have gone along with the Father to the Place of his Settlement. But it was answer'd and held by the Court, That the Order of Seftions does not set forth the Ages of the Children; and then as the Juftices have Juris-
diction, it must be intended they determined Right, viz. That the Children were not of the Ages set forth in the original Order, tho' that Reafon is not given; but it would be otherwise, if the Reverted were founded upon a Rea-

son not warranted in the fame. And a Difference was taken between an Order of Reverted and an Order of Confirmation; For this must be taken to pursue the original Order, and to be founded upon the fame Reafons; and therefore must fall to the Ground f the original Order be erroneous. The Order of Seftions confir'd. Gibb. 254. Paich. 4 Geo. 2. B. R. The Parth of Symfon v. Woughton.

(E) Orders of Removal, Good as to the Form or
Manner, in general.

1. In an Order to remove a poor Perfon it is fufficient to say. That he doth not Rent a Houfe of 10l. per Ann. or is likely to become charge-

2. Two Juftices ordered a Woman to be removed to Wefton in the Poor's Set-

tturny of Somerset, being the Place of her late Settlement as they are credi-

bly informed; But upon an Appeal, on hearing both Sides, the Order was

confirmed. Holt Ch. j. held, That this supplies the Defect, and (credibly

declared) may be that Way which the Law appoints, (viz.) By Exa-

mination of Witneffes. But at another Day he faid, They might be in-

formed to at an Almofte; and therefore be held the Order ill. But by

Confiitit it was return'd to a Judge of Almofte upon the Merits. Comb. 413.

Hill. 8 W. 3. B. R. Anon.

3. Exception was taken to an Order of 2 Juftices to remove a poor Poor's Se-

tperfon. That there it is not said in the Order, that the Man did not Rent 10l. per Ann. But Holt Ch. J. faid, That this Exception has beenolemly


S. P. Per

Car. 6. Mod.

88. Mich 2

82. Anon. 3 B. R. Anon.

S. C. — S. P.

2 Salk. 473

Trolle's

v. Wefton.

S. C. — Shuf't Pa-

rth Law.

To such an Objection it was answer'd, That upon Search in the Crown-Office

roll of the Orders of Settlement there flid are without Allegation of not renting 10l. per Ann. and y.
4. An Order was made to remove a poor Person from Chittlington to Penhurst; and this was quashed because it was not said, That one of the "juicest was of the Quorum." Holt Ch. J. said, That some indeed had been of Opinion, That an Order was good notwithstanding this Observation, and perhaps it has been so adjudged; But he was of Opinion, That this being a Special Authority to Juries out of Sessions, it ought to appear that that Authority was actually purified. 2 Salk. 475. Mich. 8 W. 3. B. R. Chittlington Parish v. Penhurst Parish.

5. A poor Man ought to have Notice and to be heard before he be removed; if it is, it is fit he should be so; but absolutely necessary. Comb. 478. Patch. 10 W. 3. B. R. Anon.

6. If an Order be made to remove a Person from A. to B. and then be comes to C. the Juries cannot grant an Order for sending him to B., upon the first Order, because they are not Parties to it; But such Order may be given in Evidence of a Settlement in B. Per Cur. 12 Mod. 419. 420. Mich. 12 W. 3. in the Case of the King v. the Inhabitants of Longchield.

7. Per Holt Ch. J. The most regular Way for Juries to proceed upon the 14 Car. 2. in removing a poor Person, is to make a Record of the Complaint and Adjudication; and upon that to make a Warrant under their Hands and Seals to the Churchwardens, to convey the Person to the Parish to which they ought to be sent, and deliver in the Record, for proper Manus, into Court next Sessions, to be kept there among the Records to charge the Parish; and that Record may be removed by a general Cursus, recorded to the Juries of Peace. And Mr. Broderick said, He had advised the Juries in Surrey to do so. 1 Salk. 406. Hill. 4 Ann. B. R. Anon.

8. It was moved to quash an Order of Removal, The Order was directed to the Overseers and Churchwardens of the Parish of K. and sets forth, That whereas Complaint has been made by 50s., (and does not say whom) Per Cur. Tis well; Because it refers to the Permons before-mentioned. 11 Mod. 265. pl. 5. Hill. 8 Ann. B. R. The Queen v. the Parish of Kidderminster.

9. The 2d Exception was, That there is no Adjudication; and upon reading the Order it appeared, That as to the Place of his_legal Settlement there was a good Adjudication, by laying. It appears to us &c. but laying, He is likely to become chargeable, is no Adjudication, without saying. It appears to us &c. And upon this last Exception this Order was qualled. 11 Mod. 265. pl. 5. The Queen v. the Parish of Kidderminster.
Removal.

10. An Order of Removal was thus, viz. We believe this Fall to be true. Exception was taken to it; Sed non Allocatur; and it is as good as if it had been. It appears to us to be true. MS. Cales. 10 Ann. B.R. in the Case of the Queen v. Bishop's-Waltham and Floram.

11. Whereas the Order was, Whereas the Perfon in all Probability is likely to become chargeable, it was held good. Ibid.

12. An Order for the Removal of a poor Person was quashed because there was no Judgment of the Judges concerning the last legal Settlement, but only the Oath of a Woman. Shaw's Pract. Juit. 53. cites Salk. 485. — And Shaw's Parish Law 229. cites S.C. [but there is no such Point there.]

13. It was moved to Quash an Order of 2 Judges; The Order removes the Wife of J. S. late of Normanton. It was objected, 1st. That it does not appear when that was, it may be 5 or 10 Years ago; nor does it appear that the Wife was in the Parish at the Time of the Removal. 2dly, That it is likely to become chargeable, and not said to what Parish or where, may be it may be to her Husband. The Court ordered them to show CAufe, Poor's Settlements. 147. pl. 158. Trin. 1724. Parish of Normington v. Edlington.

14. Several Orders of Removal have been quashed, because the County was only in the Margin, and not in the Body of the Order. 8 Mod. 315 Mich. 11 Geo. in the Case of the King v. Autin.

(F) Orders of Removal. Good. In respect of the Matter.

1. Juiftices may make one Order to remove several Families, and upon Appeal to the Sessions, they may reverse it Quod ecc. Comb. 478. Patch. 19 W. 3. B.R. Anon.

2. An Order made to remove a poor Man and his Family from H to C. was quashed, because all ought not be removed, For if a Woman has Children in a Parish where she is settled and marries a Husband settled in another Parish, it those Children are above 7 Years old they are not to be removed. 3 Salk. 260. Mich. 10 W. 3. B.R. Anon.

3. An Order of 2 Judges for the Removal of a poor Perfon was quashed at the quarter Sessions, and before the poor Perfon came back to the Parish, whose Order was quashed, they make a new Order to fix him in another Place; And per Cur. it cannot be good, because a new Order ought not to be made till the Party was come back; and if that Order had been confirmed here, it would not make it good, because it was merely void. 12 Mod. 153. Hill. 13 W. 3. Parish of Godstone v. that of East-Grinstead.

4. Whereas J. S. has intruded into the Parish of A. and is likely to become chargeable; There are to remove him with 3 Children. Quashed as to the Children, for have they removed more than is complained of. Poor's Settlements 29. pl. 25. The Parish of Newington's Cafe.

5. A poor Perfon with his Family was settled at St. Bridges, his Wife after his Time and married with A.B. and had several Children by him, the Judges took the Woman and her Children to the Parish of St. Bridges, where the first Husband was settled, and the Matter was found specially, and for forth in the Order that they had not been one another for several Years.
Removal.

Years. The Court were of Opinion they were Bards, and qualified the Order as to the Children being sent from St. Andrew's to St. Bride's. Poor's Settlements. 77. pl. 102. Parth of St. Andrew v. St. Brides.

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(2) Orders of Removal. Good in Respect of former Orders.

1. Was removed by Order of 2 Justices from the Parish of A. in Warwickshire to Chalbury in Oxfordshire, and from thence by Order of 2 Justices to Chipping-Farrington in Berkshire. It was objected that Chalbury ought to have appealed, and got the Order upon them discharged, to which Holt Ch. J. agreed; For sending the Poor Man to a 3d Place is Falsifying the first Order, which cannot be done but by Appeal; For the Order of 2 Justices is a Determination of the Right against All Persons, till it be reversed; Chalbury should have appealed from the Warwickshire Order, and got that set aside, and sent the Man back thither, and the Justices there should have lent him to Chipping-Farrington; therefore naught. 2 Salk. 458. Trim. 12 W. 3. B. R. The Inhabitants of Chalbury v. Chipping-Farrington.

2. A. came to Peterborough; The Justices sent him to Woolston by a P'ls saying he was settled there; Two other Justices sent him back to Peterborough; It was held that the 2 first Justices erred by sending him by a P's, it appearing he had a Settlement; but that did not justify the former Error; For where a Person is removed, it is by an Authority in a Judicial Manner, and they may send him forward, but not to the same Place again. Poor's Settlements. 84. pl. 113. Stamford Baron v. Woolston.

3. The Parish of Pattern removed J. H his Wife, and seven Children to the Parish of St. Giles in the Fields. The Parish of St. Giles sent them back to Pattern, without ever appealing to the Quarter Sessions as they ought, the Order of the 2 Justices being a Judgment which continues in Force till set aside upon the Appeal. Both the Orders were removed into the King's Bench, and the Court confirmed the Pattern Order, and quashed the Middlesex Order for the Irregularity. Poor's Settlements. 126. pl. 174. Inhabitants of St. Giles in the Fields v. the Parish of Pattern in Wilts.

4. A Man and his Wife and Family were removed, and the Children appearing to be Bards were sent back again to the former Parish; but the first Order was held final, and the Rule being granted to shew Caufe, it became absolute. Trim. 5 and 6 Geo. 2. B. R. The King v. North-Petherton.

5. A. and B. and his Wife were removed by an Order of 2 Justices from the Parish of C. to D. and the Order for Want of an Appeal at the next Quarter Sessions was confirmed; afterwards it appearing that B. was never married to A. he was removed back again to C. by another Order of 2 Justices, which Order was Likewise confirmed at the Sessions; The Court were clear of Opinion that the 2 last Orders were bad, and that the first Order confirmed at the Sessions whether upon Appeal, or for Want of Appeal must be conclusive to the contending Parishes upon the Authority of the Cate above. Mich. 15 Geo. 2. B. R. Parth of Berkswell v. Balfal.

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(H) Or-
(H) Orders; Not appealed from to the next Sessions.

1. **Removal.**

T' was held by the Court for a general Rule in Cases of Orders for Removal, That if the Parties, to which the Poor Person is removed, does not appeal in Time, such Order is conclusive to the contending Parties, V. 5. B.R. and indeed to all others, except where an After settlement can be made. Dall. Jutt. 246. cap. 73.

2. A poor Person was moved in 1694, from Woll Starring to Findon; Two Justices of the Peace for the County of Suffolk made an Order to remove a Man from Bunder to Alderton. At the next Quarter Session, the Man's Counsel produced an Affidavit, that there was no new Settlement proved; but the Court held they could not examine that by Affidavit, nor enquire thereby into the Reason of making the Order. 2 Salk. 489. Hill. 12 W. 3. B. R. The Inhabitants of Thatcham v. Findon in Suff. 5 P. Shaw's Plead. Jutt. 25 —— S. P. Shaw's Parlia Law 230. cites Mich. 3 Ann. Great Salk. Bartom, and Clitow (Parishes)

3. A poor Person living at St. John's Wapping, came and lived in St. Andrews Holburn, and there gained a legal Settlement, and then removed to St. Andrews Holburn, and there gained a legal Settlement, and then removed to St. John's Wapping, where he is removed by an Order of 2. Justices to St. Andrews Holburn, who let slip the Opportunity of appealing at the next Quarter Sessions, but afterwards got the said Person to be removed by an Order of 2 Justices to St. Clement's Dunes; For St. Andrews Holburn did not have until after the Quarter Sessions that he had gained a legal Settlement in St. Clement's Dunes since the Settlement gained in St. Andrew's Holburn, This Matter being referred to Judge Powell, he desired the Opinion of the Court in it, who all held that the Person ought to be setledled in St. Andrew's Holburn, for they having missed the Opportunity of appealing it is conclusive upon them, and there cannot be a subsequent Order of 2 Justices to remove the Person to another Parith, and this is for the Benefit of poor Persons that they may know where they are to be settled. MS Caffe. Hill. 3 Ann. St. Andrew's Holburn v. St. Clement's Dunes.

4. If a poor Person be removed from the Parith of A. to the Parith of B, by Order of 2 Justices, and the Parith of B. remove him to the Parith of C, the Order of Justices removing him to the Parith of B. is become final, because B. did not appeal to the Quarter Sessions. 10 Mod. 84. Patn. 11 Ann. B. R. Amen.
Removal.

5. A poor Person is sent to the Parish of Stepney, who do not appeal &c. Exception was taken that the Removal ought to have been to the Hamlet of Spittlefields. For Stepney is divided into 4 Townships, and the Poor have been removed from one Township to another in the same Parish, and the Statute takes Notice of Townships as well as Parishes, and Spittlefields is a Hamlet of Stepney. Per Cur. If a Person is removed to the wrong Place that I have ought to appeal, and to Stepney ought to have done if it were a wrong Place, or the Order will be conclusive upon them; but this is a Matter here out of the Record. Justices of the Peace are not obliged to take Notice of the Divisions of Parishes into Hamlets and Townships, which maintain their own Poor severally and distinctively; and Stepney is upon an Appeal might have shown that the Person did belong to the Hamlet of Spittlefields, which might have been a reasonable Cause to discharge the Order; Two Hamlets within a Parish are the same as two Parishes, yet Churchwardens are Overseers of the Poor of the whole Parish (who is divided) and have a Super-intendancy over the whole Hamlets and Townships. MS. Cafes. Patch. 11 Ann. B. R. Parish of Spittlefields v. Bromley.

6. Two Justices make an Order on the 20th of November to remove the Pauper and his Family from A. to B. and at next Sessions, no Appeal being brought, the Parish of A. gets the Order to be confirmed, and at the Easter Sessions following the Parish of B. appeals, and then the Order of 2 Justices, together with the Order of Confirmation is set aside. Now it was moved to set aside the last Order of Sessions, and that the 2 former Orders might stand. It was held per Cur. That it was not necessary on the Statute that the Appeal should be brought at the next Sessions after the making of the Original Order; But that it is sufficient if made at the next Sessions after Service of the Order; For till then the Party has no Notice to bring the Appeal, and therefore can be in no Default. Trin. 16 Geo. 2. B. R. Parishes of Northbrady and Rode.

(1) Orders of Removal confirmed on Appeal: The Effect thereof.

1. Two Justices of Peace made an Order to remove J. R. his Wife and 3 Children from Rowborough to Broad-Chalk, which Order, on Appeal to the Quarter Sessions was confirmed. After this R. with his Wife and 3 Children came into the Parish of Downhead, whereupon 2 Justices resting the former Order and Confirmation ordered him to Broad-chalk: And now it was objected to this Order, That it did not appear that one of the Justices was of the Quorum. Mr. Northey on the other Side argued it was not necessary here, because it was not an Original Order, but an Order made in Parliament of an Order of Sessions: And per Cur. a Settlement by Order on Appeal binds all Parties; If the poor Man goes to the Parish from whence he is removed, the Sessions must see their Order obeyed; but if he goes to another Parish not concerned in the Appeal, then it is proper for 2 Justices of the Peace to remove him to the Parish where he was settled by the Sessions by Original Order, but then it must appear therein, that one of them was of the Quorum. Qualifi'd. 2 Salk. 481. Hill. 9 W.


Afterwards Hill to W. 5. This was moved a second time, and then Holt and Gould held the Ad
Place of his legal Settlement? And per Holt Ch. J. Ryfflip is effopp'd, to say otherwise; for if Ryfflip had not been the very Place of his last Settlement, the Justices must have sent him back to Harrow, who were granted first possession of him, for that Reason, because they were possessed of Particles in him, and he did not belong to Ryfflip. And now this is in Effect the same Question again, viz. Whether he belongs to Ryfflip? which Question has been already determined on the Appeal, who have adjudged that he was Settlemented as settled at Ryfflip; Now this Point being determined, the Appeal must be final and conclusive, otherwise there would be no End of Things, and the rather as to Ryfflip. But, because Ryfflip was Party to the Suit, wherein this Determination was made, and yet his may be Ettopp'd, where it is not Party to the Suit; and Holt Ch. J. remembered the Cafe of Thornton and Pickering, where it was adjudged, That if he be adjudged by 2 Justices to be the Father of a Battard Child, he is Ettopp'd against all Mankind to say the contrary, and any Man may call him to his Pleasure. 2 Salk. 274. Mich. to W. 3. B. R. between the that Order rendered) they were at Liberty to send him to any other Place, and were not Ettopp'd; Because the Justices on the Appeal did not adjudge him now to be settled at Harrow, but they adjudge him now to be settled at Ryfflip, to that Place not his Party. But Turton and Rokby were Adversaries. For Turton v. Ld. Raym Rep. 594. S. C. by Name of the King v. the Inhabitants of Ryfflip, London, and Harrow; But says, That Turton was of Opinion that it was very hard to conclude Ryfllip against a Suit, which was determined after the Adjudication of the Appeal to be the Place of the last legal Settlement, and (by him) it is contrary to the Practice of all the Justices and England. More adjourned. — S. C. Ld. Raym Rep. 572, where Holt Ch. J. and Gould J. were of Opinion that Ryfflip was concluded, but Rokby J. was of Opinion that the Appeal to the Settlement was not final in his Board, but it may be removed into B. R., and examined there on the Merits. Turton J. was of Opinion that Ryfflip should be concluded against Harrow but not against Hendon, because Hendon was not Party to the Suit. The Court being divided, it was adjourned till the next Term.

Poor's Settlements 224, pl 229. cts S. C. — 5 Mod. 416. S. C. by Name of the Parish of Ryfflip v. Hendon — 5 Salk. 261. S. C. by Name of the King v. Ryfflip. — Shaw's Parli. Law 198 cit. cts S. C. — S. P., nor the Justices cannot remove him but to the Place of the last legal Settlement, and any other Place of Settlement will discharge the Order on the Appeal. And there is a diversity in an Order of Affirmation, and an Order confirmed on Appeal, or not confirmed from. For in the first the Matter is at large to all Places but the Place to which the poor person was settled, which was the Appeal was determined not to be the Place of his legal Settlement; but in the latter the Place to which he was sent is bound, and the Order final and conclusive as to all the World. 2 Salk. 492. Pal. 1 Ann. B. R. Swanfield Parth v. Shefield Parth. — Dalt. Jud. 370. cap. 27. cts S. C. — Jul. Gauf Law. 266. cit. S. C. — 2 Shaw's Pract. Jud. 27. cts S. C. — S. P. Ibid. 26. — Shaw's Parli. Law 196. cit. S. C. — Vid. 249. cts S. C. — Uf. Jud. 164. S. C. — S. P. For Confirmation on Appeal is an Adjudication that this is the Place of the Parther last legal Settlement, which cannot be avoided by the Parther by whom it is made. Per Holt Ch. J. 2 Salk. 52. Mich. 15 W. 4. B. R. Minton Parth v. Stroy Scotland. — 12 Mod. 665. S. C. by Name of the King v. the Parther of Minton.

If an Order of Justices for the Removal of a poor Parther be confirmed on Appeal, the Appellants are ever concluded from charging themselves of that poor Parther to all Places. For if another Parish than that from whence he is sent, by 2 Justices to the Place of his last legal Settlement, they may send him thither by an Order of 2 Justices, to be made for that Purpose; or upon Appeal, another Place being the Place of his last legal Settlement may be given in Evidence at the Settlement upon the Appeal. Per Cur. 12 Mod. 148. Term 15 W. 3. Anon.

3. It was moved to quash an Order of Justices, for that there was a former Order from the Parish of A. to the Parish of Petworth, and this Order being affirmed on Appeal to the Seelions, it was final not only between the Parishes that were Parties, but all others, except a subsequent Settlement could be found out; that therefore this Order, which was to remove one W. P. and K. his Wife, together with 3 Children from Petworth to Ringmore, should be quashed, and the Court held this Exception good. 10 Mod. 23 Trin. 10 Ann. B. R. Petworth Parish's Cafe. 112. The King against the Inhabitants of Stony Stratford. — S. P. per Cur. Poor's Settlements 24, pl 112. Th. King v. the Inhabitants of Packworth.

4. A Difference was taken between an Order of Removal and an Order of Continuation; For this must be taken to purgify the Original Order, and to be founded upon the same Reasons; and therefore must fail to the
(K) Orders of Removal Repeal'd, and the Effect thereof.

1. If poor a Person be removed from one Place where not legally settled, to another where not legally settled, the Sessions upon Appeal may quash the Order, but cannot remove to a 3d Place. Per Holt, Cumb. 260. Trin. 6. W. & M. B. R. Wale's Case.

2. A poor Man by the Order of 2 Justices was removed from the Parish of St. M. to the Parish of Kingstown-Bowsey as the Place of his last legal Settlement, from which Order Kingstown appeal'd to the next Quarter Sessions where the Order was discharged; Afterwards this poor Man went to Bedingham; From whence by another Original Order of 2 Justices, he was again removed to Kingstown-Bowsey; which last Order being removed by Certiorari into B. R. it was now moved that it might be quash'd; because upon the Appeal Kingston had been discharged, which could not be it that had been the last Place of his lawful Settlement; therefore it was intimated, that Kingstown was finally acquitted. But per Cur. the Order made upon the Appeal is final to waive out to the * containing Parties who are Parties to the Appeal, and not to Strangers, as Bedingham is in this Case. Carth. 516. Hill. 11 W. 3. B. R. Bedingham Parish v. Kingstown-Bowsey Parish.

3. A poor Woman with Child being unmarried, was by Order of 2 Justices removed from Wiltsh to Coffsand, and brought to Bed there; Coltham appeal'd at the next Sessions, and the Order was reversed; Afterwards by Order of 2 Justices the Child was sent back to Coffsand, they appeal'd, and the Order was confirm'd. At last all was removed into the B. R. And per Cur. the Birth at Coltham did not settle the Child there, because it was under an illegal Order procured by Wiltsh, which Order being reversed, the Matter is no more than this, that they unjustly procured the Woman to go thither. Salk. 125. Trin. 3 Ann. B. R. Parish of Wiltsh v. Coltham.

4. A poor Person was removed from A. to B. The Order was quash'd. Afterwards A. sent him to D. this Order was because quash'd. Afterwards the Parish of A. sent him to B again; And it was moved to quash it, because there were 3 Months intervening, from August to December following. On the other Side was cited the Case of Barron and English, where there were 9 Months intervening from the Time of the first Removal, and quash'd; the Court not intending there was any subsequent Settlement. Quod Curia concitavit, and the Order was quash'd. Poor's Settlements. 113. pl. 152. Patch. 1723. The King v. the Inhabits of Carlton.

5. If an Order is quash'd for Form at the Sessions, which is a good Order, and after they send the Party back, yet the Order being good, it is final, and a Bar to all subsequent Orders. Poor's Settlements. 119. pl. 160. Hill. 1724. Moyer Hanger v. Warden in Bedfordshire.
Removal.

(L) Orders of Removal. Directed to whom.

1. O Verfeers of A are to remove, and they of B. to receive; and one Order was directed to both Parishes to remove and receive, and therefore quash'd: For it is entire, and the Counsel said, Here is a good Judgment, that they were last legally settled in B. yet the Court answered, That was but the Opinion of the Justices, and the Foundation of the Jurisdiction which is, That he be removed &c. Cumb. 122. Patch. 7 W. 3. B. R. The King v. Trinity Parish Exeter, alias Belvin's Case.

2. Warrant to remove a poor Man was directed to the Gryffill &c. and says nothing of Ch. Wardens or Overseers, Per Cur. since the Court have executed the Order it is well enough, tho' in Scrivenes he was not bound to obey it, tho' directed to him; For if a Justice direct his Warrant to any Person by Name who is no Officer, the Perfon is not bound to obey it; but if he does, and it is a Matter within the proper Jurisdiction of a Justice of Peace the Warrant will bear him out, and he may be justified under it. Carth. 449. Patch. 10 W. 3. B. R. Wanglour v. Brandon.

3. Two Orders were return'd; The first for settling a poor Man, and the second a Confirmation of the first, upon an Appeal to the Quarterly Sessions. The first Order recited, That whereas Complaint has been made to us &c. That T.G. had of late entered into the Parish of St. George's, We adjudge him to be last legally settled at St. Olave's, There are therefore to require you to convey the said T.G. to the Parish of St. Olave's; And the Direction upon the Order was, To the Churchwardens and Overseers of the Poor of the Parish of St. Olave's. Quash'd, For they ought, and can only, order the Parish Officers where the Intention is made to make the Removal. 2 Salk. 493. St. George's (Inhabitants) v. St. Olave's, Southwark.

4. An Order recited, Whereas J.S. and his Wife were last settled in Shaw's Parish Clypton; These are to order you the Churchwardens of Clypton to repair to the Parish of Raylelock, and to relieve them, they being to sick that they S.C. but in cannot be relieved. Per Cur. The Justices have no Authority to send the 5th Editor for Officers out of another Parish, but are bound to maintain the Poor as that it is long as they continue with them. And Per Powell, No Parishioners 241. are to be relieved tho' they are carried to the Parish. Quash'd. Toon's Pract. Juff. Settlements 31. pl. 49. Patch. 1712. B. R. Clypton (St. Mary's) v. 29 Chief. S.C. Ravellock in Devon.

Trin. 11  B. R. S. C. by Name of the Queen v. Raylelock (Inhabitants.)

5. Order by 2 Justices was directed to the Churchwardens &c. of Binfield, and to the Churchwardens &c. of Banfield, and which it may concern, And it is not said who to convey or who to receive. The Court seemed to incline, That it ought to be quash'd; Sed Adrazier. 11 Mod. 268. Trin. 3 Ann. B. R. The Parish of Binfield v. Banfield.

(M) Ex-
Rent.

(M) Expenses allow'd. What.

Exception was taken to an Order made for Cots of the offices, up on this statute: it is apparent, however, for Cots, without saying so much was expended or laid out. The Court said, It appears by the oath of the parties that so much was laid out. A 2d Exception was taken, That the Order says it was upon hearing of the Appeal, and does not say, There was any Appeal lodged. But the Court said, It was well enough; For there must be an Appeal, or else they could not hear it; and they need not be so nice as in special Pleading. So the Order was confirmed. Foley's Poor Laws 247. Patch. 12 Geo. B.R. The Parish of Maiden-Bradley v. Wallingford Parish in Wilt.

For more of Removal in General, See Blaftady, Certificate-San, Sessions, Settlement of Poor, and other Proper Titles.

Rent.

See Reservation (B) (A) Of what Thing it may be granted. [What Estate Grantee shall have by the Words.]

Br. Confimation, pl. 15, cites S.C. Br. Grants, pl. 75, cites S.C. Br. Rents, pl. 14, cites S.C. but I do not observe those Words of (Taking by the Hands of the Lessee and his Affiants, and of others into whose Hands forever the said Manor shall come. This is a good Grant in Fee, and shall continue after the Death of the Lessee of the Manor. 26 Ala. 38. Rhode Is.)

1. If a Man leaves a Manor for Life, and after grants a certain Rent to take out of the said Manor, by the Hands of the Lessee and his Affiants, and of others into whose Hands forever the said Manor shall come. This is a good Grant in Fee, and shall continue after the Death of the Lessee of the Manor. 26 Ala. 38. Rhode Is.

2. If a Man leaves his Land to J. S. for Life, rendering 2 s. Rent per Ann. and after grants to another 2 s. out of the Land which J. S. holds of him for Term of Life, to the Grantee and his Heirs during the Life of the Grantor, this shall be taken a Grant of the New Rent by him in Reversion, and the Grantee shall have the Rent tho' J. S. die. Br. Rents, pl. 24, cites 34 Ala. 4. Per Sherd and Filer.

But if a Feoffment be made, rendering 5 s., gives Aisle in loco certo capiendo, which is not a Rent, and a Rent Marks Cannot, cannot be put in View. Br. Affile., pl. 2, cites 3 H. 6. 22.

3. Aisle of a Rent out of a Rent lies not; For a Rent cannot issue out of a Rent, by the Opinion of the Court; For the Statue of Witt. 2. 51, gives Aisle in loco certo capiendo, which is not a Rent, and a Rent Marks Cannot, cannot be put in View. Br. Grants, pl. 3, cites S.C.
Rent.

4. A Rent cannot be granted out of a Piscatory, * a Common, in an Ad-
evocation, or such like incorporeal Inheritances; But a Rent may be grant-
ed out of Lands or Tenements, whereunto the Grantee may have Recourse,-
Distrain, or which may be put in View to the Recognizors of an Affile.
Co. Lit. 144. (X)

is not chargeable by Law; As out of a Hundred or Advowson. - Rep. 22. a. 6. Per Cur. cites 30 Aff. 5 nor out of a Lady, cites 14 B. 5. ne. Some look 122. The Earl of Kent’s Cite. — * Cses. J. 679. Saunders-
son v. Harrison.

(B) Rent Seek. By what Words it may be granted.

1. If Rent be granted Perpetually apud the Manor of D. and it’s P. And it be Agreed that he shall discharge in other Land, in the Same or Per Cur.

other Counties; This is Rent lasting out of the Manor of D. and not out of the other Land; but the Distrain is but a Penalty. 41.
E. 3. 15. b. 41 Aff. 5. Distrain.

if it was Perpetually out of the Manor of N. and a Rent-Charge on the other Lands where the Distrain is limited, and Affile is well. Br. Charge.
pl. 2. cites 41 E. 14.

Br. Affile, pl. 339. cites 41 Aff. 5. That the Grant was not in all his Lands in D. M. & R. and the Affile was brought in 21. case out in View, and M. & R. were in another County, and yet as a For De, Armis, by Vol., Deuill, Territorium, are good Words of Charge, and the Writs are good. — 41 P. and to the De, Apud &c. Br. Charge, pl. 26. cites 41 Aff. 27. Per Tou{}m.

If a Man at this Day grants a Rent per stirpem, of Terras & Terraeque, fisst in D. or coextant de Terris

fisst in D. and a thing Coextant d’Esperance, this is a Rent Seek; and if the Grantee gets Selimi, he shall have Affile, and Denier of it is a Distraint. Br. Rent, pl. 21. cites 9 B. 4. 21.

2. If a Man grants a Rent Perpetually in Manerio de D. this

is a good Rent Seek lasting out of the Manor. 41 Aff. 3. 1067. P. cites

Tak.

3. So if a Man grants a Rent Perpetually de Manerio de D.

it is a good Rent Seek lasting out of the Manor. 41 Aff. 3. Per

Tak.

4. If a Man obliges by a Condition himself, his Goods and Lands, see (D) pl. in such a County, in such a Sum, if the Condition be not performed.

this is a good Rent lasting out of the Land, the there are not

Words of Taking, not in what Place nor Bill to take. 18 E. 3. 32. b. 18 Aff. 54. b.

5. If a Man grants a Rent Perpetually in Manerio de D. to another, and by Condition

bound him and his Goods and Lands in 2 Counties, and it was held a good Charge; to discharge if there be a

Claude of Distrain, but not to have Affile, and without Distrain is just a good Rent-Seek, if he gets sel-


If one cited in Fee lends his Goods and Lands to the Payment of a yearly Rent to A. of B. this is a good

Rent Charge with Power to discharge, albeit there be not express Words of Charge, nor to discharge. Co.

Lit. 147. 8.

6. If a Man grants to another and his Heirs an Annual Rent of

20 s. of his Mill of C. Perpetually Annaudin de Se & Hereditibus suis

in perpetuum. By these Words this shall be a Rent lasting out of the

Mill; For it shall be intended by the last Words, that he shall take the Rent of him and his Heirs in his Mill. 22 Aff. 66. Distrain.

If a Man grants and confirms to another in Fee 10 s. Rent to take out of certain Land, which Rent he has of the Grant of his Father, and he never had any Thing of the Grant of his Father, yet this shall

create a Rent. 26 Aff. 38. Per Skipwurth.

The Book is, to take of your Life, to take of your land, which Rent you had of the Grant of your Father, that you had not ever any

Thing of the Grant of your Father, this is good Title to have Affile. 26 Aff. 38. Per Skipwurth.

6 E
Rent.

7. If a Man leaves a Manor for Life, rend'ring 51. Rent, and after
grants the Rent to another for his Life, to take in the said Manor by the
Hands of the Lessee, and of whatsoever Hands the said Manor shall come
into; and after the Lease for Life of the Manor dies, yet the Rent
of the Grantee shall continue for his Life, and the Manor shall be
charged with it, tho' the Rent reserved upon the Lease be determin-
ed. 26 Litt. 38. Per Willy.

8. So if a Man leaves a Manor for Life, rend'ring 51. Rent, and
after grants this Rent to another in Fee, to have after the Death of the
Tenant for Life; This is a good Grant of the Rent, tho' the
Rent reserved upon the Lease for Life be determined before it com-
iences. 26 Litt. 38. Per Willy.

9. If I recite by Indenture, that where I have granted to G. a Rent
valid out of my Land for Life, I grant that after his Decesse the
same Rent shall remain to B. in Fee, albeit that there was no such Grant
made to C. yet B. shall have this Rent. 21 H. 6. 11. Per Stack.

10. If Rent be granted out of a Manor, the Demises only, and not the
Service, are charged. 5 Rep. 4. b.

11. A Lease for Life, in Right of M. his Wife of a Mill, made a Lease
thereof to B. for 17 Years; B. the Year after assigned the Term to C.
About a Year after C. demised to D. for 14 Years, rend'ring yearly 3 Buffels
of Malt, and one Buffel of Wheat in the Name of Rent on every Saturday;
and if the same, or any Part thereof, shall be unpaid or undelivered for
3 Days next after any of the said Feals, being lawfullly demanded, then
the Demise to cease; D. entered and was posses'd, and C. being posses-
s'd of the Reverlion, granted all his Eiflate and Interest therein to one
W. R. for the Reverlion of the Term of 17 Years. D. attorn'd. One Qui-
tion was, Whether the Rent pas's'd to W. R. by C.'s Grant, of all his
Eiflate and Interest. And it was resolved by all the Justices, absente
Popham, That the Rent reserved by first Leafe for Years, upon Demise of the
Land for a left Term, is incident to the Reverlion of the ancient Term,
and pas's'd well enough by the Words of (All his Eiflate) and if not, yet
by the Words (Till the Interest) the Rent divided from the Reverlion
will pas's, and the Reverlion clearly pas's'd by Tumus Sacram. Agreed
by 3 Justices, absente Popham. Mo. 526. pl. 69.4. Mich. 49 & 41

12. If I grant Rent to Jheen out of my Manor of D. and out of my
Lands and Tenements in D. and S. and out of my Lands elsewhere to the said Manor
belonging. This Middle Clauze stands to in Frame divided, that it shall
charge my Land in those Towns, tho' they are no Part of the Manor;
and yet that Clause is included with the Manor both before and after.
Hob. 175. in Case of Stukely v. Butler, cites Finch's Case.

(C) Rent Sack. Seisin.

1. If a Rent-Seek be granted, and diverse Days of Payment are
pas's'd before any Seisin half of the Rent, yet if after Seisin be had
he shall recover in an Affixe after Demand made and Monapayement, all
the Arrearages incurred before the Seisin had, as well as those which
were after due at the Time of the Demand. 56th. 11 Case. B. R.
between Morrice and Price, per Curiam, in Writ of Error upon a
Judgment in Wales.

by Will in Writing; and in Affixe for the Rent the Jury (among other Things) found Arrearages due
for 20 Years and an Half; but because it was not found when the Devisor died, the Judgment was re-
vered.
Rent.

2. If a Rent be granted in Fee out of Land, and this [Land] be S. C. before any Sein of the Rent, descends to two Co-Parceiners, and after the Baron of the one gives Sein of the Rent without the Alient of the Cro. C. 51. other, per this shall bind the other. \( \text{Sp. 11} \) B. R. between \( M. f. \). Jo. 42., 

rice and Prence per Curiam, upon a Welt of Error in Wides this 44, S. C. 30j. per Curiam, 

3. If a Man leaves Land for Years rendering Rent, and dies, the Heir shall have the Rent; for this is Parcel of the Reversion, and shall pass by Grant of the Reversion, and yet it does not appear there, if it was referred to the Lessee and his Heirs; quod nota. Br. Rents, pl. 10, cites 14, H. 6, 26. 

4. A Tenant was compelled by Decree in Chancery to pay a Rent-Seek, which was denied by \( W. \) out of the Land, notwithstanding no Rent Sein had of it. Mo. 626. pl. 859. Trin. 43 Eliz. And says, That Trin. 44 Eliz, a like Decree was made in the Case of Ferrers v. Tanner, S. C. cited 3 Chum. 

Cites 96. 

(D) Rent Charge. By what Words it may be granted. 

1. If Rent be granted Percipiendum apud Manerium de D. and if it be: See (B) pl. 4. 

Arrear he shall drain in other Lands in the same or other Counties; this is a Rent mixing out of the Benefit of D. and not out of the other Lands, but the Distriks were is but a Name. 41 C. 3, 15 b. 41 ait. 3. 

that I am now paid 20 a. Rent per Annum, that then I may drain in the Land in D. for 20 a. Rent per Annum, this is a good Rent out of the Land, and Be Affile of it, this Land shall be put in View. Br. Rents, pl. 32. cites to 44 Alt. 4. — And if Rent be granted out of the Land in one Count., and it be the Arrear, that be may drain out of Land of the Grantor in another Count., and he drain in and brings Affile, the Affile shall be brought in the first Count.; but if both the Lands are in one and the same Count., both Lands shall be put in View. Ibid. 

2. If a Man by Deed obliges himself to B. in Annou Reddito de See (B) pl. 1. 

tali summa Percipiendum Annuution of the Manor of D. and he obliges Manerium predeltum, & omnia Capita in the Manor to the Distriks, this is a good Rent out of D. 46 C. 3. 18 b. Cura. 

21 cites S. C. — S. P. Co. Litt. 147. 4. 

3. If the Grantee of a Rent purchase Parcel of the Land at, by which the Rent is certain, yet if the Grantee grants again (rehearsing the Purchase) that the first Grant shall stand in his Force, and that he may drain in the rest of the Land, this is a good Grant of a Rent-Charge. 46 C. 5. 32 b. 

4. If a Man grants, that it so much of the Rent be Arrear, the Br. Rents, Grantee shall drain for it in such Land, this is a good Rent-Charge. S. C. 3 D. 4 19 b. 

5. So if a Man grants to another, that he shall drain for so much S. P. Br. Rent in certain Land, this is a good Rent Charge. 9 D. 6. 9. Co. 7. 2. Perkin with. And S. P. Br. 


Querc. 

Grantee may have an Affile. — This by Constructio of Law will amount to a Grant of a Rent out of the Land, for should it not do so, the Grant would be of little Effect, if the Grantee should have a naked Distriks, and no Rent; for then he never should have Affile thereof S. C. And this is the Reason that it is often ruled, and resolved that this amounts to a Grant of a Rent by Constructio of Law. Ut Res magis Valeat. 7 Rep. 24 a. Per Cur. cites 5 E. 5. 12. 5 Alt. 7. 14 Alt. 14. 16 E. 3. Tit. Grants 64.
Rent.

6. If a Man grants to another, That whereas he has a Rent out of certain of his Lands, that he shall distrain for it in certain other Lands; if he has not any * Rent running out of his Land, this shall create a Rent out of the Land where the Distress is limited. *Tith. N. 224.

7. If a Man grants and confirms to another 10s. Rent, to take out of certain Land, which Rent he has on the Grant of his Father, tho' he never had any Thing of the Grant of his Father, yet this shall create a Rent. 26 All. 38. Per Skip.

8. If a Man has a Manor for Life, rendring 5l. Rent, and after grants this Rent to another in Fee, To Have after the Death of the Tenant for Life, and that he may distrain after the Death of the Tenant for Life, This is a good Rent-Charge tho' the Lessee be dead before the Rent commences. 26 All. 38. Per Skip.

9. Grant, That if 10s. Rent be not annually paid to J. N. that he might distrain in the Land; The Grant is a good Creation of the Rent. Per Skip. Br. Rents, pl. 14. cites 26 All. 38.

If a Man by Deed indented at this Day gives in Tull, or for Life, the Remainder over in Fee; or makes a Precedent in Fee, or refers to him and his Heirs a Rent, and that he and his Heirs may distrain &c. this is a Rent-Charge; because such Lands &c. are charged with such Diftresses by Force of the Writing only, and not of Common Right; And if one by Indenture refers to him and to his Heirs a Rent without such Charge of Diftresses in the Deed, then such Rent is Rent-Seek, for that he cannot distrain for it; And it in this Case he was never lefled of the Rent, he is without Remedy. Litt. S. 219.

Also if one feitled of Land grants by Deed Poll, or by Indenture, a Yearly Rent out of the same in Fee, or in Tull, or for Life &c. with a Clause of Diftresses &c. this is a Rent-Charge, And it the Grant be without Clause of Diftress, then it is a Rent-Seek. Litt. S. 218.

12. If a Deed be, That if A. of B. be not yearly paid at Christmas for his Life 25s. that he may distrain for it in the Manor of F. &c. this is a good Rent-Charge, because the Manor is charged with the Rent by way of Diftresses; and yet the Peron of the Grantor is discharged of an Action of Arrears, because he does not grant any Arrears to the said A. of B. but only, that he may distrain for such Arrears &c. Litt. S. 221.

13. If a Man lets Land for Term of Life, and Tenant for Life charges the Land with a Rent in Fee, and he in the Recovery confirms the same Grant, the Charge is good enough, and effectual. Litt. S. 329.

14. If a Man by Deed grants a Rent-Charge out of his Land to one for Life, and grants farther by the same Deed, That he and his Heirs may distrain in the Land for the same Rent; This amounted to a new Grant of a Rent in Fee-Simple. Co. Litt. 148 a.

A sefiled of Lands, lets the same at Will at 10l. per Ann. to B. Trim 35 Eliz. and after by another Deed granted sundry Redemptions to J. S. for Life, and afterwards the Lease at Will determined; this shall not be intended Eundem Numero, but Eundem Specie; And adjudg'd, That the Rent was well
Rent. 477


16. Causula Distriptionis is not sufficient in a Grant to create a Rent; Nov. 71. S.C. Otherwife in a Devile. No. 592. pl. 758. Trin. 40 Eliz. C. B. Kingl. where the Words were I trust s. Rent of 40 l.

pre Ann. out of all my Lands in H. with a Clause of Distript is payable yearly at the usual Forfeiture. Per Cur. This is a good Devile of a Rent-Charge by these Words, 'II is a Clause of Distript'; because of the Int. of the Devile in giving of a Remedy, and means to come to that Rent-Charge.

17. Lease for 99 Years, if he and A. & B. so long lived, granted a Rent out of the Lands to W. S. his Executors &c. for the Receiving of the Term, to be paid at the Houses of B. and if it should be behind 28 Days, being lawfully demanded at the said Houses, then it should forfeit 20 l. for every Day it should be accret; and if behind for 6 Months, being lawfully demanded at the said House, that then he might distrain for that and the Nomine Damage. Adjudg'd, That this was a Rent-Charge. Hutton 114. Mich. 8 Car. Lamb. v. Wel.

(D. 2) Rent-Charge, Grant thereof Good. In Respect of the Estate of the Grantor.

1. A. Tenant for Life, Remainder in Tail Male to B. his Son and Heir S. C. Hurr.

 appareit, Remainder to A. in Tail Male, Remainder to C. in remainder. Tail Male, Remainder to the Right Heirs of A. — A. & B. joint in a Devile, by which A. granted, and B. the Son (being then under Age) confirmed, to £. S. an Annual Rent of 10s. per Ann. out of the Lands, payable Half-Yearly, with a Clause of Distript and a Nomine Piece of 20 l. for every Month, A. & B. afterwards joint in a Fine to the Use of A. and his Heirs. A. made a Pecuniary Part to W. R. the Plaintiff, B. having Issue living. The Question was, Whether this Debt be chargeable on W. R. the Plaintiff? cited to be because it was made by Tenant for Life, and confirmed by B. in Remainder, the said W. R. being within the Age. The Court inclined in Opinion, That the Grant was lately upon good, and should bind W. R. the Plaintiff; For tho' it was agreed to be the like void as against B. who was within Age, yet the Estate Tail being barr'd Point. To by the Fine, the Use whereof was limited to A. and his Heirs, who granted the Rent, and W. R. coming in under all the Estates of A. who granted the Rent-Charge, therefore shall hold it charged. But without Regard to the Matter of Law, Judgment was given upon the fall. If this Pleadings. Cro. C. 103. pl. 4. Hill. 3 Car. C. B. Holt v. Sandbach; S. C. be the Point. They will give Judgment prentently. — Her 74. Holt v. Sandbach. Hill. 3 Car. C. B. but a D.P.

(E) Where but a Penalty.

1 If the Tenant by certain Rent grants by Indenture to his Lord, B. Grant, That he may distrain for the same Rent in all his Land in the Title pl. 141. cites 3 D. other, but he has other Land; This is not any New Rent created, with only a Distript for the Old Rent. 9 D. 6. 9.
Rent.

S. P. For 2.

2. So if a Man grants a Rent out of the Manor of D. and grants further, That if the Rent be arrear, he shall distrain in his Manor of S. If this be but a Penalty in the Manor of S. Co. 7. Butter 24. Contra 1. E. 3. 21. b.

Construction that this shall amount to a Grant of a Rent; for here is a Rent expressly granted to be issuing out of the Manor of D. and the Parties have expressly limited out of what Land the Rent shall issue, and upon what Land the Distress shall be taken; and the Law will not make an Expiration against the express Words and Intention of the Parties, which this way runs with the Rule of the Law. Quotations in versi

his nunc chumbinis his nulla Expedito contra Verba expressa fidei eff. 46ly, If in this Case this shall amount to a Grant of a Rent out of the Manor of S. then the Grantor shall be twice charged.

For if the Grantee brings a Writ of Annuity, this shall extend only to the Manor of S. for upon the Grant of a Distress in the Manor of S. no Writ of Annuity lies, because the Manor of S. is only charged, and not the Person of the Grantor as to this; and for this Case the bringing of a Writ of Annuity cannot discharge the Manor of S. of any Rent; and so the Law, by Construction against the Words and the Intention of the Parties, shall do Injury to the Grantor to charge him twice. 46ly, If in such Case the Manor of S. in which the Distress is only limited, shall be in another County; then it has been often adjudged, That the Rent shall not issue out of the same, but the Distress shall be as a mean and Remedy to compel the Tenant of the Land to pay the Rent; and it was said, That there was no Diversity in Respecting, that the Law in Construction shall make the Rent to be issuing out of this, when it lies in the same County; and not when it lies in several Counties; For the Words in both Cases are all one. Co. Litt. 147. a — 7 Rep. 24. a. Per Car. accordingly. Trin. 42. Elis. C. B. in Bunt's Case.

3. If Lord and Tenant are by Fealty and Rent, and the Lord grants the Rent to another with Clause of Distress, and the Tenant acts; This is a Rent-Charge issuing from the Land. 1. E. 3. 21. 27. 28. Dungl. D.

4. If a Man grants a Rent Cum Claufula Distriptione, this is not a Rent-Charge, because it is not expressly granted, if the Rent be arrear that he shall distrain. 11. P. 6. 41. d.

(F) By what Words a Distress may be limited.

See (B) pl. 4. a — (D) pl. 2. — Br. Grants. pl. 21 cites S. C.

C. mentions the Words of the Grant to be thus, viz. I oblige myself to A. B. and E. his Wife, and the Heirs of their Bodies issuing in the annual Rent of 10 L, which I receive of my Manor of S. and I oblige my Manor aforesaid, and all my Goods and Chattels in my Manor aforesaid being, as Differing per, by Halloquim Donum Regis, omnibus Appellatis revocatis & aliis Jurisdiction, Remission &. And Distress was adjudged a good Grant by the Words aforesaid, and that the Party or his Bailiff might distrain notwithstanding the Words (Halloquim Donum Regis) See, that these Words (my Goods and Chattels in the said Manor being) is a good Distress; good Miriam; for when the Party is dead, he has no Goods, and Miriam of this Word (Halloquim Donum Regis) for it seems to be not a Rent of the Franconremont of the Manor; for it seems to, and also the Clause of Distress shall not go to the Heirs by any Word above. — Br. Obligation, pl. 16. cites S. C. — Br. Charge, pl. 5. cites S. C. And says, Quod Miriam in some Points. — Br. Expulsion of Words, pl. 10. cites S. C.

2. A. was seized of Lands in B. and granted 5 Marks Rent out of those lands to C. for Life, the Remainder to R. for Life, and after C. died, and A. the Grantor released to R. and his Heirs all his Right in the Rent, and if it happen the Rent aforesaid be behind at the Terms &e; it shall be lawful for R. his Heirs and Assigns, to distrain in the said Tenements &c. And it was alleged that by the Death of C. the Rent was ended and determined by Skrene and Martin; for Rent which had not Issue before cannot remain; but Gascoigne and Huls awarded the Grant good, that he
he and his Heirs may distrain, and so affirm'd the first judgment; for if
Rent be granted for Term of Life, and that the Grantee and his Heirs may
distrain, he has a fee; quod not; that the Clause of Distrains founds in

3. If a Man grants a Rent with Clause of Distrains, he shall not distrain

4. A grants a Rent-Charge payable at such a Day out of such Lands,
and says it happen the Self Rent to be Arrear such a Day, and no Dis-
trains in the same Land then being found, that he may enter and retain &c.
those are implicative Words only, and Grantee can't distrain by Virtue

5. In Ejectment one made a Lease for Years of Land, Part Fee-Simple,
and Part in Leases for Years rendering Rent, and that if it should be behind
40 Days, that it should be lawful to refrain; and if there should not be
sufficient thereon, then to re-enter on the said demised Premises. Re-
solved that this Word Refrain is not limited to any Thing which
should be Restrained, as in Land or Cattle &c. and therefore it shall
not be taken for Distrain. Mo. 848. pl. 1131. Hill. 13 JaC. Moody v.
Garnon.

(Distrain) and that it shall be accepted to be of the same Sense. Sed Adjudicatur.——4 Bull. 153; S. C.
Mich. 18 JaC. Coke held accordingly, That by the Word (Refrain) he might distrain. But after-
wards Patch, 14 JaC. the Cole being argued again, Coke held, That 'cause nothing was mentioned for
him to refrain, it was not good.—Roll. Rep. 420. S. C. and there Dodderidge J. Jaid, That he at
the Distrain been only, for the Rent, he would have interpreted the Word (Refrain) to amount to Distrain,
but the Question now is of a Condition to defeat an Eject.

(G) To whom the Distrains may be limited.

1. If Rent be granted to B. out of D. and bind this to the Distrain by Br. Grants,
the Bailiff of the King; this is a good Limitation of the Dis-
trains, but this does not give any Benefit to the King; but the Bailiff
is in this a Simplee to the Grantee. 46 C. 3. 18. b.

S. P. Co. Litt. 149. 2.

2. If a Man grants a Rent to another out of Land, and if the Rent
be behind, that a Stranger by Name shall distrain for it; this Distrain
is of no Value. 40 All. 26. Per Land.

3. If the Distrains be limited to a Stranger for the Benefit of the
Grantee of the Rent, yet the Grantee himself may distrain for it; for the
Stranger is his Servant in this, and what he may do by his
Servant he may do himself. 46 C. 3. 18. b.

4. If a Man devise Land to another, to find 12 Marks for a Chap-
lain to Claim for his Soul in the Church of D. and that it be Ar-
rear, the Parishes and Parson may distrain for it; this is good by
Usage and Custom of the Place, to compel him to pay it. 20 All.

5. If A. be seized of certain Lands, and A. and B. Join in a Fee-Simple in Rent B
Fee reserving a Rent to them both and their Heirs, and the Fee
Grant to that to shall be lawful for them and their Heirs to distrain for the Rent;
this is a good Grant of a Rent to them both, because he is Party to the Rent B. had
Deed, and the Clause of Distrain is a Grant of the Rent to A. and B.
Co. Litt. 213.

(H) Our
Rent.

("H") Out of what Land the Rent shall be said to be issuing.

Co. Litt.
14. 3.
1. If a Man grants a Rent out of Land in one Country, and that if the Rent be Arrear, he shall disfrain in his Land in another Country; this Rents may be out of the Land out of which it is granted, and not out of the Land where the Distress is limited; but the Distress is limited but for the greater Justice. 31 Eliz. 27. adjudged. Co. 7. 

2. So if it the Distress be limited in Land in the same Country.

3. So if a Man grants a Rent out of certain Land, and if the Rent be Arrear, that he shall disfrain in other Land in the same Country, the Rent issues out of the Land out of which it is granted, and not where the Distress is limited. * 1 Att. 1 Eliz. 3. 24.

And it is no

4. If the Tenant, who holds by certain Rent, acknowledges it by Double Charge, neither is the Rent issuing out of the other Land, but only payable there; nota. Br. Charge. pl. 22. cites 20 Att. 1.

5. If a Man feisd of Freehold Land, and also of Copyhold Land, and by Licence of the Lord makes a Leaf of both, reserving a Rent; this Rent shall issue out of the Copyhold Land as well as out of the other Land; for a Rent may be reserved out of Copyhold Land, and it is such a Thing to which the Lett or may be had for a Distress. Add. 40. 41 Eliz. B. R. between Collins and Harding, adjudged by 3 against 1.

6. If a Man grants 20 s. Rent out of his Manor, viz. 10 s. by the Hands of A. and 10 s. by the Hands of B. yet one and the same Allegat lies, and the entire Manor is charged. Br. Allif. pl. 476. cites 15 Att. 11. and Fitzh. Charge. 6.

7. In Allif of a Corody, it was said for Law, that if a Charge be granted to take of a Priory; all their Pollenlions shall be charged by this Term Priory. Br. Charge. pl. 25. cites 29 Att. 8.

8. If a Man hold 10 Acres of his Lord by 12 d. and 1 Acre by 1 d. by several Tenures, and he confirms the Estate of the Tenant in both to hold by 4 d. This cannot make one and the same joint Tenure, which was 2 Tenures before; and in this shall enure, it shall be to give 2 d. out of the 10 Acres, and 2 d. out of the 1 Acre, of which issued but 1 d. before; therefore Quare inde, and Quare, if it cannot enure to have 1 d. out of the 1 Acre, and 3 d. or the whole 4 d. out of the other 10 Acres. Br. Confirmation. pl. 1. cites 9 H. 6. 9.

9. In
Rent.

9. In a Writ of Entry in Nature of Affidavit of Rent, it was granted, that the Priory and Convent of St. John, granted an annual Rent of £428. to the Manor and Confreres of R., from the Hose and Molality of J., for £20, to be paid at such a Feast &c. that this shall be charged the House, and is issuing out of the Hose, and the Hose and the Land upon which it stood were put in View. Br. Charge pl. 14. cites 9 E. 4. 22.

So it is where such Charge is out of a Mill, and after the Mill fails, the Land upon which it shall be charged. Br. Charge pl. 43 cites 9 E. 4. 22.

10. A. has Land named C. and also Land adjoining, which by Continuous Occupancy has been called C. and he charges his Land called C. This shall not issue out of C. but out of the Land adjoining, called C. Arg. per Clerk J. and Gent was of the same Opinion. Mo. 230. pl. 367. Hill. 29 Eliz. in the Exchequer in Fanshaw's Cafe.

11. A. seised of Bl. Acre in Fee, and pollesed of Wh. Acre for Years, grants a Rent out of both to B. for Life with Clause of Disrels in both. This Rent issues out only of the Land in Fee, tho' Wh. Acre is charged with the Disrels; and if B. takes Leafe of and Part of Wh. Acre, it is no Sufficient of the Disrels, but that B. may distrain in the Residue; For this is not issuing out of but to be taken upon Wh. Acre. Trin. 42 Eliz. C. B. 7 Rep. 23. b. 24. b. Butt's Cafe.

The Rent issues out of the Freehold only; Because the Rent being granted for Life is a Freehold, But if he had granted the Rent out of the Leafehold, Lands for the Life of B. then it had issued out of the Term, and the Land had been charged during the Term, if the Grantee had lived so long Co. Litt. 147. 5

12. A Bishop seised of the Manor of S. leased 20 Acres Parcel of the Manor to B. for 5 Lives rendring Rent; and afterwards during the Lives leased all the Manor to C rendring the ancient Rent. And it was adjudged (Hobert and Winch being only present) that the Rent referred upon the Leafe to C. issued out of the entire Manor; For it in Debt for the Rent the Lettor comes upon a Demise of the Manor, outlining the Recovery of this Parcel, the Declaration is ill, and upon Non Dimitt pleased, it shall be found against him. Winch. 46. 57. Mich. 20 Jac. C. B. Gloucelter (Bp) v. Wood.

13. Leafe for Years of Land in Possession, and other Land in Receprion, rendring Rent, the Rent issues entirely out of both; and before the Receiver falls into Possession, a Distrel may be taken upon the other Land in Possession for all the Rent. Jenk. 254. pl. 46. B. seised of 2 Acres, one whereof was in Leafe to A. for Years B makes a Leafe of both to a Stranger to have the one in P. Effer the other in Receprion, rendring 200 Rent yearly now; This rent shall issue out of that in Possession during the Term in A. and after it shall issue out of the Whole at one Entire Rent. Per Tansfield J. Litt. 119. Hill. 8 Jac. in the Cafe of Sawyer v. East.

14. If I make Gift in Tail, Remainder in Tail rendring Rent, the Rent goes out of both, but if to A. in Tail rendring Rent Remainder to B. then it goes only out of the Entire Tail of A. Arg. Litt. R. 298. Trin. 5 Car. in Beck's Cafe.

(H. 2) Nature of Rent. Where the Rent shall be of the same Nature of the Land out of which it issues.
Rent.

2. If Rent be granted out of Land, which is customary, as Borough
English, Gavelkind, or where Dower is of the Moiety &c. the Rent shall be
of the Custom and Nature of Land, tho' the Rent be granted out of the
Land within Time of Memory, or at this Day, which was said by
Fitzherbert and divers Serjeants, and not much denied, and therefore in
Demand of the Rent by Precipe or Replevin, Ancient Deneme of the
Land is a good Plea; And Fitzh. vouch'd 4 El. 3. That a Feme was en-
dow'd of the Moiety of the Rent by Reason of the Custom of the Land out of
which the Rent arose. Br. Rents, pl. 20. cites 14 H. 8. 5.

Condition. (Z. c)

(1) In what Cases a Demand is necessary [and if upon
the Land or not.]

1. If a Feme grants a Rent to another payable at certain Feasts,
and that if the Rent be Arrear at the said Feasts &c. being law-
fully demanded it shall be lawful to distrain, that the Grantee does not
demand the Rent at the Feast when it is due, yet he may demand it
any Day after, and then distrain. Co. 7. Mord. 29. b. adjudged.
Sib. 40. 41. Eliz. B. between Stanley and Reed. cites
Co. Litt. 144. and in Hand's Case.

2. So if a Feme grants a Rent to another, and grants further,
that if the Rent be Arrear being honestly demanded, it shall be law-
ful for him to distrain, he may distrain for this Rent before any ac-
tual Demand made of it; For the District is a Demand in Law, and
the Words of the Grant are, That it shall be honestly demand-
6d; so that it is referred to the Law to judge what shall be a lawful
Demand; For it does not appear that he intended in actual De-
mand, Hill. 15 Jac. B. R. between Simmons and Allen adjudged,
this being moved in Arret of Judgment, tho' the Court refused to
contra the Court before, and in this Case these Precedents were
hean. Hill. 1 Ja. B. Rot. 818. adjudged upon a Demandar be-
tween * Locke and Langford. 11 Ja. B. Rutherford
and Tenant adjudged.

If the Rent
is refered
is payable
at a Place
off the
Land, the
Land, the
Tenant
is refered
is payable
at a
Place on the
Land, then
the Land
must be
Demitted
at a
Place on the
Land.

* S. C. cited
at Hill. 1
Jac. B. R.
accordingly.
Mo 885.
pl. 1259.
in the Case of
Kirkwell v. Crawley.

3. If a Feme grants a Rent-charg-e to another to be paid at a Place
out of the Land, Killett in Gray's-Inn-Hall, and grants Further, That
if the Rent be Arrear by 30 Days next after the Feasts &c. being law-
fully demanded at Gray's-Inn-Hall aforesaid, then it should be lawful
for the Grantee to distrain. In Replevin, if Defendant avows
the Districts in the Land, and alleges no Demand of the Rent at Gray's-
Inn-Hall it is not good; For the Districts upon the Land cannot be
any Demand at Gray's-Inn-Hall* where it is expressly appointed to
be demanded. Hill. 7 Car. B. R. between Darby and Moflett, ad-
judged in Writ of Error, and a Judgment given in Siam reversed
B. R. between Selden and Shirley. Per Curiam in Writ of Error
upon Judgment in Bank ecuiter
and the Judgment reversed
that the Judgment was not entered in D. Dobart's Reports, 382, Comitia
Cr. 3 Car. B. Rot. 2865. Per Curiam between Breveton Plaintiff,
and Browen and Brown Defendants upon Defendant; But after the
Demurrer waived, and Plaintiff contested the Grant of the Rent
and that it was Arrear according to the Assembly, and therefore
Judgment given against the Plaintiff and Defendants to have Re-

Return
Rent.

483

Cr. 8 Car. 2. Rot. 333. Sir J. Lamb's Kind v. A. ->
Cafe. Per Curiam upon Demand for, but no Judgment entered.

Note of


Lease of Valley rending Rent at a Place certain out of the Parish with Clause that the Leve should be paid as in & upon the Place appointed by the Parties at a Place or Place, and on Nonpayment the Lease is void. Mo. 493. Tushing v. Edmons.—C. E. 241. S. — Adjudged in Error C. 225. S. C. — 33. cited Arg. 2. 30. 33. Nay 143. Anon. S. C. Wallerfield. The Lease shall not be compelled to seek the Leese, and demand the Rent of him, but the Leese ought to seek the Leessor, and so it hath been ruled before that Time. Daniel agreed expresly, and Warborton bound thereon.

4. If Lord and Tenant be by c.,ent Rent payable at a certain Day, if the Tenant renders the Rent upon the Land at the Day, and none comes on the Part of the Lord to receive it, yet the Lord may S. C. agreed disclaim for it upon the Land without any Actual Demand made to the Person of the Tenant; For a Rent-Service is always in Demand, and the Place for the Demand is the Land out of which it arises, and it is not any corporal Service to be done to any Person or by any Person and the Tender of the Tenant cannot affect the Place of the Payment; For the Tender of such Rent to not material till a Demand. Bill. 15 Jac. 2. between Crawley and King's. ->

Adjourned upon a Demurrer in a Report. Hobart's Reports. 281. Same Cafe.

taken, the Taking should be * tortious.— S. P. Nov 25. in the Cafe of Fortescue v. Jones.—Brown. 181. Patch. 15 Jac. adjudged accordingly, S. C. by Name of Crawley v. Kingwell. — Nov 24. S. C. that the Lord sauid the Director for评测 due from D. the Tenant saiid that D. was demed at the Day of taking the Director: And this was held by the Court to be a good Pleas but he hold'd if the Lord demands the Rental of D. and he refuses and dies, yet the Lord may disclaim after his Death. Crawley v. Kingwell Hob 207. pl. 261. S. C. adjudged accordingly; and H. bart. Said, That the Payment on behalf of a Demand and a Director, and if the Tenant be there, and offer the Rent, he may not disclaim, and therefore the Rent being due, and the Land answerable, he may demand it when he will at the Land: But where a Demand or Rent is paid to the Thing, there, you cannot take Advantage of the Palm or Forfeiture, without a Demand at the very Time prefixed. And the Mitchell were Great, for by this Council, the Lord did not demand his Rent at the very Day, he should never disclaim after, without an Actual Demand of the Person of his Tenant: But if the Tenant tenders his Rent at the Day, or after to the Person of his Lord and he refuse it, I am of Opinion, That he shall not after disclaim without a Demand of the Person of his Tenant; But the Cafe of a Rent-Seekers Cafe, Coke 29. 29. directors, For there, if he be not demanded by the Person, for there is no Premedy for that Rent, but an Affize. Now a Man cannot be a Director, nor Damages laid upon him without a writful Fault 8. P. And after wards, at another Day, the Lord demands it, and disclaims for it; and adjudged good: and recovering Damages in the Assay. For the Rent was a Thing in Demand and not in Remitter. Nay 22. Fortescue v. Jones.

5. But if the Tenant tenders his Rent upon the Land at the Day, and after this tenders it to the Perfon of the Lord, and he refuses it, he cannot afterwards demand it for without a Demand from the Person of the Tenant. Hobart 281. 33. Per Hobart.

6. An Act on of Debt lies for a Rent received upon a Lease for If Leese

Beas without any Demand. Tr. 13 Ga. 2. R. for Cafe, said to be the Cafe of Dene's Cafe. Adjudged. ->
tender at the Day before Demand: But otherwise it is, where Leesse is bound to perform Covenant. Rall. Rep. 216. Trib. 13 Jac. 2. R. the same Cafe.

7. If I disclaim my Tenant for Rent, and he is ready upon the Land, and tenders the Rent to me, and I will not take it, but leave the Directors with him, yet I may disclaim at another Day for the same Rent. 200. D. 20. 31. Per Howton.

8. If the Tenant or Leesse tenders his Rent to the Lord or Leessor it 1st Realise

at the Day of Payment upon the Land, and he rejects it, yet he may tenders to
Rent.

9. And in the preceding Case the Land or Lessee may distress for the Rent without any Demand upon the Land for the Rent: For the Distress is a Demand in Equity. Contra 1 E. 4. 20 H. 6. 31.

12. If a Man suiteth of a Rent-Seek, payable Annually at the Feast of Easter, and at the Feast no Demand or Tender is made of the Rent, yet he may come after the Feast to the Land and demand the Rent, and the Tenant be not there; yet if none be ready to pay the Rent, this is a Tender in Law, upon which an Assise lies, inasmuch as no Penalty ensues upon it; but is only to recover the Rent with Damages and Costs. 20 H. 6. 31.

13. But in the said Case it the Tenant be at the last Instant of the Feast ready upon the Land to pay, and he who has the Rent, nor any for him, comes to demand or receive it; In such Case he has that the Rent cannot come in the Abthese of the Tenant and demand it, and to make him a Distress, and tender Damages and Costs, without any Demand in him. 20 H. 6. 31.

12. But in the said Case, he who has the Rent, because Default was in him, ought to make a Demand of it upon the Land of the Person of the Tenant. 20 H. 6. 31.

14. But in the said Case, at the next Feast, if he who has the Rent demands the Rent with all the Arrearages upon the Land, tho' he be in the Abthese of the Tenant of the Land, yet this shall be a Distress in Law to have Assise for the Rent and all the Arrearages, with Costs and Damages. 20 H. 6. 31.

15. If a Man has Suiteth of a Rent-Seek he ought to demand the Rent upon the Land out of which it is to be paid, to make a Distress upon which to maintain an Assise; For a Demand of the Person of him who ought to pay out it of the Land is not sufficient. 20 H. 6. 31.

16. Rent assigned for Dower, on Condition, That the Feme on Non-Payment shall be reford, need not be demanded by the Feme. D. 348.

S. C. cited mor. per Curt. 13, 31, 96 (the Rent of a Tenant of the Land to the Plaintiff of 20s. per Ann. for 10 Years, and was assigned in 10 l. with a Condition, That if he performed the Covenants and Agreements in the said Deed; it was found, The Oblige might have and enjoy the Annuity according to the Intent of the Deed, that then &c. The Annuity was due at such a Feast, but not demanded by the Grantee, nor tendered of the Obliger; And it hereby the Obligation be forfeited, was the Question; And it was held, That it was not; For the Obligation being for the Performance of Covenants generally &c. shall not alter the Nature of an Annuity; but that it is payable, as it there had not been any Obligation. Cro. E. 823, 829. Pach. 43 Eliz. C. B. Spec. v. Shere.
Rent is recovered on a Lease for Years, in which are diverse Covenants and a Bond for Performance of all the Covenants in such Lease, and the Rent is behind. The Bond is not forfeited, but the Leesee makes a Demand for the Rent, because he is to do the first Act, viz. To demand the Rent. Ang. Godd. 154: in the Case of Killigrew v. Harpur — cites 22 H. 6 57. — Cro. E. 352; Andrew Way Wood. Contra Sed Adjudicatur. — If Leesee gives Bond to pay the Rent, he must pay it without Demand, but his tendering it on the Land is sufficient, unless other Place is named. Hob. S. in the Case of Baker v. Span.

Rent payable off from the Land, and Leesee bound on Condition to pay the Rent Secundum formam & effe etiam Indenture precedent, held per Cur. That the Leesee ought to pay the Rent at his Peril without Demand. Noy 16. Anon. — Noy 57. Anon. makes a Difference, where the Leesee is bound to perform all Covenants in the Indenture, and where the Bond is expressly to pay the Rent. In the first Case the Leesee need not demand the Rent; otherwise in the last. And Walsh says, That it had been to adjudge in this Court. Cites 22 H. 6 57. — Hutt. 114. S. G. cited.

18. Lease for Years, rendring Rent, and in Default of Payment the Mo. 291. Sir Moile makes in Perk's Case: a Demand of the Rent; and upon Demand the Leesee is void without an Entry. But otherwise of a Lease for Life. Jenk. 121. pl. 43.

19. In an Action for a Rent-charge Demand is not necessary, tho' it be there was expre'sd in the Grant, That (it being demanded) he may lawfully distrain: Agreed per Cur. and that the Ditref is a Demand. Hur. 23. Kind v. Amnery. — and cites it to resolve in the Case of Beryman v. Bowyer. after Demand, that then he may distrain, it is otherwise: For there the Ditref is limited to a Month after Demand. Ibid. And says, That it was to adjudge, Trin. 5. Cur. in the case of Coppleton v. Longfurd.

20. In Replevin &c. one granted a Rent out of certain Lands to be paid at a House off from the Lands, and that if it were behind, and lawfully demanded at the House, then the Grantee may distrain. The Question was, Whether he might distrain on the Land without a Demand of the Rent? It was insisted, that a Ditref is a Demand in Law. Crawley J. inclined that there needed no Demand; but the other Justices, and Banks Ch. J. inclined that there must be a Demand; and Banks laid, That it is Part of the Contract, and like a Condition precedent; and as in that, so in this, he ought to make a Demand to enable him to distrain; for till then he is not enabled by the Manner of the Grant (which ought to be observed) to make a Ditref. Mar. 147. pl. 218. Trin. 17 Cur. C. B. Setden v. King.

(K) What shall be Sufficient Demand. At what Place. See (L)

1. If a Man demands a Rent upon the Land, he need not demand it at the Peril of any Man. 29 Hil. 52.

2. If a Man demands a Rent illing out of Land upon which there is a House, he ought to demand it at the House. 49 Hil. 5.

3. Lees of two Barns, rendering Rent and for Default of Payment a Re-entry, if the Tenant be at one of the Barns to pay, and the Leesor at the other to demand the Rent, and none there to pay it, yet the cites 30 Leflor cannot enter for the Condition broken, because there was no Default in the Tenant, he being at one; for it was not possible for him to be at both Places together. Poph. 58 3 & 4 Eliz. Anon.

4. If a Rent be granted, payable at a Place off from the Land, yet it may be well demanded upon the Land, and is not like a Rent referred on a Lease with a Clause of Re-entry. Cro. E. 324. Patch 36 Eliz B. R. Nota in Ridgely's Case.

6 Hil. 5. Boul
Rent.

5. Bond for Payment of Rent reserved is not forfeited, unless there be a Demand of the Rent upon the Land; but if the Bond be to pay the Rent at a Collateral Place off the Land, it is otherwise. Per Popham. Ow. 111. Pach. 38 Eliz. B. R. in Case of Stroud v. Willis.

6. A Demand of Rent of the Tenant out of the Land, is not sufficient; but if there is a House and Land, a Demand of Rent on the Land, is sufficient; but for a Condition broken, it ought to be at the House. Co. Litt. 153.

7. If one Place be as notorious as another, the Feoffor has Election to demand it at which he will, and albeit the Feoffee be in some other Part of the Wood ready to pay the Rent, yet that shall not avail him. Erle de Similibus. Co. Litt. 202. a.

(L) At what Place it is to be demanded.

1. If a Rent-service be reserved to be paid at a Place out of the Land, he need not demand it upon the Land, but it is sufficient at the Place where it is to be paid. P. 5 1st. B. R. between Knapp and Welch, per Curiam. P. 32 Cl. B. R. between Gurney and Willis, per Curiam adjudged. Cr. 39 Cl. in the Treasurer Chamber, between Edmunds and Buskin per Curiam, in Rent of Castle, and there said, that this was the Point owing'd in B. R. that is to say, that the Demand ought to be at the Place appointed for Payment. Cr. 39 Cl. B. R.

2. If a Man leases for Years rendering Rent, payable out of the Land in the Church of D. or the Church of S. upon Condition, this ought to be demanded in both Churches. P. 3 D. B. R. between Knapp and Welch, per Popham and Cairfield, because the Lessor has a right to pay it in either of the Churches.

3. So if a Man leases for Years, rendering Rent payable out of the Land, that is to say, at or in the Church of C. the Demand ought to be within and without the Church; for a Demand in the Church is not sufficient, inasmuch as the Lessee 3.3 Election to pay it in the Church, or out of the Church. P. 3 2nd. B. R. between Knapp and Welch, per Curiam.

4. The Demand must be upon the Land, because the Land is the Debtor, and that is the Place of Demand appointed by Law. Co. Litt. 201. b. Mo 404. pl. 1. 5. If the King makes a Lease for Years, rendering a Rent payable at 340. Trim his Receipt at Westminster, and after the King grants the Reversion to another,
Rent.

ther, and his Heirs, the Grantee shall demand the Rent upon the Land, and demand not at the King's Receipt at Westminster; for as the Law without exception provides, the Lease in the King's Cafe to pay it at the King's Receipt; so in the Cafe of a Subject, the Law appoints the De-rect. 35.

Co. Litt. 201 b.


6. He cannot demand it at the Back-door of the House &c. But the If the Fee

 Demand must be at the Fore-door, because the Demand must be made for demand

at the most notorious Place, and it is not material, whether any Person be there or no. Co. Litt. 201 b.

7. Albeit the Feejee be in the Hall or other Part of the House, yet the Feejee need not but come to the Fore-door, for that is the Place appointed by Law, albeit the * Door be open. Co. Litt. 201 b.

dering Rent, and for Non-payment &c. it is not sufficient to demand the Rent at the Door of the House, it is open, but the Leesor must enter into the House, and there demand it: So if a Leesor be made of Land, the Leesor must enter into the most notorious Place of the Land, and there demand it.

8. If Feejee be made of a Wood only, the Demand must be at the S. D. 139.

Gate of the Wood, or at some High Way leading thereto the Wood or other


9. If the Rent be referred to be paid at any Place from the Land, yet it

in Law a Rent, and the Feejee must demand it at the Place appointed by the Parties, observing that which has been said before concerning the most notorious Place. Co. Litt. 202 a.

10. The Bishop of Exeter had certain Lands in the County of Devon S. C. accord-

For Years, rendering Rent payable in Exeter borchard, with Clause of Receipt and entry; and the Bishop had a Palace in Exeter borchard; it was the Opinion of the Judges in this Cafe, That the Rentought to be demanded B. 69. at the said Palace, and not elsewhere; and that if the Leesor comes to the Palace, it is a good Point. 27 and 58. Pl. 63. S. C. Tender without more, be the Gate shut or open, nor insisting that the Bishop be at the Gate to receive it; for the Leesor is not tied to open the Gate &c. Verbois.

S. C. cited.

3 Le. 4. pl. 9. Mich. 4 and 5. Phill. and Mary in C. B. Eliot v. New
comb.

The Precedent was view'd, and it was of Lands in Cornwall; But the Rent made payable at Exeter without limiting any Place certain, and the Demand was alleged for the Bishop to be made at Audia Palata in Givata Ex & cend nullus illuc venit ad liberd. &c. The Leesor alleged a Redoubt to pay the Rent Ad magnum & communes Portum Palati prididiti, and Illeg was joined upon the Point and not upon the Demand, and found for the Leesor against the Bishop, who his Servant made the Demand in Avea Palati tantum. But the Demand in this Case was not material by the Opinion of the Judges in the Time of E. 6. in Bordwell's Cafe Ideo Christi sapit diller &c.

11. Affife was brought of Rent-Sec granted by A. to B. His Son in Ire, injuring out of one Home in L. and payable in another. The Rent was demanded at the House out of which it issued; And the Question was, if the Demand was good, being made there, and not at the House where it was payable.
Rent.

payable. Resolv'd by the Ch. J. and Cooke J. at the Assise, after Advice had with the other Judges, That it was a good Demand. Cro. C. 507. pl. 12. Trim. 14 Car. B. R. Smith v. Smith.

(M) Place of Payment. At what Place he is bound to pay or receive it.

1 The Lord is not bound to receive the Rent in other Place than upon the Land. 20 H. 6. 36.

But the Suit appearing vexatious, the Court refer'd it. Hobbs v. Ecor.

Br. Tender &c. pl. 6.
cites S.C.—
Br. Condition. pl. 28.
cites S.C.— Br. Toun temps Prist, pl. 35. cites S.C.

2. The Lord is not bound to receive the Rent in Court upon a Tender there, after he has avow'd for the Rent; Because of Common Right Rent is not payable unless upon the Land. 7 H. 4. 18.

3. If the King makes a Lease for Years rendring Rent, without limiting any Place, or to whose Hands it shall be paid, the Leefee may by the Law pay it, either at the Receipt of the Exchequer, or to the Hands of the Bailiffs or the King's Receivers authorized by him for that Purpose, and therefore the special and usual Limitation for Payment of the Rent in such Cases, at the Receipt of the Exchequer, or to the King's Bailiffs or Receivers &c. imports no more than the Law would have implied, had they not been mentioned, and therefore are only Surplufages. And thof' the Clause at the Receipt of the Exchequer &c. apud Wein. yet that being Affirmative and Declaratory, it is not requisite that the Receipt be held at Weltminder; for if it be held in any other Place, the Rent must be paid in such other Place; and this the Law implies. Resolv'd 4 Rep. 73. b. Palch. 38 Eliz. B. R. in Borough's Cafe.

(N) At what Place he may pay it.

1. A Rent issuing out of the Land, if it be paid and accepted at a Place out of the Land, is good. Contra 49 C. 3. 6.

2. If a Place out of the Land is limited for Payment, and there is a Proviso of Re-entry for Non-payment, and Rent is paid by Leefee at the Day, but not at the Place; if Leefee once accepts, (he being privy to the Deed) it is a good Performance of the Condition. Where the Condition is to be performed to a Stranger, perhaps it might be otherwise. Per Powell. 3 Chan. Cafes 68. in Cafe of Bath v. Mountague, cites Co. Litt. 212.

(O) What
Rent. 489

(0) What shall be a good Discharge of Rent. Eviction.

1. If Lease for Years be, rendering Rent, Eviction by an elder Title be S.C. cited by Venues, J. 2 Vent. 64. but fees should be printed, as 27 H. 6. 22, wherein it should be as in Roll here 27 H. 6. 22. but is in pl. 15. — 2d of Feoff. Co. 11. tit. 325, 322.(3) — But not of Rent due before the Eviction. 2 Vent. 64. in the Case of Hume et al. v. Hobart.

In Evict for Rent on a Lease for Years, but before any Rent due the Land was evicted upon an elder Title, the Defendant pleaded, He paid his rents; he cannot give the Eviction in Justice, but should have pleaded the Eviction &c. as a de facto Judgment if Action. Per Bever, Writford, and Markham, and they mention the Opinion of the Probationaries, to the contrary. 2 Lec. 12. pl. 14. Hill. 2d Bids. C.B. Wrighead v. Sc colder.

2. If Land be given to the Baron and Feme, and to the Heirs of their Bodies begotten, the Remainder in Fee to the Baron, and after the Baron alone leaves a Fine Come ec to the King, to the Use of the King in Fee, and after the King grants it in Fee to the Baron, rendering a Fee-Farm Rent, and when the Baron dies, and the Feme enters by Lease of the Statute of the 32, and is reverted to an estate after Dying in Office by which the Estate of the Fee of the Baron is vested for the Life of the Feme, yet the King shall have the Fee-Farm Rent during the Life of the Feme; because by the Leases Systems it was public policy, and the King may distrain by his Privilege in any other Land of the Heir for the Rent; so if the King had granted the Inheritance after the Death of the Feme, referring a Rent immediately. 2. Magna Charta 691. cited 4 & 5 Ch. 30. in the Chichester, Banbury & C. Case. Justice Dallaston's Reports. 5 El.

3. If Plaintiff lessee for Years rendering Rent, and after certain S.C. cited 2 Vent. 67 in the Case of Barlow v. Boberti — See pl. 1. Holb. 83. pl. 103. 5 C. &c. to the Baron renders after what Time. 2 Vent. 66. pl. 592. Dyer, 3. 128. 5 C. cites 2 Vent. 66. pl. 592. Dyer, 3. 128. and also, 2 Vent. 67 in the Case of Barlow v. Boberti — See pl. 1. Holb. 83. pl. 103. 5 C. after the Statute is extended, by which the Land is intrested, yet this shall not discharge any Rent due before the Liberare executed. Dobc. 3 Reports 113. between Sir Richard Graham and Thormborough.

5. Deed upon Lease of a Ward, rendering 20 l. Rent per Ann. till full 2d. where the Age, by the Deed, the Defendant finds, That the Plaintiff/libid the time and Dyer lessee by the Gift of W. N. for his good Service, and that before any Rent due the Plaintiff departed out of the Service of the said W. N. by which W. N. enters, judgment St. Actio, and a good plea. Br. Dict., pl. 39. cites 45 E. 3. 8.

for and Leafe for a Condition depending upon the Easate of the Leafe. Ibid.
Rent.

Rent. What is, and what a Sum in gros.

1. Feoffment was on Condition, that Feoffee and his Heirs shall pay a Rent to a Stranger and his Heirs, this is a good Condition, yet such Payment is not properly Rent, because it lies not out of Land, and an Allie lies not for it, yet if it be not paid the Feoffor shall re-enter, and the Feoffee ought to seek the Stranger; for the Payment is but of a Sum in gros. Litt. 3.45.

2. Leilee for Years by Indenture covenanted and granted to pay annually for the Tenements, during the Term, a Rent at another Place, and that if the Rent or Service be Arrears, tho' it be not demanded, that the Lease should be void, and that Leifor might enter. It was doubted whether this was a Rent or a Sum in gros. See Pl. C. 131. b. 6 E. 6. in B. R. Browning v. Belton.

It is a Contract only. No. 115 pl. 260. Pich. 20 Eliz. and feemes to be S. C. being almost in the very same Words. And 26. pl. 59. Hill. 6 & 7 E. 6. Anon. S. C. accordingly. But the Reporter says Quarre bene of this Case; for it seems that the Sum refere'd is not any Rent, but due annually to be paid to the Leifor, and in him is merely Debt, tho' the Time of Payment is mentioned to be annually; and then it is like as when one leases Land for 20 Years for 400 l. to be paid as follows, viz. every Year 20 l. This is merely a Debt to the Leifor, and executed in him not entitling the Nature of the Reversion; and therefore if the Leifor grants the Reversion of Part of the Land, and the Tenant attorns, yet the entire Debt remains, but if it was Rent, then the Reversion and the Nature thereof draws the Rent after it, which pendant venture will not suffer an Apportionment when the Reversion of the Acre leased is conveyed. —— Nay 60. Anon. says, This is not a Rent but a Seigniory in gros, due by Rentlet of the Contract.

3. A Man had a Warrew in Fee extending into three Towns, and leased the same by Deed to another, rendering Rent; and afterwards granted by Deed the Reversion of the whole Warren in one of the said Towns to another, and the Leiffe attorns; it was holden by all the Justices in C. B. That neither the Granter nor the Grantee should have any Part of the Rent during the same Term, because no such Contract can be apportioned. 3 Le. 1. pl. 1. 6 E. 6. in C. B. Anon.

4. Baron and Feme make Feoffment to A. and A. covenants to pay annually to B. Rent. Baron dies; Feme accepts the Rent, yet this has not abolished the Feoffment, because it is but a Sum in gros; but otherwise it had been a Rent. Arg. Roll. Rep. 81. cites D. 15 Eliz. 275. pl. 49.

5. Lease
Rent.

5. Lease of a Tavern, and Plate, and diverse Utensils; Leases contain all for a Lease to account Monthly for every Tun of Wine he should sell there, and pay all Taxes, Rates, &c., for every Tun sold there; this is as a Rent reserved, and in case there is no Rent, Arg. But Judgment was given against the Plaintiff on another Point. Cro. E. 62. Mich. 29 & 30 Eliz. B. R. Gallies v. Budbury. Ley Giger. 15 pl. 3.

6. Devise that A. shall have the Land, and that she shall pay yearly to the Court to 12 L. during her Life, in Recompense of her Rent. See Fl. 31 Pl. 84 C. Bower. Per Cur. It is a Rent, and not a Sum in gross. Le. 137. Mich. 26. 30 Eliz. C. B. Goffin v. Warburton.

7. A Rent cannot be reserved out of a Common or Office, or other S. P. By Another thing, which lies not in Demand [Demande] in which an Entry can be made, unless it be out of a Medethly, as 1 H. 4. and that by the Possibility of Echear. Nov. 60, in Cite of Lovelace v. Raynolds.

8. Tenant for Life levied a Fine to Recoverer in Fee, and declared the Uses to be on Condition that the Comelle and his Heirs pay him 40 L. per An. for his Life; this is not properly a Rent, but a Sum in gross, and is not uniting out of the Land; for there is no Place appointed for Payment thereon, and therefore the Comelle must seek out the Confor, and pay him. Cro. E. 688. pl. 23. Trim. 41 Eliz. C. B. Smith v. Warren.

9. A Lease for Years, paying for a Fine 20 L. This is a Sum in gross, and shall not pass with the Rentner. Winch. 47. Arg. cites Rawlins's Case.

10. Lease for Years in Reversion after a Lease for Life, rendering Poll Sh. 45. 47. Principium in a certain yearly Rent, and two Days Work in Harvest, and the Name of Redening, ind. 4 L. Nomine Herediti post mortem of the Leesees, or either of Hangs on them, and rendering 2 Casons at Christmass, Poll pricipium ind. Per Care, adjudged according to Law. Keling Ch. J. This is a Sum in gross, but per 3 jut. contr. Vent. 91. Trim. 22 Car. 2. B. R. Lion v. Carew.

Langan v. Carn S. C. adjudged accordingly.


Rent incident to the Reversion, and that the All correspondence is bound to pay it; but it was not adjudged, because two Exceptions were taken to the Plea, and the Reporter thinks they were not willing to determine the Matter of Law. 2 Sauth. 520 to 526. Hill 22 & 25 Car. 2. S. C.

12. Rent reserved on Assignment of a Term for Years of a House; this is it is not a Sum in gross, and the Reversion ought to have been by Deed. Allen v. Colman only, and is discharged by a Release of all Demands. Cro. J. 35. Witton v. Pre - The Plaintiff being Leafe for Years, offered over his whole Term by Indenture to the Defendant rendering Rent, and an Action of Debt was now brought for the Rent in Arrear. The Defendant pleaded Non concedit & lef. C. And upon a Demarer to this Plea, it was objected in Behalf of the Defendant, That this Action would not lie, because the Sum reserved was not properly any Rent, but a Sum in gross, the Plaintiff having assigned over his whole Term, and by Consequence had no Reversion, and therefore the Action ought to be for a Sum in gross upon the Contract, (and not Debt for Rent) and that would not lie, if the last Day expires. To which it was answered, and so reserved per Cur. That this is a Rent, that shall
Rent.


13. Tenant for Years surrendered to the Lessor for paying a Rent. This was held a good Reservation on the Contract; and that Debt lay after the first Day was incurred, wherein it was referred to be paid; For it was in the Nature of a Rent, and not of a Sum in Gros. Vent. 272. Trin. 27 Car. 2. B. R. Cartwright v. Pinkney.

—Such Reservation is good, tho' without Deed. Per Holt Ch. J. Vent. 242. in the Cafe of Wilfon v. Pinkney cites Manly's Cafe, and the Cafe of Parcas v. Owen. 25 Car.

14. A. grants his Land for a Year to B. B. agrees to pay so much for it, this is a Sum in Gros, for which an Indebitatus lies. Per Holt Ch. J. Show. 26. in Cafe of Shuttleworth v. Garret.

Rent referred on a Leaf of a Toll-Passage on a River; Resolved it is not a Rent, for it is out of an incorporated Thing, and an express Covenant to pay it. 2 Vent. 67. Trin. 1 W. & M. C. B. Baynton v. Bobbert.

(Q) Sum in Gros. Remedy for it.

1. Enants have Common, paying the Lord a Penny a Year for it; the Lord cannot have Debt or Diffren for it, unless it be Prescription. Noy. 60. Lovelace v. Reynolds. cites 26 H. 3. cap. 3.

2. Debt for Rent referred upon the Leaf of a Warren of Cones; The Defendant pleaded that the Plaintiff had plowed a Field Parcel of the Warren, by which the Cones had not sufficient Pasture. Per Cur. (ablente Anderson) it is no Plea; For it is not a Rent but a Sum in Gros, due by Reaon of the Contract, and therefore the Entry, or Cuer of that Part is not any Suffixion. Noy 60 Anon.

3. Where there is a Rent referred, and a Covenant also for other Money in the same Deed, Debt will not lie for the later; As if I deme 20 Acres referring 20 l. per Annam, and further agree with him in the same Deed, that for as many Acres as he shall grow up, he shall give 10 s. more per Ann for each; This List Sum is no Rent, and an Action of Debt will not lie for it. Per Holt. 12 Mod. 73. Trin. 7 W. & M. B. R. Anon.

(R) What shall be said to be Part of the Rent.

1. Where a Man recovers Rent of 20 d. per Annam, and the Sheriff puts him in Seizin by 2d. of the Plaintiff, this had not be intended Parcel of the Rent, but the Recovereer at the Rent Day may disfrown and make Awowry for all the 20 d. Per Davers and Darby J. clearly. Brooke says the Reaon seems to be that the Rent is not due till the Day, and therefore cannot be intended Parcel of the Rent, which then was due. Br. Awowry pl. 78. cites 37 H. 6. 39.

2. Leaf is made by A. to B. rending Rent 4 L. and A. by the same Indenture, grants to B. and his Assigns dere & Reddere to B. the Leafes and his Affiges 3 s. 4 d. for Everage; This 3 s. 4 d. is by Way of Consideration, and no Part of the principal Rent to be retained by Way of Detaluation. Yelv. 42. Hill. 1 Jac. B. R. & Trin. 2 Jac. Chambers v. Malon.

(S) One
Rent.

(S) One or several. By Grant.

1. THREE E. Coparceners made Partition, and the one granted to the two
10s. Rent by these Words following viz. 50s. to the one, and 50 s. to
the other, and yet this is one Rent, and not several Rents. Br. Rents
pl. 18. cites 29 Mill. 23.

Hob. 172. in the Case of Snakely v. Butler.

2. Tenant for Life granted a Rent-Charge, and be in Reversion granted an-
other Rent-Charge, The Tenant for Life surrendered, he in Reversion
shall hold the Lands charged with 2 Rents, and as to one he shall be
Tenant in Fee-simple, and as to the other he shall be only Tenant for

3. If a Man be seized of 29 Acres of Land, and grants a Rent of 20 s.
per annum de quadris Acre Terrae nec, (that is) out of every one Acre of
my Land, this is a feudal Grant out of every several Acre, and the
Grantee shall have 20 l. in all. Co. Litt. 147. b.

4. Where the entire Rent is granted or reserved out of 2 Things, one of
which is not changeable, and afterwards a (Viz) would distribute Part
of the Rent to one of the Things and Part to the other, yet the Rent
shall be entire, for there the (Viz.) would refer the Rent to Thing which
if a grant is not answerable for the Rent, and so by Colour of Distribution a Rent of 2
would extinguish it, which is repugnant, and to the (Viz.) is void. Per
Rhodes and Partain J. Mo. 201. pl. 349. Path. 27 Eliz. C. B. in Knight's
Café.

it is but one Rent; See Hurbur Ch. J. Hob. 172 in the Case of Snakely v. Butler cites 29 E. 3 55 and
5 are Knight's Café 5 Rep. 55. and Winter's Case D. 12 Eliz. 268. upon a Difference where the Rents
are reserved fealty at the Rents, and where there are entire at first, and taken by a (Viz)

5. J. S. granted a Rent-Charge of 1 2 l. per Annum out of Land, Haben-
dum 7 l. per Annum for 33 Years, if J. D. the long live (payable at Mich.
and Lady-Day) and Habend the other 7 l. per Annum for 33 Years to com-
ence after the Death of J. D. payable at the 2 Feasts, with a Clause of
Distributes; 3. The Question was, Whether this was One or several Rents;
For that it is but one Grant of 1 2 l. in the Beginning, and the Distributes
limited for the 1 2 l. So it is entire alto in the Distributes. But all the Court
resolved that there were several Rents, because they had several Com-
 mencements and several Findings, and that it be mentioned to be but one
in the Caute of Distributes, yet that is to be intended to be taken distribu-
B. R. Bear v. Woolley.

[160. Car. 5 Trin. 5 Car.

6. A. granted an Annuity of 100 l. 4 Year to B. C. D. E. and F. to be
equally divided between them, to have to them and their respective Assigns 20 l. to
each during their Lives, and the Life of the longest Liver of them, and
if any one died, his Share to be equally divided among the Survivors. yearly Rent of
D. and E. survived, and for Rent Arrear distrained, and in Replevin in
1503 by the
word's partly. Hebut Ch. J. held that the Words Equally to be divided cannot
make a Tenancy in Common in a Deed, tho' they may in a Will 22 l., and
the Words (so have and receive 20 l. a-piece) explain how the Money on
the annuity Receipt is to be distributed, but do not favor the Grant; For it is but 25 l. 4 and to
one Rent, and one Grant undivided, and to D. and E. are Jointenants,
to receive in full with 24 l. and the Avowry good, and adjudged for the Avowant.
S. L. A. 390. come to be

The Grant was of one Annuity or
an Annuity or
any one, D. and E. survived, and for Rent Arrear distrained, and in Replevin in
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S. L. A. 390. come to be

5 Mod. 25. S. C. —- Comb. 329. S. C. states the Case accordingly, and that upon a Hill. join'd to 6 K

52
(T) Extinguished or apportioned. By Conjunction of Estates.

1. Where a Lease was made for Life by Deed indented rendring Rent, and after the Lessee granted and confirmed, the same Tenements to the Lessee and Heirs forever, the best Opinion was that by this the Rent is extinguished; for the Reversion is gone, and by Depreciation with the Reversion the Rent paffes with it, unless it be excepted; and after the Plaintiff denied the Deed. Br. Extinguishment, pl. 23. cites 22 Aff. 19.

2. The Father died in Fee of Land, and left two Daughters, he grants a Rent-charge to one of his Daughters in Fee, and dies; the Land out of which the Rent was granted, descends to the two Daughters; so that they had as great an Estate in the Land as the one of them had in the Rent; Partition is made between them; after this the Rent shall be revived, the same not being extinct by this. Per Doderidge J. 3 Bost. 122. Mich. 13. Jus. in the Case of Gough v. Howard, cited 31 Aff.

3. If a Man grants a Rent-charge in Fee, and after gives the Land in Tail in another, and the Grantee purchases the Land of the Tenant in Tail in Fee, the Tenant in Tail hath Issue, and dies; the Issue brings Toddary, and renews the Land, the Grantee discharges for the Rent, the Issue then takes the Patronage, the Grantee then the Recovery. In this Case the Charge is extinct for ever, notwithstanding the Recovery for once extinct is for ever. Per Aske. Br. Charge, pl. 42. cites 19 H. 6. 45.

4. A Man leased Land for Term of Years, the Lessee had Part of the Term to the Lessee, rendring Rent; if he be after Surndowers to the first Lessee, the Rent reserved upon the 2d Lessee is determined. Br. Extinguishment, pl. 34. cites 20 C. 4. 12. Per Brian.

5. If a Man covenants upon Condition to render to him 10 l. such a Day, and after I lease it to him for Years rendring certain Rent, and at the Day I do not pay the 10 l. Now he shall hold the Land, and the Rent referred by me upon the Lessee is determined and extinct. Br. Extinguishment, pl. 34. cites 20 C. 4. 12. Per Brian.

6. A leases to B. for 100 Years, and B. leases to C. for 20 Years, rendring Rent; A. granted the Reversion in Fee to J. S. and J. S. Jenningsis the Reversion of the Term. Adjudged that J. S. shall not have the Rent nor Re-entry; for the Reversion of the Term, to which the Rent is incident,
Rent. 495
dent, is extinguished in the Reversion in Fee. Mo. 94. pl. 232. Pitch.

12 Hiz. Lord Treasurer v. Barton
7. A. had a House and Stable for 30 Years, and less'd the Stable to B. for 6 Years, and A. assigned the whole to C. for all the Years, whereby C. had the Reversion of the Stable, and the rent in Possession for 30 Years to be paid, and demised to A. for 21 Years, the whole on Condition of Re-entry, for Non-payment of the Rent, or of 25 l. a Sum in gross, at Days ap-
pointed. Before any Default of Payment, A. re-demitted the Stable, wherein B. had 6 Years, to C. for 10 Years, but no Assignment; After- wards the Rent and Fine were unpaid at the Days appointed. A. re-en-
tered.

In this Case the Question was, Whether the Rent and Condi-
tion were extinguished by Acceptance of the Re-deem'd the Stable? And adjudged, 2d. That by the Re-deem'd to C. of any Part, by the very Acceptance of the Re-deem'd, the Rent was suspended, if it had been a rent given Re-deem'd in Possession. adly, That in this Case there being no A-
turnament, nothing paid by this Re-deem'd, but only a Future Interest after B.'s Estate for 6 Years; and therefore neither the Rent nor the Condition are suspended. Upon this Judgment a Writ of Error was made, and all the same Points, from Point to Point, were adjudged as before; so that this was the Judgment of all the Judges in England.

Palliser, 144. 145. in Case of Hodgkin v. Thornborough, cites it as Rep. 52 b. Rawlin's Case.

...to the Rent, no Rent was found to warrant such an Opinion but Br. Th. Extinquishment 3d. where it is said, If there the Lord and Tenant by Acce, and the Tenant leaves one to the Lord for Years, the whole Rent is to be paid, but says that this Case is not to be found in the Book at p. 141. And Hale said, That a Case of a Lease for Years was stronger than a Lease for Life, where the Rentee is by Ac-
tee, and the Tenant of the Land court of which the Rent is payable, and for a Condi-
tion, that must be stricter, where Part of the Hire is paid to the Leesee, because it is annexed to such a Rent in Quality for the Rent be diminished, the Court will be adjourn'd. Th. Hill. 27. & 28. Car. 2. B. K. — 4 Le. 116. pl. 235. Mich. 53. Ellis B. K. Rawlin v. Somebrad — 2 Le. 142. accord. Hodgkin v. Thornborough — Freeman 41. pl. 515. & 2d accord. And Hale said, the Case of Br. Th. Extinquishment, was the 3d Consequence of this Error, that a Rent could not be extingu'd in Part, and in Life for Part, which is a Notion that has been so firmly estab-
dow since this Opinion in Brookes, but no Reason at all was ever given for it, which may not be sup-
ported in fact, as well as extin'd in Part, for of that never a if Question was made, as if Leefe surrender Part of his Term, Part of the Rent; thereby extin'd it. And Wheat said, he look'd up-
on all the Cases, and cited by my Lord Coke in Alcock's Case, 9 C. and every one of them is in Erry by Wrog, which is object'd to all to invalidate the whole Rent. — Vaw. 146, 147. Answ. of S. C. says, That Palleson was against the Opinion of the Court in this Case, as appears by his Report. fol. 141.

8. If A. devises Rent to B. and afterwards makes B. Executer, there this Rent shall be extinct; but where a Man devises the Term to one, and a Rent out of it to another, and afterwards makes him to whom the Rent was devis'd his Executor, he may now elect to have this as a Legacy. Per Bodenridge J. 3. Rull. 122. Mich. 13 Jac. in Case of Gough v. Howard.

9. If one has Land of the Part of his Father, and a Rent out of the same Land on the Part of his Mother, the Rent is extinct, and cannot be re-

10. A Copyliolder made a Lease to B. for 16 Years, rendering 20 l. Hodgkinson v. Rent; B. less'd Part of the Lands for 10 Years to C. rendering no Rent; C. Thornbrough, though, S. C. afterwards opposed his Term to A. the first Leesee. The Question was, Palleson 147. Whether the Rent shall be apportioned or suspended? Adjudged that it is adjudged.— It should be neither, but that the Leesee should have the whole Rent Vend. 256. of 201. a Year, against his Leesee. And they all agreed further, that B. Hodgkinson v. Thornborough shall have nothing against C. because he resolved nothing, nor shall C. Shall have any Thing against A. for the same Reason. 2 Lev. 143. Trin. 27. 2d Car. 2. B. K. Hodgkinson v. Thornborough.

Ch. 1st., That if the Lease had rep'd of Rent upon the Lease for 16 Years, and he had agreed to demised any Rent, A. should have 25 l. of B. and B. should have 51. of Lord C. Robert had nothing of A. For every one shall have according to his Contract, and no other Apportionment shall be contrary to
Rent.

(U) Extinguish’d or Apportion’d. By Confirmation.

1. In Affile where a Lease is made for Life by a Deed indented, rendering Rent, and after the Lessee grants and confirms the same Tenements to the Lessee and his Heirs for ever, the best Opinion was, That by this the Rent is extinct; For the Reversion is gone, and by the Departure with the Reversion, the Rent palled with it, unless it be excepted; and after the Plaintiff denied the Deed. Br. Extinguishment, pl. 28. cites 22 Aff. 18.

2. If a Man hath a Rent-Charge out of certain Land, and he confirms the Estate, which the Tenant has in the Land, yet the Rent-Charge remains to the Confiner. Litt. S. 536.

3. Lease of 20 Acres, rendering Rent, the Lessee grants all his Estate in one of the Acres to J. S. the Lessee confirms the Estate of J. S. Resolv’d, That the entire Rent is gone in all the other Acres; For being an entire Contract, and by his own Act there cannot be an Occupation for Part, and an Extinguishment for the other Part; and in this Case there is no Difference between a Sufpension in Part and an Extinguishment. Owen 10. Mich. 33 & 34 Eliz. C. B. Goddard’s Cafe.

(W) Extinguish’d or Apportion’d. By Descent or Devise.

1. If a Man hath a Rent-Charge, and his Father purchoas Parcel of the Tenements charged in Fee, and deth it, and this Parcel descends to his Son who has the Rent-Charge, now this Charge shall be apportioned according to the Value of the Land, because each Portion of the Land purchased by the Father, comes not to Son by his own Act, but by Decent, and by Course of Law. Litt. S. 224.

2. If the Grantee grants the Rent to the Tenant of the Land, and to a Stranger, the Rent is extinct but for a Moity. Co. Litt. 149. b.

3. A seeld of a Houfe in Fee, leaves the same to J. S. for Years, and by Will devises it to C. and D. his younger Sons, and to the Heirs of each of their
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their Bodies lawfully begotten. Remainder to the right Reirs of A. and D. dies; C. dies, leaving W. his Son; D. now is feised of one Moity for Life, and the other Moity in Tail, and takes the whole Rent, and dies, leaving a Son. Adjudged that the Rent is now apportionable, but if A. had conveyed the Reversion of one Acre, Parceled &c., and the Tenant had attorneyed, there had been no Apportionment. And. 21. pl. 44. Hill 16 Eliz. Huntley v. Roper.

4. A has a general Tail in Bl. Acre, and Special Tail in Gr. Acre, and leaves late, rendring Rent, and dies, having several Isles inheritable to each Tail. Now the Condition shall go according to the Rent. Per manwood. 4 Le. 27. pl. 82. in the Case of Lee v. Arnold.

5. A Person has Land, whereof he is seised in his own Right, and Land, of which he is seised in his Church's Right, for Years, rendring Rent, with Clause of Re-entry, and dies, the Rent shall go according to his respective Capacity, and the Condition divided. Per Jeffry's. 4 Le. 23. in Case of Lee v. Arnold.

6. If one makes a Lease of Freehold and Copyhold Lands, rendring Rent, and the Copyhold devolves to one and the Freehold to another, the Rent shall be apportioned. Per tot. Car. Godb. 139. pl. 169. 39 Eliz. B. R. Hardng's Case.

7. A. was seised in Fee of one Acre, and possesed of another Acre for a Term of 27 Years, he divided the Acre to B. the Defendant for 15 Years, rendring Rent; Provided, if the Rent be behind for 25 Days, and no sufficient Disafes upon the Land, that they might enter. A. died. The Inheritance of one Acre came to his Hery, and the Term for Years to his Exenter. The Rent was in Arrear 23 Days &c. and the Heir demanded a Portion of the Rent according to the Value of his Acre; which not being paid, he entered. The Question was, Whether the Reversion being divided, the Rent shall be in like Manner apportioned; And if the Condition be divided, whether the Heir may demand Part of the Rent, and enter for Non-Payment? but as to this no Opinion was deliver'd; Sed Adjournat. Cro. J. 392. pl. 3. Hill 13 Jac. B. R. Wood v. Germans.

(X) Extinguished or Apportioned. By Grant.

1. A. was seised to B. for Life, and afterwards to C. for 20 Years, rendring 60s.

2. It was taken not to be a good Security for the King for his Services referred upon a Grant before made to A. in Tail, to give the Reversion Tenend. the Reversion by such Services, when it shall vest, and to except the first Services during the Tail; for when the Reversion is gone, the Rent and Services referred upon the Tail are gone, as well in the Case of the King as in the Case of a common Person, and therefore the

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1. If the Tenant of the King of 4 Acres assigns one Acre to the King, the Rent shall be apportioned, by some it be, favorable, and this by the Common Law by mane. Br. Apportionment, pl. 23. cites 32 H. 8. —

2. Odd this but was 4. If this shall have new Tenure immediately, and the Grantee shall not be charged for Double Services and Rents during the Tail. Br. Patents, pl. 97. cites 32 H. 8. The P. of Rutland's Cafe.

3. If the Tenant of the King of 4 Acres assigns one Acre to the King, the Rent shall be apportioned, by some if it be, favorable, and this by the Common Law by mane. Br. Apportionment, pl. 23. cites 32 H. 8. —

4. A Lease for Years was made of 100 Acres of Land rendering Rent 101. Afterwards the Lejfee granted 59 Acres of it. The Grantee shall not have any Part of the Rent, but it is all destroyed. Arg. 2 Le. 252. pl. 339. cites 32 H. 8. Wiifean v. Warringar.

5. If the Lejfee grants Part of the Reversion to a Stranger, the Rent shall be apportioned; For the Rent is incident to the Reversion. Co. Litt. 148. a.

6. If a Lease be of 3 Acres referring a Rent upon Condition, and the Reversion is granted of 2 Acres, the Rent shall be apportioned by the Act of the Parties, but the Condition is destroyed, because Life is intire, and against Common Right. Co. Litt. 215. a.

7. If the Grantee of a Rent-charge grants it to the Tenant of the Land, and a Stranger, it shall be extinguished but for the Necessity, and so it is of a Seigniary. Co. Litt. 307. b.

8. A. Ince sold B. in Fee of the Manor of S. rendering to A. and his Heirs a Rent annually, with a Cland o Disburs, and a Re-entry for Non-payment, and covenanted to make further Assurance; And by another Deed of the same Date A. covenanted with B. to levy a Fine of the said Manor, which should be to the same Uses, Intents, and Conditions, as expressed in the Deed of Precedent, and to no other. A. levied a Fine on B. with the usual Words of Release of all his Right, according to the Course of Fines &c. with Warranty accordingly &c. It was the Opinion of the greater Part of the Justices of both Benches, That the Rent was not extinguished by this Fine, but was reserved by the Indenture which recited the Uses. D. 157. pl. 28, 29, 32. Hill. 4 & 5 P. & M. Puttenham v. Duncomb.

9. Lejfee for 10 Years granted a Rent-charge to his Lejfee for the said Years, the Lejfee granted the Remainder in Fee to the Lejfee for Years, the Justices were of Opinion that the Rent is gone, because the Lejfee who had the Rent was party to the Destruction of the Lejfee, which is the Ground of the Rent. 4 Le. 2. pl. 5. 27 Eliz. C. B. Blackward's Cafe.

10. Limiting a Remainder over of the Land by him, to whom the Rent was first reserved upon the Render by Fine of the Land Entailed was Extinguishment of the Rent, and cannot go to the Remainder. No. 575. pl. 795. Patch. 41 Eliz. C. B. White v. Gerish.

11. A. Copyholder in Fee made a Lease rendring Rent, and then surrendered the Recession to B. who distrained for 2 Parts of the Rent; and this was held good without any Attornment of the Lesses or Notice to him; because the surrender is a Thing notorious of itself. Raym. 16. Trin. 13 Car. 2. B. R. Black v. Mole.

(Y) Extinguished' or Apportion'd. By Purchase of Parcel.

1. If there be Lord and Tenant, and the Lord purchases Parcel of the Land, the Rent of the Seignory shall be apportion'd; and it was done by Award, Anno 18 E. 2 quod nota; and this by the Common Law, as it is said elsewhere; but quæres by the Common Law. But it is good Law after the Statute of Quæs. emporos Terrarum; and so is Littleton in his Title of Rents, & concordat the Reading of Sir John Fitzjames. Br. Apportionment, pl. 16. cites 3 Al. 18.

2. In Affîde of 101. Rent, the Tenant pleaded Hors de son Fee, the Defendant made his pleading Title by Grant of one A. Terentian to the Ancestor of the Plaintiff in Tail, and the Plaintiff is Issue in Tail. The Defendant said, That the Tenant in Tail purchased Parcel of the Land charged, and that the Plaintiff recovered against him by joint Title, which Matter was pleaded for Extinguishment of the Rent, and after the Affîde was changed to require if the Plaintiff be seized of Parcel of the Land charged, which said, That he was Adimonuat inuentor 16 s. and were appalled of what Value the Whole was, who said, That 5l. and so fee that the Land is worth only the Money of the Rent; and after it was awarded, That the Plaintiff recover the Sum of the Rent, and recoup 15 s. of Rent in the Hands of the Plaintiff; and no more; And yet per Birton, He ought to recoup more than 16s. by reason that the Land is worth only the Money of the Rent; therefore quæres if the Land had been of greater Value than the Rent, whether it had been apportioned, having regard to the Quantity of the Rent; And fee, That by a Purchase of Parcel of the Land by Tenant in Tail of the Rent, the entire Rent was not extinguished, but it feets, That against Tenant in Tail himself, who purchased, it is a Suspension of all during his Life; but as to his Heir, in whom there is no Polly, it shall be apportioned. And so fee supra, That the Tenant in Tail purchased Parcel of the Land charged, and suffered his Issue to recover this Land against him in Affîde upon joint Title; the Tenant in Tail died, the Issue in Tail being seized in this Form, brought Affîde of the Rent granted in Tail, and yet recovered and the Rent recouped at supra, Miror inde, by reason that he himself recovered the Land, and brought the Affîde of the Rent. Br. Extinguishment, pl. 29. cites 30 Al. 12.

3. Dum fuit infra estatem; Per Birton, If an Infant seized of a Rent purchases the Land and aliens the Land within Age, it is at his Election to bring Precise quod Reddat of the Land or of the Rent; quod nullus negavit. And fee, That the Rent is not extinguished by his Purchase, but only suspended. Br. Extinguishment, pl. 7. cites 43 E. 3. 34.
4. If a Man has a Rent-Charge and purchaseth Parcel of the Land, charged, the Rent is suspended, because in this Case there is no Apportionment.

5. Where an annual Sum is granted out of Lands, so that it may be Rent or Annuity at the Election of the Grantee, if the Grantee purchaseth Parcel before Election he cannot make Election afterwards, but the Whole is extinguished; but if before Election Parcel defends on the Grantee, it brings Writ of Annuity the Annuity is not apportionable, but he shall have the Annuity entirely.

6. If a Man has a Rent-Charge to him and to his Heirs, iffuing out of certain Land, if he purchase any Parcel of this to him and to his Heirs, all the Rent-Charge is extinct and the Annuity also; because the Rent-Charge cannot by such Manner be apportioned. Litt. S. 222.

7. But if a Man who has a Rent Service purchase Parcel of the Land out of which the Rent is iffuing, this shall not extinguish all; for a Rent Service in such Case may be apportioned according to the Value of the Land. Litt. S. 222.

8. If 3 Jointenants hold by an entire yearly Rent, as a Horse, or of a Grain of Wheat, and the Tenant deth by 2 Years, and the Land recovers 2 Parts of the Land against 2 of them, and the 3d finds 1 Part by rendering the Rent &c. and finding Surety; Allen the Land comes to the 2 Parts by lawful Recovery, grounded upon the Default and Wrong of the 2 Jointenants, yet shall the entire annual Rent be extinct. Co. Litt. 152 b.

9. Baron and Feme were seised of 2 Manors, and convey'd them by Fine to Z. and A. by the same Fine render'd back to them a yearly Rent of 50 l. and to the Heirs of the Feme; and also render'd the 2 Masions to them for their Lives, Remainder over to B. Baron and Feme died. The Son and Heir of the Feme claimed the Rent. 'Twas objected, That the Grant of the Rent was void. Because the Land was granted at the same Time and to the same Persons, and that the Grantee cannot have both. But adjudged, That it was good, and the Law shall march them; For first the Rent shall pass, and then it shall be as a Purchase of the Land by the Feme, who was seised in Fee of the Rent; and the Purchase of the Remainder in Fee shall not extinguish the Rent, but it shall be in Este during the particular Estate; For by this the Possession is only charged.
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10. A. seised of Bl. Acre in Fee, and poecifid of Wh. Acre for Years, grants a Rent out of both to B. for Life, with Clause of Differs in both. If B. parchest Parcel of Wh. Acre the Rent is not extinct, because it issues only out of Bl. Acre. 7 Rep. 23. b. 24. b. Trim. 42 Eliz. C. B. Butl's Cafe.

(Z) Extinguish'd or Apportion'd. By Recovery.

1. Where a Man grants a Rent-Charge out of 2 Acres, and after the Rent a Man
   Grantere recovers the one Acre by good Title, the Grantee shall have the whole Rent out of the other Acre. Brooke says, Quære inde; for this is his own Act; for it had elsewhere, That if a pane has a Rent and after the
   Grantor recovers one of the Acres by a good Title by law,

then the Rent is extinct for the Whole; because he claims under the Grantor. Co. Litt. 138. b.

2. If a Man leases Land for Life, rendering Rent, and the Tenant is
   impregnated and lives, and recoveres in Value, he shall not render Rent for the
   Land recovered in Value; For the Rent shall be recouped in the Extent.

3. If a Man leases Land and Goods for Years, rendering Rent, and after Leafe of
   a Stranger recovers the Land, the Rent shall be apportioned, inasmuch as
   the Goods are not recover'd. Br. Apportionment, pl. 24. cites 7 H. 7.

4. 5.

made by the Leisor the Land is vested. Adjudged, That there shall be no Apportionment of the Rent, and the Lifee shall hold the Sheep without any Allowance. And Wray Ch. J. cited, That it was to be held before in C. B. For the Rent was in its Creation entirely and incident to the Recovery, and was not to be recover'd in the Extent, but by the action of the Land and Recovery this ceases to be Rent Service, and if there-


4. If a Man recovers the Place waft'd by Action of Waifs, which Place Br.Waifs,
   walted is only Parcel of the Land leased, there the Rent shall be apportioned. Per Newdigate Sergeant. Br. Apportionment, pl. 6. cites 14 S. P. Co.

Litt. 148. a. — S. P. Per

Dyer and Manwood, Mo. 114. in pl 245. Patch. 29 Eliz. Anon. — If Part of the Land be recovered
   the Rent shall be apportioned. Br. Apportionment, pl. 24. cites T. 12 H. 8 fol. 11.

5. A. is Lord, and B. Tenant by certain Rent. B. leases to A. for Life, and this is
   and after brings Waifs and recovers the Land again. Keble held, That the
   Tenant B. shall not pay the Rent to A. during A's Life; Because A. by
   his own Act had excluded himself once of any Rent during his own life.
   Life by taking this Lease ; and tho' B. recovers, yet by this Recovery he
   is not like a Condition in Law and in Fact, and therefore shall be discharged of the Rent.
   Keilw. 113. b. pl. 47. Calus incerti Temporis. Anon.

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6. A. leases to B. for Life; B. by Indenture grants his Estate to J. S., referring to him &c. as a Rent, with Clause of Re-entry for Non-payment; J. S. dies Wale, A. brings Wale, and recovers. Keble said, That A. after his Recovery shall pay the Rent, but the Re-entry is determined; and it being insisted, That if J. S. before any Wale done, had granted a Rent to a Stranger, and after A. the first Leior had recovered, that in such Case A. should be charged with the Rent, because there was no Default in the Stranger. Keble said, That there is no Diversion where J. S. the 2d Grantor had granted a Rent to a Stranger, and where to his Leil or; for he had such Interest in the Land, that he might charge it during the Life of his Leil or, and then his Authority is as great against his Leil or as against a Stranger, and the doing of the Wale was not his Act, and so to his Intent the Rent remains, but the Re-entry is gone, because the Land, by committing the Wale, is given to the Leil or by the Statute for a Punishment, and the same Law of Celarit. But where the Lord recovers by Writ of Escheat, it is otherwise; for if he shall not have his Land in other Condition than his Tenant had it; for the Land is not bound with any special Law, as in the Cases above said, and for Diversion &c. Keilw. 132. a. b. pl. 189. Catus in certis temporis. Anem.

7. In some Case a Rent-charge shall not be wholly extinct, where the Grantee claims from and under the Grantor; As if B. makes a Leil of one Acre for Life to A. and A. is seised of another Acre in Fee, and A. grants a Rent-charge to B. out of both Acres, and does Wale in the Acre which he holds for Life, and B. recovers in Wale; the whole Rent is not extinct, but shall be apportioned, and yet B. claims the one Acre under A. Co. Litt. 148. b.

It is if A. had made a Beneficent in Fee, and B. had entered for the Re-entoy, the Rent in to be apportioned, and is not wholly extinct; and the Reason thereof is, for that it is a Marlin in Law, That Nulius comman- 
dum capere (except in causa Propria) and therefore being the Wale and Re-entry were com- 
mittcd by the Act and Wrong of the Leil or, he shall not take Advantage thereof to extinguish the whole Rent, and the whole Rent cannot issue out of the other Acre, because the Leil or has the one Acre under the Estate of the Leil or, and therefore it shall be apportioned. Co. Litt. 148. b.

8. If the King gives 2 Acres of Land of equal Value to another in Fee, Fee-Tail, for Life or Years, referring a Rent of 2 Shillings, and the one Acre is evicted by a Title Paramount, the Rent shall be apportioned. Co. Litt. 148. b.

If Gift in Tail, Lease for Life or Years, be made of both Acres, referring a Rent, the Donor or Leil or dies, the Gift in Tail avoids the Gift or Leil, the Rent shall be apportioned; for seeing the Rent is referred off and out for the whole of the Lands, it is Reason that when Part is evicted by an elder Title, that the Donor or Leil or should not be charged with the whole Rent, but that it should be apportioned ratably, according to the Value of the Rent. Co. Litt. 148. b.

If the Father within Age, purchase Parcel of the Land charged, and Aliens within Age, and dies, the Son recovers in a Writ of Damnum infra Aetatem, or enters; in this Case the Act of the Law is mixt with the Act of the Party, and yet the Rent shall be apportioned; for after the Recovery or Entry, the Son has the Land by Defeint. Co. Litt. 150. a.

A. Man seised of Lands in Fee takes a Wife, and makes a Beneficent in Fee, the Feoffe grants a Rent-charge of 10 l. out of the Land to the Feoffe and his Wife, and to the Heirs of the Husband; the Husband dies, the Wife recovers the Moiety for her Own by the Custom; the Rent-charge shall be apportioned, and the may disfain for 1 l. which is the Moiety of the Rent; in which Case two notable Things are to be observed. 11. Albeit the Dower be by Relation or Fiction of Law above the
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the Rent, yet when the Wife recovers her Dower, she shall not have her entire Rent out of the Reissue; for a Relation or Fiction in Law shall never work a Wrong, or a Charge to a third Person, but in fictive juris those of Aquitanis. 2dly. That albeit her own Aid concurs with the Aid in Law, yet the Rent shall be apportioned. Co. Litt. 150. a.

12. If a Man has an Office for Life, which requires Skill and Confidence, to which Office he has a House belonging, and charges the House with Rent during his Life, and after commits a Forfeiture of his Office, the Rent-charge shall not be avoided during his Life; for regularly a Man that takes Advantage of a Condition in Law, shall take the Land with such Charge as he finds it. Co. Litt. 234. a.

13. Leaf of Lands to A. at 100 l. per Annum, Right of Common was claimed, and recovered in Part of the Lands; this is no Eviction of the Land at Law, because the Soil was not recovered, and so no Apportionment can be at Law; but it appearing, that notwithstanding the Right of Common the Lands were worth the Rent referred, and better, the Court of Chancery would not decree it, but Bill dismissed, tho' Maynard insisted that such Apportionment had frequently been decreed here. Chan. Cases 31. Mich. 15 Car. 3. Jew v. Thirkwell.

Failure, and the Common was set aside. Le 351. in Case of Knightly v. Spencer, cites; Rep. 5. Corbet v. Cleer.

14. Eviction of Tithes shall make an Apportionment of the Rent. Arg. Show. 51. in Case of the King v. Meeres.

(A. a) Extinguished or Apportioned. By Re-entry.

1. WHere a Man re-enters for Non-payment of his Rent, by Condition upon a Leafe for 10 Years, he shall have the Land and the Arrears of the Rent also, viz. the Arrears then due. Per Bryan Ch. J. Quære of the Rent which incurred after the Time of the Re-entry, if he does not re-enter by a Year after his Time of Re-entry. Br. Rents, pl. 15. cit. 6 H. 7. 3.

2. Debt upon a Leafe for 10 Years, and counted of Arrears of 8 Years, the Defendant said that the Plaintiff entered into Parcel such, that there is Lord Year, before which Entry Riens Arear. And per Cur. Entry into the Parcel suspends all the Rent upon a Leafe for Years, because the Rent is not apportionable. Br. Apportionment, pl. 5. cites 7 H. 6. 26. into Part, he shall make an Entry for the Pool, because the Rent shall be apportioned; Per Needham and Cheke, (Quære inde) because it shall be apportion'd where the Lord justices Parcel by Tune; but it seems that he cannot apportion this Rent for his own Tert. Br. Apportionment, pl. 7. cites 9 E. 4. 1. — By Entry into Part by Title Permanum, the whole Sum or Rent remains. Br. Contract, pl. 16. cites S. C. — 8 S. P. Br. Contract &c. pl. 16. cites 9 E. 4. 1.

1. was agreed by all the Judges, That where a Man leases Land for a certain Term rendering Rent, it is a Plea in Debt for the Rent, that the Lessee has entered into one Acre Parcel of the 4 Acres lease'd, because the Rent is Rent Revenue; therefore by their Reason the Rent remains, or shall be apportion'd; quæ' 2 Citis, because the Land is his own Aid; Currit of Entry upon Title. Br. Apportionment, pl. 14. cites 21 E. 4. 29.

2. If a Man leases Land for Life or Years, rendering Rent with Clause of Re-entry, if the Lessee enters into any Part of the Land, he cannot re-enter for Rent Arrears after, by Reason that a Condition cannot be apportioned, rent the Rent. Br. Condition, pl. 197 cites 55 H. S. 2d. P. 9 E. 4. 1. - Where one looks for an Apportionment in a Case where the Lessee enters upon the Lease in Part, they are to be understood where the Lessee enters wholly; as upon a Surrender, Forfeiture, or such like, where the Rent is but fully extinct in Part. Co. Litt. 148 b.

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5. If there are three Partevers, and the one enters, and leaves to me rendering Rent, and I am bound to pay the Rent, and after the two enter, I forfeit the Obligation if I do not pay the third Part of the Rent but by the Entry two Parts of the Rent are extinct. Br. Conditions, pl. 207, cites 20 H. 6, 23.

6. If the Tenant of the King alien to several particularly, and the King disains one for the whole, as he may, because the King is not bound by the Statute of Quia emptores Terrarum, there the others shall be contributory. Br. Apportionment, pl. 21, cites F. N. B. 234, 235.

7. If the Leffor enters for a Forfeiture into Part, the Rent shall be apportion’d. Co. Litt. 148 a.

8. If my Dispose or grants a Rent-Charge out of the Land, and I reciting the Grant confirm it, and after I enter, some now hold, That I shall not avoid the Rent-Charge against my own Confirmation. And there a general Rule is taken, That such a Thing as I may defeat by my Entry I may make good by my Confirmation. A Releafe to the Grantee in this Case were void. Co. Litt. 300 a.

9. If the Feoffor upon Condition grants a Rent-Charge in Fee, and the Feoffor confirms it; and after the Condition is broken, and the Feoffor enters, he shall not avoid the Rent-Charge. Co. Litt. 300 a.

10. If one has a Leafe for Years of 20 Acres, rendring Rent, upon Condition, That if he does not do such a Thing the Leafe shall be void for 10 Acres. If the Leffor does not perform the Condition, and the Leffor enters, the entire Rent is gone. Owen 10. Mich. 33 & 34 Eliz. C.B. in Goddard’s Cafe.

11. A made a Leafe of a Houfe, and after commanded the Breaking a Partition Wall in the said Houfe; This was held no such Re-entry into the Houfe as will make an Extinguishment of the Rent; for that must be a Continuance of the Possession, and putting out the Leffee. Clayt. 34. Harrison’s Cafe.

(B. a) Extinguished or Apportioned. By Release.

1. A Sife of Rent referred upon a Leafe for Life, the Tenant pleaded a Release of Part of the Rent, and another Answer to the Refidue; and well; quod nona; For the Release of Part does not determine the whole Rent. Br. Aliife, pl. 428. cites 9 E. 3. 8.

2. If the Leffor grants to the Leffee for Life, That he shall be discharged of the Rent; This is a good Release. Co. Litt. 264 b.

3. There is a Diversity between several Estates in several Lands and several Estates in one Land; For if one be Tenant for Life of Lands, the Reversion in Fee over to another; if they 2 join in a Grant of a Rent out
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out of the Lands, if the Grantee releases either to him in the Reversion or to Tenant for Life, the whole Rent is extinguished; For it is but one Rent, and titles out of both Estates. Co. Litt. 267. b.

4. If 2 Tenants in Common of Land grant a Rent-Charge of 40 s. out of the same to one in Fee, and the Grantee releases to one of them, this shall extinguish but 20s. For out the Grant in Judgment of Law was severall. So it is if 2 Men be seised of several Acres, and grant a Rent. Co. Litt. 267. b.

5. By the Release of the Seigniory a Rent-Charge is extinct. Co Litt. 395. a.

6. Leffor for Years affirms the Term, Leffor releases all Demands to the Cro. E. 66. first Leafe; This does not determine the Rent; being after the Ailign-ment of the Term; Only Rent due before the Release may be extinct B. R. S. C. by the Release. Mo. 544. pl. 723. Patch. 39 Eliz. B. R. Collins v. Harding.

7. If a Lease be made to begin at Michaelmas, reserving a Rent; and before the Day the Leffor releases all the Right that he has in the Land; This cannot enure to enlarge the Estate, but to extinguish the Rent in respect of the Privity. Co. Litt. 270. a.b. cites it is resolved in the Exchequer. Mich. 39 & 40 Eliz. Woodhouse v. Patton.

8. A. rented of 3 Acres grants a Rent-Charge out of them to B. — A. infers C. of 2 of the Acres. B. the Grantee covenants and grants with C. That he will not charge the 2 Acres for the said Rent with any Dittrevis. Afterwards D. the Tertenant of the 3d Acre, being displeased, brought Replevin. As to the Covenant and Grant being a Release the Court was divided, but agreed, That if it be a Release D. may plead it; For by that the Rent is extinguished. No. 5. Butler v. Mornings.

9. The Plaintiff declared upon a Lease for Years, rented 20 s. at Lady-Day and Michaelmas, and assigns for Breach, Non-Payment of a Year's Rent due and ending at Lady-Day 1689. The Defendant pleaded a Re-entry dated the 18th Day of November 1688. of all Demands; And upon Demurrer Judgment was given for the Plaintiff; For the growing Rent not due, which is incident to the Reversion, was not discharged; that the first Half-Year's Rent, which was a Duty demandable, was released; But here the Release being pleaded as a Bar to all, which it is not, the Plea is naught, and Judgment must be given for the Plaintiff. 2 Salk. 578. pl. 1. Hill. 2 W. & M. B. R. Stephens & Urn. v. Snow.

(c. a) Extinguished or Apportioned. By Surrender.

1. If a Man makes a Lease for Life or Years, reserving a Rent, and the Goldsby 24. Leafe surrenders Part to the Leffor, the Rent shall be apportioned. Per Rhodes J — A Rent referred up-on a Leafe for Years shall not be apportioned by the Act of the Leffor; As where he he takes a Surrender of Part of it. Per tot. Car. God. 95. pl. 107. Mich. 28 & 29 Eliz. C. B. in the Case of Wilkman v. Wallinger.

2. A. Leafe 2 Acres rendring Rent with Clause of Re-entry Leffor accepts a Surrender of one Acre, the whole Condition is gone, but the Kent shall be apportioned. Per Jeffries. 4 Le. 28. pl. 82. in the Case of Lee v. Arnold.

3. If Leafe for 20 Years leaves for 10 Years, and afterwards surrenders his Term, the Rent is gone, and yet the Term for 10 Years continues. Agreed. Godb. 279. pl. 396. Trim. 16 Jac. B. R. Blackstone v. Heath.

4. Leaff.
Rent.

4. Lefsee for Life leaves for Years, rendring Rent, and surrenders to Lefsee; the Lefsee ilk all not have the Rent; For he is in by his Reversion, which is above the Leave for Years. Arg. Bridgn. 44 Mich. 13 Jac. in the Cafe of Smallman v. Agborne.

(D. a) Apportioned. In the King's Cafe.

1. If the King gives 2 Acres of Land of equal Value to another in Fee, Fee Tail, for Life, or Years rendring a Rent of 2 s. and the one Acre is evicted by a Title Paramount, the Rent shall be apportioned. Co. Litt. 148 b.

2. R. being seised in Fee, lesed for Years to L. rendring Rent of 40l. per Annum; then he devids 2 Parts of the said Lands, (being held in Capite) and died, his heir being under Age, who being entitled to the other 3d Part, and in Ward the Queen granted the 3d Part of the Rent to the Plaintiff during the Minority of the Ward, who brought Debt for 3 Years Rent. It was held, That the Rent might be apportioned or divided; For it is a Real Contract, which is well apportionable, and Judgment was ordered to be entered, but was stayed for an Imperfection in the Declaration. Cro. E. 851. pl. 7. Mich. 43 & 44 Eliz. B. R. Weft v. Leffe.

3. Lands of a Monastery were granted to A. referring 28l. Rent yearly for a Tenth of all the said Land according to the Statute, and A. afterwards granted the greater Part to B. and that he had used upon the Agreement made between A. and him to pay 2 l. yearly for the Tenth of his Part, and A. had used to pay 8 l. yearly for that which he retained. A. was attainted, and to his Part came to the King, and now the Auditor would impose the Charge of all the Tenth upon B. Per Car. tho' the Tenth was originally chargeable and leviable upon all and every Part of the Land, yet it being apparent to them that Part thereof came to the King's Hands, it was ordered that the Land of B. should be discharged before that Auditor Ivo Rata, and so it was, and B. to pay only 20 l. yearly. Lane 56. Sir John Littleton's Cafe.

(E. a) Apportioned. By whom; and How.

S. P. by Yelverton J. Brown. 186. in Tallor's Cafe.

S. P. Co. Litt. 149 b. —— But it is sufficient to make it according to the Quantity of the Land, if it be not known of the other side, that it differs in Value. Nay to Arg. cites 444.

2. Affile of 12 s. of Rent Service, and 40 Acres of Land put in View, th Defendant said that the Plaintiff is seised of 16 of the Acres, and he is Tenant of the rest, and that he had tendered the Service for his Tenant, and it is ready, and the Plaintiff said, That the Defendant is Tenant of all the Land out of which &c. and it was found that the Rent was itting out of the 40 Acres, and that the Plaintiff held 16, and that the Tenant had tendered, having Regard to 10 s. but not to 12 s. for the Whole wherefore the Rent was apportioned by the Court, and it was awarded that the Plainti
Rent.

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5. A brought Affife of 20 d. of Rent against B. and put in View 2 Acres, B. saith that the Rent is issuing out of those 2 Acres, and of 3 Acres of Meadow, of which B. is Tenant not named in the Writ, Judgment &c. S. C. and it found &c. and it was found that M. was seized of the 2 Acres of Land, and 3 Acres of Meadow, and held them of one S. By Exple of the said S. the Plaintiff both by 20 d. per Annu. and M. before the Statue of Queen Euphemia Terraram encoff'd 2 to hold of Eunis of the 2 Acres of Land, and after the Statue be encoff'd B. Tenant in the Affife of the 3 Acres of Meadow to hold of the Chief Per. Per Stone the Writ ought to have been brought against B. and the others who are Tenants of the 3 Acres of Meadow as Tenants of the whole in Demesne and in Service; but now the Question is if we may apportion the Rent in the Absence of the other Tenant; And the Plaintiff was non-suited, because the Rent cannot be apportioned in the Absence of the other Tenant. Br. Affife, pl. 116. cites 4 All. 6.—Nevertheless Rent was apportioned in the Absence of some of the Tenants not named in the Writ; therefore Query. Ibid. cites 18 E. 2.

4. A holds 20 Houses of B. by Fealty, and 20 s. Rent. A. encoff'd C. &c. of 18 of them, yet without Notice he remains always Tenant to B. the Lord between them 2, and this Notice ought to be made of the very Certainty of the Rent, which should belong to B. pro Particula illa put in Peculiament. For otherwise it is no Notice, and this Notice must be given before any Avowry made by B. otherwife A. shall be still chargeable for the whole 20 s. Rent notwithstanding Notice after the Avowry, and therefore A. as to the 18 Houses shall plead Hors de Son Fee, and this shall be entered to avoid the Eltoppel. Per Frowicke Ch. J. Kelw. 74, pl. 15. M. 21 H. 7. Anon.

5. By the Words (according to the Quantity of the Land) in the Statue of 18 E. 1. cap. 2. [which see at (G. a) pl. 1.] If there be Lord and Tenant of 20 Acres of Land by Feevity, and 10 s. Rent, the Lord purchases 2 Acres, and taking the Rent to be apportioned according to the Quantity of the Land differens for 9 s. the Tenant makes Resons, the Lord brings his Affise, the Tenant pleads Null Test, the Recognitors of the Affise shal extend the Land according to the Value, and not according to the Quantity of the Land, and the Lord ought upon the true Valuation of the said 2 Acres to cover to purchase, to have but 8 s. 6 d. 2 Init. 505.

In this Case, albeit the Plaintiff imtook the just Refusae upon the Abpportionmen, yet shall be re, and the Lord to be due; For it were too hard, and a Cause of Multiplication of Suits, and against the Meaning of the Makers of this Act, that the Lord should be driven in his Affise or Avowry &c. to hit the just Sum due upon the Abpportionmen; thus he shall recover, but that just Sum, which is implied in these Words Secondum Quantitaten Terræ, &c. Secondum Quantitaten Valoris Terræ; But if he demand Legi in that Action, he shall not recover the Greater. 2 Init. 593, 594.

6. So it is if a Man make a Lease for Years, reserving a Rent, if he Parch grants away Part of the Reversion, the Rent shall be apportioned by the Common Law, and albeit the Grantee of Part demands or claims more in his Acteon of Debt or Avowry than is due, yet shall he recover to much as the Jury shall find upon a just Abpportionmen to be due, against a fudden Opinion reported by Serjeant Bendloes, Hill. 6 & 7 E. 6. that the Rent in that Case could not be apportioned but lost; but the Law has been often adjudged to the contrary, for 4 Reafons, 1st. For that it is a Rent-Service, and not a bare Contropol, and Rent-Services were 25. &c. B. C. B. apportionable at the Common Law. 2. It is incident to the Reversion, which is ferable. Et Accedferium sequitur Naturam sui Principis. 3. The Rent being a Rent-Service is recoverable by Payement of Part, in an Acteon of Waife, or upon Surrender in Part. 4. Lastly, it is a General Cafe, and especially in Cafe of Writs, which many Times are void for a third Part. 2 Init. 504.
Rent.

7. And where the Cafe has been put of a Lefee for Years, the fame
Lefee holds in the Cafe of a Lefee for Life, whereupon a Rent is referred,
for the Apportionment of the Rent; whereby it appears, that there was an
Apportionment at the Common Law Pro Particula secundum Quantum
Quotidem Valoris &c. For to none of these Cafes does our Act extend. 2
Hart. 594.

8. Apportionment made by Agreement en Pairs is good, if it be to the
Quantity and Quality of the Land, which the one and the other has,
otherwise not. Per Dyer and Manwood. No. 114. pl. 255. Patch. 29
Eliz. Anon.

* Cro. E.
7-2, Ewer v. Boyle. — A Lefee grants the Reversion of 40 Acres thereof, if B. bring Debt, he may
be ordered a 40 by the Rate of the Acre, and if Defendant plead Nd; debet per Pa-
trian the Jury shall state the Value, and tho' the Value be found less
by the Jury than the Plaintiff turnifeth, yet he shall recover after the

upon Nq; debet pleaded, or the Defendant may in his Pleading set forth the Value of the Land, and to what
the Apportionment shall be. Vent. 166. in the Cafe of Hopkins v. Robinson and Thornborough.

Wild J. held, that there might have been an Apportionment in this Cafe if it had been before a Jury; but the Reporter adds, Sed non dedit Rationem. Freem. Rep. 419. pl. 533. in the Cafe of Hopkins v. Thornbury.

(F. a) Apportioned. Demanded, Hoo. And Pleadings.

Yelv. 140. D.P. 1. A WAS seized in Fee of a Manor, one Mowd whereof he held by
Knight Service, and the other in Whig, and also of a Partidge
appropriated, and demised the whole to the Plaintiff for Years rendering 771.
6s. 8d. per Ann. A. devised the Manor to B. his eldest Son for Life, Re-
mainder to C. his youngest Son in Tail; afterwards B. surrendered his Estate
for Life to C. who disfrained; and in Replevin avowed for the Rent of
5 Parts of the said Manor into 6 to be divided, and showed, that the Par-
tidge was worth 20 l. per Ann. but did not set forth of what yearly Value
the Manor was. Defendant demurred, because the Plaintiff did not shew
the entire Value by the Year of the whole. Upon the first Argument
the Court much doubted upon this Matter, and moved the Parties to
agree; but afterwards Hill. 43 Eliz. upon further Argument the Court
all agreed, That the Rent shall be apportioned, in regard it was not a
Dispute by the Act of the Party, but by the Law, viz. The Statute of
Wills, as in 34 H. 6. where the Lefee granted the Reversion to the Lef-
fee, and a Stranger. And they also held, That the Bar to the Avoary
was not good, because only Part was valued, and not all. And therefore
Ewer v. Moore.

2. A. made a Lefee for Years of Lands to which he had a good Title, and
of other Lands to which he had a defeasible Title, rendering Rent. In Reple-
vin A. avowed for the whole Rent; the Plaintiff replied. That after the
Lefee made, the Diffidies entered upon Part of the Land, and caused him.
Upon Demurrer it was held by 3 Justices, That the Avoant should
have a Return for the whole Rent; for the Judges could not apportion
this, because the Value did not appear, which ought to be fixed by the
Lefee in his Pleading and Notice given to the Lefee. But 2 Justices held
that it ought to be apportioned, because it appeared the Part was evict-
ed; but because the Value did not appear to the Judges, it could not be

3. It
3. If Leffe surrenders Part, the Leffe need not show the Value. Per Williams J. and Popham agreed thereto, because the Acceptance of the Leffe had made him privy to it. Brownl. 137. in Pallet's C. E.

4. In Replevin in the Defendant avows for Rent, the Plaintiff shews that he was evicted of Part. Per Popham and Tankfield, The Plaintiff ought to shew the Value of the Land evicted, and how the Rent ought to be apportioned, and what Part remained, and to tender the Restitution; for what the Value is, and how the Apportionment should be, are both in his Notice, and therefore the Plea was ill. But Williams J. held, That the Leffe ought in his Declaration or Avowry to shew the Apportionment; for he ought to take Knowledge of the Eviction, and of his own Title; and said it was lately to adjudged in C. B. in a Case of Noyle v. Ever. Wherefore the Justices would advise, & adjourned. Cro. J. 160. Patch.

5. Jac. B. R. Smith v. Malines. A. justified of a Term for Years, and of Land in Fee Simple, leaves for a Man to the Heir, in this Case the Heir ought to demand at his Peril directly more Rent than the Sum to which the Rent ought to be apportioned; for he oughts more than is due, than he oughts, the Demand is not good; Per Coke. But in the Case at Bar the Demand was of a *Glee Sum than he oughts to have upon the Apportionment. Ad quod Nothing was said whether it was good or no. Roll. R. 368. Patch. 14 Jac. B. R. Moody v. Gannon.

6. In Replevin &c. the Defendant avowed for Rent, and shewed that his Father was seised, and held for Years rendering Rent, and died, and that the Restitution demanded to him, and to he avowed for Rent Acrear; the Plaintiff replied, That the Father devised the Restitution to another &c. The Defendant maintained his Avowry, and traversed the Devise. The Jury found, That the Devise was only of two Parts, and not of the 3d. the Lands being held by Knights Service; Hutton J. held that the Avowant should have Return for Part; for here the Jury have found the 3d Part of the Restitution in him, and to there appears a sufficient Certainty to the Court to make an Apportionment; and then if the Court may make an Apportionment, the Avowant shall have Return for so much as is due to him; but if it be to be made by the Jury, and not by the Court, the Avowant shall not have Return for the 3d Part. Adjourned. But afterwards Judgment was given for the Avowant, Hobart and Winch being only present. Winch. 49, 50. Mich. 20 Jac. C. B. Chaworthy v. Mitchel.

7. A. made a Lease of Freehold and Copyhold Land to B. Debt was; Lev. 39 brought for the Rent; B. pleaded in Bar that he was evicted out of all 8 C. the said Lands ante &c. A. replies, that J. S. was seised of the Freehold, and traverses the Seisin alleged by B. in his Plea of Eviction. Upon Issue joined a general Judgment is pro Quo. and affirm'd per rot. Cur. For where the Plea in Bar was entire, and Part falsified by the Verdict, he must have his Judgment general, which was for the whole Rent, as Plaintiff declared. And it was argued that the Defendant should have set forth the Value of the Particular Lands evicted, and also of the other Lands. 2 Show. 399. Mich. 56 Car. 2. B. R. Randal v. Brefe.
Rent.

See Tenure (C. a) Apportioned. In what Cases there shall be No Apportionment, but the whole Rent shall issue out of the Residue.

1. 13 E. 1. [NA]cts that if be sell any Part of such Lands or Tenements to cap. 2. any, the Feoffee shall immediately hold it of the Chief Lord, and shall be forthwith charged with the Services, for so much as pertains, or ought to pertain to the said Chief Lord for the same Parcel, according to the Quantity of the Land or Tenement so sold. (2.) And so in this Case the same Part of the Service shall remain to the Lord, to be taken by the Hands of the Feoffees, for which he ought to be attendant, and answerable to the same Chief Lord, according to the Quantity of the Land or Tenement sold for the Parcel of the Service so due.

1. 13 E. 1. 2. It was said, That if Tenor be ousted of Parcel by a Title paramount, he shall be charged of the whole Rent for the reit; because Rent upon a Chattel cannot be apportioned. Quare inde. Br. Apportionment, pl. 7. cites 9 E. 4. 1.

If a Man grants a Rent-charge out of 2 Acres, and after the Grantor receives one of the Acres against the Grantor by a Title paramount, the whole Rent shall issue out of the other Acre. Co. Litt. 148. b.

If a Interests of B of one Acre in Fee, upon Condition, and B being seized of another Acre in Fee, grants a Rent out of both Acres to the Feoffee, who enters into the one Acre for the Condition broken, the whole Rent shall issue out of the other Acre, because his Title is paramount by the Grant. Co. Litt. 148. b.—But if a Man makes a Lease for Life of B. Acre and W. Acre, referring a Rent, upon Condition that if the Leffer dies, the Lease for Life of B. Acre and W. Acre, he then shall have Fee in B. Acre, the Lease performes the Condition, albeit now by Relation, he has the Fee-simple. Ab Initio, yet shall the Rent be apportioned; for that the Reversion of one Acre whereunto the Rent was incident, is gone from the Leffer. Co. Litt. 148. b. 3. Note 2. Difference between a Rent in cd. 3. A Rent incident to a Reversion, concerning the Apportionment thereof. Co. Litt. 148. b.

3. Lease of a Warren, extending into 3 Parishes, was made rendering Rent, and after the Reversion of all the Warren in one of the Parishes was granted to J. S. and the Leffee attorned. Adjudged that neither the Leffor nor J. S. should have any Rent; for the Law is, That no Co-Rent shall be apportioned. Owen 10. in Goddard's Cafes, cites Bend. 14 H. 7.

4. If the Grantee of an Annuity or Rent-charge of 20 l. grant 10 l. Parcel of the same Annuity or Rent-charge, and the Tenant attorns, hereby the Annuity or Rent-charge is divided. Co. Litt. 148. b.

5. Concerning the Apportionment of Rents, there is a Difference between a Grant of a Rent and a Reservation of a Rent; for if a Man be seized of 2 Acres of Land, the one in Fee-simple, and the other in Tail, and by his Deed grants a Rent out of both in Fee, in Tail, for Life &c. and dies, the Land intail'd is discharged, and the Land in Fee Simple remains charg'd with the whole Rent; for against his own Grant he shall not take Advantage of the Weakness of his own Eiurate in Part. Co. Litt. 148. b.

Gift in Tail, Lease for Life for Years or for both Acres reference a Rent, the Donor or Leffer dies, the line in Tail ascends.

Gift or Lease, the Rent shall be apportioned; for seeing the Rent is referred out of and for the whole Lands, it is Reason that when Part is called by an elder Title, that the Donor or Leffer should not be charged with the whole Rent; but that it should be apportioned ratably according to the Value of the Land. Co. Litt. 148. b.

6. A
6. A Lease was made of Land in Possession, and of other Land in Re- 

ervation, after the Death of J. S. then Tenant for Life to have the first 

for Life, and the other from the Death of J. S. for 42 Years, if Leesee 

should to long live, yielding for all and singular the Pensions 4 l. at the 

four annual Terms of the Year; the whole Rent is payable presently, 

and not to wait the Death of J. S. for the Reversion is intire. D. 256. 

b. 257. pl. 11 Mich. 9 Eliz. Anen. 

7. Apportionment can be only of Certain Rents and Things and not of 

Accidental or Casual Profits, as Heritors, Profits of Courses, which cannot 

be reduced to an annual Value. Resolved 5 Rep. 6. a. Mich. 31 & 32 

Eliz. B. R. in Lord Mountjoy's Cafe. 

8. A Tenant for 20 Years, and seized of other Lands in Fee, leaves all for 

10 Years, referring Rent, with Clause of Re-entry, and dies; now the 

Heir has a Reversion for the Land in Fee, and the Executor for the 

other Land, and to the Condition is divided according to the Reversion. 

Per Manwood. 4 Le. 27. pl. 83. in Cafe of Lee v. Arnold. 

9. If a Man leaves 3 Acres of equal Annual Value, for Life or Years, 

receiving 3 s. Rent, and afterwards grants the Reversion of one Acre, and 

the Tenant attorn, the Rent shall be apportioned; for tho' it was but 

One Leaf, One Reversion, and One Rent, yet it was incident to the 

Reversion, which was favorable; And the Rent shall attend upon the 

Reversion, and upon every Part thereof. 8 Rep. 79. b. in Wiatre's Cafe. 

Cen. 656. 

10. A leased Freckald and Copyhold Lands by one Denisse, and afterwards 

A. surrenders the Copyhold to J. S. and his Heirs, and at another Time 

granted the Reversion of the Freckald to J. S. in Fee, and the Tenant attorn'd. 

Adjudge'd, That J. S. may have one Action of Debt for the whole Rent. 


11. A leased Land to B. rendering Rent 10 l. and then devised 6 l. per 

Ann. Parcel of the 10 l. per Ann. to C. D. & E. severally, to each of 

them a 3d Part, and dies. The Devise is good, and the Rent is well 

favorable, and Action lies for each, which the Law gives as incident to 

the Rent, Per 3 Justices. Contra Popham. And Judgment accordingly; 


12. Rent-seek or * Rent-Change cannot be divided without the Te-

tenant attorn, but Rent-service may. Arg. 2 jo. 120. in the Cafe of: 

burn v. Blyth, cites Hob. 25. and says, That Rent-Seek is divisible 

by Devise by the express Words of 34 H. 8. Ibid. Arg. 

and delivered in Execution; and this Act of the Sheriff is an Act in Law. But by Act of the Party 


13. Lease of Bl. Acre to commence at a Day to come, and Wh. Acre in Pre-

fent, rendering Rent at Michaelmas. Before the Commencement of the 

Term in the other Acre the entire Rent grows due, and clearly is but 


14. A Bishop had 4 Manors, which were usuall 3 leased at 32 l. Rent a 

Year. He leased 3 of them rendering the ancient Rent, whereas no ancient 

Rent had ever been reserved for 3 only; and consequently the Reversion 

good; And it could not be help'd by Apportionment. G. Equ. R. 

52. & 3 Chan. Rep. 199 & 119. cited by Trevor Ch. J. and Holt Ch. J. 

in the Cafe of Duy v. L. B. Rehiiiiii, as the true State of the Cafe of 

Snow v. Sparrin, according as it appears upon the Record; And they 

said, That Cro. C. 94. is but an imperfect Report of that Cafe. 

15. Lease of Copyhold Lands for 3 Years, and of Freckald for 31 Years, 

at an entire Rent. One of the Terms is expired, Debt is brought for the 

Rent Arrear. Per Roll Ch. J. The Plaintiff ought to shew how much of 

the Land is Copyhold, and how much Freckald. It was then inferred, 

That
Rent.

That but one entire Rent was reserved, and shall be paid as well after the expiration of the Lease of the Cop'y hold lands as before. Rell Ch. 1. asked then for what Term shall the Rent be reserved? For it doth not appear to us. Therefore you had best discontinue your Action; For if we give Judgment on the Exception you may lose your Rent. Sci. 381。


16. Sir J. W. Warden of the Fleet, granted the same, with some Exceptions, to the Plaintiff for 1000 l. in Hand, 1000 l. per annum, and 220 Guineas of Plate Rent. His Agent gave a particular of the Chamber-Rents to the Plaintiff, to induce him to the Bargain. Afterwards, on Complaint of the Prisoners, the Judges of C. B. reduced the Rents of the Chambers, which the Prisoners were to pay, so as they came to make a Quarter less in Value. The Plaintiff thereupon sought to be relieved; For this Order is compulsory, and in Nature of an Estoppel; For tho' the Thing remain, the Profits which answer the Rent are taken away; But in regard there was no Covenant in the Assignment for the upwards the Value, or that they were such, the LD. Keeper conceiv'd it like other Cates of Purchase, where it seldom happens but Things are over-valu'd; and dismiss'd the Bill. 2 Ch. Cates 204. Mich. 26 Car. 2. Duckenfield v. Whitecoit.

S. C. cited Arg. 2 Show.

17. If Leafe reduceth to Leafe, referring a Rent, there shall be no Apportionment; For the Parties by the Reservation have ascertain'd what Rent shall be allow'd for that Part. Per Hale. Vent. 276. Mich. 27 Car. 2. B. R. Hodgkins v. Robson.

But in the fame Cafe if Part of the Land had been * evicted before Easter, and Easter

and incumb'd in the Life of the Lease, there should be Apportionment of the Rent, but not in respect of Time, which well continues, but in respect that Parcel of the Land demised is evicted. Refolv'd to Rep. 128. a. Mich. 11 Jac. in Clun's Cafe.

Rent.

To make a Suspensation of Rent referred upon a Lease for Years the Lessee must quit the Leases of Part of the Land, and, until he returns to the former manner of Possession, he shall not be held liable for the Rent due, until the date of the return.
Rent.

3. A. makes B. Steward of his Manor, and gives 10l. Fee to B. with Dittres Pro Officio suo Exequendo, and Victuals and Drink for his Life. B. leaves the Fee and his Diet to A. for 4 Years, rendering to B. 12 l. per Ann. with Clause of Dittres in the Manor, by Deed indented. B. neglees to keep the Courts, and afterwards distreins for the 12 l. and makes an Award upon this Limitation; But the Award doth not lie, because it is extir'd by the Non-lesiveness of the Services &c. For when the Rent comes by session of the Land, there a Lease to the Lord is a Suspension; But contrary where it comes Rentone Person. Br. Litt. Stat. Limit. 77. cites 20 Eliz. 12. Per Cur.

4. If there be a Lord and Tenant of 40 Acres of Land by Fealty, and 20 s. Rent, if the Tenant make a Gift in Tail, or a Lease for Life, or Years, of Parcel thereof to the Lord; in this Case the Rent shall not be apportioned for any Part, but the Rent shall be suspeded for the whole; for a Rent-service (faith Littleton) may be extinct for Part, and apportioned for the rent; but a Rent-service cannot be suspended in Part by the Act of the Party, and in Estre for other Part. Co. Litt. 148. a. b.

5. If Rent be granted out of an Estate in Fee, and a Term for Years to A. for Life, an Acceptance of a Lease or Grant of the Land held for the Term, is no Suspension of the Rent. 7 Rep. 23. b. Per Cur. Tin. 42 Eiz. in Butt's Cafe.

6. Leifee conveys to the doing a Thing ordered by Leifir to be done; afterwards it appeared that it could not be done without Cutting down an Apple-tree. The Leifir's Workman acquaints the Leifee of it, who will not consent, but forbids the cutting it down; however, the Workman cut it down. And this was adjudged no Suspension of the Rent; but it was agreed, that if Leifee had revoked his Licence, and made it known to his Leifir, and the Leifir had after that commanded the Workman to cut down the Tree, it had been a Suspension. Arg. 2 Roll. R. 399. cites it as the Case of Dord Denny v. Parney.

7. In Debt for Rent, the Defendant pleaded an Entry and Expulsion out of the Garden-house; and it was held good, too it was Parcel of the Tenements &c. Hob. 190. pl. 236. Mich. 14 Jac. Darrel v. Andrews.

8. A. made a Lease of an House, Land, and Woods, excepting all Trees not before Erist, rendering Rent. A. cut down the Trees which had been Bvpp before. The Question was, Whether this was a Suspension of the Rent? It seems that it is not, because the Body of the Tree does not belong to the Leifir; so that the Prejudice to him is only in Respect of the Boughs and Shade; besides he not having Property in the Trees, the taking
Rent.

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taking the Roughts will not be a Suspension; for no Rent illiss out of them, and they are Parcel of the Inheritance; but adornatur. 2 Roll. Rep. 398. Aikin. 21 Jac. B. R. Farby v. Clarke.

9. Leafle at a Language for Years, Leiffe covenants to pay the Rent, but before any becomes due, the Ordinary sequentials the Partitionage for Non-payment of the first Fruits; this is no Plea for the Leiffe in Action of Covenant. And if he had given Bond for Payment of the Rent, it would be no Plea in Debt on the Bond; for he had bound himself to pay the Rent, and the Occupation is not material, where the Leiffe is for Years or Life; but otherwise of a Leafle at Will. Hor. 54. Mich. 3 Car. C. B. Jenkill v. Linne.

19. In Debt for Rent upon a Leafle for Years, the Defendant pleaded that Prince Rupert, an Alien born, and an Enemy to the King, invaded the Land, and entered upon, and drove away his Cattle, and kept him out that he could not enjoy the Lands for a long Time. And though, this he pleaded in Bar to the Action; and upon Demurrer to the Plea, That the Roll held the Plea not good, for he did not plead that the Army were Alien and Takers, as he should have done; and the pleading that it was Hielis Exculsor, makes not the Plea more certain than before; and where the whole a Tenant for Years covenants to pay Rent, tho' the Lands are surrounded with Water, yet he is chargeable with the Rent, and much more in this Case. Stu. 47. 48. Mich. 23 Car. Parhine v. Jayce.

Rent. And this Difference was taken, That where the Lease creates a Duty or Charge, and the Party is defild to perform it, without any Defaults in him, and has no Remedy seen, under the Law, it will excuse him.

As in the Case of War, if a House be destroyed by Tenchey or Enemy; the Leiffe is excused, according to Dice 23. S. Iff. 35. 3. 14. 2. 14. 2. 4. 6. So also an Escape. C. 4. 54. b. 31. 3. 10. 1. So in 9 E. 3. 16. A Superfendi was awarded to the Juices, tho' they should not proceed in a Civil suit on a Lease during the War; But under the Party by his own Covenant creates a Duty of Charge upon himself, he is bound to make it good, if he may, notwithstanding any Accident by inevitable Necessity, because he might have provided against it by his own Contract. And therefore if the Lease covenant to require a Prouice, though it be burnt by Lighting, or thrown down by Enemies, yet he ought to repair it. Dice 11. a. 35. E. 3. 6. 6. Now the Rent is a Duty created by the Party upon the Reinvest, and had there been a Covenant to pay it, there had been no Quelion but the Leiffe must have made it good, notwithstanding the Interruption by Enemies; for the Law could not protect him beyond his own Agreement, no more than in the Case of Reparation; this Reinvest then being a Covenant in Law, and whereupon an Action of Covenant hath been maintained, (as Roll said) it is all one as if there had been an actual Covenant. Another Reason was added, That as the Lease is to have the Advantages of Civil Profit, so he ought on the Hazard of Civil Injury, and not by the whole burden of them upon him his Leisseur; and Dice 11. 6. was cited for this Purpose, that though the Land be surrounded, or granted by the Sea, or made barren by Wildfire, yet the Leißor shall have his whole Rent. And Judgment was given for the Plaintiff.

11. A leas'd a House in London to B. at a certain Rent; B. left the House and went to Oxan to K. Chab. 1. and then sent his Servant with the Key of the House to A. and desired her to re-enter, and accept the Surrender. She said she would advise with the Defendant, her Son in Law, (who then sat in the House of Commons, and acted with them) afterwards the relituated to accept of a Surrender; the House was made an Hospital by the Parliament for Wounded Soldiers; the Defendant, as Executive to the Lady, brought Debt at Law against the Plaintiff for Rent incurred, whilst the House was so ed, and all the Time. B. brought a Bill to be relieved against the Action. It was intifted to be but reasonable, That if a Tenant be put out by such against whom he can have his Remedy, that he notwithstanding, be liable to pay his Rent to the Leissor; but in this Case the Plaintiff has no Remedy over, and that it was an Act of Force in the Parliament, which is pardoned by the Act of Oblivion, and so no Remedy over, and the King had pardoned all Arrears of Rent. Lord Chancellor took Time to advise, but declared that if he could he would relieve the Plaintiff. Chan. Cases 83. Patch. 19 Car. 2 between Harrison and Lord North.

12. If
Rent.

12. If A. is to B. for 10 Years, and B. demises to A. for 6 Years, to commence in future, in the mean Time this works no Suspensation either of Rent or Condition. Vent. 91. Trin. 27 Car. 2. B. R. Lion v. Catew.

13. Pulling down a Rent-chaire, is no Suspensation of Rent, but is a Treipafs, for which Leftie may have his Action. 2 Jo. 148. Pachh. 33 Car. 2. Roper v. Loyd.

14. A. Leftie for 60 Years made an Underlease to B. for 21. at 25.1. payable Quarterly. B. conveanted to pay the Rent to A. her Executors &c. during the Term, and covenanted to keep the demifed Premises during the said Term, [in sufficient Repair] except the fame should happen to be demolished or damaged by Fire, and would so deliver them up at the End of the Term, except as before excepted. E. enter'd and was paid for. The Premises were burnt down, and remained unbuilt for the Space of a full Year. In an Action for Non-Payment of the Rent it was inquired for the Defendant, That the Rent was payable only for the Enjoyment of the demifed Premises, so that since he was hinder'd enjoying them by their burnt down, (which he was not anwerable for, nor obliged by his express Covenants to repair, but that the Plaintiff was to rebuild them,) it would be hard to charge him with the Rent when he had no Use of them. But Perrot. Cur. He is bound by express Covenant to pay the Rent during the Term; and the Plaintiff had Judg. rev. 2 Id. Raym. Rep. 1477. Pachh. 13 Geo. 1. B. R. Monk v. Cooper.

(K. a) Revived.

1. F the Lord releases to his Tenant, and to the Heirs of his Body, the Rent shall revive after the Tail determined by the best Opinion; quod minus, for he releaseth to him who has Fee-simple, but this goes by Way of making of Estate; therefore quere if there be a Diversity. Br. Extinguishment, pl. 45. cites 13 E. 3.

2. In Affite W. M. granted fo. Rent to N. D. out of his Land for Life of A. the Remander to R. for his Life, and after A. died, and W. M. after the Death of A. released by another Deed to the said R. all his Right in the Rent, and granted that whenever the Rent shall be Arrear that the said R. and his Heirs may distrain; It is a good Title to R. for the Rent in Fee, by all the Judges, and yet by the Death of A. the Rent was extinct; For the Remander was void, by Reason that the Rent which commenced by this Grant could not remain, and fo the Releafe of the Rent to R. was void, inasmuch as the Rent was extinct before the Death of A. but because the last Deed has this Clause of Grant to R. that he and his Heirs may distrain when the Rent is Arrear, therefore this is a New Grant; Quod nota. Br. Rents pl. 19. cites 8 H 4. 19.

3. If the Grantee of a Rent-charge, and a Stranger disafleles the Tenant of the Land, and the Grantee confirms the ESTATE of his Companier, and the Tenant of the Land re-enters, the Rent is revived; for the Confirmation extended not to the Rent fulpend; otherwise of a Relafe. Co. Lit. 298. b.

4. Rent and Services suspended by Union with the Crown by Attainder of the Tenant are revived by Grant of the Land to a Subject. Ley 1. Trin. or Pachh. 1619. Long's Caf. 84.

5. Grante of Rent disafles the Grantor, and makes Feoffment, and the Disaflee re-enters, or recovered &c. or if it be rendered by Continuance, to that there is no Remitter, the Rent shall not be revived, because he grants the Rent fulpend. Arg. Littr. R. 53. in the Cafe of Peyto v. Pemberton.

(L. a) Re-
Rent.

517

(L. a) Revived. By Re-entry.

1. If a Rent-charge be granted for a Way, and the Way is stopped, the Rent-charge shall be stopped also. Dav. Rep. 1. b. in the Case of Proxies cites 9 E. 4. 15 E. 4. 21 E. 5. 24 E. 3. 9.

2. If the Defendant grants a Rent-charge, and the Defendant enters, and enters into that Part of the Land where the House is; and the House was Part of the Castle for which the Rent was reserved. Fenner and Clench doubted Adjudicatur. Cro. E. 341. Mich. 36 & 37 Eliz. B. R. Cherborn v. Rye.

(M. a) Avoided.

1. If a Rent-charge be granted for a Way, and the Way is stopped, the Rent-charge shall be stopped also. Dav. Rep. 1. b. in the Case of Proxies cites 9 E. 4. 15 E. 4. 21 E. 5. 24 E. 3. 9.

2. If the Defendant grants a Rent-charge, and the Defendant enters, and enters into that Part of the Land where the House is; and the House was Part of the Castle for which the Rent was reserved. Fenner and Clench doubted Adjudicatur. Cro. E. 341. Mich. 36 & 37 Eliz. B. R. Cherborn v. Rye.

(N. a) Of the several Sorts of Rents, as Rent-Service, Rent-Charge, and Rent-Seek.

1. Where a Man holds a Manor of his Lord by Service of 40 s. and per and by 20 s. for grinding at his Mill, and grants the 20 s. to Peretti, if W. S. and the Tenant attorns. Some held this 20 s. was Rent-Seek, and Manor in-
Rent.

And by some it was Rent-Service in the Hands of the Grantor. Br. Ten.

2. Where the Rent and Service go together, this is Rent-Service; but if the Rent-Service be severed from the Services in Fact or in Law, this is Rent-Seek. Br. Rents pl. 14, cites 26 All. 38.

It is called Rent-Service because it has some referred service incident to it, which at least is Feody. Co. Litt. 175. a.

* Rent-Service is where the Tenant holds his Land of the Lord by Feody and certain Rent. Litt. S. 213.
* Rent-Seek is where such Grant is made without Clause of Disl.

6. Rent reserved between Particuaries out of the Land which the other has in Partition for Equality of Partition is Rent-charge, and he may disfrain in the Land of Common Right. Br. Rents pl. 4, cites Littleton, Tit. Parceners.


Cro F. 616. pl. 22. Hill.
nure cannot be created at this Day; and every Fee-Farm Rent, when granted by the King, becomes Rent-Seek, and therefore not to be extended. Arg. 9 Mod. 72. cites Cro. E. 656.

(O. a) Where Rent-Service or Charge becomes Rent-Seek in the Hands of the Grantee.

1. **THE Lord grants his Rent-Service, facing to himself his Seigniory.** If there be the Grantee cannot distrain, for this is Rent-Seek; And to fee, Lord and Tenant, and That by express Words Fealty may be severed from Rent-Service. Br. Tenures, pl. 79. cites 7 E. 3. and Fitzh. Avowry 142.

**Land by Lord,** and certain Rent, and the Lord grants the Rent by his Deed to another, *recollect the Fealty is himself,* and the Tenant attorns to the Grantee of the Rent; now this Rent is Rent-Seek to the Grantee, because the Tenements are not held in of the Grantee of the Rent, but are held in of the Lord who referred to him the Fealty. Lit. S. 225. — *So if it be living to him the other Services. Lit. S. 225.*

If there be Lord and Grant by Fealty and certain Rent, and the Lord by Deed grants the Rent in Fealty, the Fealty, and grants further by the same Deed, That the Grantee may distrait for the same Rent in the Grantee, if a Diffrein were incident to be Rent to the Hand of the Grantor; and that a Tenant attorns to the Grant, yet cannot the Grantee distrait; For the Diffrein is tenant as an Incident inseparable to the Sept. Reis; then the Tenant should be subject to a General Rephrase. Co. Litt. 130. 6.

& it it the Lord grants the Rent or Tenure for life, giving the Fealty, and for sure-guards, That the Grantee may distrait for it, unless the Reversion of the Rent be a Rent Service, yet the Dues or Grants shall have it but as a Rent-Seek, and shall not distrait for it. Co. Litt. 130. 6.

2. If Lord and Tenant are, and the Tenant holds the Manor of R. of his Lord by 3d5. Rent per Ann. and 10s. per Ann. for granting of his Suit, and the Lord grants the 10s. which comes for Grining, to W. S. and the Tenant attorns, W. S. shall have it as Rent-Seek by lease, and by lease it was Rent-Service in the Hands of the Grantor; To which Parm. agreed. Br. Rents, pl. 11. cites 9 All. 24.

3. If a Man holds by Fealty and 10s. Rent, and grants the Rent; this is Rent-Service to the Grantee, on the Fealty shall pass. Contra if the Tenure is by Homage, Fealty, and Liegeage and Rent, and he grants the Reconly, for there the Services remain with the Homage. Per Willy: But per Skip. Etc. clearly where the Rent is joined with a Reversion, As upon Lease for Life, or upon a Gift in Tail, rending Rent; there, if the Rent be granted and the Tenant attorns, the Grantee shall have only Rent-Seek; For the Services are incident to the Reversion, and do not pass by Grant of the rent. Per Willy, It may be recorded; For if the Deene grant the Services the Grantee shall have the Rent as Rent-Service by Grant of the Services, which none denied. But see Littleton contrary in his 2d Book, the 12th Chapter of Rents, 40. 49 & 50. Br. Grante, pl. 73. cites 26 All. 38.

4. It was agreed for Law, That if there be Lord and Tenant, and the Tenant holds of his Lords as of his Manor, and the Lord relieves the Seigniory to the Tenant, saving the Reversion, yet this is Parcel of the Manor, and yet is now Rent-Seek, which was Rent-Service before. Br. Rents, pl. 22, cites 31 All. 23.

5. Or if a Tenant holds of his Mefne as of his Manor, and the Lord Paramount purcathes the Tenancy where the Mefne has the Surplusage of the Service, yet the Mefne who is Lord of the Manor shall have the surplusage of the Rent as Rent-Seek, and this Rent remains Parcel of the Manor; quod nobis; And a Man shall make Title to those Rents in Jiffy by Claimant of Seisin of them, of which be, and those whose sponde he has in the Manor time out of Mind, have been Jesised, and so prescribe; And so fee
Rent.

7. Tenants for 20 Years had the Land to W. P. for 10 Years, rendering Rent, and after he granted the same Rent to W. P. There he cannot distrain because it is Rent-Seek; For he has not the Reversion of the Term, which gives the Cause of the Distrain. Br. Rents, pl. 17. cites 2 E. 4. 11.

If he grants the Reversion of the Land to another, for the Term of Life, and the Tenant attorns &c. then the Grantee has the Rent as a Rent-Service, for that he has the Reversion for Term of Life. Litt. S. 228.

9. If the Donee holds of the Donor by Fealty and certain Rent, and the Donor grants the Services to another, and the Tenant attorns, some have laid the Rent shall not pass; Because the Rent cannot pass but as a Rent-Service, being granted by the Name of Services, and the Fealty cannot pass, because it is an Incident inseparable to the Reversion; But it seems the Rent shall pass as a Rent-Seek; because at the Time of the Grant it was a Rent-Service in the Grantor, and therefore there are Words sufficient to pass it to the Grantee, and it is not of Necessity that it shall be a Rent-Service in the Hands of the Grantee. Co. Litt. 150 b.

(P. a) Demand of Rent. At what Time. And what is a sufficient Attendance.

1. In Affife a Man leased Land for 12 Years, rendering Rent, with Clause of Re-entry, if it be arrear at the Day &c. and at a Day of Payment the Rent was arrear, and the Leilour came the next Day, and entered without demanding the Rent; and therefore per Cur. his Entry is not lawful, because he did not demand the Rent; nevertheless it is not express'd when he shall demand the Rent, but it seems this shall be the Day of Payment, and at the last Instalment of the Day. Br. Entre Cong. pl. 81. cites 40 Alf. 11.

2. In Quare ejecto infra Terminium, the Defendant justified by reason of a Lease made by the Defendant to the Plaintiff for Term of Years rendering Rent, and a Re-entry for Default of Payment, and for the Rent Arrear; Such
Rent.

Such a Day he re-entered. Fulthorp, at the same Day that he supposes the Rent to be Arrear, the Plaintiff was all the Day ready upon the Land to have paid him if he would have demanded it, Abique here, that any Day after this Day he demanded the Rent &c. Newton, after this Day came, and of Payment &c. we came to the Land, and there demanded the Rent, and he did not pay it, Abique here, that he tendered the Rent to us at any Day after the said Day, and before the Re-entry, and upon this they demurred on both Sides, & Adjournatur; and it was seen, that the Tenant ought to attend all the Day upon the Land to offer the Rent; but it seems that the lessor may come any Time of the Day to demand the Rent. Br. Entce Cong. pl. 39. cit. 1 H. 6. 9.

3. If a Man leaves Land rending Rent, and for Default of Payment at the Time, the Demand of the Feoffs be not good for a Re-entry; and if he comes the Day after the Month, and departs, yet if the Tenant comes the last Instant of the Day, and renders the Rent, the other cannot re-enter. Per Fairtax and Brian. Br. Entce Cong. pl. 92. cites 6 H. 7. 3.

4. It is not necessary that the Grantee of the Rent should demand it at the very Time when it becomes due; but at any Time after is sufficient, for this is not like a Demand of a Rent upon a Condition, because that is special, and overthrows the whole Estate, and losses the Tenant of Demand must be certain, to the End the Lessee, Demeze, or Feoffee may thereto pay the Rent; but a Demand of a Rent-Seek, or Re-entry is but only a formal Mean to recover that which is due; and therefore it may be demanded after it is behind at any Time, whether the Tenant be present or no. For Remedies for Rights are ever favourably extended. Co. Litt. 153. a. b.

5. The Rent upon a Lease was made payable at 4 usual Feasts, upon Condition that if the Rent be behind by the Space of 4 Months after any of the Feasts, on which &c. then a Re-entry. The Rent was Arrears Demand was made by J. S. by virtue of a Special Letter of Attorney at the Capital Meffuage an Hour before Sun-set at the Day of the 13 Months after the Feafe &c. according to the Condition, in Order for a Re-entry of the Rent due at Midsummer Half, but none was there on the Part of the Lessee to pay. J. S. left his Letter in the Hall of the said Meffuage, commanding him to lay there, and it may come to pay the said Rent to give him Notice thereof; then J. S. went out and walked into the Land, the Land lying on both Sides, and did not return into the House till Sun-set. This is a good Continuance of the Demand, and the 3 Months shall be computed by 28 Days. 4 Le. 179. pl. 273. Mich. 15 Eliz. B. R. Wood v. Chivers.

6. Lessee comes to the Land before the Half Hour, viz. in the Morning or in the Afternoon, and demands the Rent, and then goes off the Land, and is not there the last Instant of the Day, it is not a sufficient Demand, tho' he return presently after Sun-set. Agreed by all the Justices. 4 Le. 180. in the Case of Wood v. Chivers.

7. Demand in the Morning, and Continuance on the Land till Sun-set: if after without any other Demand after is good; For his Presence there is the Demand in the News.
Rent.

Continuance of the Demand. Per Gerrard Attorney-General; Quod e v e t a n d a, it is adjudged, the Defendant rendre, and pay the Land till Sun-set, 'Tis a Continuance of the Demand. Per Cullen J Quod Wray Ch. J. concedeth. 4 Le. 186 in the Case of Wood v Chivers.

8. Where a Lease is made rendering Rent at Midnight, between the Hours of 1 and 3 in the Afternoon, and a Re-entry &c. the Lessee comes at the Day at 2 o'Clock, and continues demanding till 3, and the Rent is not paid; he may re-enter, altho' he was not at 1 o'Clock, when peradventure the Lessee was there, and tendered it. Cro. E. 15. pl. 5. Patch. 25 Eliz. C. B. The Lord Cromwell v. Andrews.

9. A Lease to B. for Years, rendering Rent upon Condition, That if the Rent be behind at the Day, and 10 Days after (being in the mean Time demanded) no Distrefs to be found upon the Land, that then the Plaintiff might re-enter. The Rent was behind at the Day, and 10 Days after, and a sufficient Distress was upon the Land till 3 o'Clock in the Afternoon of the 16th Day, at which Time B. drove out the Cattle, and at the last Day of the Day A. came and demanded the Rent, and it was not paid, nor any Distresses on the Land. It was held by Wray and Shute that the Condition is not broken, and that if a Distress be found there any Time within the 10 Days it is sufficient; but Clerch doubted; but adjudged, That a Demand made at the End of the 10 Days is not sufficient, tho' no Distresses be then there; but a Demand must be made in the mean Time. Cro. E. 63. pl. 6. Mich. 29 & 30 Eliz. B. R. Worcest. v. Stone.

10. If Rent be demanded so much Time before Sun-set, as is sufficient for the Rent to be paid in, it is enough. Per Cur. And. 253. pl. 232. Mich. 31 & 32 Eliz. Fabian v. Rewmilton.

11. Lease for Years, rendering Rent to be paid at 2 Days in the Year, Provided, That if Lessee do not pay the said yearly Rent, that then a Re-entry; That Rent is not demandable on Pain of Forfeiture, but on the last Day of every Year only, and not every Year according to the Retention. 3 Le. 226. Dr. Moline's Case, cited in the Case of Scott v. Scott.

12. Lease of Land rendering Rent per Ann. Quandocunque the Lessee fuit, demand it. If Leslor comes to demand it before the End of the Year, his Demand on the Land is not good, unlefs the Lessee be there also; for the Time being uncertain when the Leslor will demand it, he ought to give Notice to the Lessee of the Time; and if he comes to the Lessee and demands it, this is not sufficient; For tho' Notice ought to be given to Lessee in Person, yet the Land is the Debtor; And for this the Law binds the Leslor to come to the Land, as to the Place in which it shall be paid; But if Leslor stay till the End of the Year, then Lessee at his Peril ought to attend upon the Land to pay; For the End of the Year is the Time of Payment prescribed by the Law. Per Popham; quod futi concedimus. Yelv. 37. Patch. 1 Jac. B. R. Sweeten v. Curhe.

13. The Sun-set is the Time to demand, yet it is not due till Midnight. Per Hale Ch. J. Saund. 287. Trin. 21 Car. 2. B. R. in the Case of Duppa Executor of Baskerville v. Mayo.
(Q. a) Demand. Good. In Respect of the Sum.

1. **If** in Demand of Rent the **Leiße**, or any on his Part **demands one** and 2. **Penny more or less than is due**, the Demand is not good, and no **Re-entry** in such shall be given unless the Demand be precisely and strictly followed. Agreed per to British. Lex. 305. pl. 425. Mich. 31 & 32 Eliz. C.B. in the Case of Fabian v. Windlor.


2. Rent was payable half-yearly, Demand of a Year and a half in one line, the Name of Rent and Arrears, or of 10l. (being the Fabian v. half Year's Rent due at the last Rent due at the half Rent due before the Demand, and of 20l. more which accrued due before, is a good Demand. And fo was the Opinion of the Court. And. 256. pl. 283. Trin. 32 Eliz. Dennis v. Bolton.

at the next Day Leisfer demands 10. it is not good, but he must demand 7. 1. which then becomes due, but may demand the Arrears also. Allen. 94. Anon.

(R. a) Demand. Good. In Respect of the Words, or Manner.

1. **He** who is to demand Rent ought to bring Witness with him, and in their Presence make express Demand of the Rent on the Land, tho' no Person be there present to pay it. Per Hales. Quere hoc. D. 68. b. pl. 25. Patch. 5 E. 6. in the Case of Kidwelley v. Brande.

2. If the **Leiße** comes upon the Land to demand the Rent, and there meets with J. S. a Stranger, and says to J. S. Pay me my Rent; this is not a good Demand, for he has mistaken the Person; for J. S. is not chargeable therewith, but in such Case a general Demand of the Rent, without Reference thereof to any Person who is not chargeable, has been good. Yelv. 37. Patch. 1 Jac. B. R. Sweeton v. Culhe.

3. Dean and Chapter of Chichester leased Land to B. rendering Rent, payable at the Cathedral Church of Chichester, he ought to make a formal Demand, and his saying, Bear Witness I am come here to demand and receive such Rent, is not a good Demand. Brownl. 133. Patch. 5 Jac. Knap v. Pier Javelhe. 

4. And in this Case a General Letter of Attorney by the Dean and Chapter, to demand their Rent on any Part of the Land leased, was not good, but it ought to be special only for that Land; and it ought also to be particular, and not general of any Person to whom they had made a Lease. Brownl. 138. Knap v. Pier Javelhe.

5. I demand my Half Year's Rent; this is a sufficient Demand; by two S. P. Dalzle. Justices against one. Het. 109. Trin. 4 Car. C. B. Hunlock's Case.
Rent.

(S. a) Demand to have Re-entry. Necessary in what Cases.

1. The lessor cannot enter upon the lesslee for years, by clause of re-entry for non-payment of rent, unless he first demands the rent; quad nota, by award. Br. Demand, pl. 19. cites 40. Aff. 21.

Because the

land is the principal debtor, for the rent lies out of the land. Co. Litt. 237. b. — It was resolved that when a lease for years is made, referring a rent, and for non-payment that the lease shall be void, the lease is not void by non-payment, without an actual demand, because a rent is not properly due till it is demanded; but otherwise it is if it be to be void for non-payment of a sum in gross. Freeman, Rep. 243. pl. 255. Hill. 1677. Sir John Marshall v. Goodere.

2. In covenant the defendant justified for a re-entry upon the plaintiff, who was his lesslee for years, for the rent arrear by clause of re-entry, and the plaintiff was taken whether the defendant demanded the rent before his re-entry, or not; quad nota. Br. Ent. Cong. pl. 14. cites 47. E. 3. 12.

3. Where the king leaves for years, with clause of re-entry for non-payment of the rent, the king need not demand the rent before he re-enters. Per Hillary and Brian; and it is laid there, that if the king grants the rent and re-entry to another, he cannot enter without demanding of the rent, and the king may grant his action, and a clause in action, contrary of a common perf. a quad nota. Per Hillary. And the king cannot enter till the non-payment be found by office. Br. Ent. Cong. pl. 88. cites 11. H. 7. 8.

4. A made a lease for years, rendering rent at the feast of st. michael; and for default of payment at the said day, and by the space of 30 days after, the lessor to re-enter without any demand of the rent. The rent is in arrear by 30 days after the feast, and no demand made by the lessor; the lessor entered. The question was if the entry was lawful? Per Hurton, it is not; for a demand of the rent is given by the common law between lessee and lessor, and notwithstanding the words (without any demand) it remains as it was before; and is not altered by them; but if the rent had been referred payable at another place than upon the land, there the lessor may enter without any demand. But where no place is limited but upon the land, otherwise it is. Richardson to the contrary; for when he had confessed that he might enter without any demand, the lessor had dispensed with the common law by his own covenant. And Harvey was of the same opinion. Het. 77. Hill. 3 car. C. B. Challoner v. ware.

Demand, that the lessor may re-enter, it was adjudged that no demand was requisite; for modus & conventio vincunt legem.

(T. a) Payment of Rent. At what time. By the words of limitation.

1. If one makes a lease, october 1. for years, or life, or gift in tail, rendering per annum, a pair of gold spurs at easter, or 20 s. at michaelmas. If the lessee do not pay the spurs at easter, nothing is due till mich. 10 rep. 128. a. in clunn’s cafe. cites 43 E. 3. tit barr 194. 44 E. 3. 32. 15 E. 3. execution 63. 3 E. 2. 2.

2. A
Rent.

2. A Grant of a Reversion depending on a Term for Years was Habend. & Tenend. Reversionem illam ad Terminum Vice &c. aut alter accelerator, rendering annually 20 s. &c. when the Reversion shall happen as is aforesaid, the Words (Cum Reversionio accidit) shall be construed Cum Postentio accidit ad Reversionem, till when no Rent is payable. D. 376. b. 377. a. pl. 27. Trin. 23 Eliz. Anon.

3. If Rent be referred Annuatim durante Termino pridie, the first Payment to begin two Years after; this controls the Words of Reversion. Per Jones J. 3 Bulst. 329. Hill. 1 Car. B. R. in Case of Shury v. Brown.


5. Leafe rendering Rent, and 100 Couple of Covies, to be paid between such and such a Time weekly, as Plaintiff should appoint, such Reversion seems to differ from Rent which may be demanded all at once in the last Week, because it may be kept without Damage, but the other not. Lat. 271. Mich. 3 Car. Per Jones J. Baily v. Buggs.

6. A Leafe was made to hold from Mich. 1661 to Mich. 1668, paying Rent Half-yearly. It was demurr’d, supposing that the Words being to Michaelmas 1663, there was not an entire Half-year, the Day being to be excluded, and that it was to be held in Case of Humble v. Fisher, in 1 Cro. 702. Per Cur. It is true in Pleading, Uique tale Fidium, will exclude that Day; but in Case of a Reversion the Construction is to be governed by the Intent. Vent. 292. Hill. 27 & 28 Car. 2. B. R. Pigot v. Bridge.

7. In Debt for Rent, the Plaintiff declared upon a Demife made 25 S. C. 2. Med. Aug. 11 W. 3. of a Mettuage &c. Habendum for 7 Years, to commence from the 24th Day of January, Reddendum quarterly, at the 4 mo. u. of the Feasts, viz. Michaelmas, St Thomas, Lady-day and Midsummer, 31 10 s. per Ann. the first Payment to be made at Michaelmas next, and all things for said on, Breach, that if of the said Rent was in Arrear for twelve Months, ended 24th December, Anno 13 W. 3. Defendant demurr’d, and it was objected that if the Rent did not end the 24th December, but at St. Thomas’s Day, according to the Reddendum, which is 21 December, Quod Curia condemn, because where special Days of Payment are limited by the Reddendum, the Court told the Plaintiff that he could not demurr’d, and the Rent must be computed according to the Reddendum, and not according to the Habendum, and the Computation of the Rent, according to the Habendum, is only where the Reddendum is general, (viz.) Yielding and paying quarterly so much Rent; whereupon the Plaintiff had Leave to discontinue. 1 Salk. 141. pl. 7. Mich. 1 Ann. B. R. Tomkins v. Pincent.

Bar against the right Rent.—2. Le Raym. Rep. 819. 820. S. C. states it is that the Rent was referred payable at the 4 m. u. of the Feasts, but the (viz.) contained but 3, namely, St. Thomas Day, Lady-day, and Midsummer; and Exception being taken thereto, that it was ill, the Court held that the (viz.) being replevied, it shall be rejected as void; and as to the other Point of the Year not ending the 24th December, that the Rent ought to have been demanded in the Action, as of the 21. Holt, Powell and Goud were of that Opinion, but Powis J. contra. And Judgment for the Defendant for the Reason given in 1 Salk. supra.

So where the Demand was 25 March, Habend, a Die Datum, the Half-year ends 25th September. See Skin. 339. Hill. 5 W. & M. B. R. Parker v. Harris.

(U. a) Payment. At what Time. By Words Disjunctive, or Dubious.

1. Eafe rendering Rent, payable at Michaelmas, or 14 Days after. Le 141. Et si contingat, the said Rent to be behind Post altius Terminum, rendering, cum vel Postorurum pridie in quo fallit debet, by the Space of 14 to Rep. 129. Days, Post altius Fidium pridie, that then &c. Adjudged that the 5 C. cited Leake in Clun’s Case.
Leafe has 14 Days after the said 14 Days mentioned in the Reservation, without Danger of the Penalty of the Condition, and the last Words Post aliquid Felorum predict, for the Contrariety shall be rejected. 4 Le.


2. Bond for Payment of 40 l. annually during the Life of B. at the Feast of St Michael, and the Annunciation, or within 30 Days after every of the said Feasts; B. dies within the 30 Days. It was held that this is a Discharge of the Payment due at the Feast before his Death. Cro. E. 280. Hill 37 Eliz. Price v. Williams.

3. Leafe made 26th June 26 Eliz. Habend. a Fefto Annuc. ult. preterit. for 35 Years, rendering the first 10 Years 40 l. annually, on the 15th of October and the last of March, be equal Portions; and after the 10 Years 46 l. on the same Days, the first Payment to begin October 1st, next following. Resolved, that tho' the Leafe began not in Interfet till the 26th June 26 Eliz. yet in the Account of the Number of Years, it began the Lady-day before; so that the 10 Years expired at Lady-day 36 Eliz. and then the first Reservation ended, and every Day after there is to be paid 231. And now tho' the Leffor cannot have 10 Years together 40 l. but shall fail in one of the Payments, yet that is not material; for it is impoſsible that he should have it 10 Years and 10 Times, as this Reservation is, to Judgment for the Plaintiff. Cro. E. 315. Mich. 38 & 39 Eliz. B. R. Main v. Beak.

4. Leafe of Bl. Acre, to commence at a Day to come, and of Wh. Acre in Prenent, rendering Rent at Michaelmas before the Commencement of the Term in the other Acre, the entire Rent is then payable. And per Car. It is but one Rent. 2 Roll. R. 467. Mich. 22 Jac. B. R. Fal-tith's Cafe.

5. A Rent was granted by Indenture to J. S. and J. N. for a Term of Years, if they should live long, payable at Michaelmas and Lady-day, the first Payment to be in Manner and Form as afterwards expres'd in the Grant, and no otherwise, but enters mentioning the Time when it should commence. Jones and Berkley J. held, That for this Uncertainty the Rent should commence presently. Croke J. compared it to a Grant of a Rent, the Payment whereof is to be limited by another Deed, in which Cafe, for Want of a Limitation, the Grant is void. Jones said he did not remember that Richardfon Ch. J. delivered any Opinion [as to this] but all agreed that when the Limitation and Expreflion is made, then the Rent shall commence well enough. Jo. 343. Trin. 10 Car. B. R. Dickinfon v. Waterman.

6. Covenant upon a Leafe for Years, yielding and paying 10l. at Michaelmas, if it be demanded, or within 10 Days after. The Breach affliction was for Non-payment of the Rent. It was objected, that it is not the said Rent was demanded at the Days, and then it is not due. But per Cur. If it be not demanded, it is due at the Days, tho' not payable; but however, it is due 10 Days after. Freeman Rep. 463. pl. 633. Trin. 1678. Norris v. Elfworth.

7. Covenant for Payment of Rent at St. John and Christimas, or within 14 Days after, the first Payment to be at Christmas next after the Date. Per Cur. The Defendant had 14 Days after the first Christimas, as well as any other, to pay his Rent in, and Judgment accordingly. 2 Show. 77. Trin. 31 Car. 2. Anon.
Rent.

(W. a) Payment, When. By General Words.

1. The Words of a Will were, I give to A. 40 s. of yearly Rent going out of all my Lands in M. with a Clause of Difficulties for Non-payment thereof at the usual Feasts, during all his Life; the usual Feasts for Payment of Rents in the Vill where the Lands were, were St. Michael and the Annunciation; adjudged a good Devise, and that the usual Days shall be taken to be the usual Days in the Town where the Lands are, for the Payment of Rents. 2 And. 122. pl. 67. Mich. 40 & 41 Eliz. Cowdrey’s Case.

2. The Dean and Chapter of W. leased Land for 21 Years, rendering Rent quarterly, Leesee affligns the Moiety for Years to J. S. paying the Half of all such Rents as are payable to the Dean and Chapter; J. S. must pay the Rent to B. quarterly; for (Such) shall intend the Quality, as well as the Quantity. Noy 18. Sir Hugh Wrot’s Case.

3. If a Rent be referred to be paid before Michaelmas, this may be paid at any Time before Michaelmas, at the Election of the Leesee, and this Payment shall be a Bar in Debt brought for this after Michaelmas. Per Coke Ch. J. Roll. R. 390. Trin. 14 Jac. B. R. in Cafe of Whitcheoke v. Fox.


5. Pro qualitatem Anna, is all one as if it had been annually, and then it is to be paid at the End of every Year. Lutw. 231. Mich. 3 Jac. 2. Cooingsy v. Rodd.

(X. a) Payment. When. By Words (Months &c.) How to be computed.

1. Rent was referred payable at the 4 usual Feasts, upon Condition to re-enter, unless it be paid within 3 Months after any of the said Feasts; It was resolved by all the Justices, That in the Computation of these 3 Months there ought to be allowed 28 Days to every Month. 4 Le. 179. pl. 288. Mich. 15 Eliz. B. R. Wood v. Chivers.

2. A Month &c. shall be accounted to consist of Days, and therefore the Demand shall be made at the 1st Instant of the Day, without accounting Nights, but the Night is Parcel of the Year, yet it cannot be deman-ed in the Night. Per Bromely. Dal. 114. pl. 5. 16 Eliz. in Cafe of Butle v. Willord.

3. Condition of Re-entry was on Non-payment of the Rent by the Space Cro. E. 42. of a Month after every Quarter, and the Demand of the Rent was the 39 & 79 28th Day after Christmas; And well, as is resolved in the Cafe of the Eliz. B. R. Bishop of Peterborough v. Caresby. 2 Lutw. 1139. in the Cafe of Kirby Allen v. Andrews. And if Leesee comes on the Land to make a Tender within the Month, and Leesee is not there, it is no good Tender.

(V. a) Pay-
(Y. a) Payment. When. By transposing the Feast-
Days mentioned in the Grant.

1. If Leafe be to one in November, rendering Rent at Michaelmas and the Anunciation, yet the first Payment shall be at the Anunciation, because it is the first Day of Payment in Time tho' it be not the first in Na-

2. If Leafe be to one in November, rendering Rent at Michaelmas and the Anunciation, yet the first Payment shall be at the Anunciation, because it is the first Day of Payment in Time tho' it be not the first in Na-

(Z. a) Payment on the Rent-Day. Good. And to whom. Leffer dying on the same Day.

1. "H O R P" said in a Quare Impedit, That it is not doubted but if the King's Tenant receives his Rent due from his Tenants at Christ-
mas on Christmas-Day, and after he dies the same Day, that the Tenants shall pay it again, and the Lands shall be thereof charged in the Exche-
quer; which none deny'd or affirm'd. Therefore quae Legem? For if the Bishop presents to his Advowson, and his Clerk is inducted and in-
ducted, and the Bishop after dies the same Day, by which the Temporal-
ties come to the Hands of the King the same Day, the King shall not have the Pretenntation. Contra, it no Induction was. Quare of the Di-
versity of the Payment of the Rent, and this Cafe of the Advowson; For all is one in Realon. Br. Rents, pl. 2. cites 44 E. 3. 3.

2. If the Rent be payable at Easter, and the Tenant pays the Rent in the Morning * about 10 o'clock of the same Day, and the Leffer dies be-
fore in the same Morning, this Payment was voluntary, and yet it is good Satisfacnon against the Heir. 10 Rep. 127. b. Clith's Cafe. Mich.

3. If one feiled of Land in Fee Ost. 1 makes Leafe of the said Land for 10 Years from Michaelmas-Day then last past, rendering to him and his Heirs to l. a Year at the Feast of St. Michael the Archangel, or within a Month after; In this Cafe, if the Leffer dies between Michaelmas and the End of the Month the Heir shall have the Rent as incident to the Reverion, and not the Executors as Rent arrear; because it is not due till the End of the Month. Cited by Coke Ch. J. Mich. 11 Jac. in Clith's Cafe, as a Cafe whereof he had been a Report Mich. 3; H. 8. in the Time of Baldwin Ch. J. where it was so held by all the Judges.

4. Tho'
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4. The *Sun-set* is the Time appointed by Law to demand Rent to take Advantage of a Condition of Re-entry, and to render it to live a Furniture, yet it is *not due till Midnight*; For it one falled in Fee leafes for Years, rendering Rent at Midnight on Condition of Re-entry for Non-Payment; now if he will take Advantage of the Condition he must demand it at Sun-set, but if he *dies after Sun-set* and before *Midnight* his Heir shall have this Rent, and not his Executors, which proves that the Rent is *not due till the last Minute of the Natural Day.* 

5. A granted a Rent-Change to B. for Life, payable at Lady-Day and Michaelmas, and B. died on Michaelmas-Day after Sun-set; It was held proper given by Judge Tracy, That since B. lived after Sun-set, which was the legal *Sun-set* of a Time for demanding the Rent, tho' he died before 12 at Night, it should go to the Executors. *Wms's Rep.* 178, 179. Arg. cites it as a Case at Durham Abbey. 3. See *Cale* 21. in the Case of Dupper Executor of Bulkervil v. Mayo.

6. If Leifier dies on the Rent-Day between 3 and 4 in the Afternoon be-fore Sun-set, the Rent shall go to the Heir or Jointest; Except at the Time of the Leifier's Death there was no Remedy or Means to compel by the Name the Payment thereof. Decreed per Trevor Master of the Rolls, 1711. of Ld. Rockingham v. Oxenden. 

7. The Disjucetion is between Leaves determined and Leaves continuing. In the first Case, it a Tenant for Life makes a Lease for Years, and re- 

6 T (A. b) Pay.
Rent.

(A. b) Payment. Good. And what Amounts to a Payment.

1. Payment of Rent by the Tenant to one Covenantor, where there are two or more, is good, and a Payment to both. Br. Tender, pl. 19, cites 46 All. 1.

2. A Payment made in Name of Sworn of Rent being given before the Day on which the Rent is due, shall not be abated out of the Rent. Co. Litt. 315. a.

3. Money paid for Rent before the Day of Reservation is no good Payment of the Rent; For it is a Payment only of a Sum in Gross. Cro. E. 15. 3. 15. Pauch. 25. Eliz. C. B. D. Cromwell v. Andrews.

If the Lessee covenants, to pay his Rent to the Lessor, his Payment of the Rent before the Day is no Performance of the Covenant, Coast part. Le. 136. pl. 186. Mich. 52 Eliz. C. B. in the Cafe of Littleton v. Perns.

4. In Debt for Rent the Defendant gave in Evidence, That the Lessor was bound by Covenant to repair the House, but did not; and therefore he expended Part of the Rent in the Repair of the House. Per 2 Jut. Contra Fenner J. The Lessor might expend the Rent in the Repairs and stop so much. But it should be pleaded and not given in Evidence. Cro. E. 222. pl. 2. Pauch. 33 Eliz. B. R. Tailour v. Beale.

5. Paying Rent-Charge &c. by the Lessor’s Order or Appointment is Payment to himself. Cro. E. 223. Tailour v. Beale.

6. There is a Divinity where the Accquittance for the last Quarter is under the Plaintiff’s Hand and Seal, and where it is under his Hand only; For in the first Cafe it is an Eftoppel, in the last it is but Evidence. Comb. 59. Trin. 3 Jac. B. R. Fountain v. Gnales.

(B. b) Determined or Not; where the Estate, on which it was reserved, is determined.

1. A MAN feiled of a Forest granted the Office of Forester to one rendering Rent, and after gave the Forest to J. S. The Forester forfeited the Office, and the Lord of the Forest feiled, yet the Forester shall render the Rent to the Grantor; quod nota bene. Br. Charge, pl. 52. cites 26 Affl. 66.

2. If an Albot has a Rent, and all the Monks die, the Rent-Charge is extinct: And so of an Annuity; for the Corporation is determined, and the Creation De Novo is another Body. Br. Mortmaine, pl. i. cites 20 H. 6. 7.
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3. If a Man grants a Rent out of a Mill, and the Mill is taken, yet the Soil is charged. Br. Acceptance, pl. 5 cites 9 E. 4 & 21. Per Danby.

4. A Parsonage Appointed to a Prior Allen, was charged with an Annuity, and after was sold into the King's Hands; and it was enacted by Parliament, in Time of H. 5. That the Poffeffions of Priors Allen should remain to the King and his Heirs for ever; and the King granted the Parsonage to another and his Successors, as it was in the King's Hands; and the Charge brought a Writ of Annuity against the Grantee of the Parsonage &c. And the last Opinion was, That the Annuity is determined, for the Corporation is dissolved. Br. Charge, pl. 54. cites 21 H. 7. 1.

5. King Ed. 6. purfuant to the Will of H. 8. granted the Minor of D. S. C. cited to his Sister Mary, so long as she should live unmarried. She granted a Rent-charge out of it. The King died, and the Reversion by that Means deft to her, and then she married King Philip. The Question was, Whether she might not avoid the Rent-charge? But the Book leaves it a Quare. Dyer 141. pl. 44. Patch. 3 & 4 P. & M. may avoid her own Grant, as it is in Randies Reports, and as it is put at large in D. 124. But Mo. 554. Coke, who argued on the other Side, denied the Exposition of Egerton, and infilled that she should not avoid her own Charges made by her before the Defeat of the Reversion.

6. A Tenant for Life made a Leafe for 21 Years, rendering Rent at Michahelmas and Lady-day, or within 13 Weeks of any of the 3rd Feasts, After Michahelmas, and before the 13 Weeks past, A.died. The Plaintiff, his Executor brought Debt for the Rent. Adjudged that the Action did not lie for the Rent; for being to be paid at Michaelmas, or within 13 Weeks after, the Leafe has Election to pay it at any of the Days, and before the left Day it is not due; and when the Leffer dies before that Day, his Executors have not any Right to the Rent; but after the Death of the Leffer, having but an Estate for Life, the Rent is gone. But if the Leffer had had a Fee-sduple in the Land, and had died before the left Day, the Heir should have had the Rent, as incident to the Reversion; but if the Leffer had survived both Days, the Rent had been a Thing vested in him, and his Executors should have had it. But the Rent had been reserved at Michaelmas, and if it be behind by 13 Weeks, that then it should be lawful for the Leffer to enter; if the Leffer survive Michaelmas, his Executors shall have Debt for the Rent; for then the Rent is due, and the 13 Weeks are but a Disposition of the Party of the Leffer until that Time; And in this Case, as well as where the Rent is reserved at two Days in the Disjunctive, it is sufficient that the Rent be demanded at the Last Day, without demanding of it at the first Day. 4 Le. 247. pl. 423. Mich. 12 Jac. B. R. Glover v. Archer.

* Bartleb v. Stott, where a Leafe was made for 21 Years, rendering annually at Michahelmas, or within 40 Days, such Rent, the Leafe beginning at Michahelmas, shall end there; and the Rent was within 40 Days, the Leafe being annually due for the last Year, although the Year expired before the 40 Days; and it was computed according to their Rates during the Term at the 40 Days Feasts, or within 40 Days, it shall be extended according to their Rates, or the Term being uncertain, depending upon the Life of the Leffer, the Term expires the 13 Weeks, so the Leafe is due, and the 13 Weeks are but a Disposition of the Party of the Leffer until that Time. And in this Case, as well as where the Rent is reserved at two Days in the Disjunctive, it is sufficient that the Rent be demanded at the Last Day, without demanding of it at the first Day. 4 Le. 247. pl. 423. Mich. 12 Jac. B. R. Glover v. Archer.
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or within 12 Days after every of the said Fests; and demands the Rent due at Michaelmas last-past, and mentions not the 12th Day after; and the Plaintiff had Judgment. And it was then said, That the Reference being Durante Termino at Michaelmas, or within 12 Days, this Election is determined at the last Festa, because the Term is expired.

7. Leafe for 3 Years of Tithes and Glebe, 2 Years and a Half' expired in the Leffer's Life, and the Leffe had taken the Profits of the whole Year in the Leffer's Life, who died before the last Rent-day; the Successor filed a Bill to have that Half Year's Rent. See Statute 28 H. 8. cap. 11. The Plaintiff had not made the Executor of the Leffer a Party. Per Lords Commissioners, Dixinus the Bill. 2 Vern. 136. pl. 134. Pach. 1650. Bencham v. Alton.


(C. b) Relation. Who shall have the Rent by Relation.

1. A Seized of Freehold and Copyhold Land, makes a Leafe for 1. Years of both, with Licence, rendering Rent, and after grants the Reversion of the Freehold, and makes a Surrender of the Copyhold to one and the same Person; and an Attornment was had for the Freehold, and the Surrender of the Copyhold was not presented till a Year after, yet he in Reversion shall have an Action of Debt for all the Rent; for the Premptom of the Surrender is but a Perfection of the Surrender before made. Arg. Lane 33. cites it as adjudged 41 Eliz. B. R. in Cafe of Collins v. Harding.

2. A seized of a Manor bargains it to B. Rent incurs before the Involvment; B. shall not have the Rent, tho' the Deed be inroll'd within six Months after. The fame of a Condition; and if a Reversion be granted, and before Attornment of the Tenant the Rent incurr'd, the Grantes shall not have the Rent, notwithstanding any Relation. Per Snig Baron. Lane 63. in Sir Edward Dimock's Cafe.

(D. b) Nomine Pone. What is, and How recovered.

1. A Rent-charge was granted for Years with a Nomine Pone, and a Clause of Distresses, if it was not paid on the Day. The Rent was behind; the Years expired. It was moved, That tho' the Years are incurr'd, he might distress for the Nomine Pone; but the Court was of a contrary Opinion, because the Nomine Pone depended on the Rent, and the Distresses was gone as to both of them. Winch. 7. Pach. 19 Jac. Tatter v. Fry.

2. A Nomine Pone is an uncertain Thing, and comes not within the Statute 21 H. 8. 19. of Awneries, as a Rent-charge does, which is certain. Arg. Sty. 4. in Cafe of Remington v. Kingerby.

3. A Grant was made of a Rent-charge of 20 l. per Annum to the Husband, and a Covenant to pay to the Children 300 l. a-piece; if Sons, at the Age of 21, and if Daughters, at the Age of 18 Years; and in Default of Payment of the said 300 l. then the Grantor further granted to the Husband and Wife, an Annuity of 4l. ever and above the Annuity of 20 l. as a Forfeiture.
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ture or Penalty, with a Cliue of Distress. One Question was, Whether this 4l. per Annum was a new distinct Rent from the 20 l. a Year, or a Nomine Poene annexed to the Rent of 20 l. per Annum. But the Court was not agreed; for the Ch. Justice held it a Nomine Poene, but two other Justices held otherwise, because the said annual Sum of 4l. was not to arise upon the Non-payment of the Rent-charge of 20 l. a Year, but for Non-payment of the Collateral Sum to the eldest Son, upon his coming to the Age of 21. And that a Nomine Poene is always given and created, upon Non-payment of Rent granted before; and tho' it is mentioned in the Indenture, that the 4l. shall be paid as a Forfeiture or Penalty, yet this is to be intended as a Forfeiture or Penalty for not paying the Collateral Sum to the eldest Son when he came to the Age of 21. But no Judgment was given. 2 Latw. 1151. Trin. 3 Jac. 2. C. B. Egerton v. Sheale.

(E. b) Nomine Poene. Charged or Benefited by it, Whos, and How far.

1. A. By Deed, in which B. his Son and Heir Apparent joined, (but B. did not seal it) granted an Annuity to J. S. for Life out of all his Lands in D. and if it should happen the said Annuity to be in Arrear, it should be lawful for the Grantee to enter for the same, as well as for 6 s. 8 d. Nomine Poene, &c. It is agreed in the Deed were no other Words of Grant. A. died; Debt was brought against A.'s Executors, as well for the Arrears of the Annuity as for the Nomine Poene. And upon Demurrer, all the Justices doubted whether the Action would lie against the Executors for the Penalty, because the Perfon of the Grantee was never charged with it; for the Words, If it should happen &c. are not Words of Grant. Dy. 227. a. b. pl. 43. Hill. 6 Eliz. Sir Geo. Capell's Cafe.

6. Rent was granted to A. illuing out of the Manor of D. for 60 Years, with a Nomine Poene; A. devised the Rent to B. Devisee shall take benefit of a Nomine Poene annex'd to an Annuity or Rent granted to a Tenant: The Nomine Poene shall pass as incident to the Rent; Per Yelverton and Fenner J. And in this Cafe Yelverton J. held, That an Action of Debt well lay for this Rent; but as to this Point Fenner J. doubted: Wherefore Caveni Justicarii absitibus aequornarum. Cro. E. 695. pl. 13. Trin. 44 Eliz. B. R. Brendolos v. Phillips.

3. A. leased for Years to B. rendering Rent at Michaelmas and Ladyday, with a Nomine Poene of 3 s. 4d. for every Day it should be Arrear after the Pease. B. affirmed the Term. It was adjudged that the Alignee is chargeable with the Nomine Poene incurred after the Allignement, but not before. Mo. 357. pl. 356. Trin. 36 Eliz. Thyn v. pl. 129. in Cholmley. S. C. agreed.

--- S. C. Cro. E. 353. pl. 1; Puck. 47 Eliz. B. R. sets the Penalty amounted to 500l. and more, and that Gawdy and Glench held that the Action lay against the Allignee; for the Land is charged there-with, and the Allignee for his own Time shall be chargeable. But Fenner held contrary, for the Penalty is quit Collateral. Fenner also moved, that the Declaration was not good; for he is not bound to the Penalty, unless the Rent be demanded, no more than he should be to the Forfeiture of a Lease for Non-payment Gawdy. It is not alike; for the Condition which goes in Defaulice of an Estate, shall be taken strictly, but the Penalty is in Nature of the Rent; and as he shall have the Rent it self without Demand, to be he shall have the Penalty. And to that Opinion Glench agreed, Pugh ab anabebo; wherefore it was adjoined.

4. And if the Rent be Arrear by 2 Feasts, the Penalty is 6 8. 8. a Day, viz. for the one Rent 3 s. 4d. and for the other Rent 3 s. and 4 d. more. Adjudged. Mo. 357. 355. Thyn v. Cholmley.
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(F. b) Nomine Poena. Demand thereof, or of the Rent for which it is given. Necessary in what Cases.

1. D E B T lies for Nomine Poena without a Demand of the Rent. Mo. 358. pl. 486. cites it to be adjudged in the C. B. Patch. 31 Eliz. in the Case of Moone v. Ingham. Rent rendering Rent by Indenture, and the Leffe corespond, That if the Rent be behind at any Time of Payment according to the Form of the Indenture, that the Leffe shall have Nomine Poena for such Default, and the Rent being behind A brought Debt for the Nomine Poena; The Question was, Whether without a Demand of the Rent, Deeds lay for the Nomine Poena? And the better Opinion of the Court was, That the Action of Debt did not lie. Godb. 144. pl. 203. Trin. 5 Jac. in B. R. Sir John Spencer v. Paynest. — S. C. cited Arg. 2 Jo. 53. Hill. 19 Car. 5. C. B. in the Case of Tuftian v. Roper. — S. P. Style 4. Hill. 21 Car. Remington v. Kangery. Admitter.

So where the Defendant made Avowry, and converted himself to £1. Rent due such a Day, and for Non-Payment thereof So l. Nomine Poena and avow'd for the 83 l. but laid no Actual Demand of Rent; IT was resolved by the Court, That this Avowry was insufficient for the Pain, which could not be forfeited without Actual Demand of the Rent, and yet the Return was adjudged unto him, because he had just Caufeto distrain for the Rent, and they appeared to the Court to be several. Hob. 153. pl. 177. Mich. 14 Jac. Howell v. Sambach. — Brownl. 179. Howell v. Sambay S. C. the Avowry was held ill for the Nomine Poena, but good for the Rent; and said it had been So adjudged in one Midlay's Cafe.

S. C. cited Arg. 2 Jo. 53. Hill. 19 Car. 5. C. B. in the Cafe of Tuftian v Roper.

2. A. was Leffe for 99 Years, if B. and C. go long lived. A. granted a Rent out of the Land, payable at Michaelmas and Lady-Day, and if it were behind 28 Days, being demanded at the House of C. then to pay 20 s. Nomine Poena for every Day; Adjudged, That for the Nomine Poena there must be an Actual Demand. Hutt. 114. Trin. 8 Car. Lamb v. Wilt.

(G. b) Nomine Poena. Demand thereof, when.

Brownl. 17. 1. A Leafe for Years was made rendring Rent, with a Nomine Poena of 8 s. per Day for Non-payment &c. In Debt brought for the Rent, and the Nomine Poena; IT was adjudged against the Plaintiff, because he did not set forth that the Rent was actually demanded at the Day, without which a Pain is not forfeited. Hob. 82. pl. 108. Hill. 10 Jac. Grosham v. Thornborough.

Brownl. 171. S. C. but the Word (Name) seems mis- printed for the Word (Demand) — S. C. cited Arg. 2 Jo. 53. Hill. 19 Car. 5. C. B. in the Case of Tuftian v. Roper.

2. A Nomine Poena was, That if the Rent was not paid at the End of 10 Days, being lawfully demanded, that then &c. Per Hobart If he would distrain for the Pain, he must actually demand the Rent at the 10 Days End, and must make another Demand of the Pain itself; (unless perhaps the Distresses will be a Demand) which must be after it is grown due, so that it is not till the 11th Day, in the End of which he must demand it; For the whole Day is given to the Payer without Fraction. And tho' the whole Claffe of Distresses be not several, one for the Rent, and another for the Pain, but as it were joint for both, so as there could be no Distresses for the Rent, unless there was also for the Pain forfeited, and Distresses for both, yet the Law will divide them, and distinguish the Demands according to their Natures. Hob. 208. pl. 292. Trin. 15 Jac. Browne v. Dunrery.

3. Nomine
Rent.

3. Nomine Pænce ought to be demanded strictly at the Day; and when it is to be demanded on the Land, it may be at any Time. Per Richardson. H. 8. Palf. 4 Car. C. B. Fox v. Vaughan and Hall.

(H. b) Nomine Pænce. Demand thereof; What is sufficient.

1. Where a Lease is by Indenture, rendering 10s. Rent, and for Default, or Refusal at any Payment 40s. Nomine Pænce, the Tender, Payment, and Request shall be upon the Land, and there it suffices. Br. Tender, pl. 23. cites 20 E. 4. 18.

But when it is all in the Indenture, the Penalty is of the Nature of the Rent. Br. Tender, pl. 22. And it was said per Brian, Where the Lessee pays that he has been always ready to pay his Rent, the Lessee may rely. That is made Request upon the Land, and otherwise the Request is not good; Quod Caria concedit. Br. Tender pl. 25. cites 20 E. 4. 18. Br. Conditions pl. 109. cites S. C.

2. One excused for a Rent granted, and a Nomine Pænce, and fraught not any Demand of the Nomine Pænce; But the Influe was tried, and found upon other Matter, viz. Non concedit. It was moved in Arrest of Judgment, That he alleged no Demand; yet the Avoivant had Judgment; For it is Matter confessed, and the Action is a Request, viz. the Avoivant. For he is there the Actor. And it is but a Circumstance collateral to the Right. Hutt. 42. Mich. 18 Jac. Sir Tho. Wentworth's Case.

3. M. a Feme folle Leffe for Life made a Lease for Years rendring Rent at Michaelmas and Lady-Day &c. with a Nomine Pænce of 40s. for every Day it shall be in Arrear after 30 Days next after the said Feoffs. Al. married A. but went from him and lived with her Son, who was the Leffe. The Rent-Day incurred, and the next Day after the Feoffs be demanded it, and the Leffe paid it to her without any Disagreement of the Husband (nor was it found that he had any Notice of the Marriage, tho' it appeared upon the Evidence that he had). Afterwards the Husband demanded the Rent, and 40s. for every Day incurred after it became due, which amounted to 333 l. and one Question was, Whether one Demand was sufficient, or whether there should have been a new Demand every Day for every 40s. As to this Point the Court differed; But Ley Ch. J. said, That the Rent ought to be demanded every Feoff, and yet the Words (every Day next day) shall be referred to the Day next ensuing the Rent Day. But Chamberlayne J. as to the Nomine Pænce was against the Plaintiff, whereupon the Plaintiff relied on the Penalty and Damages, and had Judgment for the Rent. Palm. 256, Mich. 19 Jac. B. R. Tracy v. Dutton.


1. If one makes a Lease for Years, rendring for the first 2 Years 10l. and afterwards 30 l. per Annum, with Condition, That if the Rent of 30 l. or any Part of it be behind, that the Leffe may enter; it was said that the Leisse may enter for the Non-payment of the 10 l. For the 10 l. was Parcel of the Rent; for it was but one Rent. 4 Le. 8. pl. 35. Hill. 27 Eliz. in the Case of Holland v. Hopkins.
Rent.

2. Leafe on Condition that if the Rent be behind, and no sufficient Dis
rrefs upon the Land, that then the Leffer may re-enter; If the Rent be
behind, and there be a Piece of Lead or other Thing hidden in the Land,
and no other Thing there to be distrained, the Leffe may re-enter; For
the Difesfes ought to be open, and to be come by.  Godb. 110. pl. 130.

(K. b) Re-entry in what Cases. Want of Disfrefs, and
defeating the Præmisces. Power of Juftices of Peace.

1. 11 Geo. 2. 19. E Naëts, That if any Tenant, holding any Lands,
S. 16. Tenements, or Hereditaments at a Rack-Rent, or
where the Rent reserved shall be full 5 Fourths of the yearly Value of the De-
nised Premises, who shall be in Arrear for one Year’s Rent, shall defert the
Premises, and shall leave the same uncultivated or unoccupied, so as no sufficient
Disfress can be had to counteract the Arrears of Rent, it shall and may
be lawful to and for 2 or more Juftices of the Peace of the County, Riding,
Drophones, or Place (having no Interets in the demised Premises) at the Re-
quest of the Leffor or Landlord, or his Bailiff, or Receiver, to go up and
view the same, and to affize, or cause to be affized on the most notorious Part
of the Premises Notice in Writing, what Day, (at the Distance of 14 Days
at least) they will return to take a second View thereof; and if upon such
second View, the Tenant, or any Person on his Behalf, shall not appear and pay
the Rent in Arrear, or there shall not be sufficient Disfress upon the Premises,
then the said Juftices may put the said Landlord or Leffer into the Possifion
of the said demised Premises, and the Lease thereof to such Tenant as to any
Demise therein contained only, shall from thenceforth become void.

S.17. Provided always, That fuch Proceedings of the said Juftices shall be exa-
ninated into in a Summary Way by the next Juftice, or Juftices of Allif of
the repective Counties in which fuch Lands or Premises lie; and if they lie in the City of London, or County of Middlesex, then by the Judges of the
Courts of King’s-Bench or Common-Plains, and if in the Counties Palatine of
Chefler, Lanciafter, or Durham, then by the Judges thereof, and if in
Wales then before the Courts of Grand Sessions respectively, who are hereby re-
spectively impowered to order Reftitution to be made to fuch Tenant, toge-
 ther with his Expences and Cofts to be paid by the Leffor or Landlord, if
they shall see Cafe for the fame, and in cafe they shall affirm the Act of the
said Juftices to award Cofts, not exceeding 5l. for the frivolous Appeal.

(L. b) Re-entry. Want’d. By what Act.

But if Leffor
accepts next
Quarter’s
Rent, then
he has lost
the Benefit
of the Re-entry; For thereby he admits the Leffe to be his Tenant. Le. 262. pl. 568. Green’s Cafe.

RENT due at Michaelmas was behind being demanded at the
Day, which Rent Leffe afterwards accepted, and after entered for
Condition broken, and good; for the Rent was due before the Con-
dition broken. Le. 262. pl. 568. 18 Eliz. Green’s Cafe.

And if Leffor disfains for Rent due at Lady-Day after the forfeiture, he cannot after re-enter for
the said forfeiture; For by this Disfres he hath affirmed the Possifion of the Leffe. Le. 262. pl. 568.
Green’s Cafe. — So if he make Acquisition for the Rent, as a Rent. Secs if the Acquisition be not
for a Sum of Money, and not expressly for the Rent. Per to. Cur. Le. 262. pl. 568. Green’s Cafe.

Cra. Le. 3. pl. 6. Hill. 24 Eliz. S.C.

(M. b) Re-
(M. b) Remedy for Rent-Charge, Rent-Seek &c.

1. If a Man who has a Rent-Seek be once feized of any Parcel of the Rent, and after the Tenant will not pay the Rent behind, this is his Remedy. He ought to go by himself or by others unto the Lands, or Tenements out of which the Rent is lying, and there demand the Arrears of the Rent, and if the Tenant denies to pay it, this Denial is a Remedy

2. Also if the Tenant be not then ready to pay it; this is a Denial, which

3. Also of the Tenant, or any other Man being remaining upon the Lands or Tenements, to pay the Rent when he demands the Arrears; this is a Denial in Law, and a Difference in Deed, and of such Difference he may have an Affife of Notice against the Tenant, and shall recover the Seisin of the Rent, and his Arrears, and his Damages, and the Costs of his Writ and of his Plea &c. Litt. S. 233.

4. And if, after such Recovery and Execution had, the Rent be again denied unto him, then he shall have a Declaration, and shall recover his double Damages &c. Litt. S. 233.

5. Of Rent-Seek a Man may have an Affise of Mortmain or, a Write of Ayre or Conveyance, and all other Manner of Actions Real, as the Case lies, as he may have of any other Rent. Litt. S. 235.

6. If Rent-Charge be granted before Time of Memory, and no Distress or Seisin had within Time of Memory, the Heir of the Grantee is without Remedy. Br. Rents, pl. 7, cites 14 H 7, 4.

7. A Man may differ for Rent-Seek in 3 Cases. 1st. As if a Man holds of B. by Homage, Fealty, and 10s. Rent, who takes Wife and dies, now the Wife shall have the 3d Part of the Rent as a Rent-Seek, and for this Rent the shall eitirian, and this is in reason Ditis. 2dly. If there be Lord Mefne and Tenant, and the Tenant holds of the Mefne by 10s. and the Mefne over by 2d. now if the Lord Paramount proceeds the Tenancy, the Mefne shall have the Overplus of the Rent as a Rent-Seek, and may distrain for it, because the Rent was Rent-Service before, and the Nature of the Rent is not charged by the Act of the Mefne. 3dly. If the King has a Rent-Seek, he may well distrain. Keilw. 124. pl. 11. Calis Incerti Temporis.

8. Affise was for a Rent-Charge devised unto him for Life, whereas he 6 Rep. 38 b, had Seisin by the Hands of a Tenant for Years; and whether this Seisin was Sufficient to maintain an Affise, was the Question? And held by all the Judges that it was not a Sufficient Seisin. Cro. J. 142. pl. 20. Mich. 4 Jac in B. R. Bredman v. Bromley

9. 4 Geo. 2, 23. S. 5. Enacts that all Persons shall have the like Remedy by Distress, and by Incumbering and Selling the same in Cases of Rent-Seek, Rents of Affise and Chief Rents, which shall be answered or paid for 3 Years, within the Space of 20 Years before the first Day of this Seisin of Parliament, or shall be hereafter created, as in Case of Rents referred upon Life.

6X (N. b) Re-
(N. b) Remedy for Rent. Where the Goods are taken in Execution.

1. 8 Ann. 14. Nacts, That no Goodsover Chattels whatsoever, lying or being in, or upon any Message, Lands, or Tenements, which are or shall be leased for Life or Lives, Term of Years, or Will, or otherwise, shall be liable to be taken by Virtue of any Execution, on any Pretence whatsoever, unless the Party at whose Suit the said Execution is sued out, shall before the Removal of such Goods from off the said Premisses, by Virtue of such Execution or Extent, pay to the Landlord of the said Premisses, or his Bailiff, all such Sum or Sums of Money as are, or shall be due for Rent for the said Premisses at the Time of the taking such Goods or Chattels, by Virtue of such Executions, provided the said Arrears of Rent do not amount to more than one Year’s Rent; and in case the said Arrears shall exceed one Year’s Rent, then the said Party, at whose Suit the Execution is sued out, paying the said Landlord or his Bailiff one Year’s Rent, may proceed to execute his Judgment, as he might have done before the making of this Act; and the Sheriff or other Officer is hereby empowered and required to levy and pay to the Plaintiff as well the Money so paid for Rent, as the Execution Money.

S. 8. Provided, That this Act shall not prejudice the Crown, to recover and settle Debts, Fines and Forfeitures due and answerable to the Crown.

(N. b. 2) Remedy. By Ejectment. Where there is No Distress, or Tenant in Possession.

1. 4 Geo. 2. Nacts that as often as Half a Year’s Rent is due, and the 29. S. 2. Leffer has Right by Law to re-enter for Non-payment, he may, without any formal Demand or Re-entry, serve a Declaration in Ejectment for Recovery of the demifed Premisses; or if the same cannot be legally served, or there is no Tenant in actual Possession, then to fix the same on the Door; or if no Message, then on some notorious Place of the Lands &c. and it shall be deemed legal Service, and shall be as a Demand or Re-entry. And in Case of Judgment against the Goad Bailiff, for not confining Leffes, Entry, and Officer, it shall appear to the Court by Affidavit, or be proved upon the Trial, in case the Defendant appears, that Half a Year’s Rent was due before the Declaration was served, and that no sufficient Distress was to be found on the demifed Premisses counteracting the Arrears then due, and that the Leffer had Power to re-enter, he shall have Judgment and Execution; and if Leffee &c. fuller Judgment and Execution, without paying Rent and Arrears, and full Costs, and without filing any Bill in Equity within for Calendar Months after Execution executed, such Leffee &c. shall be barr’d of all Relief in Law or Equity, other than by Writ of Error, to reverse such Judgment, and the Leffer shall hold discharged of such Leafe; but if Verdict be for Defendant or Plaintiff be Nonfuit, except for Defendant’s not confining Leafe, Entry, and Officer, Defendant shall have full Costs, but not to bar the Right of any Mortgagee, be paying the Arrears, Costs and Damages, and performing the Covenants &c. as Leffee ought to have done.

S. 3. No Injunction against Proceedings at Law in such Ejectment, unless within 40 Days after a perfect Answer filed by Leffor or Leffees &c. such Leffes &c. bringing into Court so much Money as Leffor of the Plaintiff shall swear to be due, (over and above all just Allowances) and Costs taxed in the said Suit, to remain till bearing the Cause, or to be paid to the Leffor on Security,
cunity, subject to Decree of the Court. And if such Bill be filed within 40 Days, and after Execution is executed, the Lessee shall account for so much only as he made, Bona Fide, without Fraud, Deceit, or wilful Neglect, from his actual Entry; and if it be less than the Rent, the Lessee before he is referred to Possession, shall pay what is short. Provided if Lessee &c. before Trial, tenders &c. the Arrears and Costs to the Lessee, his Executors &c. or to the Attorney in the Cause, then the Proceedings to cease.

(N. b. 3) Remedy for Rent. Tho' No Agreement can be proved.

1. 11 Geo. 2. £ NAcis that where the Demise is not by Deed, the Landlord 19. S. 14. shall recover a reasonable Satisfaction for the Tenements occupied by the Defendant in an Action on the Cause for the Use and Occupation of what was so held or enjoyed; and if in Evidence on the Trial of such Action, any Parted-Demise, or any Agreement (not being by Deed) wherein a certain Rent was reserved, shall appear, the Plaintiff in such Action shall not be frustrated, but may make Use thereof as an Evidence of the Quantum of the Damages to be recovered.

(O. b) Remedy for Rent Arrear, after Alteration of the Estate by him to whom the Arrears are due.

1. 1 P. A. be seised of a Rent-service or Rent-charge in Fee, and grants it over by Deed to B. and his Heirs, and the Tenant attorns, A. is without Remedy for the Rent Arrear before the Grant; for distrain he cannot, and he has no other Remedy; because all Privity between him and the Tenant is destroyed by Attornment to B. And A. has no more Right than any Stranger to come on the Land after such transferring the Rent. Agreed; and said to be agreed in Andrew Ognell's Case 4 Rep. 49. Vaughan 40. Hill 21 & 22 Car. 2. C. B. in Case of Dixon v. Harrison. the Use of Hafnoff and in Wife in Tait. Per Vaughan Ch. J. he may distrain for the Rent Arrear before the Fine levied. 2 Jo. 2. Witheridge v. Harrison.

2. If Grantee of Rent-charge (as above) regrants the same Rent to A. either in Fee, in Tail, or for Life, and the Tenant attorns, as he must to this Re-grant, yet A. shall never be enabled to distrain for Arrears due to him before he granted over the Rent; for now the Privity between him and the Tenant begins but from the Attornment to the Re-grant, the former being absolutely destroyed. Per Vaughan. Vaughan 40. in Case of Dixon v. Harrison.

3. Two Tenants in Common by a Devise of the Lease granted the Re-assignment by Fine after Arrears due, and afterwards bring Covenant against B. the Allignee of the Lease. Resolv'd, That the very Privity of the Contract was transferred by the Statute of H. 8. which gives the Action for and against the Allignees; and the Contract still remains, tho' the Privity of the Estate is gone. And per Cur. Deo lies in this Case for Arrears of Rent, a Fortiori Covenant &c. And Judgment accordingly. Carth. 289. Mich. 5 W. & M. Midgley and Gilbert v. Lovelace.

(P. b) Arrears
(P. b) Arrears recover'd. At and from what Time.

1. LORD and Tenant, and the Rent was Arrear, and the Tenant recover'd by Assize, and the Lord brought Assize of the Rent, and recover'd as well the Arrears due before the Disaff, as the Rent due after the Disaff, but no Rent during the Disaff. And the Pollution by Disaff does not determine the Arrears due before; but the Rent for the Time of the Disaff was recouped in the Recovery in the Assize by the Tenant against the Lord. Br. Arrears, pl. 17, cites 8 Att. 37.

2. He who re-enters for Condition for Non-Payment of Rent upon a Lease shall have the Land and the Rent also, still, the Arrears. But Quære if he does not enter within a Year or Half a Year after the Time of forfeiture what Remedy for the Rent incurred after the Time of the Re-entry? Br. Arrears, pl. 11, cites 6 H. 7, 3.

3. Where a Rent is extinguished during the Term by the Act of the Lessor; As where Lessor for 20 Acres, rending Rent, grants all his Estate in one of the Acres to J. S. and the Lessor confirms the Estate of J. S. which extinguishes the Rent in all the Acres, the Lessor shall not allow for the Arrears of Rent before the Time of Confirmation and Extinction. Ow. 10. Goddard's Cae.

4. Rent is render'd to a Bishop, who resided it, and afterwards was translnted to another See. Upon a Bill brought by the Bishop, the Lord Chancellor was clear of Opinion. That by Law the Plaintiff could not recover the said Arrears, but how far the Plaintiff was receivable in Equity was the Question; And his Lordship ordered Precedents to be produced, where there hath been a just Duty, but no legal Remedy; And ordered a Cae to be itated. But it appearing, That the Plaintiff, before he was translnted to the other See, would not accept the said Rent; his Lordship, with Judges assisting him, were clear of Opinion, That there was no Ground in Equity to give the Plaintiff any Relief, and dismissed the Bill. 2 Ch. R. 60, 61. 25 Car. 2. The Bishop of Sarum v. Nolworthy.

5. & Anna 14. S. 1. Enquets, That No Goods &c. shall be taken in Execution, unless the Party before Removal of them shall pay to the Landlord One Year's Rent. And the Sheriff &c. shall ley the Money to paid for Rent, as well as the Execution-Money.

(Q. b.) Chargeable with Arrears, Who. Alienees.

1. In Assize in Writ of Entry in Nature of Assize of Rent, the Demandant shall recover against the Tenant all the Arrears to the Time of the Disaff, tho' they are arrear for 20 Years, and the Tenant has not been Tenant nor Pernor but for a Month only. In such Action of Land the Statute is, That every Tenant shall answer for his Time if the Disaff for be not sufficient to render Damages. But of Rent, he who is Tenant at the Judgment shall answer all the Arrears. Br. Arrears, pl. 13, cites 33 H. 6, 46.

S. P. Co. Legt 269. b. If there is Lord and Tenant, and Rent is Arrear, Tenant in Lee's B. If the Lord accepts Rent or Service of B. he shall lose the Arrears in Time of the Feoffor, tho' he made no Acquittance; For after such Acceptance he shall not avow on the Feoffee at all, nor on B. for what was due before;
Rent.

But if the Feoffor dies it is otherwise. 3 Rep. 66. b. in Pennant’s Cae. — And says, That all this appears in 4 E. 3. 22. 7 E. 3. 4. 7 E. 4. 27. 29 H. 8. tit. Aowry 111.

3. A. grants a Rent-Charge to B. — B. dies. A. infefoffs C. — C. infefoffs D. several Years afterwards, and several Years afterwards D. infefoffs E. Per 3 Justices against Anderson Ch. J. E. shall be chargeable with the Arrears to the Executors; But all agreed, That the Lord by Ejfect, Ten- nant in Dower or by the Courtely, should not be chargeable; For they did not claim by the Party only, but by the Law also. 3 Le. 263. pl. 355. Mich. 32 Eliz. C. B. Anon.

4. If J. S. grants a Rent-Charge out of his Land for Life, and the Rent is arrear, and afterwards makes a Feoffment in Fee to A. and the Rent is arrear again in A.’s Time, and then A. infefoffs B. and the Rent is arrear again in B.’s Time, and then the Grantor dies, his Executor may have an Action of Debit against every of them for the Rent arrear in their several Times respectively; For Qui fentit Commodum, Entire debit & Ones. 7 Rep. 38. b. "The last Resolution, Mitch. 5 Jac. C. B. in Lillingstone’s Cae."

(R. b) Remedy for Rent by Distrefs. By Recoverors.

1. 7 H. 8. 4. E N A C T S, That Recoverors of Minors, Lands, Tenure—If a Manu- nants, and Advowsons, their Hears and Affairs, may had made a disstrain for Rents, Services, and Caftions, due and unpaid, and make Action to- ry, and satisfy the same; and have like Remedy for recovering them as the act at 3. 6. Recoverors might have done or had, albeit the said Recoverors were never sef- ed thereof.

Before Michaelmas he had suffered a Common Recovery, the Recoveror should disstrain for that Rent which the Lessee before the Recovery could not; But if the Recovery had not been had, he might have disstrained, and if it is within the Statute. But if a Lessee had been levied of a Manor, and before Atten- war was made a Common Recovery, the Recoveror should not disstrain &c. because the Co- mitee, against whom the Recovery was had, could not. But this Act extended only to Distresses and Advowson for Rents, Services, and Caftions, and gave also a Form of a Quare Impedit. But upon this Statute it was held, That the Recoveror could not have an Action of Debt against the Lessee for Years, nor an Action of Usque against Tenant for Life or Years; and therefore Remedy was provided in their Cases by the Statute of 21 H. 8. 15. Co Litt. 104. b.

2. A. made a Leafe for Life to B. and afterwards a Leafe for Years to C. ibid Marg. B. surrendred to A. who suffered a Common Recovery to the Use of J. S. One Question was, Whether this Case was out of the Statu- ture of 7 H. 8. cap. 4. or that J. S. could disstrain and avow for the Rent within this Statute; For A. himself, who suffered the Recovery, could not make Avowry. Knightly bid them demur if they would; But the Counsel pray’d Day to another Term, and had it. D. 31. pl. 210, 214. Hill. 26 H. 8.

6 Y (S. b) Re-
Rent.

(S. b) Remedy for Rent Arrear. By Statute.

The Preamble of the Statute concerning Executors or Administrators of Tenants for Life, is to be intended of Fee-Simple, Tenants in Fee-Tail, and Tenants for Term of Life of Rents-Services, Rent-Charges, Rent-Sacks, and Fee-Farms, have no Remedy to recover such Arrears of the said Rents or Fee-Farms as were due unto such Executors or Administrators in their Lives; Nor yet the Heirs of such Executors, nor any Person having the Possession of his Estate after his Death, may distrain or have any lawful Action to lay any such Arrears of Rents or Fee-Farms due unto him in his Life, as is afo before; but by reason whereof the Tenants of the Demeans of such Lands, Tenements, or Heredaments, out of which such Rents were due and payable, were Right ought to pay their Rents and Farms at such Day and Times as they were due, do many Times keep, hold, and retain such Arrears in their own Hands, so that the Executors and Administrators of the Persons, to whom such Rents or Fee-Farms were due, cannot have or come by the said Arrears of the same, towards the Payment of the Dividends and Performance of the Will of the said Executors.

A. An Executor or Administrator of the Manor of D. Gratuitously deceased, is entitled to his Right of a Life Tenancy according to the present Parlia-

ment, but the Executors and Administrators of every such Person or Persons, to whom such Rents or Fee-Farms is or shall be due and paid at the Time of his Death, shall and may have an Action of Debt for all such Arrears against the Tenant or Tenants that ought to have paid the said Rents or Fee-Farms so long behind in the Life of their Executors, or against the Executors and Administrators of the said Tenants.

Rent, held by the Heirs, Executors, or Administrators of a Gratuitously deceased Tenant, is due to the Heirs of the Tenant, and may be recovered by the Action of Arrears, at any Time, by Motion of the Executors or Administrators of the Tenant, or by the Heirs of the Tenant, as often as such Tenants or Rents have been due, and are due. The Executors and Administrators of a Gratuitously deceased Tenant, are entitled to their Arrears, as often as such Arrears have been due, and are due, by virtue of the Act of 1616, 25 Hen. 8.

The Difficult is the more plain and certain Remedy than the Action of Debt; For the Action of Debt must be brought against them that is sued for and recoverable, according to the Arrears of all such Rents and Fee-Farms, upon the Land, Tenements, and other Heredaments which were charged with the Payment of such Rents or Fee-Farms, and chargeable to the Diffres of the said Executors. And further, it is lawful to every such Executor and Administrator of any such Person or Persons, unto whom such Rents or Fee-Farms, are due and not paid at the Time of his Death, as is afo before, to distrain for the Arrears of all such Rents and Fee-Farms, upon the said Land, Tenements, and other Heredaments which were charged with the Payment of such Rents or Fee-Farms, and chargeable to the Diffres of the said Executors.

Also the same is lawful to every such Executor and Administrator, unto whom such Rents or Fee-Farms, are due and not paid at the Time of his Death, as is afo before, and afterwards may be charged with the said Tenant in Demise, which ought immediately to have paid the said Rents or Fee-Farms, so long behind, to be levied by the said Executors, in the same.

A suit for a Land held by the said Executors, shall be prosecuted in the same Manner as in the Case of the said Tenant in Demise, as afo before, and afterwards may be charged with the said Rents or Fee-Farms, so long behind, to be levied by the said Executors, in the same.

Lives by Copy, according to the Custom of the said Manor, Tenements, or Heredaments, continue, remain, and be in the Seisin or Possession of the said Tenant in Demise, who ought immediately to have paid the said Rents or Fee-Farms, so long behind, to be levied by the said Executors, in his Life, to the

Court or the

Lands, Tenements, or Heredaments, continue, remain, and be in the Seisin or Possession of the said Tenant in Demise, who ought immediately to have paid the said Rents or Fee-Farms, so long behind, to be levied by the said Executors, in his Life.
and the Manor defeended to C his Son, who granted a Copyhold to D. The Executours of J S thereof d, for the Rent Fowler conceived, That they could not; Because this Land did not continue on the Sifta and Possession of the Tenant, and that here C was Infe in Life, and in claims not by B his Father only but per Formam Fuit. This only, but alfo to Deferit and Aworry. And Wimham and Rhodes held, That the Copyholder claims not by the Lord only, but alfo by the Cadoom; but that is not any Part of his Title, but only appoints the Manner how he shall hold, "That the Polele has continues here in C. For the Polele and Stains of the Copyholder is his Possession, as if D D be omitted, C shall have an Allot. And in the brick Words of the Statute are abovenote. So the Copyholder and Sifta and Possession in C who claims not only by B was the Tenant in Demesne, that ought to pay the Rent. But Fowler answered, That the Sifta and Possession intended by the Statute is the very actual Possession, viz. Such in which the Defeits may be taken; which, he said, could not be in a Freethold without an actual Possession. But it was agreed per

or. That the Copyholder should hold the Land charg'd 2 Le 152. pl. 189. Hill 18 Fiz C B.

The Executors of Sir William Cotton v. Clifton. 5 Le 59. pl. 8. S. C. by the Name of the Earl of Wemfordenich's Cafe, reported almost in the same Words.

It was infiribed by Lithurgh, That none are Tenants in Demesne but he who is in Possession, and therefore if one grants a Rent Charge for Life, and then makes a Lease for Years, that during those Years he shall not be charg'd for Arrears then incurred; For by the statute none is chargable but the Tenant in Demesne, who ought to pay the same, and the Tenant for Years ought not to pay it: and the law lays the Charge upon him, during the Term. But Watson of a contrary Opinion held, That the Lease may enter for all the Arrears charg'd; Because he is the Person who ought to pay the same, and the Tenant is not charg'd, but only there is a Necessity for him to pay it to prevent a Defeit. But this was not right, it being a Trial by Order of the Exchequer Chamber, to try if such Rent was granted or not. Lect. Rep. 95. Tran. 4 Cur. in the Exchequer. Birmingham v. Parkburgh.

Or in the Sifta or Possession of any other Person or Persons claiming the said it was mov'd to the Court, Lands, Tenements, and Hereditaments only by and from the same Tenant by W A grants a Rent Charge to B, the Rent is behind, B do's. A interest C of the Lands in F., who lives Years after hisd D's. d150, alldoers Years after int. £3. It is alfo be divided as by Wimham, Peruim, and Wimham J upon' And C a fray Lcd. Ch. 1 That E should be chargeable with the said Arrears in the Executors of A. 1 Le 4. 170. pl. 418. Mech. 26. Liz. in B. R. Avo. But they all agreed, That the Lord by Effect of Tenant in Descer, or by the Grantor, should not be charge'd; For they do not claim it by the Party only, but also by the Laws. 1 Le 541. pl. 534. Avo. 4. 1 Le 264. pl. 535. S. C. repurted in the same Words.

An alledged of a Receipt in Fee after the Determination of a Lease of 70 Years, then in LATIN, created a Rent Charge out of the Land in S. The Term for 70 Years expired; then A was bid B in Feo. J S made his Executors and idea E made a lease or H int. The Executors of J S discharged for Arrears due in the Life of J S before the Exploitation of the Term of 70 Years. It was objcted, That the Claim was out of the Skin, which extends only to Tenants in Demesne, who immediately ought to have paid it, who in this Cafe was the Granter, and who claims only by B, and from him, whereas the Lease at Will did not claim from him but from the Feodar. It was refuted, That the Arrears due in the Life of J S were left at the Common Law. But adjudged, That all the Lives or H int. claims not immediately from the Granter, yet he is in the Act. For where Things are due in Right and Verity, and not from the Granter, yet he is in the Act of God, viz. By the Death of him to whom they are due, Statute gives no Recourse in such Cases shall be continued bottomlessly, and to extend the remedy proportionably to the Mitchell intended to be cured by it, agreeable to the Lease and Tenement, and the Grantor, and the Granter's Consent, and fo on in Latinum, shall be charged by Virtue of this Act. And Kane thought the 24 Granter within the very Matter of Form, for the life is not in (by) the Granter, he is in (some) For from him. The 24Granter is the Form of (under him) and the Words (by) shall be taken for (or) and that the Words (by) is meant, That he must claim only under the Tenant in Demesne, and not a Parliament. As if Tenant in F int. made a Receipt in Fee, and dies, and the Distrinet charges the Land with a Rent in Fee, and then infers the Infir in Tail within Act, it is that he is remitted; Now in this Cafe this Word (Only) has its Operation. For now the Duke claims by Title of Parliament. But if the Tenant makes a Receipt in Fee to the life of another, and he is not in Le Per, and yet he claims under the Tenant, this was the Intent of the Matter alfo: in this Cafe, Get he does not claims only by the Tenant, but by the Statute also: is in Le Per, and yet he claims under the Tenant; and this was the Intent of the Act.

Art. 7 Rep. 48. b. 50. b. Andrew Ogges's Case So if Tenant makes a Gift in Tail, and the door dies, the Infe in Tail is still in this Statute: For he claims (only) under the Title and Estate of the Tenant in Demesne, tho' he does not claim only by Defeit, but also per Formam Dent. ibid. So if Tenant in Tail be, the Remainder over in Fee, the Infe in Tail is within the Statute, contrary to the Opinion in Pl. in Barrett's Case. 4. b. 4 Rep. 50. b. Hill 29. Liz. C. B. Andrew Ogges's Case — Co Litt. 102. b. cites S. C. — 4 Le 115. pl. 214. S. C. by the Name of Oggei underhill. Adjourn.

If the Tenant makes a Lease for Life, the Remainder over in Fee, the Tenant for Life dies; the Executors cannot claim per the Remainder to the Lord, the Lord dies, the Tenant for Life dies; the Executors cannot claim per the Remainder to the Lord, because he claims not by or from the Tenant for Life: and in it is of a Reversion, for the Cause aforesaid. Co. Litt. 102. b.
Rent.

A tenant pays Rent in his Life-Time; And the said Executors and Administrators shall, for the Change in the Law, lastly make Airways upon their Matter of record.

For the Lie, and the Rent is arrear, and after a year the Rent to the Tenant, and the Tenant pays, and 

the Executor, or assignee, grant, to the Tenant, in the natur of the Rent, the Executors and Administrators shall have, for the Change in the Law, lastly make Airways upon their Matter of record.

Provided his few Fee-Farms, the Executor said, and he had therefor the Title, not to have or have any Rent for the said Arrears; and in the Clauses hereunto touching the Touching of the Debit, the Words are (when any sum Rent or Fee-Farms is a paid to the Executors, and not paid at the Time of his Death) so that the Act gives no Remedy on these Title, which his own, and had the matter with the Airway, but then when they were due to him at the Time of his Death, and the Act of God became remediless. Agreed per our Cur. 4 Rep. 52. b. 11 Hill 20 Eliz. C B. in Andrew Ogles's Case. — Vaux's 45 in the Case of Dorney, said this Cafe having been cited, Vaughan said, He agreed this Case; For after the Tenant at

the Lord Grantor is without Remedy for the Rent Arrear, before his Grant; for distress he cannot, and other Rent he has not; Because all Privy between him and the Tenant is deliver'd by the Attorney to the Grantor, and he has no more Right than any Stranger to come into the Land, after the transfering over of the Rent. And he said he should likewise agree another Case, That if such Grantor should regrant the same Rent back to the Grantor, either in Fee, in Tail, or for Life, and the Tenant, as he must to this Re-grant, yet the first Grantor shall never be enabled to distress for Arrears due to him before he was granted over the Rent; For now the Privy between him and the Tenant begins but from the Attorney to the Re-grant, the former being absolutely deliver'd, and the Tenant no more, distressable for the ancient Arrears than he was upon the Creation of the Rent, for Arrears incurred before, till first arrear'd.

S 2. Provided always, That this Act, nor any Thing therein contained, shall not extend to any such Manor, Lordship, or Demesne in Herts, or in the Archies of the same, where the Inhabitants have paid True out of the Mind of Men, to pay unto every Lord, or Owner of such Lordship, Manor, or Demesne, at his or their just Entry into the same, any Sum or Sums of Money for the Redemption and Discharge of all Duties, Forfeitures, or Penalties whatsoever the said Inhabitants were chargeable to any of their said Lords, Lords, or Predecessors before his said Entry.

S 3. And further be it enacted by the Authority aforesaid, That if any Man who now has, or hereafter shall have in the Right of his life, any Estate in Fee-Simple, Fee-Tail, or for Term of Life, or in any Rent or Fee-Farms, and the same Reents or Fee-Farms now be, or hereafter shall be due, behind, and unpaid in the said Wife's Life, then the said Husband, after the Death of his said Wife, his Executors and Administrators, shall have an Action of Debt for the said Arrears against the Tenant of the Demesne that ought to have paid such estate, his Executors or Administrators.

And also the said Husband, after the Death of his said Wife, may distraint for the said Arrears in the manner and Form as he might have done if his Wife had been then living, and make Airways upon this Matter, as is aforesaid.

Rent.

Charge was granted by

Deed to

Pence Sole

Life

The Rent

was arrear.

Said took

the

Baron. The

Rent was

again arrear.

She died.

The Baron brought

Debt against

the Heir of the Grantor, who was the Tenant of the Land charg'd, for all the Arrears. The Writ was awarded good, and he had his Judgment by reason of this Matter. 4 Rep. 248 B. pl 28 S.C. and 47, pl 120 S.C. — Col. Litt. 162. b. cites S.C. 4 Rep. 51. a. in Quin's Cafe, cites S.C. and adds, That 2 Objections were made against the Baron's having the Arrears before the Coveture; 1. Because by the Common Law the Executors &c. of the Feme might have had Debt for the Arrears before the Coveture, and that the Statute, as appears by the Premble, provides Remedy, when the Executors &c. of him to whom the Rent was due cannot have or come by the said Arrears &c. so that the Makers of the Act did not intend to give Remedy where Remedy was at Common Law, nor charge the Remedy at Common Law for another. Only, That this Branch touching Baron and Feme gives him Remedy for the Arrears due in the Wife's Life, so that the Arrears ought to incur while she was a Wife, and not before. But referred unanimously, That by this Branch touching Baron and Feme shall have the Arrears incurred in the Life of his Wife. And this cannot extend to Arrears during the Coveture, For the Common Law gave him such Arrears, and therefore when the Statute gave Debt to him for the Arrears, this must mean four thing further, and shall be confir'd of Arrears due before; And the Statute by naming her (Wife) intended only to describe the Condition of the Feme, and not to imply, That the Arrears should incur after the Coveture.
Rent.

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S.9. And his wife it is further enacted by the Authority aforesaid, That if any Perfon or Perfon or any one further shall have any Rent or Free-Farms, or Tenure of Life or Lives of any other Perfon or Perfons, and the said Rent or Free-Farms now be or, or hereafter shall be due and demand, and unpaid in the Life-time of such Life or Perfon, for whom the said Rent or Free-Farms did depend or continue, and after the said Perfon or Perfons do die, then be sure whom the said Rent and Free-Farms was due in Fee-Farm aforesaid, (as Executors and Administrators, shall and may have an Action of Debt against the Tenant in Domes, that ought to have paid the same when it was due, but Executors and Administrators; And also di

strait for the same Arrears upon such Lands and Tenements, out of which the said Rent or Free-Farms were owing and payable, to such like Muner for傳

Death the said Arrearages in the said Rent and Free-Farms was determined and executat, but even in such Life, and not dead, and the Account for the Taking of the same due fees to be made in Muner and Form aforesaid.

discovered E. for all the above incurred in the Life-time of D. The Question was, If E. shall be charged for all the Arrears of this Act. Refused and adjigned, That the Remainder-Man is charg'd by the last Part of the Clause of this Act, according to the express letter thereof; And the several doing and ersoning of the former Part containing Difficulties given to the Executors, and of this Branch, shews the intent of the Makers to make a Diversity of Remedies and Practices, or otherwise they would have used the same Words. And in this Case all the Lord was charged with the Rent, and the fee held by, and when he made the Lease for Life, Rents, &c. over in Fee; the Remainder-Man was charg'd, and might have been discovered by the Common Law for the Arrears, and by the Act of God (viz.) by the Death of C. the Tenant for Life, D was disabled to dis-trib in his upon him, yet that is supplied by the last Part of the 2d Branch, which gives the Grand

Power to disfrain as if the Centry were had been above. And Judgment accordingly. 5 Reg. 11. a. b. 3d. 29. 1st. Ch. 1. Lords's Cols. — Co. Litt. 162. B. cites S. C.

1. Testamentary Tenants for Life of a Rent Charge, and a Liberty of the Rent over extended by Elegit, and more he be in Arrears, A died; And the Question was, If better the tenant by Elegit will dis-claim after the Lease of d. for the Rent due in A Life-Time by this branch of the Statute. It was arg'd, That Tenant the Elegit was such a one as was in the Life of another within this Statute, and therefore might. Newgate I thought he was in by Act of the Party, and so within the Statute. But Glynn Ch. 1. and Warburton held the Difficult is not good, but that he might have Deed. And Glyn said, That this Difficult is founded upon an Act of Parliament, and that all persons who are in by an Act of Parliament are in Fee Pole, and if he can not disfrain. And adjigned accordingly. 2 Id. 26. 29. Misch 1727. and pg. 6. 2d. Hill. 154. Pool v. New.

A. it was in Fee granted a rent-Charge of 124. per Annun to J. S. for his Life out of the Manor of E., with a Clause of Difficult for Non-payment within 20 Days, if demanded. J. S. made W. his Executor, and died. The said W. K. refused it for 124. being for 1 Years Rent in Arrear, in the Life-time of his Tenant. It was infi-anted, That the Executors of a Person to whom a Rent-Charge was granted for an Life was not within this Act, which is to be a donation of Executors of Tenants per Annum during the Life of the Centry that Vio. But it was reford, That this Life is within the Statute 2 Lott. 1227. Patn. 8 W. 5. Eade v. Bell.

2. If a Man makes a Lease for Life or Lives, or a Gift in Tuity, referring a Rent, this is a Rent-Service within this Statute. Co. Litt. 162. b.

3. For the Arrears of a Nomine Feue, and for Relief as for Aid Pur faire Pir's Chivaler, or Pir File marrier; This Statute gives no Remedy; For, for the Arrears of the Nomine Feue, the Granite Law of may have an Action of Debt, and consequently his Executors or Administrators; and yet the Nomine Feue, as an incident to the Rent, shall defec to the Heir. For Relief the Lord cannot have an Action of Debt but Difficult; but his Executors by the Common Law shall have an Action of Debt; For it is no Rent, but casual Improvement of Services for the said Aids. If the Lord does levy them, the Son and Daughter respectively shall have an Action of Debt against the Executors or Administrators of the Lord; and if they have nothing, then again the Heir; but this is by the Statute of W. 1. Note, That all Arrears of Ar-
Rent.

6. A Reverioner in Fee on an Estate for Life devised a Rent of 4 l. per "Annum to J. S. for Life. J. S. made his Executors and died; the Executors disinfran, and avowed for that Rent: He ought to aver that the Land remains in the Seinf of the Tenant that ought to pay it, or in the Hands of some other that claims by him by Purchase or Defeint according to the Statute of 32 H. 8. 37. Cro. E. 547. Hill. 39 Eliz. C. B. Myles v. Willoughby.

7. A seised in Fee granted a Rent to B. and bis Heirs for the Life of J. S.—B. by Will devised it to C. The Rent is Arrear. J. S. dies. C. disftrained. The Court inclined, that by this Statute, one that has a Rent "Pro ater Vie may after the Death of Ceify que Vie disftrained for the Rent incurred in the Life of Ceify que Vie, if the Land be in the Possession of any Person that was chargeable with the Rent in the Life of Ceify que Vie; But whether C. was well intituled to the Rent was a Doubt which depended upon 2 Points. Ith by the Common Law such Rent was de

But Work-Days, or any corporal Service, or the like, are not within this Statute. Co. Lit. 162. b.
Rent.

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viable, and the Court agreed, That it was not. 2dly, If it be devisable tunable by the Statute 32 & 34 H. 8. and Gawdy and Fenner held it was, tho' it be only a Frankencement defendible; But Popham eontra. All agreed that no General Occupant could be of it; and if it was deviseable by the Custom, that the Devise would prevent the Occupancy. Mo. 625, pl. 858. Mich. 42 & 43 Eliz. Gawen v. Rante.

8. A Rent-charge was granted to the Defendant's Testator for 30 Years with a Clause of Distrefs in the Deed, That the Grantee and his Heirs might distrain for the Rent during the Term. In Replevin the Defendant, as Executor, avowed for this Rent. It was held that the Executor shall have the Rent, and distrain for it, and not the Heir. Cro. 644 pl. 50. Mich. 49 & 41 Eliz. B. R. Darrel v. Willon.

9. The Lord of a Copyhold Manor, where Copyholders are for Life, but Holc said, That grants Rent-charge out of all the Manor; one Copyhold ofheats, the Lord grants that again by Copy; the Question was, If the Grantor of the Copyhold shall hold it charged or not; and by the whole Court but Fenner he shall not hold it charged, because he comes in Paramount the Grantor, that issuing out is, by the Custom. The same Law of Statutes, Recognizances, or Dowers, a Copyhold; but the 14th of Eliz. Dyer 279, by the whole Court, that he shall hold it charged; but this hath been denied for Law in C. B. between Summer and Bridge, which see Trin. 5 Jac. But to Coke J. it seemed that if a Copyholder be of 20 Acres, and the Lord grants Rent out of those 20 Acres in the Tenure and Occupation of the said Copyholder (and names him) there is this Copyhold ofheats, and be granted again, the Copyholder shall hold it charged, for this is now charged by express Words. Brownl. 208. Summer v. Force.


10. In Debt by an Executor for the Arrears of a Rent-charge upon the Statute of 32 H. 8. the Plaintiff declares, That the Defendant in the Life of the Testator did enter into the Land, out of which the Rent was issuing, and occupied it, and took the Profits thereof by the Space of 5 Years, and demands the Arrears of the Rent for that Time; And after a Verdict for the Plaintiff, it was moved that the Action will not lie for the Arrears against the Occupiers, for the Statute gives it against the Tenant of the Land; To which Hale answered, That at the Common Law the Action lay against him that took the Profits of the Land, and against the Husband that was seized in Right of his Wife. C. 4. fol. 49. 2dly. That this Action is given in Lieu of a Distrefs, and the Beasts of the Occupiers were chargeable to the Distrefes. 3dly, That it would be convenient [inconvenient] that the Plaintiff should be compelled to inquire out in whom the ESTATE was of Right; But Judgment was stayed, and Roll doubted of the Case; but inclined against the Plaintiff. All. 62. Patch. 24 B. R. Dunhill v. Smith.

11. Lease to the Plaintiff for Years, Habendum De Auge in Annua quadratibus et paribus, to begin the 25th of March, paying for the same 20 l. yearly, by equal Portions at Michaelmas and Lady-Day; The Rent was behind at Michaelmas, and A. died in January follow, having made the Plaintiff his Wife, his Executrix, and the distrained for the 10 l. Rent due at Michaelmas to the Testator, the Cattle of the Defendant the 17th of April following, Et li &c. Upon this special dicit, Whether it was for 2 Years certain, according to 3 Cro. 775. (which they agreed to be good Law) or not, the Court did not determine; but they agreed, that if the Parties in such a Lease do begin the Year,
Rent.

Year, the Will cannot be determined till the End of the Year, as 3. Cro. 775. and Q. Br. Lease 53. and in this Case, tho' A. died in January, and the Death of one of the Parties determines the Will, yet here the Defendant was to hold the Land till the 25th of March, and the half Year's Rent at Michaelmas belonged to the Plaintiff as Executrix, and the half Year's Rent, which became due the 25th Day of March following, did belong to the Heir, with the Reversion; but in this Case the Plaintiff had Judgment; for tho' the Defendant had a Right to the Rent due at Michaelmas, yet the could not distress for it after the 25th of March, because the former Lease at Will made by the Tenant was then determined. Holt's Rep. 417. Mich. 5 Anno. Crockerell v. Overell.

12. A. was Tenant in Tail subject to a Rent-Charge for Life of B. who died, the Rent being Arrear; The Question was, How far the Issue in Tail should be liable for the Arrears incurred in the Life of his ancestor. Ld. C. Cowper was of Opinion, That the Statute 32 H. 8. 37. only provided what was just and equitable, that he who should have paid should still be liable to an Action of Debt, or Distress of the Executor or Administrator of the Grantee of the Rent-charge; And fo against any claiming under him, by Purchase, Gift, or Defeas; but extends not to the Issue in Tail who claims not under, but Paramount. That the Tenant ought to have paid the Rent; That it is true, whilst the Rent-charge was continuing, the Issue in Tail was liable to be disstrained for the whole Arrear, which was incurred in the Life-time of his ancestor; but that was Summum jus, and the new Remedy given by the Statute does not carry it so far; had this Case been within the Statue, yet the Plaintiff's Remedy was at Law, and not to be aided in Equity, or the Remedy altered or changed from a Distress to a Receiver or Possession. 2 Vern. 612, 613. pl. 550. Trin. 1708. Ld. Fairfax v. Ld. Derby.

13. 8 Ann. cap. 14. 8. 4. Emes, That it shall be lawful for any Person, having Rent due upon any Lease for Life, to bring an Action of Debt for such Arrears, as upon a Lease for Years.

(T. b) Distress. By whom.

A. failed in 1. If a Man has Land for Years, and grants all the Term rending Rent he cannot disstrain. Br. Dette pl. 39. cites 45 E. 3. 8.

failed to B. for 60 Years in Consideration of 500 l. and B. re demises the whole Term to A. rending 20 l. Rent per Ann. (the intent of the Bargain being to secure an Annuity of 20 l. to B. which he purchased with the 500 l.) then at End, and the Defendant entered upon those re-demised Lands as Grantee as to her Son. In this Case it was agreed, 16. That when a Termor assigns his whole Term, rending Rent, altho' he cannot disstrain, because he has no Reversion in him, yet he may maintain an Action of Debt against the Lefsee upon this Contract. Freem Rep. 218. pl. 226. Mich. 1676. Floyd v. Langfield, cites S. C. and 2 Cro 48; and Moor 126.

2. If a Rent be granted to 2 and to their Heirs out of an Acre of Land, and that it shall be lawful for one of them and his Heirs to distress for this in the same Acre; this is a Rent-Seck; but inasmuch as they stand jointly feited of one entire Rent, it cannot be as to the one Rent-Seck, and as to the other a Rent-charge; and this Distress is as an Appartener to the Rent, and therefore, if he which has the Rent dies, the Surviver shall disstrain, and if both grant over the Term to another, he shall disstrain for this. Co. Litt. 147.


3. A. bound in a Statute-Merchant, grants a Rent-charge to B. out of his Lands; The Consee extends the Lands, and levies his Debt, Costs and Damages, and Grantee disstraine for his Rent, & per tot. Cur. held good,
good; For he cannot have Seire Facias, but the Conuor or his Assignes
of the Land only may; and in Replevin or other Action for taking the
Distrefs, this shall be put in Issue, if the Conuor had levied the Debt
&c. and it found to be, then the Distrefs shall be held lawful, otherwise

ment for the Avowant.


1. O F Common Right a Man cannot distrain for Rent, but in the
Land out of which the Rent is issuing; but if the Tenant grants
me that I am not paid the Rent, that if I may distrain in other Land,
this is good; per tot. Cur. and there is it no New Rent. Rent pl. 1. cites
9 H. 6. 9.

2. If a Man grants a Rent out of 3 Acres, and grants further that if the
Rent be behind, that he shall distrain for the Rent in one of the Acres;
This is a Rent-Sock for the Whole, and yet he shall distrain for this in the
3d Acre. Co. Litt. 147. b.

3. If a Man be feized of 2 Acres of Land in 2 several Counties, and
makes a Lease of both of them, referring 2 s. Rent. In this Case, tho' se-
veral Liveries be made at several Times, yet it is but an entire Rent, in
Respect of the Necessity of the Cafe, and he shall distrain in one County
for the whole, and make one Avowry for the whole; but he shall have se-
veral Affizes in Confinio Comitatus, and in either County shall make his
Plaint of the whole Rent, but there shall be but one Patent to the Justices.
Co. Litt. 153. b.

4. Lease for Years of Land in Possession, and other Land in Reversion
rendering Rent; the Rent issues entirely out of both, and before the
Reversion falls into Possession, a Distress may be taken upon the other
Land in Possession for all the Rent. Jenk. 254. pl. 46.

3. A was seised of 3 Parts of a Manor; and B. of the 4th Part. A granted a
Rent-charge to J. S. and then A. sold his 3 Parts, and B. his 4th Part to
C. Then C. demised a 4th Part to W. R. but whether it was the very
4th Part which was B.'s, or a 4th Part generally, was not agreed; but
if it was the very 4th Part of B. then W. R. was not liable to a Diftress
for it; otherwise if it was a 4th Part generally. But afterwards it be-
ing alleged by W. R. that it was Eandem quatuor Partem, which was
demised to him, it was held by all, That it shall be discharged, because
it was never charged, tho' once he might have distrained in all the Ma-
nor, for then there was no 4th Part, for all was alike in the Hands of
C. but now when the 4th Part is in the Hands of a Stranger, it is no
Reason that it shall be charged. Goldsb. 62. pl. 2. Trin. 29 Eliz. Go-
verdine v. 

might well enough single out Eandem quatuor Partem, and grant it, and the Grantee shall hold the
same discharged as the said C. held it, and the Beasts of the said W. R. shall not be distrained; and so
Judgment was given against the Avowant.

7 A (W. b) Distress.
Rent.

(W. b) Distress. At what Time.

1. If one makes a Lease for 21 Years, and a Year after grants the Reserv


3. Lease to hold from Year to Year, and so on so long as both Parties please; Leafe entered upon a third Year, the Rent of the 2d Year not paid. Held that the 3d Year is not in Nature of a distinct Interest, because it arises from the same Executory Contract; and therefore the Lessor may distrain the 3d Year for the Rent of the 2d. 2 Salk. 414. Hill. 7 Ann. B. K. Legg v. Strudwick.

The 5 Days mentioned in this are by an Act of 11 Geo. 2:19 enlarged to 50 Days.

4. 8 Ann. 14. [or 17, Quere] S. 2. Enacts, That in Case any Leafe for Life or Lives, Term of Years at Will, or otherwise, of any Estates, Lands, or Tenements, upon the Demise whereof any Rents are or shall be reserved or made payable, shall fraudulently or clandestinely convey or carry off or from such demised Premises, his Goods or Chattels, with intent to prevent the Lessor or Leafe from distraining the same for Arrears of such Rent so reserved as aforesaid, it shall and may be lawful to, and for such Lessor or Landlord, or any Person or Persons by him for that Purpose lawfully impowered, within the Space of 5 Days next ensuing such Conveying away or Carrying off such Goods or Chattels as aforesaid, to take and seize such Goods and Chattels whereover the same shall be found, as a Distress for the said Arrears of such Rent, and the same to sell, or otherwise dispose of in such Manner as if the said Goods and Chattels had actually been distrained by such Lessor or Landlord, in and upon such demised Premises for such Arrears of Rent.

5. Provided nevertheless, That nothing in this Act contained shall extend, or be confirmed to extend, to impower such Lessor or Landlord to take or seize any Goods or Chattels, as a Distress for Arrears of Rent, which shall be sold Bona Fide, and for a valuable Consideration, before such Scarem made, any Thing herein contained to the contrary notwithstanding.

6. And it is further enacted, That all Distresses hereby impowered to be made, as aforesaid, shall be liable to such Sales, and in such Manner, and the Monies arising by such Sales to be distributed in like Manner, as by an Act made in the 2d Year of the Reign of their late Majesties King William and Queen Mary, intituled, An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in reasonable Time, is in that Behalf directed and appointed.


(X. b) Distress.
(X. b) Distresses. How to be made, and what to be done.

1. If a Landlord comes into a House, and seizes on some Goods as a Distress, in Strain of all the Goods in the House, that will be a good Seizure of all; but he must remove them in convenient Time at Common Law; and now since the Statute of W. & M. immediately, except it be Hay or Corn. And because in the Principal Case the Seizure was of Barrels of Beer, the' not easily removable, it at all, without Damage, and on a Monday, and no Removal till Wednesday, when another took them by Replevin, in which the lessor and not the Distraintant was made Defendant; and besides, the Landlord quitted Possession the two intervening Nights, and had not the Possession at the Time of the taking by Virtue of the Replevin, without which there could be no Refusals, the Plaintiff was Non-suited. In this Case it appeared that the Distraintant drew Beer out of one of the Barrels, which made him a "Trespasser ab initio," as to that Barrel only. Per Holt Ch. J. 6 Mod. 215. Trin. 3 Ann. B. R. Dodd v. Monger.

(Y. b) Distresses. Difficulties, in making Distresses, removed.

1. 11 Geo. 2. 19. Enacts that where any Distress shall be made for any Kind of Rent justly due, and any Irregularity or Unlawful Act shall be afterwards done by the Party distraining, or by his Agent, the Distress shall not be deemed unlawful, nor the Party making it be deemed a Trespasser ab initio, but the Party aggrieved by such Unlawful Act or Irregularity, shall or may recover full Satisfaction for the Special Damage he shall have sustained thereby, and no more, in an Action of Trespass, or on the Case, at the Election of the Plaintiff. Provided always, That where the Plaintiff shall recover in such Action, he shall be paid his full Costs of Suit, and have all the like Remedies for the same, as in other Cases of Costs.

20. Provided nevertheless, That no Tenant or Lessor shall recover in any Action for any such Unlawful Act or Irregularity, as aforesaid, if Tender of Amends Faithfully been made by the Party distraining, or his Agent, before such Action brought.

21. In Actions against Persons intitled to Rents or Services of any Kind, or their Bailiff or Receiver, or other Person or Persons relating to any Entry, by Virtue of Any Act, or otherwise, upon the Premises chargeable with such Rents or Services, or to any Distresses or Seizures, Sale, or Disposal of any Goods.
**Rent.**

Goods or Chattels thereupon, it shall and may be lawful to and for the Defendant in such Actions, to plead the General Issue, and give the Special Matter in Evidence, any Law or Usage to the contrary notwithstanding; and in Case the Plaintiff in such Action shall become Non-suitor, discontinue his Action, or have Judgment against him, the Defendant shall recover double Costs of Suit.

(Z. b) *Frauds to prevent Distresses for Rent remedied, and Aiders punished.*

1. 11 Geo. 2. Enacts that Tenants fraudulently conveying away their 19. S. 3. Goods and Chattels off the Premises, to prevent the Landlord's distressing, and all and every Person assisting therein, or in concealing the same, shall forfeit to the Landlord double the Value of such Goods, to be recovered by Action of Debt, in which no Effusion, Protection, Waiver of Law shall be allowed, nor more than one Impartial.

S. 4. Provided if such Goods exceed not the Value of 50 l. such Landlord, his Bailiff, Servant, or Agent, may make Complaint in Writing to 2 Justices of Peace.

S. 5. 6. But Appeal may be to the Quarter-Sessions. And Appellant entering into a Recognizance with 2 Sureties, in double the Sum ordered by the two Justices of Peace to be paid, the Order of the 2 Justices of Peace shall not be executed in the mean Time.

S. 7. And where any Goods so conveyed away by any Tenant, his, her, or their Servant, or Agent, or other Aider or Affirfer, shall be Put, Placed, or Kept in any House, Barn, Stable, Out-house, Yard, Close or Place, locked up, fastened, or otherwise secured, so as to prevent such Goods or Chattels from being taken and seized as a Distress for Arrears of Rent, it shall and may be lawful for the Landlord or Landlords, Lessor or Lessors, his, her, or their Servant, Bailiff, Receiver, or other Person or Persons impowered, to take and seize as a Distress for Rent such Goods and Chattels (just calling to his, her, or their Affiance, the Confiable, Headborough, Bowholder, or other Peace-Officer of the Hundred, Borough, Parish, District, or Place where the same shall be fastened to be concealed, who are hereby required to aid and assist therein; and in Case of a Dwelling-House) Oath being also first made before some Justice of the Peace, of a reasonable Ground to suspect that such Goods and Chattels are therein) in the Day-time to break open, and enter into such House, Barn, Stable, Out-house, Yard, Close, and Place, and to take and seize such Goods and Chattels for the said Arrears of Rent, as he, she, or they might have done, by Virtue of this or any former Act, if such Goods and Chattels had been put in any open Field or Place.

(A. c) *Remedy by Distress. For what Rent.*

S. P. Br. Rents, pl. 5, cites Littleton, Tit. Partecners.

1. W Here a Rent is reserved upon Equality of Partition, the Tenant may distrain for it of Common Right, viz. The Coparcener to whom it is referred. Per Newton Ch. J. and Patton J. and yet Patton said that it is not properly Rent-charge. Br. Rents, pl. 6, cites 21 H. 6. 11.

2. Tenant for 20 Years les'd the Land to W. P. for 10 Years rendering Rent, and after he granted the same Rent to W. N. there he cannot distrain,
Rent.

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train, because it is Rent Seek; for he has not the Reversion of the Term which gives the Caution of the Distreets. Contra if he had granted the Reversion and Rent to W. N. there he may distrain; Note the Diversity. Br. Rents, pl. 17. cites 2 E. 4. 11.

(B. c) Distreets of whose Cattle &c.

1. It was admitted that if 2 Jointenants are, and one of them grants a Rent-charge, the Grantee may distrain the Beasts of the Grantor upon the Land, but not the Beasts of the other Jointenant. Where if he may distrain the Beasts which comes there Damage featur, it seems that he may.


2. A. and B. severally seised of 2 Close adjoining, and the Fence belonging wholly to A. by Prescription, and the Beasts of B. for Defants of fence escape out of his Clofe into the Clofe of A. and immediately before B. could re-chafl them into his proper Clofe, the Lord distrained them for Services; and if he may so do was demurred in Law. And it was adjudged Pro quer. and against the Avouant; for no Default can be alleged in B. for this Escape, nor any Law oblige him to keep the Beasts in his own Clofe.


3. A. Leafee for 60 Years of 3 Clofes, grants 2 to B. who put his Beasts Where the there, and they grazed into the other Clofe that was not sufficiently hedged or enclosed; the Leffor, who had the Reuide of the Land finding them in the Levant and couchant distrained them for his Rent; and it was held per Stronger, Croke, Dodderidge, and Haughton, abente Mountague, that the Distreets is well taken; and they said, That there is no Diversity between Levant and Couchant, as that they are not levant and couchant. And Dodderidge gave the Judge the Clofe of the Caution, becur the Clofe as a Debtor, and he came to his Debtor, and the Owner, distrained Beasts found there, and he cannot examine how they came in the Cafe there, or if the Clofe be hedged or not; and Opinion Curots, that the Leffor shall have a Return.

Palm. 43. Mich. 17 Jac. B. R. Lade's Cafe. Service. Nay if one seifed in Fee Lalee a Rent-charge, tho' this be a Charge on the Land by his own Aét, yet if his Neighbour's Cattle escape therto, and happen to be there Levant and couchant they are distrainable, because the Land is Debtor; this Case was adjudged in Point in the Exchequer. 12 Mod. 158. Hill 9 W. 3. B. R. in Cafe of Britton v. Cole. Holt Ch. J. cited it as adjudged Pach. 18 Car. 2. Hodgson and Tubbige.

4. A. seised in Fee makes a Lease for Life, and after grants a Rent-charge to B. If A's Cattle come on the Ground, B. may distrain them, tho' he cannot distrain the Cattle of the Tenant in Possession. Brownl. Anon.

32. Anon.

5. A. seised in Fee of a Clofe leased it to B. The Clofe adjoining be- longed to C. The Fence between the 2 Grounds had always been made by A. charge was Arrear for 20 Years, and Cattle escaped into the Clofe leased by A. to B. and A. distrained them escaped out of the next Ground, and in Replevin by C. Judgment was given for A. in C. B. and affirmed on Error in B. R. Nit &c. 2 Saund. 239. Hill 22 & 23 Car. 2. Poole v. Longville.

tiegham relieved against it. Cited 2 Vern. 151. pl 128. as the Cafe of Broad v. Pierce.

6. And the Court relied much upon the Cafe in 19 H. 7. 21. b. where But the Rep- it is said, That if the Beasts escape into any Land, and the Lord distrain porter takes a Difference them,
Rent.

between a them, that the Distreys is good, and that Lexanny and Conchyancy is not material. 2 Saund. 289. Pool u Longville.

Sequestr, and by a Leave upon his own Land for Rent refused; For the Lord has nothing to do with the Fences on the Land, and to the Fences being in Repaie or not, are Nothing to him; But it is not to us to the Lessor, who ought to repair either by himself or his Tenant, or otherwise he shall take Aecanance of lessees Interest; and to warrant this he cites D. 517. b 718 pl. 9. 25 E. 4. 49. b 7 H. 7. 1; H. 7. 21. 15 H. 7. 1; But if the Beasts escape into the Land without any Damage in the Fences, or the Tenant of the Land where C. is not bound to repair the Fences, for Default whereof the Beasts escape and are Draied, it is not material to the Lord or Lessor, Whether they were Lend or Coachant or no. 2 Saund. 289, and tis he thinks the Case hard to be maintained.

Holt Ch J. said. He thought it hard to maintain the Judgment in the Case of Poole v. Longville 2 Saund 289, that when the Plaintiffs Inheritance is charged with the Repairs, he should take Advantage of his Own Wrong in not repairing, by making the escaping Cattle a Distreys for his Rent, and it is not like the Case of Lord and Tenant there quoted; for the Lord has nothing to do with the Land, but the Charge of Repairs belong to the Tenant. And per Cur. That Judgment is fit to be considered. 6 Mod. 168, in the Case of Elmore v. Tucker. This Case of Elmore and Mitchell was the same Point with that of Poole and Longville. And upon Demurrer was relied upon as a Case in Point; But after the Court had declared their Opinion as before, it was adjourned.

7. A. is seised of a 3d Part in Common, and B. of the other 2 Parts in Common with A. A. has his 3d Part, referring a Rent. B. puts in his Cattle, or a Stranger by his Licence, such Cattle are not drainable for the Rent. 2 Vent. 283. Hill. 2 & 3 W. & M. B. R. Kemp v. Cory.

(C. c) Distreys. In what Cases several Distreys may be for the same Rent.

1. If the Lord comes to drain and takes an Ox, which is [not] sufficient for the Rent Arrear, and there are then no more Beasts there, he may come at another Time, and take a Cow, and at another Time, and take another Cow, till he has sufficient Distreys. Br. Distreys pl. 96. cites the printed Abridgment of Alifle tit. Bar.

2. If one takes Trop Petit Distreys for Rent, and after takes another Distreys for the same Rent, it is not good; For he cannot avow 2 Distreys for the same Rent; For it was his Polly that he took not a better Distreys at first; But note in the Abridgment of the Alifie it is said that if there be not sufficient Distreys when he drain, he may drain again. Cro. E. 13. pl. 8. Hill. 25 Eliz. C. B. Anon.

(C. c) Distreys. In what Cases several Distreys may be for the same Rent.

3. 17 Car. 2. cap. 7. S. 4. Ennels, That whereas the Value of the Cattle drained shall not be found to the full Value of the Arrears drain'd for, the Party to whom such Arrears were due, his Executors or Administrators may from Time to Time drain again for the Restidue of the Arrears. It was a Mischief before this Statute, That in Case a Distreys was too little one could not drain again, but the other might plead Levied by Distreys which thaws that Distreys could not be split. Per Holt. Cumb. 546. Mich. 7 W. 3. B. R. Johnston v. Lane.

4. If one drain again for the same Rent, the Remedy is Reception, and if the Sheriff refuse a Replevin, an Action lies against him. Parr. 118. Mich. 1 Ann. B. R. Anon.
Rent.

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(D. c) Diffres. Pleadings in Avowry; Good.

1. It was said for Law in a Note, That in Replevis, if the Defendant avows for Rent, and the Plaintiff alleges Tender upon the Land, this suffices without Tender in Court; For he is not bound to tender but only upon the Land; Quod Nata. Br. Avowry, pl. 40. cites 7 H. 4. 14.

2. In Trelaw, the Defendant said that the Plaintiff held of J. S. by Fealty, homage, and Suit of Court, and 10 s. Rent payable &c. and for the Homage, Fealty, Suit, and Rent Arrear, he was batill displeased, The Plaintiff said, That he held by Fealty, Suit of Court, and 9 s. Rent, Alaske for that he held in the Manner as the Defendant alleged, and the other contra, and as to the 9 s. Rent and Fealty, he said, That no jurament infefta, and it was said that the Plaintiff held by Fealty, and 9 s. and not by Homage and Suit. And the Plaintiff recovered, and the Defendant brought Writ of Error, and it was held by Cotesby, That to say that the Fealty was in off (not done) is not good; For he ought to say in the Affirmative that it was done. But per Cur. because the Avowry is in the Affirmative, heBound infefta, therefore it is a good Answer, that the Fealty he hold suit, &c. quod nota. Per Cur. And it seens there that the Verdict ought to have been that he did not hold by Homage, Fealty, Suit, and 10 s. Rent, Precit. &c. For this is the Rule. Br. Batte, pl. 73. cites 9 H. 7. 12.

3. In Avowry for Rent-charge the Plaintiff said, That his Briggs escaped for Defall of Inducely of the Tenant, and he first prejudiced them, and the Defendant took them; the Defendant said they were there 2 Nights, and no Plea without Traversing the Esque or les Briggs Suit, and he may traverse either of them. Br. Travers per &c. pl. 298. cites 15 H. 7. 17.

4. A. dillains, and being asked for what Cause he disclaimed himself a Cause which is not sufficient, and after an Action is brought against A. he may answer the Defrzes for another Cause. 2 Le. 196. pl. 244. Mich.


5. Resolved that an Avowry may be for Part of a Rent. 4 Le. 4. pl. 13. Patch. 31 Eliz. C. B. Anon.

6. In Replevis, &c. the Defendant avowed for a Rent-charge devised to him, but did not allege the Land to be held in Scavage, and therefore adjudged to be ill. Cro. E. 667. pl. 23. Patch. 41 Eliz. C. B. Merryweather v. Stanton.

7. A. avowed a Diffres for Rent, alleging a Possession for a certain Tern of Years. It was intit. That tho' in Debt for Rent it was good, yet that it was not good in Avowry; But it was answered, That to it might be a Formedon or Real Action, but this was only between Leifor and J. Iffe. And the Court held it all one, and Judgment for the Avowry. 2 Law. 484. Mich. 2 Jac. 2. B. R. Seymour v. Pulley.

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7. 11 Geo. 2. 19. S. 21. Whereas great Difficulties often arise in making Avowries or Custome upon Diffres for Rent, Quit-Rents, Reliefs, He-

viats, and other Services, it shall and may be lawful to and for all Defendants in Replevis to aoe or make Custome generally, That the Plaintiff in Replevis, or other Tenant of the Lands and Tenements whereof such Diffres were made, enjoy'd the same under a Grant or Deed of such a certain Rent, during the Time wherein the Rent displeased for surend, which Rent was then and still remains due; or that the Place where the Diffres were taken was Part of such certain Tenements, held of such Honour, Lordship, or Manor; for which Tenements the Rent, Relief, Periott, or other Service displeased for surend; and if the Time of such Diffres, and still remains due; without further setting
Rent.

For the Grant, Tenure, Demise, or Title of such Landlord, Lessee, or Owner of such Manor, any Law or Usage to the contrary notwithstanding. And if the Plaintiff in such Action shall become Non-suited, discontinue his Allegation, or have Judgment given against him, the Defendant in such Replevin shall recover double Costs of Suit.

(E. c) Avowry. Good; after the Estate determined.

1. A Man leased for Life, rendering Rent, the Rent was arrear, and the Tenant surrendered to him in Reversion; yet it is agreed, That he shall have the Rent due before the Surrender; but there he distrained, and after the Tenant surrendered. And it was agreed per tot Cur. except Acue. That he may make Avowry after the Surrender; and it is not mentioned there whether there was any Exception in saving the Rent upon the Acceptance of the Surrender. Br. Rents, pl. 5. cites 19 H. 6. 41

* Per Twidden J. He ought not to make Avowry or Confiance, but to justify; because the Taking was lawful. Rent. 64. Car. 2. B. R. in the Case of Palmer v. Richards.

2. If one distrains for a Rent, and * before the Avowry the Estate determines, on which the Rent was referred, the Avowry shall be as if the Estate had continued; For the Avowant is to have the Rent notwithstanding. But if the Distress was for a Personal Service, then the Defendant must have a special Justification; For he cannot have the Service in Specie when the Estate is determined. Vent. 250. Mich. 25 Car. 2. B. R. in the Case of Wildman v. Norton, says; Note that it was so said.

3. 8 Anne 14 [or 17.] S. 6. Whereas Tenants Pur auctorVie and Leafes for Years, or at Will, frequently held over the Tenements to them demised, after the Determination of such Leafes. And whereas after the Determination of such, or any other Leafes, no Distress can by Law be made for any Arrears of Rent that grew due on such respective Leafes before the Determination thereof; it is hereby enacted, That it shall and may be lawful for any Person or Persons, having any Rent in Arrear, or due upon any Leafes for Life or Lives, or for Years, or at Will, ended or determined, to distrain for such Arrears after the Determination of the said respective Leafes, in the same Manner as they might have done if such Leaf or Leafes had not been ended or determined.

S. 7. Provided, That such Distress be made within the Space of 6 Calendar Months after the Determination of such Leafes, and during the Continuance of such Landlord’s Title or Interests, and during the Possession of the Tenant from whom such Arrears became due.

S. 8. I provided, That this Act shall not prejudice the Crown, to recover and seize Debts, Fines, and Forfeitures, due and answerable to the Crown.

(F. c) Efflopp.

1. A Man avows for a Rent due such a Day, and is Non-suited, now he may avow for the same Rent, and suppose the same due at another Day; For he shall not be efflopped by the Record on which he was Non-suited. Arg. 2 Le. 3. pl. 3. cites 20 H. 7.

2. After
Rent.

2. After an *Avowry for Rent due at a later Day, an Avowry may be for Rent due at a former Day; and the same after a Recovery in an Action of Debt. But an *Acquittance for Rent due at a later Day is a Bar. Lev. 43. Mich. 13 Car. 2. B. R. Palmer v. Strange.


3. J. S. held Froster-Court Farm of A. by Lease at 263l. a Year and also a Farm called Pikes of A. at Will at 22l. J. S. paid 137l. 12s. to A.'s Steward, who gave J. S. a Receipt thus (viz.) Received then of J. S. the Sum of 137. 10s. in full for Half a Year's Rent due at Lady-Day last past. A Bill was brought by A. to be relieved, but the Maker of the Rolls disclaimed it, in regard J. S. might have his Action at Law for the Rent of Pikes, notwithstanding the Generality of the Words of the Release. But on Appeal the Lord Chancellor said, He was not satisfied that A. had Remedy at Law, as Both these Lands might formerly have been held together, and the general Words in the Lease might possibly extend to Pikes, contrary to the Intent of the Parties; And that if A. should not recover at Law, his Lordship must relieve here; and so it would be finding it to Law in order to have a new Bill. And therefore decreed an Account. Sel. Cafes in Chann. in Ld. King's Time 1, 2. Mich. 1724. Ld. Lucy v. Watts.

4. A Tenant got a Receipt in full to the Date; Bill was brought for Account. The Tenant intitled he was not obliged to any Account previous to the Receipt; Because his Voucher might be lost, and not preserved on account of the Receipt; so that he might be made to suffer, not thro' any Default of his own, but by relying on the Receipt. But there being great Reason to believe the Receipt intitled on was obtained either thro' Fraud or by Mistake, and that the Tenant had not paid all that was due to the Time of the Receipt, Account was ordered to be taken previous to the Receipt; and to pay Cafes. Sel. Cafes in Chann. in Ld. King's Time 2. Mich. 1724. cited in the Case of Lord Lucy v. Watts, by Mr. Talbot, as decreed about 2 or 3 Terms before, in the Case of Bacon v. Harris.

(G. c) Rent doubled. By Holding over.

1. 4 Geo. 2. 2 Naes, That if Tenant or Tenants for Life or Years, or others 28. S. 1. in Possession of Lands &c. by, or under, or by Collation with such Tenant or Tenants, shall wilfully hold over, after Determination of such Term, and after Demand made, and Notice in Writing for Delivering Possession by the Landlord, his, her, or their Agent, lawfully authorized, such Person, so holding over, shall pay at the Rate of double the Value, to be recovered by Action of Debt in any of his Majesty's Courts of Record, and Defendant shall give Bail, and against which there shall be no Relief in Equity.

2. 11 Geo. 2. cap. 19. S. 18. Enacts, That in Case any Tenant shall give Notice of his Intention to quit the Premisses, and shall not accordingly deliver up the Possession at the Time in such Notice contained, the said Tenant, his Executors or Administrators, shall pay to the Landlord double the Rent which he should otherwise have paid.

7 C (H. c) Plead-
Rent.

(H. c) Pleadings in Debt for Rent.

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Rent, fee Judgment; Defendant rear againft Leafe ibid. That -

Rent has expended it is expedient, for the contrary. But per Bradencll Ch. J. If Leafe be bound to the Reparation by Covenant, it is a good Plea, as above. Br. Dette, pl. 27. cites 34 H. 6. 17.

If a Man has Rent due to him he has his Election to bring Debt or to displ. and if he brings Debt after distressing, the Defendant may plead Levyed per Diffref: For by displaining he has determined his Election for that Time; For otherwise he might have 2 Judgments, viz. Return irrepeleable, and Judgment in Debt; to avoid which he may, in that Case, plea Levyed by Diffref: Per Holt Ch. J. 11 Mod. 530. Mich. 11 W. 3. B. R. in the Cafe of the King v. S. to. — The Reporter makes a Queere, How it would have been if Leafe had distress'd, and the Castle had died in the Pound. Ibid.

In Debt upon a Leafe tithes, Levyed by Diffres is no Plea; Per Skrene; Because there is no Land in which he can distress, and he cannot distress by the Tithes fever'd; For this is the Thing leaded. But Till contra. Br. Dette, pl. 234. cites 11 H. 4. 40.

In Debt upon a Leafe for Years, the Defendant said that where the Plaintiff has counted upon a Leafe rendering 4 Marks per Ann. that the Leafe was rendering 1 Mark per Ann. and as to the 18 Term, he has been always ready, and yet is, and brought the Money into Court; and as to the other nothing Arrear, which seems to be no Plea, but that He owes him nothing, in Debt &c. and Nothing Arrear, in Assey &c. and to the rest the Plaintiff entered into the Land before the Day of Payment. And per Roll. The first Plea goes to all; but it seems that the Defendant ought to traverse that the Leafe was not made rendering 4 Marks &c. Br. Deux Plees, pl. 1. cites 3 H. 6. 19.

In Debt upon a Leafe for Years, or upon Arrears of Account before Auditors, he may say Non Demijst, or Nul tiel Account; for there he cannot wage his Law. Br. Dette, pl. 88. cites 8 H. 6. 5.

In Debt upon a Leafe for Years in London, the Defendant said that the Cument of London is, that the Leffor shall repair the Tenements sufficiently, and that before the Day &c. the House became so ruinous by Tempus.
Rent.

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Tempest, that he could not abide in it, and he requested the Plaintiff to send it, and he would not, by which before the Day he left the premises, judgment in Action; and the Opinion of the Court was, that it is no Plea. Br. Dette, pl. 18. cites 27 H. 6. 10.

8. Debt upon Arrears of a Lease for Years in the County of Middlesex of Land in the County of Kent, the Defendant pleaded Payment in the County of K. where the Land is. And per Moire J. This is a good Plea to plead it in the County of K. where the Land is; for it may be that he paid it s.c. That by Distress, or upon the Land without Distress, but it is no Plea in any other County without answering to the Debt. But per Alkson, It is no Plea, but shall say that Levied by Distress, and then a good Plea; and it is no Replication that he did not distrain, for this is not traversable. And per Alkson, The Payment is a good Plea in a Foreign Country, which does not seem to be Law; and Pridot and Danybro were absent. Br. Dette, pl. 118. cites 37 H. 6. 10.

vied it or had Payment any Way, it is sufficient.—In Debt upon a Lease for Years, the Defendant said that the Plaintiff found the Rent payable by Distress &c. and the Plaintiff said that he did not levy the Money as before said &c. and a good Plea. Br. Illies Joines, pl. 53. cites 1 E. 4. 5.—Br. Negativa &c. pl. 46. cites 8 C.

9. In Debt upon Leases for Years, Tender upon the Land, and Restitution of the Plaintiff is no Plea: for he shall answer to the Debt. Contra in Averty; for there he is to have Return, and ought not to distrain, if Tender was made. Br. Dette, pl. 216. cites 14 E. 4. 4. 10. In Debt the Plaintiff equated upon a Lease for Years by Indenture, yet the Defendant may plead that Nihil debet per Patronum. Br. Edi, pl. 110. cites 19 H. 7. 24.

11. Debt upon a Lease of a Manor. Kable said that 10s. Rent, and 100 Acres of Land make the Manor, and the Leesor had nothing in the Manor at the Time of the Demise, and a good Plea: for then the Service shall not pass. Br. Dette, pl. 240. cites 16 H. 7. 5.

12. Note by Award, that if a Man counts in Debt that he be leased, and does not say that he was leased and leased, it is well by Way of Writ or Count, and the same in Formesdon, Cai in Fita &c. Good Debt or Quod Demissi, without speaking of Selim; but in Bars and all Pleadings, he shall say that he was leased and leased &c. or gere &c. good nota. Br. Pleadings, pl. 47. cites 21 H. 7. 26.

13. In Debt for Rent, the Defendant pleaded an Extent of the Land by a Stranger upon a Statute acknowledged before the Demise, but showed that the Liberate was executed after the Rent was due. The Plaintiff demurred, and had Judgment, because the Extent was before the Liberate executed. Hob. 92. pl. 108. Hill. 19 Jac. Grobbham v. Thornborough.

14. In Debt for Rent by Executor for Rent due after Death of Testator, the Declaration did not set forth that Testator was possessed for Years, so that it might be intended that he was leased in Fee, especially as in the Lease there was an Exception of Trees, with Liberty to cut them and if he was leased in Fee, then this Rent would belong to the Heir; but this being after Verdict, the Court held it good, for that had the Testator been leased in Fee, the Jury upon Nil Debet pleaded would have found for the Defendant; but they all agreed the Declaration had been ill upon Demurrer. Sid. 218. Mich. 10 Car. 2. B. R. Bickerstaff v. Purdue.

15. Error of a Judgment in B. R. in Ireland, in Debt for Rent on a Lease, paying on 1st September yearly 7s. 4d. by equal Portions; and demanded 100 l. for Rent for 1 Year and an Half. The Errors assigned were, first, That the Rent is a Duty payable yearly on the 1st of September, and the Words (By equal Portions) are Idle and Surplusage, and no Half Year's Rent can be due. 2dly. The Rent for a Year and a Half amounts to 11l. and the Plaintiff demands but 100l. which is less than is due, and does
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does not follow how the Rent is satisfied. The Court held that the judgment ought to be reversed for both Causes, but this being the first Time of arguing it, and none ready for the Defendant. Adjudicatur: 2 Lev. 4. Patch 23 Car. 2. B. R. Holme v. Sanders.

16. Debt for Rent, Defendant pleaded Actio non &c. quia Die &c. that it became due, Paranum finem ad adventum paratus exhibi solvere & prohiber hic in Cur. the Money on Demurrer; the Plea was adjudged ill, because he did not plead Obitum. 2dly. The Plea goes not to the Action, but in Exculpe of Damages only. Quere of the first Reason; for Rent is demandable, otherwise of a Sum in gross, which is payable without Demand. 2 Lev. 209. Mich. 29 Car. 2. B. R. Beverham v. Osborne.

17. Debt for Rent, Defendant pleaded That he was at the House on the Day Etc. on Hour before Sum-rife, and paid there till Sum-set ready to pay the Rent, and that no Body was there to receive it, and that since that Day he always was, and yet is ready &c. Per Cur. The Plea is good without a Tender; but it had not been so in an Action of Debt on a Bond, for there Tender must be set forth to save the Breach of the Condition. Raym. 18. Mich. 32 Car. 2. B. R. Crouch v. Pattolle.

18. If an Excision be pleaded in Bar to Rent, it must be to Rent grown due after the Excision. 2 Vent. 68. Trin. 1 W. & M. C. B. in Cafe of Baynton v. Bobbet.

A. A Lease for a Year, Rent payable Quarteristin, and not paid to be at the most usual Feasts or Days of Payment, and Avenomy was made for Rent due ad Feftam Michael, whereas it ought to have been the 29th September, according to Calculation. Eyres f. aed, if he had declared of a Rent aetro at Mich. it would have been well; but here it is for a Rent due at Michaelmas; Ergo not good. 12 Mod. 5. Patch. 3 W. & M. B. R. Smith v. Bromley.

20. If you bring Debt or Annuity, and Part of the Quarter is paid, you must acknowledge Satisfaction for that, and declare for the Restful. 12 Mod. 72. Patch. 7 W. & M. B. R. Anon.

(1. c) Pleadings. In what Cases he shall conclude his Plea with (and so Nil Debet.)

DEBT upon a Leafe for Years rendering Rent, the Defendant pleaded that the Plaintiff differeed J. S. and lead to the Defendant, as in the Declaration, who entered such a Day after the Day of Payment, before which Entry Riens Arrear; and this Riens Arrear is no Plea in Debt, but shall say Nihil Debet; and after he, by Advice, took the Entry and Diffusion by Protestation, and for Plea Nihil Debet; quod nota. Br. Dette, pl. 13. cites 20 H. 6. 20.

2. Debt in Middlesex upon a Leafe of Land in Effyx, *Lexed by Disbr's prist, is a good Plea, without saying Nihil Debet, because the Land is in another Country, and this Issue is to be tried where the Land is; the Plea was accepted without answering over to the Debt; quod nota. Br. Dette, pl. 95. cites 22 H. 6. 13.

3. So, tho' it be brought in the County where the Land is. Per Cur. Br. Dette, pl. 95. cites 4 H. 6. 5.

* S. P. Br. Dette, pl. 50. cites 28 H. 6. 6. That it is a good Plea without more. But in Debt in the same Country, where the Land is, it is no Plea, if he does not say ever, and so Nil Debet; for where the Land is, there the Debt may well be tried. Contra where the Land is not. Br. Dette, pl. 22. cites 20 H. 6. 6. If
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4. In Middlesex upon a Lease for Years of Land in Edex rendering Rent, the Defendant pleaded Payment at D. in the County of E., where the Land is. And the Opinion was, That it is no Plea without saying, And fo Nihil Debet. Br. Dictio, pl. 96. cit. 22 H. 6 36. —— S. P. Br. Dectio, pl. 35. [H. 6 37]

But in Debt upon a Lease for Years, the Defendant pleaded Payment in another County, and without saying, And fo Nihil Debet, and yet attested a good Plea. Br. Dictio, pl. 97. cit. 8 H. 7 2. —— Payment in a Foreign County, is a good Plea without Acquaintance, but if he pleads it in the same County, he shall conclude, And fo Nihil Debet. Br. Dictio, pl. 235. cit. 11 H 7 4.

(K. c) Pleadings in Cases of Re-entry.

1. Telpos, the Defendant pleaded a Lease of the Plaintiff, and the Plaintiff replied by Re-entry for Non-payment, by Condition upon the Lease, and the Defendant rejoined by Agreement between them by Parol, that the Defendant shall retain the Rent for Boarding the Plaintiff at his Table by 10 Weeks; and well. Br. Replication, pl. 62. cit. 47 E. 3 24.

2. In Telpos, the Defendant justified by Lease for Years by Deed, and the Plaintiff said that it was Reserving Rent, with Clause of Re-entry for Default of Payment, and that the Rent was Arrear by 6 Weeks, by which he re-entered. And per Cur. He ought to have a Demand. Br. Entrie Cong. pl. 2. cit. 25 H. 6 30 31.

3. In Writ of Entry by an Abbot of 31 Rent, the Defendant pleaded as some of the Rent sufficing out of so much of the Land out of which &c. a Plea to the Writ, and as to some Rent sufficing out of the Tenement, Hors de fyn Fac, and as to some Rent sufficing out of the rest Non Difficuor. And it was held ill Pleading; for he shall answer as Tenant of the Land or Lernor of the Rent, and then shall plead; and also he ought to divide the Parcels of the Rent, and shew how much is sufficing out of one Parcel, and how much out of the other, and plead in Bar; and so he did. Brooke says, And so fee that where it is sapped by the Writ that it is one entire Rent, the Defendant shall be compelled to plead it as to several Rents. Br. Rent, pl. 16. cit. 5 E. 4 85.

4. A. made a Lease for Years rending Rent, and a Re-entry for Mo. 141. pl. 182. Anon. Non-payment, and at the Day a Stranger demanded the Rent; Leffe asked what Authority he had the Leffer to demand the Rent, and because he was a Casing Fellow, and one that was notoriously untamant, and would not shew any Authority, the Leffe would not pay the Rent; and thereupon A. entered, and his Entry adjudged lawful; for a Command to receive Rent may be by Parol. Cro. E. 22. Mich. 25 Eliz. C. B. Sir John Souch's Cafe.

That if any Man would swear that this was true, that the Leffer ought not to enter. And one was immediately sworn that he was of ill Fame, and the Notes of the Records of the Outlaws were thrown, and then the Juftices dismissed the Leffe.

5. If the Reent and Reversion are extended upon a Statute, or seised into the King's Hands for Debt, if the Leffe pays the Rent according to the Extent, the fame is not in any Danger of the Condition; for that now the Leffe is compellable to pay it according to the Extent. 3 Lc. 113. pl. 152. Trin. 26 Eliz. in the Exchequer. Bishop of Bristol's Cafe.

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6. If the Condition was, that if the Rent be behind by the Space of a Year &c. and no Distress &c. per tanum temporum predict, then to re-enter. If there be a Distress there at any Time of the Year, the same to be there the last Day, yet the Condition is not broken. 

7. Leffer enters, by Reaton of a Condition upon Non-payment of Rent, and afterwards brings Debt for a subsequent Rent, he must have a Re-entry by the Leffer to revive the Rent, or else the Action is barred by the Leiffer's pleading the Entry of Leffer for the Prior Rent. Per 21 Jul. 22. Bult. 295. Patch. 10 Jac. Collins v. Goldsmith.

8. Where an Entry is to avoid a Freehold, there the fame ought to be pleaded by Indenture for the Condition; but otherwise where to avoid a Lease for Years, being but a Chattel. 3 Bult. 296. Mich. 1 Car. B. R. Potter v. Potter.


10. Lease with a Clause of Re-entry, if Leffer before the Day of Payment enters into Part of the Lands let, and at the Day he makes a Demand of the Rent; in this Case Non-payment and a Re-entry shall not make the Lease void; for the Rent was suspendende at the Time of the Demand; Sic Dicitum habere. Sci. 446. Patch. 1655. in Cafe of Timbrell v. Bullock.

(L. c) Pleadings in Affire &c. for Rent. In what Cases there must be Prolet or, Mon trans of Deeds.

1. A Sale of Rent, the Defendant pleaded Hors de son Vie &c. the Plaintiff said, That he is Lord of the Manor of B. and those whose Eftate in the said Manor have been sessed of the same Rent whereof &c. and it was held that he ought to shew Deed of the Purchase; for he cannot claim it by Que Eftate without shewing Deed thereof where it is a Rent in Grops as it appears to be here, and not Parcel of the Manor, nor appaddon to it. Br. Montrans p. 91. cites 22 Aff. 53.

2. Affire of Rent, the Plaintiff prescribed in him and his Ancestors, and those whose Eftate his Ancestors had in the same Rent, to hold &c. and the Title adjudged good without a shewing Specialty of Que Eftate. and Error thereof brought, and the Judgment was affirmed. Br. Montrans p. 91. cites 22 Aff. 6.

3. In Affire, the Plaintiff prescribed in J. S. and his Ancestors in the Rent Time out of Mind who granted it to Z. who devised it to the Plaintiff.
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4. A granted all his Estate reserving a Rent, he shall not have any Action thereof without the Deed of Reservation, for he has not any Reservation in him. Br. Montfrans pl. 133. cites 43 All. 46. and 12 H. 4. 17.

5. Affile was brought by W. P. of 26 s. 8 d. of Rent granted to him for Life by J. S. out of 5 Marks of Rent, which he had in T. in Fecesib Diversis in all his Lands and Rents in T. But it was not adjudged whether he should pay the Deed of 5 Marks Rent; For the Court held Contra querentem, insinadue as a Rent cannot issue out of a Rent as it seems. Nevertheless per Patton, Wombat, and Rolfe, he may maintain the Affile without the Deed, because he has no more than a particular Estate; but it was not denied but that if he had had the whole Fee-simple he ought to pay the Deed notwithstanding the Whole of the Rent be granted, and not the Whole. Br. Montfrans pl. 5. cites 3 H. 6. 20.

6. If Rent Parcel of a Minor, or appendant to an Office, or Rent recovered in Value for Land tail'd shall be in Demand, the Demandant shall not pay the Deed, for by a Grant of the Manor or Office the Rent passes, and where it is recovered in Value the Record shall serve. Perkeble. Br. Montfrans pl. 112. cites 12 H. 7. 11.

(M. c) Equity. Cases in Equity relating to Rent.

1. LORD Zouch deceased, late Father to the Plaintiff, did give the Manor of W. with the Appurtenances in the County of Dorset, intailed to the Father of the Defendant, reserving 40 l. a Year rent to him and his Heirs; and after, about 3 Years last past, granted 25 l. Parcel of the said Rent, to the Plaintiff for their Lives; and the Defendant's Father attainted, and paid the Rent to the Plaintiff, until about 2 or 3 Years before his Death, which was about 6 Years since, since which Time the Defendant, being Illue in Tail and seised, refused to pay the said Rent, but was ordered by this Court to pay it, if he shew not good Cause to the contrary. Cary's Rep. 131. 132. cites 22 Eliz. Zouch v. Siddenham.

2. The Plaintiff seeks Relief by way of Contribution, for that one of the Defendants has a Rent-charge out of his, the Plaintiff's, Lands, and one other of the Defendant's Lands, and yet seeks to lay the whole Burden of the Rent-charge upon him the Plaintiff's Lands; and because the Defendant would not answer, therefore an Injunction is granted for staying the Suits for the Rent, Cary's Rep. 132. cites 22 Eliz. Dolman v. Vavasor.

3. Where a Man made Title to a Rent-Seek, of which there was no Suit, nor for which he had any Action at the Common Law, and prayed Help here, it was denied upon Conference had by the Lord-Keeper with the Judges. Cary's Rep. 7. cites Mich. 1596. Anon.

4. The Court is of Opinion, That the Plaintiff having suspended his Rent, there is no Reason but that the Defendant should detain it, by Reason of the Plaintiff's Suit. Toth. 267. cites 31 Eliz. fol. 312. Warren v. Towler.

5. Leafe for 40 Years from Q. Eliz. made a Leafe for 21 Years rendring Rent. The Plaintiff granted to him Statute farms to J. S. the Plaintiff, to whom the Under-lease refused to attorn, or pay the Rent; But Lord C. Ellemere deeded him to attorn, and pay the Rent and Arrears, unless Cause &c. For J. S. could not compel the Tenant to attorn, yet without Attorn-
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Attornement the Reversion, to which the Rent was incident, was in J. S. Mo. 305. pl. 1092. Mich. 5 Jac. in Canc. Shure v. Malory.

6. A Rent was devised without Distrefs, yet the Tenant has been decreed to pay it; because without Seisin he has no Remedy, and yet the Rent is in the Devisee by the Devise. Said by Ld. C. Ellefmore to have been so decreed. Mo. 805. pl. 1092. in the Case of Shure v. Malory.

7. If the Leslee enters, and suspends his Rent he shall not have his Remedy in Equity for it; For it is contrary to the Law. Per Dodridge and not denied by any. Nay 82. in the Case of Vinceant v. Beverly.

8. If a Man grants a Rent-charge out of all his Lands, and afterwards sells the Lands by Particles to diverse Persons, and the Grantee of the Rent will from Time to Time buy the Whole Rent upon one of the Purchasers only, be shall be called in Chancery by Contribution from the rest of the Purchasers, and the Grantee shall be restrained by Order to charge the same upon him only. Cary's Rep. 3. Anon.


10. Judges were of Opinion, that a Rent paid for a long Time (although no Assurance could be produced) should be decreed to be paid. Toth. 270.


12. Concerning Rents which have been paid, by Reason of a long Consequent Payment. Decreed. Toth. 270. cites 12 Car. Cedar v. Gater.

13. An Annuity was devis'd by Will, and by the same Will the same Lands devised to an Half-brother of the Devisee of the Annuity; this being a Rent-Seck without Seisin, and no Power of Distrees, and the Devisee of the Lands having promised to pay it, the Court decreed the Devisee of the Darcy, S. C. Lands to give Seisin of the Rent to the Devisee of the Annuity. Chan. Caes 147. Mich. 21 Car. 2. in Case of Dary v. Davy, cites 22 June 1644.

14. A Devise was to the Plaintiff 'by the Defendant's Father (whose Son and Heir the Defendant was) of 20 l. per Annum out of a Rectory, with a Charge of Distrees for Non-payment. The Glebe belonging to the Rectory was but of 40 l. per Annum. And the Tithe not being subject at Law to a Distrees, and no sufficient Remedy at Law for the Rent, the Plaintiff thereupon brought his Bill to have the whole Rectory liable to the Rent, and the Defendant decreed to pay it. On the Defendant's Part it was inquired, That this Court ought not to extend a Remedy beyond what the Devisee appointed, and the Plaintiff must take such Remedy as by Law he might. The Plaintiff's Counsel replied, That the Devisee gave the Annuity out of the whole Rectory, and intended the Tithe as well as the Glebe should be liable to it. The Court decreed, That the whole Rectory be liable to pay the Annuity, and that the Defendant do pay the Arrears and Costs. Chan. Caes. 79. 80. Hill. 18 & 19 Car. 2. Dr. Thornike v. Allington.

15. A Rent or Pension of 11. 14 s. per Annum, was granted by King H. 6. to Eaton College, illusing out of certain Lands; The College brought a Bill against the Executor of the Testator for Relief as to the Arrears due in his Testator's Life-time, suggesting that the College did not know the Lands charg'd, and so could not disfrain, and that tho' the Perfon
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knew of till the Bill, and demurred, because the Bill sought to subject his Person (which was not to be liable at Law) to pay the Rent and Arrears, and it having been so long unpaid, it was to be presumed the Rent was extinguisht; and however, it appearing by the Bill that the Plaintiff had Seisin, he might bring his Action at Law; and if there had not been a Seisin, it was said that all the Relief this Court would have given, would be but to give Seisin. And on Debate the Demurrer was allowed. Chan. Caes 184. Trin. 22 Car. 2. Palmer v. Wettenhal.

10. A Lease is made rendering Rent, and if a Meadow be pleaded to pay 51. per Acre. North K. asked if this was reasonable? 2 Chan. Caes 199. Trin. 26 Car. 2.

20. Chancery will not decree a Rent to be abated on the Account of Loss, Eviction, or lessening the Profits, unless there be a Covenant. 2 Chan. Caes 203. Mich. 26 Car. 2. Dukkenfield v. Whitecot.

21. Forty Marks yearly Rent was reserved on a Sale of Lands in the 9th of H. 8. payable to the Vendor and his Heirs. This Debt was in rol'd at Chester, and the Rent paid till the Year 1632, but the Counterpart being lost, it was now denied to be paid. The Defendants pleaded that they were Purchasers for a valuable Consideration without Notice &c. and that some of them had enjoyed the Lands 30 Years, and more, in all which Time no Demand was made of these 40 Marks, or of any Part thereof. Matter of the Rolls decreed it to be paid with Interest; but Finch K. revers'd that Decree as to the Interest, because the Debt being inrol'd, it was a Neglect in the Plaintiff that he did not recover the Rent sooner. Fin. R. 241. Mich. 27 Car. 2. Boteler v. Massy.

22. Lands were charged with a Rent; A. purchas'd Part with Notice, and afterwards sells Part of that Part to B, and directs the Grantee of the Rent to join in a Fine to B, asuring the Grantee that it would be no Prejudice to his Rent. It was insisted that No Relief ought to be in Equity, because the Extinguishment of the Rent being a Rent-charge was by the Plaintiff's own Act by a Fine; but Ed. Chancellor held, There was no Consideration for the Rent, nor any Agreement to extinguish it, and that the Grantee was circumvented, and decreed Relief against A. Chan. Caes 273. Hill. 27 & 28 Car. 2. Hawkes.

23. Rent in lieu of Tithes payable before the Diissolution of Abbeys &c. tho not paid for 14 Years past were decreed to be paid, and all the Arrears. Fin. R. 256. Trin. 28 Car. 2. Dr. Busby v. the Earl of Salisbury.

24. A. upon his Marriage charges his Lands with a Rent-charge for the Furniture of his Wife, and afterwards by his Will devises Part of these Lands to his Wife. The Plaintiff's Bill was, That the Lands devised to the Wife might bear that Proportion of the Rent-charge, otherwise the rest of the Lands, that were not sufficient to pay the Rent, would be clogged with the Arrears, which in Time would swallow up the Inheritance. Ed Chancellor, The Grantee of the Rent-charge may distress in all or any Part of the Lands for her Rent, and there is no Reason to abridge her Remedy in Equity, and the Husband certainly intended her some Benefit by this Devise, and he has not declared it should be accepted in Part of the Rent-charge; and therefore dismissed the Bill. Vern. 347. pl. 342. Mich. 1695. Knight v. Calthorpe.

25. A Lady for Years under a certain Rent, and Covenants to repair, makes 100 Under-leases; The Premises were not repaired, nor the Rent paid; A Re-Cover is made, and the Original Lease avoided. Six of the Under Leases brought a Bill against the Head Landlord and his Lady &c. The Court said, They could not make any Decree to appoin't the Head Landlord's Rent, or relieve the Plaintiffs, but on their Payment of the whole Rent in Arrear, and repairing all the Premises; But when they have so done, they might compel the rest of the Under-Tenants to contribute. 2 Vern. 103. pl. 99. Trin. 1689. Webber v. Smith.
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26. A seised in Fee of a M数千age of 8l. per Ann. and possessed of a Perennial Estate of about 250l. Value, devised several Legacies, and gave to B. his Eldest Son, the Plaintiff, 5l. yearly for 40 Years, if he should so long live, and made C. his 2d Son Executor and Residuary Legatee, and deeded to him the said Millsgage in Trust. C. died, and during his Life paid the Annuity. His Executors refused, that he had no effect, and that the Will had not adversely the Real Estate to the Payment thereof, and that C. took the Estate, and bequeathed 50l. of B. the Plaintiff's; and for securing thereof, and also of the 5l. a Year for 3 Years, conveyed the Millsgage in Fee to f. S. in Trust for the Plaintiff, redeemable at 3 Years end on Payment of the 50l. and Interest, and the 3 Five Pounds; and that the Money was repaid, and the Plaintiff had re-convey'd, and so had extinguished his Right, if any he had, as to the Real Estate. But the Court thought that C. being both devisee of the Land and Executor also, the Lands should be liable to the 5l. a Year, as in Clowesley and Pelham's Case, especially as it was all the Provision made for the disinherited Heir, and C. had now 20 Years duly paid the same. And as to the pretended Extinction by accepting the Mortgage, it was not to be regarded in Equity. And to redeem the Arrears and growing Annuity for the future, and an Account of the Rents and Profits of the Real Estate for that Purpose. 2 Vern. 143, 144 pl. 140. Trin. 1692. Elliot v. Hancock & al.

For more of Rent in General, See Abargy, Debt, Distress, Distresses, Replevin, Ejectment, Sculm, and other Proper Titles.

Repleader.

(A) In what Cases it shall be [and at what Time.]

1. If the Parties are at Issue upon an immaterial Issue they may replead. 3 D. 6. 39.

For Rent the Defendant pleaded, That before the Rent due he had offered the Term to $ S of which the Plaintiff had Notice. But as he joined the Notice, and Verdict for the Defendant. It was refused, That judgment ought not to be given, but a Repleader, the Issue being upon a matter immaterial, the Notice being no Discharge with an Agreement or Acceptance by the 3d Person. And Twelth J. held, That if an issue be taken, and Verdict given, judgment shall thereupon be given whether for the Plaintiff or Defendant, and cited Cno. 5 s. But an immaterial issue is where upon the Verdict the Court cannot know for whom to give the Judgment, whether for Plaintiff or Defendant. And to this the Chief Just. and Wincham J. agreed, and awarded a Repleader. Lev. 32. Pach. 13 Car. 2 B.R. Sergeant v. Fairly.

This upon Behalf of the Defendant, as Executor; the Issue was joined, Whether he had after not the 3d of December, which was the Day when he had Notice of the Plaintiff's Original; and it was joined, That then he took effect. It was moved for a Repleader, because (as was said) this was an immaterial Issue; for that he had not After then, yet if he had any Afterwards is liable to the Plaintiff's Action. But it was insisted to have Judgment upon the Statute of 32 H. 8. 79, because here the Parties only doubt whether there were Affairs at the Time of the Notice. And it was found, That there were none, and that therefore Judgment is to be given accordingly. And of that Opinion was the whole Court. 2 Med. 159. 152 Mitch. 28 Car. 2 C.B. Read v. Dwayne. Akin v. W. Counsel Opinion, That if a Party is in an immaterial Issue there shall be no Repleader, because he is helped after Verdict by the Words in the Statue, viz. (See Issue) He is not said,
3. After Issue if the Tenant makes Default, and at the Petit Cape returned the Demandant releases the Default be shall not repeat again before this Day. 12 C. 6. 7.

4. If the Inquest be taken by Default the Parties shall not repel after; Because by the Default he was out of Cont. 23 H. 6. 32.

5. If Tenant for Life makes Default after Default, and is in Reversion is received, and joins Issue upon an ill Plea, and after his Prius makes Default, now at the Day in Bank there shall not be any Repleader, because by his Default, after the Receipt, the Demandant has Cause to recover the Land upon the Default of the Tenant for Life; and to the Plea cannot be put in such Degree as it was at the Time of implaining, as it ought upon the Repleader. 20 H. 6. 37.

6. If an Inquest be taken before theJustices of Nisi Prius, and this is returned in Bank, if the Parties were not well at time, they shall be received to repel. 30 C. 3. 17. But there

As in Action upon Inclination of Leafe for 20 Years, rendering 12 l. per Annum in Esther, and other Covenants Ex terraque parte Perimplendant et ad omnes Coevantes Prior, not a Performer to go longer in the same Indenture in 201. And for Non-Payment of 10l. at Esther, the Lessor brought Action in 201. And the Defendant said, That at Esther he paid the Land all the Day ready to pay, and none came of the Part of the Plaintiff to receive the. For the Trespass, That if such a Day after the said Feasal be demanded time, the Defendant shall not be in the same Day, and so to Issue; And found for the Plaintiff at the Nisi Prius. And per Car. This is Jefolal. For the Penalty refers to the Feasal of Esther, only, which is excused by the Tender upon the Land all Esther-Day, and the Plaintiff imputes himself by a Demand after the Penalty is saved; by which it was awarded, That they, not being withholding the same at Nisi Prius, when the Defendant is not demandable; For yet he has Day in Court to demulcet in equal in several such like Cases the Parties have repel; such note, by Award. Br. Repleaders, pl. 22. cites 22 H. 6. 37.
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Repleader.

So in Repleader the Defendant made Complaint as Bailiff to S for Damage done, supposing that Error, a Lady, to all R. And the Plaintiff proved Panel of his Tenor to the said S. The Plaintiff rejoined, That bare before 5 E. and any Term in the Land, and J. late Abbot of K. was seize thereof in Fee. In Right of his Church, who demitted to him for Life. The Defendant traced the Lease of the Abbey. The Jury found the Lease, but that there was no Liberty made. Upon this Verdict the Court awarded a Repleader, because a Verdict at large cannot be given upon a special Issue joined. And they awarded the Repleader to continue at the Accrue. D 11 b. 118 pl. 6. 57. Pag. 2 P. M. Jones. Weaver.

So in Debt upon an Obligation, the Defendant pleaded the Statute of Fyars, made the 6th of Febr. 11. Eliz. (whereas the Parliament did begin the 21st of Feb. 15. Eliz.) and that the Obligation was taken by Fyars. The Plaintiff replied, It was not made for Fyars &c. contra jamnum statute meli, &c. forma prejud. and upon this they were at Issue, and found for the Plaintiff; and that for the Statue was mid-risked, and it was a good Law of which the Court is to take Commandance: although both the Parties do agree there is such a Statue, yet the Court well knowing there is in such Statutes, and so cannot be controverted. The Court held, No Judgment could be given for the Plaintiff, it being in the Law of the Defendant, the Court hold it clearly ill; and that a Repleader ought to be, albeit it was after Verdict. And it was adjudged, That there should be a Repleader. Cro. E. 245 pl 4. Mich. 55 & 56 Eliz. B. R. Love v. Wotton, — cites 3 May 119.

So where Error was brought of a Judgment in Tox in a case in the Wife and Wife, upon the Conveyance of the Wife to her own Wife, wherein they pleaded, Legit is not just culpabili. This was null to be heeld, because no Tort is supposed in the Baron, and the Plaintiff should be Legit is not just culpabili. Wherefore after Verdict for the Plaintiff a Repleader was awarded. Cro. 1. 5 pl. 6. Pach. 1 Jac. in the Exchequer-Chamber. Cov v. Cropwell. — Cov. v. Cropwell and his Wife, S. C. in B. R. Cro. E. 283. Adjourned. So in Affirmavit upon a Promise of the Wife Dain Sula, the Plea was entered Et prejud. the Husband and Wife defendant Ini &c. et ipsa the Wife says, Legit is not just Affirmavit. And this being tried and found for the Plaintiff, it was moved in Arrealt of Judgment, That a Plea of the Feme without the Baron in no Plea at all; and an Issue joined and tried therein on its side, and not aided by any of the Statutes of Fam. and of that Opinion was all the Court. A Repleader was awarded. Cro. J. 245. pl. 4. Mich. 9 Jac. B. R. Tampion v. Newton. — Yold 216. S. C. And this, The S. P. was adjourned in an Action against the Husband and Wife for Words spokc by the Wife, where the Wife only pleaded Not Guilty. Chomley v. Apsey.

So in a Repleader the Defendant pleads, That it is his Plaintiff's. The Plaintiff replies, That the Truth of the Issue is present by the Defendant's Evidence &c. The Defendant replies, That the Jury's Opinion the House was well repaired. And Issue upon that upon the Plaintiff, who now appears in Arrrealt of Judgment, That it is not a good Issue; For it ought to have been Tempore Efectis, or Intimation. But by the Court that was now disallowed, being now'd after Verdict; but because, upon View of the Return of the Verdict facts, nothing was indorsed but the Jurors Names, the Court awarded a Repleader Nov. 114. Safford v. Ventres, cites 3 Rep. 41. ——[But see now the Statue of 21 Jan. 15. 16. in first Amendment].

So in Debt in a Bond, with Condition to pay 10 l. 10 S. to the Defendant pleaded Payment of 20 l. founded from Condition; upon which they were at Issue, and a Verdict was given for the Plaintiff; and yet a Repleader was awarded. Hob. 112. Kent v. Hall.

But in Troop's for leasing and improving his Wife &c. the Defendant insinuates by Warrant of the Sheriff. The Plaintiff replies, He inquires in proper alegue tali Camp, and Issue upon it; And Verdict for the Plaintiff. And it was moved for a Repleader; because De inquiris facia Propria is not a Plea to Matter of Record, but the Plaintiff ought to have travailed the Warrant; but Judgment was given for the Plaintiff; because it is good enough after Verdict. Raym. 50. Mich. 13 Car. 2 B. R. Collins v. Walker.

And says, That it was to be resolved between Osborn, and Dennis, and Pater v. Stafford. Hob. Rep. 244. See 2 Leon St. Moor v Sir John Savage.

See pl. 52 the 5th Revolution, in the Case of Staple v. Haydon.

7. Debt against Executors, who pleaded Rics enter meris; and it was found, That they had enter meris, and did not pay Aftors, nor how much they had; and so Jealal; And they rejoined. Br. Repleader, pl. 55. cites 40 E. 3. 15.

8. In Troop's Day was given at the Commencement to Quinl. Aich. Br. Repleaded and the Roll found to be read in the same Place and made Quinl. Tempit, et. pl. 8. but it could not well be percussed, so that the Justices were in Doubt how cites S.S. the Truth should be tried, it such Deceit had been; and at last an In-quest was taken of the Clerks, and nothing was found; and after the Parties had Day in Court, and Procs continued without Interruption, tho' it was not continued by Course of Law, and the Justices would not amend the Original, but awarded them to replie de novo &c. 46 E. 3. 19. a. b. pl. 2.

9. Decision of a Deed, by which the Land was given to R. his Ancestor, whose Heir he was, and J. his Feme, and the Heirs of R. which R. dead, and J. married the Defendant, and deeded the Deed. The Defendant said, That the Land was given to R. and J. in Title; and lo to illude the Repleader, Where the Plaintiff ought to have maintained such debt in Fees
Repleader.

as above, therefore they repleaded; but in so doing, the Defendant in his Bar was to have alleged the Tail, attique how that it was given to them and the Heirs of R. prout &c. Br. Repleader, pl. 10. cit. 7 H. 4. 14.

10. Account of Receipts of 100l. for Merchandize for 7 Years. The Defendant said, That he fully accounted the 6th Year for the Whole; And found for the Plaintiff. And they repleaded; For he cannot account the 5th Year for the Profits which arose the 2 last of the 7 Years. Br. Repleader, pl. 46. cit. 7 H. 6. 5.

11. In Recordante the Defendant aver'd for Damage past, and the Plaintiff made Title to a Common by way of Bar to the Awory, and the Defendant replied by a Deed of Release of the Common, which was not a perfect Deed, by which the Plaintiff demurred upon the Replication of the Defendant; And by the Opinion of the Court, the Replication is not good; but because there was a Default in the Replication of the Defendant, who made his Title to the Common, therefore by Award of the Court the Parties were awarded to replead. And to see that they shall not replead for the Default which is in this Plea upon which the Defendant is, but because a Plea before was not good; As where they demur upon the Replication, there if the Replication be not good, they shall replead; and if they demur upon the Replication, and afterwards it appears that the Bar is evident, they shall replead, and all those shall be by Defaults in Matter apparent; And to see that Repleader shall be as well after a Demurrer in Law as after Issue joined; quod nota. Br. Repleader, pl. 39. cit. 9 H. 6. 35.

A Repleader may be after Demurrer.

D. 118. a. Marg. pl. 35. Enr. 127. 42. a. No issue was argued by Fenner, and so adjudged according to.

25 H. 6. 19 a. Path. 25. Enr. in Hart's Cafe. Bar at the End of Ridgway's Cafe. 5 Rep. 52. b. It is said, That the Record of this Cafe of 9 H. 6. 35. had been erased, and that it does not warrant the Report of the Book.—And. Mo. 187. pl. 119. Mich. 14 Jac. in the Cafe of Badare v. Salter. It was agreed, That after a Demurrer no Repleader shall be; but otherwise after a Verdict.

It was held strongly by Dyer, Dal. 76. pl. 2. 14 Enr. in the Cafe of Page Williams v. Corden. That Repleader never shall be but on Tresol or Issue joined, and never upon a Demurrer in Law; For if there be a sufficient Declaration and a Fault in the Bar and a Fault in the Replication, the Judge shall allow, That the Plaintiff likes nothing by his Writ, and not that he shall replead; For tho' the Bar be ill, yet the Parties have let it pass. So if the Case be good, and the Bar ill, and the Replication ill, and the Repleader ill, and a Demurrer be upon the Repleader, the Plaintiff shall recover, and they shall never replead; tho' the Replication be not good.

After a Demurrer in Law there shall be no Repleader, Per Periam. Which Anderson Ch. 1. denied; For it seemed to him, That tho' the Demurrer was upon the Replication, yet if the Matter of the Bar is ill, they shall replead; And to this he put the Cafe of Borden v. Bevon, in Trefpass, where the Demurrer was upon the Replication, which was adjudget good, and that the Plaintiff should be bar'd; but because there was a Default of Pleading in the Bar, they shall replead. But the Reporter says, Where it did appear by Act of the Court or Counsel of the Parties, that the Pleading was altered in divers Points in the Alignment of the Day of the Trefpass, which seems to be by Affent of the Parties, as he apprehends; But he says, Periam cited the Cafe of D'Harv. v. Southwall, in Debt upon Obligation, where the Demurrer was upon the Replication, and the Plaintiff was bar'd, because the Replication was ill; And there it was said, That if the Plaintiff had demurred upon the Bar, which was ill, he would have recovered: So therefore in 17 Geo. 3. it is said upon Demurrer upon the Bar, If there is no Rejoinder to the Demurrer of the Bar. Therefore Quere Legem, and the Court of the Court of C.B. For, he says, as he remembers, the Ld. Dyer, in his Time, always took it, that no Repleader should ever be after Demurrer, which seems against the Opinion of 9 H. 6. Sav. 89. pl. 165. Patch. 28 Enr. in Belford's Cafe.

After a Demurrer in Law there never shall be any Repleader; For the Parties have, by their mutual Affent, put themselves upon the Judgment of the Court, and therefore without their Affent they cannot replead. 5 Rep. 52. b. Path. 56 Enr. B. R. the 3d Resolution in Ridgway's Cafe.

But Gaway said, It is without Question, that a Repleader may well be after Demurrers, but that is when the Pleading is insufficient of both Parties. But Per Popham. If it be insufficient in Matter, so that the Affent is ripe, and the Plaintiff replies, and a Demurrer upon it, yet Judgment is given against the Defendant, but there the Bar is insufficient but not in Matter, but in Form, (as for want of a Traverle) and a Replication is to it, which is ill, and a Demurrer upon it, there shall be a Repleader; and afterwards the Justices mov'd the Parties to discontinue the Action, and to commence again; and so they did. Cor. E. 318. pl. 4. Patch. 56 Enr. B. R. Grills v. Ridgway.

The Court was moved to have a Repleader after a Demurrer, and this without the Affent of the Parties. To this it was ane word, That the time cannot be without Affent of the Parties, according to the Resolution in Point, Cole 3 Rep. fol. 52. (5) in Ridgway's Cafe. against the Opinion in 9 H. 6 fol. 35. But by the Opinion of the whole Court here, in this principal Cafe, no Repleader can be granted here, being after a Demurrer, without the Affent of the Parties hereunto. 2 Bulst. 37. Mich. 10 Jac. Succomv v. Wardner.

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This generally upon a Demurrer there shall be no Repleader, yet this is to be understood upon the same Plea, upon which the Demurrer was; but upon other precedent Pleas it may be. Act 1st. in the Case of Clinton v. Pool. — And ibid. 245. furs. That in the Book of Appeals are Precedents of Repleader after Demurrer; but they are not Entries by Rule of Court, and cites 2d. Leg. 137.

In a Question raised by a Sovereign for curing a Fraud. The Defendant pleaded a Tener of 2. Gentlemen, name 35. a. without any justifiable note. The Plaintiff Demurrer, because the Traverse made the Plea double, and was insertment, and that no such Value can be put on Cottages. The Plea was adjudged ill, and a Repleader was awarded, and to omit the Traverse, and the Plea to be of a Tender of 45. and June to be taken of the Sufficiency thereon. 3 Lev. 24. S. W. 3. C. Stephens v. Cooper. — And ibid. The Reporter adds, Et facit nota. That a Repleader was awarded by the Court after Demurrer and Argument; which, he says. He had heard denied several Times of late, and that no Repleader shall be after Demurrer, but after Illie joined; but that heretofore Repleader had been after Demurrer.

Powell positively said, That Repleader could never be upon Demurrer, but is always after Iffie; tho' the old Booksbeheld to make a Question of it, yet there were 2d. Authorities in the new Books of it; And yet Brotherick held as consist of a contrary Opinion at the Bar, recente Holt Ch. J. & Cur. re- plia. 6. Mod. 102. Hill. 5 Ann. B. R. in the Case of Crotte v. Billon.

12. Debt against Comteiner upon Tally due to him such a Day, Year, Place, and County, at which Time he had Affairs, and would not pay. To which the Defendant said. That such a Day after he rece'd the Tally to him, at which Day he had nothing in his Hands, nor ever after, except he had that he rece'd the Tally to him before this Day; and so to Illie, and found for the Plaintiff. And the Defendant would have repleaded, because no Place nor County was alleged where the 2d Tender was, & no Allegation. For it shall be intended in the Place and County where the first Tender was; quod nona Per Cur. But Contro where be juries in another County, and transfers in the first County; For there Place and County ought of Necessity to be known, for the Country there is Parcel of the Iffie. Br. Pleadings, pl. 9. cites 27. H. 6. 9.

13. Trefofs against Baron and Feme of Goods taken in D. in the County of C. and the Baron pleaded Not Guilty, and the Feme, as to all the Goods, except certain, Not Guilty; and as to those that he was possessed of at the Pro- priet at B. in the County of H. and hailed the Goods to E. to keep, who delivered the Goods to the Plaintiff, and the Baron and Feme took them at the Vill in the Declaration. The Plaintiff said. That he was possessed of the Goods at the Propris at the Time of the Trefofs till the Defendant took them at the Vill in the Declaration, abjures he that these were the Goods of the Feme at the Time of the Trefofs, and the others c contra; and the Illie tried by View of D. in the County of C. And it seemed to the Court, That the Pleading is not good, and it ought to have been tried by the County of H. and not by the County of C. And it was agreed, That after the Illie found the Parties shal not have Day in Court if the Verdict be good; but if it be not good, then the Parties shall replead. Br. Repleader, pl. 34. cites 5 E. 4. 108.

14. In Way they were at Illie, and the jury ready to pass; there if All Matters there be justifiable apparent in the Record, the Inquest shall be discharged. Br. Repleader pl. 54. cites 7 E. 4. 1. — And to it was used in B. R. 32. H. 8. and the Parties replead; Quod Nota. Ibid. for Repleader at the Common Law, unless in Special Case; but several of those are remedied by the Stat- tute of Jeofallis 52. H. 8. cap. 50. Br. Repleader pl. 62.

15. It was adjudged by good Advice in B. R. That if an Office be transferred in Chancery, and Illie being joined, the Transcript is sent into B. R. to try the Illie, which is found against the Queen, but because all the Points of the Office were not transferred, he who tendered the Traverse was put to replead, he shall replead in B. R. and not in Chancery, tho' nothing was certified in B. R. but the Traverse, and the very Record is in Chancery, inasmuch as the Court is once sealt of the Record; And this Repleader is only to fortify the Record, and to make the Illie there the better, and the more easy to be tried, so that Right be done to the Party.
17. In *Replevin* in C. B. the Plaintiff made a *New Allignment in unam Acer Terrae sine Preta.* The Defendant pleaded Not Guilty; for which Reaon the Court adjudged all the Pleading void, saying that the Writ abased for this Uncertainty; So note, That this New Allignment is as Parcel of the Declaration, otherwise it could not be that the Writ should abate, but there ought rather to be a Repleader, and then to commence at the New Allignment, the which is not done for the Reaon aforesaid. And 31. pl. 73. in the Case of Lee v. Mayer.

18. In *Action for Rent,* the Defendant made Title to it, as Cousin and Heir to Ro. Chamberlaine, that is to say, Son of Ann Daughter of Ro. and avowed for Rent Arrear for 16 Years after the Death of Ann; and because he made Title to it immediately as Heir of Ro. and after avowed for Rent after the Death of Ann, which cannot be; for so it shall be intend ed that the died in the Life of Ro. and Iliue being joined upon another Matter, they were awarded to replead. *Cro. E. 24.* pl. 1. *Hill.* 26 *Eliz.* C. B. Chamberlaine’s Cafe.

19. *Debt upon a Sheriff’s Bond* conditioned to appear in B. R. where the Proces is returnable, then &c. The Defendant said in Fact, That he had appeared Secondum Formam & effectum Conditions &c. and upon this they were at Iliue. The Court were clear of Opinion, that a Re pleader should be awarded, and so it was, because the Appearance was not triable by a Jury, but by the Record. *Le. 90.* pl. 114. *Mich.* 29 &c 30 *Eliz.* C. B. Brett v. Shepperd.

20. In *Debt* the Plaintiff declared, That be let certain Lands for Years to the Defendant, rendering Rent payable at the Feasts of the Annunciation and St. Michael, or within 40 Days after every of the said Feasts, and that the Rent was behind at the Feast of St. Michael last past, Unde Aetio accredit. The Defendant pleaded *Nobil debet,* upon which they were at Iliue; It was shown to the Court, That there upon the Pleading is a Jeofall, for the Rent is reserved payable at the said Feasts, or within 40 Days after, and he declares, That the said Rent, upon which the Action was brought was behind at St. Michael, without Respect to the 40 Days after which cannot be; for before the 40 Day after each Feast no Action deb he; whereupon the Court awarded a Repleader. *4 Le. 19.* pl. 64. *Mich.* 32 *Eliz.* C. B. Joffelin v. Joffelin.

21. *Forester of divers Trees apud D. in the County of Surrey,* The Defendant pleads, That Queen Mary was seated in Fee of the Manor of D. in the County of Surrey, where those Trees were growing, and granted it to the Defendant in Tail, whereby he was feiled thereof; and that J. S. cut the said Trees, and granted them to the Plaintiff, who left them, and the Defendant found and converted them &c. The Plaintiff replies *De Injuria sine Propria &c.* And thereupon Iliue was joined. Coke moved, That the *Replication was Ill*; For De Injuria sine Propria is not any Plea, where the Defendant makes Justification by claiming an Interest
Interest in the Freehold to himself, as 16 E. 4. 44 E. 3. 18. and 14 H. 4. 32. is, upon the same Reason; but where one claims not any Interest, but justifies by Command, or Authority derived from another, it is otherwise; and of that Opinion was the whole Court, wherefore a Repleader was awarded. Cro. E. 539. 540. pl. 2. Hill. 39 Eliz. B. R. The Archbishops of Canterbury v. Kemp.

22. In Replevin &c. the Defendant made Conformance as Bailiff to F. G. for 10 s. for an Amercement &c. and for 20 s. for Rent. The Plaintiff as to the 20s. for Rent, replied Legal presumes fact &c. obtinit to J. S. Bailiff to F. G. who refused it, and that he is yet ready; The Defendant traversed Demurr to the Refusal, and to the Flue. It was relented per tot. Cur. That this Flue joined upon the Refusal was ill; For it ought to have been joined upon the Tenure, and therefore a Repleader was awarded as to that Point. Cro. E. 853. pl. 26. Patch. 4 Eliz. C. B. Parham v. Norton.

23. In Replevin the Defendant avowed upon the Statute infra Feudum & Deminium upon a Stranger, the Plaintiff replied Non-tenure Generally, without alleging Tenure of any particular Person, and traversed the Tenure alleging. It was ruled to be ill, and therefore Repleader was awarded; for he might traverse the Tenure or plead Hors deSone Fee, but cannot reply Non-tenure generally at the Common Law. Cro. J. 127. pl. 16. Trim. 2 Jac. B. R. Paramour v. Chapman.

24. In Battery the Defendant justified that he was a Copyholder, and that the Lord had a Way for himself and Copyholders over the Plaintiff's Lands, which is a Copyhold also of the Manor, and that the Defendant resided there, and that the Plaintiff as he was going there, and the Defendant Molliet Manus &c. upon him. The Defendant traversed that the Lord could not have a Way over his own Land; and this was agreed per Cur. Then tho' the Verdict palpated upon a null Flue, this is not remedied by 32 H. 8. 32. And this was also agreed per Cur. Otherwise it is where an Flue is issue, be-misjoined, which has the Colour and Countenance of an Flue; whereupon the Court awarded a Repleader. Mo. 867. pl. 1198. Mich. 14 Jac. Tasker v. Salter.

25. T. brought an Action of Debt upon a Recognizance in the Petty-Bagg; The Defendant prayed Oyer of the Condition there and had it; afterwards he pleaded this Matter to this Court, and prays, in Regard he had not taken his Plea, that he may replead. Rol. Ch. Jut. This cannot be granted upon Motion here; for if the Flue be joined in the Petty-Bagg you must try it, we can make no Rule but by Consent. St. 412. Hill. 1654. Turney v. Trapes.

26. In Debt the Defendant pleaded an Accord with the Plaintiff, but did not plead any Satisfaction. Flue was taken, if there was any such Accord, and found that there was not; Jones held that the Plaintiff should have Judgment; but if it had been found for the Defendant there it

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there should be a Repleader. Quere, inde now by the Statute, the Plaintiff shall not be barred. Lat. 54. Plumeley's Case.  

27. In Case upon severall Promises for curing the Defendant of a Sore, and applying several Medicines to him, and for the Medicines themselves, the Defendant pleaded that he had paid the Plaintiff 6d. for the Medicines, and the Application of them; whereupon Issue was taken, and Verdict for the Plaintiff. The Court was moved for a Repleader, because the Case was not answered to, and the Plaintiff declared upon that as well as upon the Price and Applications of his Medicines. Per Cur. there ought to be a Repleader; For here the Plea is to the Whole, and therefore ill. Hard. 331. pl. 6. Trin. 15 Car. in the Exchequer. Workman v. Chappel. A Discontinuance is said by the Statute after Verdict. And so a Diversity. Per Cur. Hard. 331. in S. C.  

28. In Assumpsit against Administrator Defendant pleaded, That issue non Assumpsit instead of the Incestate; after Verdict a Repleader was awarded, and no Costs to either Party on a Repleader. 2 Vent. 195. Trin. 2 W. & M., C. B. Anon.  

29. Trapsaf's of his Clofe broken called B. in D. and for taking and impounding 3 Cows &c. To all, besides the Taking and Impounding, the Defendant pleads Not Guilty; and as to that he says, That he was posse'd for a long Term of Years of the Place where &c. That he demised to W. for Part of the Term rendering Rent, and for Rent Acre he took the Cattle in the Place where &c. as a Distress &c: The Plaintiff replies, That the Cattle were not Levant and Couchant; upon which Issue is taken, and Verdict for the Plaintiff. It was argued that this was an immaterial Issue, and therefore moved for a Repleader. But per Treby Ch. J. Where the Cattle escape accidentally, there they are not disallowable until they have been Levant and Couchant; but if they escape by Default of their Owners, they are disallowable the first Minute; but here it does not appear how they came into the Plaintiff's Land; therefore since the Defendant has taken Issue upon the Levancy and Couchancy, it must be intended after Verdict against him, as much as if he had laid that he will admit that they came in by such Means, whereby the Levancy and Couchancy should be material to intitle him to the Distress; but if the Defendant had demurred upon the Replication, then it must have been taken more strongly against the Plaintiff, and then it would have been ill; or otherwise the Defendant might have rejoined, that the Cattle came in by the Plaintiff's Default; but now after this Issue, it shall be taken much strongly against the Plaintiff. And (by him) if a Repleader is to be awarded, the Replication shall not be set aside, but only the first Issue, which was the taking of Issue upon it by the Defendant. But (per Fowell) the Replication is Part of the Issue, and ought to be set aside if a Repleader is granted; for when a Repleader is awarded, * no Error ought to be set upon the Record; and therefore if the Declaration be good, and the Bar, Replication and Rejoinder ill, if a Repleader be awarded, all ought to be set aside but the Declaration; and Judgment Nisi &c. was given for the Plaintiff, and afterwards upon further Argument it was adjudged by the whole Court, That no Repleader should be awarded; for it is not totally an immaterial Issue; for perhaps the Defendant charged the Cattle upon the Land not to his Distress, and then Levancy and Couchancy is material; and the Court will intend that it was to after a Verdict. And therefore Judgment was given for the Plaintiff. Lord Raym. Rep. 167, 169, 170. Hill. 7 W. 3. C. B. Kempe v. Crewes.  


32. Treff-
32. Trespas against W. R. and W. S. for breaking his Close called the Salk. 216. Wharf 31st May, and throwing down his Rails, and doing the like Trep- pias 7th July following; W. S. pleads Not Guilty as to all &c. but W. R. as to the Trespas 31st May, pleads Not Guilty as to the Force, but Raym. Rep. justifies the Entry, and throwing down the Rails, by Virtue of a Leafe of the said Wharf, and for a Way over the same to certain Stairs on the Thames, and that being invited to the said Way, the Plaintiff obstructed a Repleder it with Rails, which the Defendant desired him (the Plaintiff) to open, cannot be but he refused, so he justified the throwing them down, and pleads the grant made by the Court before Term, that the Plaintiff could have a more convenient Way to the said Stairs and River Thames than by and through the said Wharf.

The Plaintiff, as to the Plea of the 1st Trespas replies, That the Defen- dant had another more convenient Way to the River Thames, and thereupon they are at Issue; And as to the Plea to the Trespas on 7th July, he de- murs. Both Defendants made Default at the Nth Prius, which being recorded, the Inquest was awarded by Default, and both were found Guilty, viz. W. S. as to the Trespas 31st May, and acquitted of that of 7th July, and W. R. was acquitted as to the Force 31st May, as to the Force; but as to the riot the Jury found, That he had no other Way to the said Stairs and River Thames than thro' the said Wharf, and affests Damages on the Demurrrer, and acquit him of the Trespas 7th July. It was held clearly, That this was an immaterial Issue; and the Court held as to Repleaders generally, 1st. That a Repleader is to be awarded when such an Issue is joined, as the Court after Trial thereof cannot give a Judgment, and not determining the Right. —2dly. That before the Statute of Jeuitsails, if such an Issue were joined, the Court before Trial might award a Repleader. —3dly. * When a Re- pleader is awarded, the Amendment must begin where the Plea which Salk. 56. makes the Issue bad, begins to be frantik, and therefore if one makes him, S. C. — And fell a bad Title in his Declaration, to which there is a bad Bar, and there- upon a bad Replication on which there is Issue, there the Replication must be awarded and entered on Record; and Plaintiff shall declare de Novo &c. But if the Bar be good, or Plea be good, and the * Replication bad, and Issue thereupon, there a Repleader will only be as to the Replication; but if* Where the Bar is good, and the Issue ill by which they plead, the Bar shall be good, and the Issue ill; and thereupon the Replication be bad, and a Repleder awarded, it must be as to the both.—4thly. || If the Court award a Repleader where it ought not to have been, or deny it when it ought to be, it is Error. —5thly. ¶ That upon Award of Repleader, there must be no Cofis, because it is a Judg- ment of the Court upon the Pleading; but upon Amendment of a Plea in Paper, there must be Cofis —6thly. That upon a general Rule for Re- plieder, without any Direction from the Court from what they should begin the Repleader, it must begin from the first Fault which occasioned the bad Pleading commenced; for the Judgment is Quod partes replicant. —7thly. That the Pleadings in this Case were such as a Repleader would be awarded upon upon the Common Law; for the Defendant having 3dly. infisted upon a Title to a Way by Grant, his Averment, that he had no other Way, was ** immaterial, and by Consequence the Issue thereupon Imper- fective; besides, there was no Issue at all joined, for the Plaintiff's Af- firmative does not meet with the Defendant's Negative. —8thly. || S. C. cites 22. H. 6. 14. That tho' a Repleader should have been at Common Law in this Case, this Motion having been made before Trial, and it being doubtful whe- ther a Verdict would not help it by the Statute of Jeuitsails, the Court said it would be just in them not to grant a Repleder till ++ after Verdict; for good, there they said they might indeed grant a Repleder before Verdict at Common Law, but they were not bound to do it. Sonote the Diversity since the Sta- tute, for tho' it were reasonable to award a Repleder before Verdict at Common Law, where the Pleadings appeared such on which no Judgment the other could be after Verdict, yet since the Statute, when Verdict may cure immu- natorial or informal Issues, it may not be proper to do it. —9thly. After the
Trial the Court held, That this Issue was such on which no Judgment could be; for Defendant pleaded, That he had no other Way to the Stars and River Thames. Plaintiff replies, That he had another Way to the Thames; and they found no other Way to the said Stars and River Thames; so in Truth there was no Issue join'd. That in this Case there could be no Replevin; for the Parties were quite out of Court by the Default. 6 Mod. 1, 2, 3. Mich. 2 Ann. B. R. Staple v. Haydon.

For more of Repleader in general, see Amendment, Trial, and other Proper Titles.

— Replevin.

(A) Replevin. Of what Things a Replevin lies.

1. A Replevin lies of such Things in which a Man has a qualified Property, tho' he has not therein an absolute Property, as of Things Fere Nature, which are made tame so long as they continue to.

2. As a Replevin lies of a Leaver (for it has Animim Reverendi, and is tauned) 2 C. 2. Fitzh. Dist. 20.


6. Trephais of the Taking and Imprisonment of the Plaintiff, and yet detaining him; by which the Plaintiff prayed Writ to deliver him. Et non Allocatur in this Action, but shall be put to a Homine Replegiando. Br. Replevin, pl. 57. cites 40 E. 3. 36.

S. P. Br. Damage, pl. 126. cites 12 E. 4. 1. and 18 E. 3. 48. — Br. Replevin was brought of a Sow and 6 Pigs; and as to the Sow the Defendant avow'd for Damage-deferent, and as to the Pigs Ne pritf pas; and for the Sow the Jury found for the Defendant, and for the Pigs fird, That the Sow was with Pig at the Time of the taking, and in the Possession of the Defendant, and the Jury fird, That the Sow was with Pig at the Time of the taking, and in the Possession of the Defendant, and the Jury fird, That the Sow was with Pig at the Time of the taking, and in the Possession of the Defendant; 40 E. 3. 36.
Replevin.

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the Figs; so this was a taking of the Figs. Per Littleton, Quere if the Verdict, 1 Pl. Saw had not been with Pig at the Time of the taking. Br. Replevin, 62. cites S. C. and Fifth Replevin 24.

—S. P. Arg. 2 Brownl. 148. in Case of Croy v. Welford.—By Sper Fairfax, Where Swarms are taken, and after they produce Swarms, or a Hare a Pole, or a * Cow a Calf &c. Br. Replevin, pl. 41. cites 12 E. 4. 3. and 18 E. 3. — S. P. And so of Sheep which after have Lambs. F. N. B. 69 (D) 3.


10. It lies of certain Iron of his Mill. F. N. B. 68. (E)

11. In a Special Case a Man may have a Replevin of Goods not disinterred. As If the Mefne put his Cattle in Lieu of the Cattle of the Tenant: Per Yon who, never is bound to acquit, he shall have a Replevin of the Cattle that never were disinterred. Co. Litt. 145. b.


13. It lies not of Leather made into Shoes. Arg. 2 Brownl. 139. in the Case of Croy v. Welford.


15. Upon Evidence at Guildhall in a Replevin for Goods taken by Order of the East-India Company from Interlopers in the Indies, Pollexfen Ch. J. held, That no Replevin lies for Goods taken beyond the Seas, tho' brought Libor by the Defendant afterwards. 1 Show. 91. Hill. 1 W. & M. Nightingale v. Adams.

(B) For what Causes it may be brought. Of what Taking.

1. If a Man takes the Beasts of my Tenant, and I take out of the Pound Br. Replevin his Beasts, and put in my Beasts in Pledge for them, I may maintain a Replevin for my Beasts, and the other shall not avoid it by laying that he took the Beasts of my Tenant. 7 D. 4. 18.

Lord disinterred the Tenant. Ibid. — S. C. cited 9 Rep. 22. b. in the Case of Ayovry — Lord, Mefne, and Tenant, the Lord disinterred the Tenant for the Services of the Mefne, thereto, upon Notice thereof, the Mefne ran his Beasts into the Pond. For the Beasts of the Tenant, and shall have Replevin, and he shall discharge the Tenant in Place at Writ of Mefne; and so Replevin of Beasts which were not taken. Br. Replevin pl. 54. cites 24 H. 6. 47. — S. P. And this the Mefne may do in Spite of the Lord's Teeth; and if he will not permit him so to do, then is the first Taking tortious: For he misuses the Matter, as much as if he had put the Beasts in his Pough. Ibid. pl. 42. cites 13 E. 4. 6. and 7 H. 4.

2. If Trefpalfior takes Beasts, Replevin lies of this taking at Elce- By some, Replevin lies not of the Taking of Beasts contra Pacem; But per Gascoigne, he may have Replevin or Trefpalfior. Br. Replevin pl. 15. cites * H. 4. 2. —a * Leffe of Beasts to feed his Land has a Special Property for the Time and therefore if they are taken from him by another it seems that Trefpalfior lies; For Possession suffices for the bringing Trefpalfior, but Replevin is for him, that has Property, and otherwise not. Br. Replevin pl. 29. cites 21 H. 9. * 14 

* S. P. Tho' he takes them as Trefpalfior has a Property by Tort; For the Replevin is of the Property which the Owner had at the Time of the Taking; But he cannot have Détinence, for this is of Property, which the Owner had at the Time of the Action brought. Br. Replevin pl. 57. cites S. C. 7 H. by
Replevin.

4. If the Lord discharges his Tenants Cattle wrongfully, and afterwards the Cattle Return back unto the Tenant; yet the Tenant shall have a Replevin against the Lord for those Cattle, and shall recover Damages for the wrongfull discharging of them, because he cannot have an Action of Trespaß against his Lord for that Disfrut; but against a Bailiff or Servant he may. F. N. B. 69. (H) cites 1 H. 6. 7.
5. Goods disfranteed on a Cordialion for keeping Dogs and Nests not being qualified were replievy’d. The Court would not set aside the Replevin, but made a Rule to шew Cattle why an Attachment should not go. 8 Mod. 258. Mich. 10 Geo. 1724. The King v. the Town-Clerk of Guildford.

(C) What Persons shall have it.

S. P. and by r. If the Beasts another Man are manuring of and agitating my Land, and were Levant and Couchant, and are taken by Strangers, I shall have Replevin. 42 C. 3. 18. b.
S. P. Br. Replevin pl. 29. cites S. C. and per Fines clearly. 21 P. 7. 14 b. 11 P. 4. 17. 2 C. 3. 44.

2. If a Man has Beasts of another Man to complot his Land, and a Stranger takes them he may have Replevin: For he has Special Property for the Time (This it seems is the Intent of 42 C. 3. before.) where a Man leaseth his Beasts for Years to complot the Land Replevin lies for the Termor. And so if a Man bails Goods to re-bail, the Bailor may have Replevin. ——† Br. Replevin pl. 20. cites S. C.

3. Executors shall have Replevin of a Taking of Beasts in the Life of their Testator; and this by the Common Law as it seems; For this affirms Property to remain. But Contra of Trespaß; For this disaffirms Property. But Action of Trespaß De Bonis Teftatoris Afporatis in Vita Teftatoris is remedied by the Statute of 4 E. 3. Br. Replevin pl. 59. cites 17 E. 3. and 33 E. 3.

4. If the Cattle of a Feme Sole be taken, and afterwards she marries, the Husband alone may have a Replevin. F. N. B. 69. (K) cites Trin. 33 E. 3.

5. The Lord who is in Possession of a Villain shall have Replevin of the Beasts of the Villain. Br. Replevin pl. 8. cites 42 E. 3. 18.

S. P. And yet he had not Property in them at the Time of the Taking, but now by his Claim he has &c. But it seems he shall not have Damages for the Taking of the Cattle, but only for the detaining of them if the same be found for him. F. N. B. 69. (F) cites 9 H. 6. 26. 42 Ed. 5. 25 or 8. —— The bringing of the Replevin amount to a Claim in Law, and vails the Property in the Plaintiff; But in that Case if the Goods of a Villain are taken
6. It is a general Rule, That the Plaintiff must have the Property of the Goods in him at the Time of the Taking. There be 2 Kinds of Properties, a general Property which every Absolute Owner has; and a Special Property, as Goods pledged or taken to manure his Lands, or the like; and of both these a Replegiare does lie. Co. Litt. 145. b.

(D) Against what Persons it lies.

1. If A. takes Beasts by Command of B. the Replevin may be brought against Both. 9a 21. Per Curiam.
2. And in this Case the Replevin may be brought against the Commander only, as well as Trespasses. 9a 21. Per Curiam.
3. A Man may have Replevin against him who differs from a Duty to Br. Quin.

(E) How it shall be brought. [Writ and Declaration.]

1. If I have Beasts of another to manure my land, and a Stranger takes them, I may have a General Writ without shewing the Specialty of the Case. 42 C. 18. b. 11 D. 4. 17. 23. b.
2. But I may have a Special Writ. 11 D. 4. 17.
3. Where a dead Chattel, or a live Chattel shall be reprieved, the Writ And if a shall be Quendum quum & Catalla quae B. capit. Br. Replevin, pl. 65.
4. A Man may count of several Takings, Part at one Day and Place, and Part at another Day and Place. F. N. B. 68. (D) in the new Notes there (a) cites 29 E. 3. 23. adjudged.
5. Replevin de Aecris capiti, the Plaintiff counted de Bonis & Catallis, and he amended his Count after Challenge, notwithstanding that Aervia are Catalla.
Replevin.

Catalla; sed prima Facie non potest hic intelligi. Br. Replevin, pl. 11. cites 2 H. 4. 25.

6. And in Replevin, if the Taking exceeds one Beast, it shall be Acquiat, and to note that Accius finit Bélite, viz. Catalla ovem, and not Omnia Catalla. Br. Replevin, pl. 11. cites the Register.

7. In Replevin, the Plaintiff caused of 4 Oxen taken at diverse Times and Places, and that Delivery was made of 2, and of 2 not, but he yet obtains them to the Damage of 10s., and did not suffer the Damages; and yet well. Br. Damages, pl. 42. cites 7 H. 4. 11.

Br. Replevin, 8. Replevin in A. and declared of taking of 20 Beasts in A. and B. And per Car. He need not show how many he took in one Vill., and how many in the other, by which he pleaded to the Writ, because A. and B. are in D. and T., and not in T.; and he was compell'd to prove in which of the Vills. A. is, and in which B. is; quod non. Br. Brief, pl. 19. cites 20 H. 6. 28.

9. In Replevin, the Plaintiff declared of taking his Cattle against O. The Defendant demurred, because he did not say in quodam loco &c. And upon Demurrer it was adjudged, that the Declaration is not in the form of the Cattle; and for the general Precedents of Declarations in Replevins are to align a Place as well as a Town; and it is an Action of more Certainty than Trespass, and must necessarily contain a Place in the Count, as is laid by Starkie and Brian 22 E. 4. 51. and cited a Precedent of 35 H. 6. Rot. 206. But afterward says, That yet it is true that some Declarations in Replevins are found without any other Place and Acquities, and other Pleas made upon them, without Demurrer or Exception to that Point, and then they are well enough. Hob. 16, 17. 28. Read v. Haws.

10. In Replevin &c. The Plaintiff declared that the Defendant took Cattle over Matrices and Veruces of the Plaintiff's; after a Verdict for the Plaintiff. Exception was taken (inter alia) to the Declaration, because it did not appear in the Declaration how many Eves, and how many Weathers; and the Sheriff is bound to make Deliverance of either Sort, according to the Writ; and tho' he may be informed by the Party, so that it is a good Return to say that none came on the Behalf of the Party to shew the Beasts, yet he is not bound to require it, but ought to have sufficient Certainty within the Record. And therefore Judgment was given for the Plaintiff. And therefore it was agreed, that Oves without Addition had been good enough. All. 32 33. Mich. 23 Car. B. R. More v. Clypmain.

Str. 11. S. C. accordingly. —R. plevi of 80 Oxe, and lays out how many Veruces and Matrices, and because it is not certain, and the Return ought to be certain, it was adjudged in B. R. that it was not good. Cited per Baldwin Serjeant, as a Case in which he was Counsel, and Ellis J. said he remember'd it. Cart. 218. in Case of Whately v. Conquet.


12. All Plaints in Replevin in any Inferior Court, which hold Plea therein by Prescription, must be in the Detinet only, because the Goods &c. are not repelved but by Process subflebunt to, and grounded on the Plain. Carth. 328. Trin. 8 Will. 3. B. R. in a Note at the End of the Case of Hallett v. Byr.

13. In a Declaration in Replevin, if the Plaintiff says, That the Defendant fummonus suit ad Repondendum to kim de Placito quod cum eupt Acies of the Plaintiff; This Declaration with a Quod cum is stark naught, either upon a Demurrer, or after a Verdict; But it shall be De Placito
Replevin.

Placito Quaere, or de Placito quaeris, only; because quod cum is but a Recital, and no direct Affirmation; so that the Plaintiff has not, by his Declaration, made any Charge against the Defendant. 2 L. P. R. 456.

(E. 2) In what Cases there shall be one or more Replevins.

1. Replevin of a Taking in Dale, and they are at Issue upon Asserta. S. P. Br. Se- made in the same Place, which passed against the Plaintiff by Ver- dict, he shall not have other Replevins. Br. Replevin, pl. 10. c. 49. S. C. E. § 24.

2. Lie where in Replevin of a Taking in S. the Defendant avered the Taking in D. and it was found for him; and the Defendant had Return upon and Deliv- erance, the Plaintiff shall not have 2d Deliverance, because it cites S. C. is passed against him by Verdict; but he may have * other Replevin. And also Contra where the Avowry is made in the same Place. Note a Diversity: he cannot assert in another Place.

then where he did it in the Replevin. Per Perley, quad non negatur. Ibid. * * S. P. That he may have a new Replevin, and count of a Taking in S. For the Statute is, That in Return or Index upon a Replevin, there shall be Motion made that the Sheriff shall not make Deliverance for Replevin in another Place; and if there be Motion of his first Judgment; and if the Plaintiff in the 2d Deliverance cannot vary from the first Number: Per Justin and Vitiitor. Per Br. The Plaintiff may vary from the Place, because the Defendant in the Replevin avowed in another Place; but if it was agreed in the Place at first they cannot vary in the 2d Deliverance. Br. second Deliverance, c. 4 * S. P. Per Wood. Br. Replevin, pl. 52. c. 39. S. C. — All the Editions are (to print) cannot, but the (N) seem too much.

3. If the Benefits of divers several Men be taken, they cannot join in a Replevin, but every one must have a several Replevin. Co. Litt. 145 b.

4. Upon Evidence in an Action upon the Statute 52 & 3 P. & M. al- tho' that one Disfruts be put into several Pounds, yet one Replevin shall pl. 620. serve; there shall not be within the Statute. OTHERWISE IT IS IN DECEIVE. S. C. Counties, or several Francises, where there ought to be several Reple- vins. Noy 52. Partridge v. Naylor.


(E. 3) Replevin by the Statute of Marlborough.

1. By 52 H. 3. cap. 21. it is provided, That if the Benefits of any Man be taken, and wrongfully withheld, the Sheriff, after Computation, when the Goods were made to run to him, may deliver them, without Lett or gainsaying of him that took the Goods, if they were taken out of Liberties.

or other Goods were detained and impounded, the Owner of the Goods had no Remedy but a Writ of Replevin, by which Delay the Benefitt or other Goods were hung detained from the Owner, to his great Loss and Damage. When the Feals or other Goods were detained and impounded within any Liberty that had Return of Warrants, the Sheriff was driven to make a Warrant to the Bailiff of the Liberty to make Deliverance, and that wrought a longer Delay; For at Common Law he could not enter into the Liberty to take the Benefitt. As at Mich. Las, When the Disfruts was taken out of the Liberty and impounded within. Now this Statute does apply Cures to all these Milanckes. 2 L. P. R. 152. * The Sheriff, upon a Warrant made unto him, either by a Warrant, or Warrant, command his Bailiff to deliver them; that he, To make Replevin of them. And by these Words (P. Quaerens nam titil) the Sheriff may take a Plant or court of the County Court, and make Replevin of them, which
Replevin.

(whieh he ought to enter in the Court) for it should be inconvenient, and against the Sense of this Statue, to the Gawer, for whose Benefit the Statue was made, should carry for his Beasts till the next County Court, which is held from Month to Month. 2. H. 139.

A d in a Replevin by Plaintiff the Sheriff may hold Plato in his County Court, until the Value be of 20l. or there, by Force of this Statue; but in other Actions he shall hold Plato under 4s. le. 2. H. 139.

The Upper of the County of Northampton is, That in the Absence of the Sheriff, the Bailiff, the Sheriff, or a Deputee; Note this 2. H. 139.

If J. be the Plaintiff, and the Process is taken by him, the Writ or Plaint shall be in Common Form, naming the Sheriff by his Christian Name and Surname, Que J. S. cspt., and not Que a tale captept.; and the Sheriff in that Case ought to make Deliverance. 2. H. 139.

Hereby it is

As if the Beasts were taken within any Liberties, and the Bailiffs of the Liberty not deliver them, then the Sheriff, for Default of the Bailiffs, shall cause them to be delivered.

(F) Proprietate Probanda. Who shall have it.

Fizh. tit. Proprietate Probanda, pl. 2, cites S. C.

Br. Retorn de Bracho, pl. 105. cites S. C.

S. E. Par. Nonu parte pro die illic no Defedit.

Co. Litt. 145. b. --- In Replevin one as Bailiff made Confinance, and pleaded Property in a Stranger; and upon Demurrer it was objected, That he could not; and cited 4. H. 14. 4. but per Cur. This is intended of the County Court, not of this Court; and cited 2. B. 6. 14, and gave Judgment for the Complainant. Lev. 90. Hill. 14 & 15 Car. 2. B. R. Oldham v. Hamilt.

4. In Replevin the Defendant claimed Property, upon which they were at issue, and after the Plaintiff was nonsuit; And to note that it is permitted without Argument, That the Defendant in Replevin may claim Property. Per Brian. Br. Property, pl. 1, cites 26 H. 8. 6.

5. If the Defendant claims Property in Replevin the Plaintiff may have Writ De Proprietate Probanda without Continuance of the Replevin, tho' it be 2 or 3 Years after; Because by claim of Property the first Suit is determined. No. 493. pl. 537. Pacha. 37 Eliz. Gawen v. Ludlow.
(F. 2) Property claimed. In what Cases; and the Effect thereof.

1. If the Defendant claims Property in Replevin before the Sheriff, the F. N. B. Power of the Sheriff is determined; and there the Plaintiff — S. P. shall have Writ de Proprietae Probanda to the Sheriff, to enquire of the Property. Per Banc. Br. Property, pl. 49. cites 14 H. 4. 25. by the Statutes of Marlbridge, cap. 22. Quod Vicccomes post quercumionem inde libi faéram, ea fine Impedimentum vel Contradictionem eum, quod dicta aversa cepit, deliberac pari &c. For it is a Rule in Law, That Property ought to be tried by Writ; and therefore in that Case, where the Trial is by Plain, the Plaintiff may have a Writ de Proprietae Probanda directed to the Sheriff to try the Property; and if thereupon it be found for the Plaintiff, then the Sheriff to make Deliverance, (for to be Words of the Writ) and if for the Defendant, he can no farther proceed; but that is but an Inquest of Office. And therefore if thereby it be found against the Plaintiff, yet he may have a Writ of Replevy to the Sheriff; and if he return the Claim of Property &c. yet shall he proceed in the Court of B. where the Property shall be put in Issue and finally tried. And the Sheriff may take a Plein upon the said Act out of the County, and make Replevy prejudice; For it should be inconvenient for the Owner to forbear his Cattle till the County Day. Co. Litt. 125. b. 

* S. P. Whether the Property be claimed where the Plain is by Plain or by Writ, yet the Sheriff's Power is determined; but if the Plain be before him by Writ, and the Defendant claims Property, the Plaintiff may sue a Scut alias, vel Cautam nobisignitures; and thereupon the Sheriff may return, That the Plaintiff claims Property; and upon this shall issue a Writ de Proprietae Probanda returnable in Chancery or B. R. or C. B. and this the Sheriff finds the Property with the Defendant, yet the Plaintiff is not hereby concluded, but he may bring Trespass; for this is only an Inquest of Office. But if it brings a new Replevin the Sheriff shall not make Deliverance, Cauti pater; but when the Defendant claims Property in Bank, and a Writ de Proprietae Probanda Issue thereupon, and it is found for the Defendant, the Plaintiff shall never have a Writ of Trespass. Fitzh. tit. Proprietae Probanda, pl. 4. cites Hill. 51 T. 5. Per Some &c. Edmonds; and 2 E. 3. 118. North. But Fitzherbert says, It seems that Writ of Proprietae &c. shall not Issue in this Case, (viz.) When the Parties appear in Bank, and the Defendant claims Property without Cauti to invite him to the Bench, to which the Plaintiff might have Answer; and this shall be tried here. For (he says) he apprehends that a Man shall not have Writ of Proprietae Probanda but only upon Return of the Sheriff &c.

2. If the Defendant claims Property before the Sheriff, it shall be trial. Br. Property, by Writ de Proprietae Probanda, and if it be claimed in Bank it shall be pl. 1. cites tried by 12. Per Brian Ch. J. quod non negatur per aliquem. Br. Pro. S. C. property, pl. 32. cites 21 E. 4. 64.


(F. 3) Proprietae Probanda. The Effect of the Finding thereon; and Judgment How.

1. THE Trial of the Property in the County by Writ de Proprietae Probanda is only an Inquest of Office, and may be transferred and try'd again upon Issue joined; But where it is try'd in Bank, it shall be upon Issue joined, and shall bind the Parties. Br. Property, pl. 49. cites Fitzh. tit. Replevin 35. and H. 31 E. 3. & consolidat. Ibidem 30. and that by the Verdict certified out of Court the Plaintiff shall abate. And cites the Reg. hil. fol. 169.

2. It
Replevin.

2. It was said, That if the Sheriff returns in Replevin, that the Defendant claims Property, by which Writ of Proprietate Probanda illiacs, which is found for the Defendant, the Plaintiff shall take nothing by his Writ. Br. Property, pl. 12. cites 17 H. 4. 28.

3. And if the Defendant claims Property in Court, and it is found that he has no Property, the Plaintiff shall recover all in DAMAGES. Br. Property, pl. 12. cites 7 H. 4. 28.

4. It was said, that Hill. 31. E. 3. the Defendant in Replevin in the County claimed Property, and the Property found for him; and because it was not of Record, and also this was only an Inquest of Office, he was for'd to take an Assertment that the Property was His. Br. Property, pl. 13. cites 7 H. 4. 46.

5. If the Property be found for the Plaintiff, and at the Day of Return the Sheriff returns an Elizgement, and the Defendant makes Default, a Writernam shall be granted, and to a Capias, Pluries & Exigent. F. N. B. 77. (C) in the new Notes there (a) cites 39 Ed. 3. 30. But some held that the Plaintiff in that Case shall recover the Goods in Damage. And cites 7 H. 4. 28. Per Bull, When the Defendant comes in by Attornment after Property found for the Plaintiff, the Plaintiff may have two Counts against him, one on the Proper Proband, and another on the Replevin. 7 H. 4. 46. If the Replevin be returnable in Chancery, Sient alias vel Cafum &c. and the Claim of Property returned thereon, then the Proper Proband shall issue out of the Chancery; but if it on the Pluries the Claim is returned in B. R. or C. B. the Proprietate Probanda shall issue from these Courts, and cites Dy.

(G) Gage Deliverance. Upon what Plea.

1. If Replevin upon taking in D. if Defendant says that he took in another Place, and that it is Ancient Domeline, and avows the taking there, the Defendant shall gage Deliverance, because if the taking be where the Plaintiff has counted, the Court has Jurisdiction, 21 C. 3. 7. 51.
5. — Upon such Place to the Place, the Defendant made Away to have Return; and the Plaintiff maintained his Writ, and had Deliverance. Quod non. Ibid, pl. 1., cites 21 H. 4. 12.

It was granted that if Defendant lays that the Place where Sec. is Ancient Demise, the Defendant cannot now to have Return. Br. Gage Deliverance, pl. 14. cites 1 H. 7. 41. Whence it follows that the Plaintiff cannot pray to have Gager of Deliverance, as is said there. Ibid. — Defendant shall not be compelled to give Deliverance upon his Pleading, that the Place where Sec. is Ancient Demise; and shall be deemed to have stood in another Place in his famed for Damage for which he did not claim Property in the Beasts, Writ faithful to deliver the Beasts, notwithstanding that the Plaintiff were not at lib. Br. Gage deliverance, pl. 15, cites 1 H. 7. 41.

2. In a Replevin, if Defendant claims Property in Place, the Sheriff ought not to make Deliverance. 32 C. 3. 9. b.

3. In Replevin if Defendant pleads a Recovery in an Interior Court, Br. Reple. and that those Goods were delivered to him in Execution, he shall not have Deliverance, because he has claimed Property thereupon. 38 C. 3. 3. Br. Gage Deliverance, pl. 7. cites 1 H. 24.

—Where a Man receives Land and Damages in Affire in Ancient Demise, and the Bailiff by Process takes Beasts in Execution for the Damages, and join them and deliver the Money to the Plaintiff in the Affire, and upon Delivery forced forth, or in the course of time returned, and the Beasts of the Defendant delivered to the Plaintiff in Habeas in B. R. it appears in Pleading thereupon, that the Land recovered was made Frauds here by force levied, before the Recovery in Common Law, that in that Case the Plaintiff shall not be compelled to give Deliverance, but he ought to deliver the Warrant to the Defendant without paying Deliverance, for it appears that the Defendant cannot have Return of the first Beasts, for they are lost, but that the Plaintiff can have, for no blame is in the Officer who took the Beasts, and whether for the Execution, for he was not bound to take Conscience of the Writ levied at Common Law. Br. Gage Deliverance, pl. 5. cites 7 H. 4. 23. —S. P. Br. Witheram, pl. 4. cites 7 H. 4. 27. S. C.

4. A Man granted to another to distrain for Rent, and to retain the 6 br. for Duties of his Gages and Flidges until it be paid, and yet Replein in lies is against it and he was compelled to give Deliverance. Br. Replevin in pl. 66, cites 31 E. 3. and Pizan. Gage Deliverance 5.

—Gable, and by such an Invention the Current of the Replevin should be overthrown, to the Hindrance of the Common wealth, and therefore it was followed by the whole Court, and an ascertained that the Defendant should gage Deliverance, or go to Prifon. Ca. Litt. 145 b. —2 Ind. 143. S. P. cites 31 E. 3. Gager Deliverance 5.

5. In Replevin the Plaintiff counted of 2 Oxen taken, whereas he had Deliverance of 2, and that he yet detains the other two. Per Skrine, We pray that the Defendant gage Deliverance of the two which he yet detains. Per Thuri, He pays not gage Deliverance before Away made &c. Br. Gage Deliverance, pl. 2. cites 7 H. 4. 11.

6. Where a Man owes as Under-Sheriff, for levying Expences of the Knights of the County for the Parliament by fees Fiscas, and by Sale of that which he to took, he shall not gage Deliverance. Br. Gage Deliverance, pl. 4. cites 11 H. 4. 2.

7. In Replevin in the Defendant availed for a Rent-charg, the Plaintiff said that the Place Sec. was not Parcel of the Land charged, and the others controverted and the Plaintiff said that the Defendant is yet kept of the Beasts, and prayed that the Defendant gage Deliverance and the Defendant said that the Plaintiff availed is lawful, Judgment to hold gage Deliverance &c. And by the Opinion of the Court, the Seisin of the Beasts cannot make flue, but the Defendant shall gage Deliverance, and this Matter shall come in after; Per Bell upon the Pluries, and the Defendant said that they were dead in Pound court in Default of the Plaintiff &c. &c. adjournatur. Br. Gage Deliverance, pl. 7. cites 15 H. 6. 15. —Brooke lays, See 5 H. 7. 9. That the flue was taken upon the Default of the Dead Beasts. Ibid.

8. In Replevin the Defendant made Contrasce as Bailiff for a Rent-charg where the Plaintiff counted 2 Quod abate distant &c. by which the Plaintiff prayed that he may gage Deliverance. And by the Opinion of the Court he shall pay answer to the Contrasce. Br. Gage Deliverance, pl. 11. cites 22 H. 6. 44.
9. Replevin of Beasts taken in D. the Defendant said that he took them in S. and not in D. Judgment of the Court, and made Delivery to have Return, the Plaintiff prayed that he may have Delivery. Per Pigot, Where a Man pleads in Abatement of the Writ, or at the Court, as if he says the Property is in a Stranger, and not in the Plaintiff, he shall not have Delivery. Catesby agreed where the Property is alleged in another; but if he says that he did not take, or that he took as a Hirant, or by suspence by Peer Rests &c where he may tell them, he shall not have Delivery in the principal Case here. Br. Execution, pl. 21. cites 21 E. 4. 17.

10. Replevin of a taking in D. in a Place called C. The Defendant said, That he took in another Place in the same Ville, abique boc, that he took them in C. present &c. and made Delivery to have Return, as he ought, and yet This shall not go upon this, but upon the Place only. Per Brian, It seems that the Defendant shall not have Delivery upon an ill Writ, as here, for it may be tried against the Plaintiff. Frook says Minor of this Reason; for it may be as well found for the Plaintiff. Per Pigot, The Defendant has confessed that the Property is in the Plaintiff, in which Case the Nature of the Writ is that he shall have Delivery; but if the Property was in Debate, neither the Sheriff nor the Justices can compel him to have Delivery; for he did not confess Property in the Plaintiff, nor where he said that he took as a Hirant, shall be have Delivery; which Cases were agreed per Chocke and Catesby Justices. Br. Gage Delivery, pl. 22. cites 21 E. 4. 64.

11. In Replevin at the Pleas, the Sheriff returned Quod Acera dongate sunt, and thereupon Witherenn, and the Sheriff returned Nihil Obsta, and the Defendant appeared, the Plaintiff declared in a Place called S. in B. &c. and ad libitum detact &c. the Defendant said that his Father was seized of 100 Acres of Land in D. called L. and died seizd, and the Land descended &c. and he as Here took the Beasts Damage seint, abique boc, that he took them in the Place called X. and demanded Judgment of the Writ, and prayed the Return, and the Plaintiff prayed that he have Delivery, and the Court was in doubt whether he should maintain his Writ before that the Defendant should have Delivery, by which the Plaintiff to avoid his own Delay said, That the 100 Acres of Land are as well known by the Name of S. as by Name of L. and that the Place called S. and the 100 Acres of Land called L. are one and the same Place, and not diverse &c. and to the Plea pleaded by the Matter &c. no Law ought to put Him to suffer &c. and prayed that the Defendant have Delivery; and because the Defendant appeared by Attorney, the Court awarded the Writ to the Sheriff to make Delivery &c. without finding Pledges, but if the Party had appeared in Person, he should find Pledges, or should be committed to Prison: But per Newton and Brian, the Attorney shall have Delivery, and if he does not find Surety he shall go to the Place. Br. Gage Delivery, pl. 14. cites 1 H. 7. 11.

12. In Replevin, if the Writ be void by Matter apparent, the Defendant shall not be compelled to have Delivery upon his Avoir, nor for it is quous nullam Originale. Br. Gage Delivery, pl. 15. cites 1 H. 7. 21.


(G. 2) Gage
(G. 2) Gager Deliverance; In what Cases, and by what Persons; And how Compell'd.

1. N. Replevin in which it appears by the Declaration, That the Deliverance is not made, the Defendant says nothing, the Court shall award that the Defendant make Deliverance. Br. Gage Deliverance pl. 10, cites 22 H. 6. 21. Per Newton.

2. Action for Damage resulting in 2 Acres P. reel of 1000 Acres, of which the Defendant was seized in Fee Tempore &c. and the Plaintiff said that he himself was seized of 100 Acres, wherein the Place where &c. was Parcel Tempore &c. All upon the Plaintiff says that the Place where &c. was Parcel of the 1000 Acres, and the Plaintiff prays that the Defendant make Deliverance; Defendant said, That Plaintiff had had the Deliverance already, Et non alloctetur; For if it be fo, it may appear by the Return of the Sheriff; and so if he says that the Beasts are dead in Pound Overt in Default of the Plaintiff, yet he shall have the Deliverance; For if it appears by the Return of the Sheriff, then the Defendant is excited; and by such Surmise of the Defendant the Plaintiff shall not be delayed, and the Defendant is not at any Time at the Cattle storepaid; For the Surety and the Writ to make Deliverance in such Case may be conditionally, viz. If it be fo &c. and after he was awarded per Cur. to make Deliverance, and the Name of the Pledge put in Court, and the Surety made conditionally; Quod nota. Br. Gage Deliverance pl. 17. cites 5 E. 4. 117.

3. In Homme Repleviando, the Defendant excused the Taking as his Villain Regardant, the other said, That Frank, and of Frank Estlute, and fo to Hike; and after he found Surety to sue, and then the Plaintiff sworn that the Defendant had taken his Goods, and prayed that he may have Deliverance of the Goods, to which the Defendant said nothing, by which Writ excited to the Defendant to deliver the Goods returnable immediately. Yonge said this Writ is awarded without a Count. Per Cur. pl. 18, this is not Curfew, but Surmise of the Plaintiff depending upon the Matter &c. And therefore the Writ well awarded; And per Cur. the Defendant's * Attorney and gage Deliverance; for he has Power of all Things depending upon the Matter, and he shall have his Goods without Surety. Br. Gage Deliverance pl. 18. cites 6 E. 4. 8.

4. In Homme Repleviando, Vavilier J said, That the Opinion of the Justices Anno 6. was that the Defendant shall have the Deliveranceconditionally, viz. If he has him, For it may be that he has not taken him, and then Nulla sequitur Pana. Br. Retorne de Avers pl. 31. cites 12 E. 4. 8.

5. In Repleviando the Sheriff returned Averia Elaunt, upon which issued Writ of Seizure, and the Sheriff returned Quod non habet bond for Castis infra &c. Nee est incredit in eandem, whereupon issued Capias, and the Sheriff returned Captus Eland, and That Langidas in Prifonia, by which issued Deues return, and the Sheriff brought him in, and the Plaintiff counted of an Adverse Defendant, and the Defendant avowed, and the Plaintiff prayed that he might Gage Deliverance; And the Defendant said that the Beasts were dead in Pound Overt. Per Littleton, If the Defendant after Avowry cannot Gage Deliverance he shall be imprisoned for the Contempt, and so shall you, if your Plea be not sufficient against the Gager Deliverance. Br. Retorne de Bricies pl. 100. cites 20 E. 4. 11.

6. Note
6. Note; Per Read and Fineux Ch. J. That if the Bailiff of the King diſcreas &c for a Duty to the King, he shall gage Deliverance, as well as a Common Person &c. Frowick said that the Books are contra, and they Ead No. Br. Gage Deliverance pl. 12. cites 15 H. 7. 11.

7. A Gager of Deliverance is in no Case but where the Defendant admits the Tasure &c. and controverts the Property. Per Holt Ch. J. Carth. 287. in the Case of Delabattide v. Reynell.

(H) In what Cases it shall be upon Withernam.

1. If it appears that the first Taking was lawful, and the Plaintiff cannot have the Beasts again; Because they were held upon an Execution; The Plaintiff shall gage Deliverance of the Beasts which he had in Withernam of the Defendant, without any Gager of the Deliverance of the first Beasts. 7 H. 4. 28. Adjudged.

2. In Replevin, if Defendant claims Property the Plaintiff shall gage Deliverance of the Beasts of the Defendant, which he had in Withernam before at the Idea pleaded, upon Return de Absens &c. longatiis. 11 H. 4. 10.

3. In a Replevin if the Sheriff cannot have the View of the Chattels taken, upon which he returns a Withernam against him, and after the Parties are at Issue upon the Title in Bank, if the Defendant claims Property in the Chattels taken upon the Replevin, the Plaintiff shall gage Deliverance of the Beasts taken in Withernam before the Chattles taken upon the Replevin are delivered to the Plaintiff; Because the Defendant claims Property in them, and if he had claimed Property in them en hand he had not had the Replev in Withernam. For this would not be any Withernam, but otherwise there would be no Withernam. 30 C. 3. 9. b. Awarded.

4. In Replevin if the Plaintiff avows the taking the Beasts of the Defendant as of the Chattels of the Defendant, he ought to make Deliverance of the Beasts, which he has in Withernam before Deliverance made by the Defendant of the Beasts first taken; For these are known to be the Beasts of the Defendant. 30 C. 3. 9. b.

5. Where the Bailiff makes Conuance for the Lord who joins in Aid of him, now because the Conuance is in Name of the Lord he shall make Deliverance of the Beasts, and the Bailiff shall have his Beasts taken in Withernam. 7 H. 4. 28.

6. As to Gaging Deliverance, it was held, That was to be done by the Plaintiff, 'only where the Thing is impleaded.' Per Holt 12 Mod. 36. in the Case of De la Bailiile v. Reignald & Ux.

(1) Gager

1. If a Withernam be awarded for the Plaintiff of the Bealls of Withernam in the Defendant, and the Sheriff returns that he has taken the Plaintiff Bealls of the Defendant in Withernam, but none came from the Plaintiff to have them, then the Plaintiff prays a Writ to the Sheriff to make him deliver the Withernam to him, and the Defendant prays that the Sheriff, and Plaintiff gage Deliverance, and lays that Part of the Bealls which he took are delvered by Default of the Plaintiff, and the said he is ready to deliver. In this Case the Plaintiff shall not have Deliverance of the Withernam to him, but it shall remain in the Custody of the Sheriff till a Deliverance to the Sheriff for the Plaintiff to have Deliverance of the Bealls, and then a Writ to be in Issue in what Device the Bealls are taken, and to what Mile it is determined, and he has Deliverance, the Defendant shall have the Deliverance of the Withernam.

44 A. 15. Poilaeg.

2. [So] If a Withernam be awarded for the Plaintiff of the Bealls of the Defendant, and the Sheriff returns that he has not taken the Bealls of the Defendant in Withernam, but none came from the Plaintiff to return them, upon which Return the Plaintiff is transmitted in this Writ. In this Case the Defendant shall have Deliverance of his Bealls in the Custody of the Sheriff by Force of the Withernam. 1. W. 15.

3. If the Sheriff levies 20 s. in Withernam upon not finding of the PlauchBealls, the Defendant shall not gage Deliverance of the 20 s. before the Gage Deliverance of the Bealls of the Defendant in Withernam, but the Plaintiff of whom the 20 s. is levied, and the Goods against him. 23 E. 3. 47. 6.

4. No Goods are taken in Withernam the Defendant shall not gage Deliverance of them till they are delivered to him by the Sheriff.

5. Deliverance shall not be gaged before Avoary. 7 D. 4. 11.

8. T. Tith. in Gage Deliverance.

6. In Replevin, upon Return of the Sheriff, the Plaintiff laid and proved Bealls of the Defendant in Withernam, upon which the Defendant came, and by false Gage Deliverance, the Goods of which the Replevin was filed were lost, the Goods, and thereupon they were at Issue, and the Defendant proved Deliverance of the Withernam. Ham. laid, This you cannot have till Hie be try'd. Th. laid, we intend that the Property of Bealls of which Replevin is fined is the Defendant's till the contrary is found, wherefore he did the Defendant the Deliverance of the Withernam. Fitzh. tit. Gage Deliverance pl. 26. citia X. 31 b. 3.

7. If Defendant in Replevin comes in on the Replevin he need not gage 2 s. in Delivery, but if he comes not in upon the Replevin, but upon a true Issue, the Proceeds he must gage Deliverance in some Cases, and he is still condemned the Case in Raymond. Per Holt Ch. J. 12 Mod. 455. in the 34. 3d. Mich.

7 L (K) B7:3

Cafe of More v. Watts.
(K) What shall be good Counterplea to the Gager.

Counterplea.

1. If is no good Counterplea that the Plaintiff himself, who prays the Gager, is killed of the Beasts; for this cannot make Issue.

2. This is good Counterplea that Deliverance was made in Pay to the Plaintiff at 25 C. 3. 47. b. For this may make Issue.

But note. That anno 21 E. 3. 27. never before with any feems to have been adjudged to be an Issue treated of, and therefore the Plaintiff is to be set right.

3. If it is a good Counterplea that he put them into Pound Over, and that they are dead for Want of Sustenance; for if this be true, there shall not be any Gager. * 4 D. 6. 13. b. + 5 D. 7. 9. 21 C. 3.

4. This is not taken whether the Beasts are dead or live. Quod Nota. And it seems that if the Beasts died in Default of the Defendant, the Plaintiff shall have Action thereof. — In Replevin the Defendant avowed for Rent, and Return was awarded for the Rent; it was agreed, That if after he has Return the Beasts die in the Pound, in Default of the Plaintiff, the Defendant has no Remedy, but to distrain de Novo. And to see that the Return be not Execution for the Rent, but only a Gage for it, in which the Defendant has no Property, Br. Repr. de Avera. pl. 15. cit. 21 E. 3. 22. — See (O) pl. 4. S. P.

* Be Replevin pl. 55. cites S. C. — Issue was taken whether they died in Default of the Plaintiff, or of the Defendant. Quod Nota. Br. Gage Deliverance pl. 16. cites S. C.


But note. In Replevin the Parties were at Issue; the Plaintiff said that he had not yet delivered his Beasts, and prayed that the Defendant should go without the Deliverance; Hulz said that the Deliverance is made already, and the Plaintiff suffered the Issue. Br. Gage Deliverance pl. 6. cites 11 H. and Vitr. 4. 10.

1. If the Plaintiff prays, That the Defendant give Deliverance, and the Defendant says, That the Beasts were in Pound over, and there were dead for Want of Sustenance, and the Plaintiff says, That they are alive, Write shall Issue to the Sheriff to try it; and if it is found that they are alive, Deliverance shall be made immediately; But this shall not be tried by 12 in C. B. because the Plaintiff ought not to be delay'd to have his Beasts when the Property is known to be in him. And the same Term after Avowry the Plaintiff prav'd, That the Defendant give Deliverance; who said, Ut supra, that they were dead in Pound over for want of Sustenance; and the Plaintiff said, That they are alive, and pray'd Vitr. to make Deliverance & confine patent that they are alive, and it was granted; quod nota. Br. Gage Deliverance, pl. 22. cit. 21 E. 4. 64. & 77.

2. If the Plaintiff prays, That the Defendant give Deliverance, and the Defendant says, That the Beasts were in Pound over, and there were dead for Want of Sustenance, and the Plaintiff says, That they are alive, Write shall Issue to the Sheriff to try it; and if it is found that they are alive, Deliverance shall be made immediately; But this shall not be tried by 12 in C. B.

S. P. The Court said, That Dead or Alive will not make a Good Issue; But the Plaintiff
Replevin.

Sheriff, quod si conflatte poterit, that they are alive to make Deliverance. 

Writ to the Clerk for the Sheriff, and after Writ was awarded to deliver those which were acknowledged to be alive. But if conflate &c. that the Allegation of the Defendant be false as to those which are alleged to be dead, viz. that they are alive, then to take in Withernam 2 other Beasts of the Defendant &c. Fitzh. Gage Deliverance pl. 25. cites T. 22 E. 4.

4. In Replevin if the Beasts of the Defendant are taken in Withernam, Br. Wither- 

for New-Library of the Beasts of the Plaintiff, there at the Day each of those shall give Deliverance to the other, and shall find Pledges severally of the Deliverance, and each shall have several Writ of Deliverance, and it shall not be in one and the same Writ; quaed non; and it is no Plea for the Defendant to say that the Plaintiff after the Taking, and before the Replevin, retake Part of the Beasts, for this shall come in by Return of the Sheriff; and to say that the Beasts died in Pound, in Default of the one or the other, this was not Habe, but shall come by Return of the Sheriff. Br. Gage Deliverance, pl. 27. cites H. 7. 28. and H. 7. 16. accordingly.

(L) Return of Beasts.

1. If a Replevin abates for Falls Latin, or other Cause, which is not the Default of the Party, but of the Clerk, the Avowant shall not have a Return. 3 D. 6. 3.

shall have a Return; for it appears that the Plaintiff has the Cattle Jenk. 133. in pl. 41. — Replevin was abated for stance between that and the Pope. For the Replevin was H. 88. of T. and the Pope was cited of T. and the Plaintiff avow, and the Defendant prayed Return, and could not have it. Br. Return de Avers pl. 14. cites 41 B. 5.

2. If a Reception abates by Death of the Plaintiff, the Defendant but in Re- 

ception, if the Plea

Writ for the Defendant, he shall have Return; quaed non bene. Br. Return de Avers, pl. 34. cites Fitzh. Reception 5 & 7.

3. In a Replevin, if the Defendant makes a Justification, and does S. P. The 

not appear, he shall not have any Return of the Beasts.


Contra is he makes Accrue or Justification; quaed non bene. Br. Return de Avers, pl. 36. cites S C —

[Square, And it is not supported by the Year-book.] 

In Replevin the Defendant may avow or justify at his Election, but if he justify he cannot have a Return as he shall, if he avows. 5 Lev. 234, 235. Mich. 38 Car. 2. C. D. Allebury v. Harvey.

4. If a Bailiff in a Replevin makes a Justification, and not any Co- 

in the Right of his Master, he shall not have any Return. 9 

E. 4. 33. 6.

5. In a Replevin against Master and Servant, and the Servant in Replevin comes and avows the Taking in the Right of the Master, and then the 

Matter comes and justifies the Taking. In this Case the Avowry of the 

Servant is not to any Purpose; for it appears by the Plea of the 

Master that he will not have a Return, but that he only makes a 


Courtan.
6. If a Master and Servant make Avowry together, the Avowry of the Servant shall be taken only as a Compromise. 35 P. 6. Avowry. 34

S. c. cited. 7. In a Replevin against the Master and Bailiff, or Servant, if the Master makes Compromise as Bailiff, and the Master pleads that he did not take, the Defendant shall not have any Return upon his Compromise; but by the Plea of the Master, his Compromise is changed into a Litigation. 15 C. 3. Avowry 107.

Br. de Avers, 8. Replevin of a Taking in L. in 7. the Defendant said that L. is in H. and in 7. Judgment of the Writ, and to have Return made Avowry, and the Plaintiff was compelled to maintain that L. is in T. and the others contra. Br. Replevin, pl. 7. cites 41 E. 3. 4.

Br. Dei Re's, 9. Where the Tenant offers the Rent or Acknowledgment at the Time of the Defendants made, or after the Defendants taken, there he shall not have Return; quod nota. Br. Retorne de Avers, pl. 11. cites 42 E. 3. 9.

Br. Surtan, 10. Homine Replegingando was brought by 3, Et per Cur. they ought not to join; by which they were not sufferers to count, and were let go; and the Defendant prayed to have Deliverance or Return of them, and could not have it, because they should have found Mainprize to sue with H. and, therefore may have Execution against the Mainprizers, if &c. Br. Retorne de Avers, pl. 14. cites 5 H. 4. 21.

Br. Surety, 11. W. files a Replevin. H. removes it by a Record in into the King's Bench; the Plaintiff does not declare, and upon that a Return awarded to H. The Sheriff thereupon returns Avowry dangers; and then a Withernam was awarded and executed, and now comes the Plaintiff and prays to declare, and pays a Deliverance of the Withernam. And it was testified to the Court by the Clerks, That upon Subscription of the Plaintiff to a Fine for not declaring, and that imposed upon him by the Judge, he shall have Deliverance of the Withernam, and shall declare. And low a Fine of 3 s. 4 d. was imposed upon the Plaintiff, and then he declared and had Deliverance. Note, The Court of the King's Bench is contrary to that of the Common Bench. Nov 50. Webv. Hid.

S. c. 12. The Defendant can have no Return where the Avowry is ill, the Replevin ill; and therefore the Replevin was quashed without judgment for Return. Show. 99. Trin. 2 W. & M. Allen v. Darby.

Br. survey, 13. In an Avowry for Rent, if Money be brought into Court by Plaintiff, and taken out by Defendant, yet a Return ought to be awarded, and the Plaintiff may take Advantage of the Money being taken out, as he can. 12 Mod. 353. Patch. 12 W. 3. B. R. Horn v. Luines.

99. In a Withernam by Way of Execution in Replevin, the Plaintiff thereby gains an absolutive Property in them, in Lieu of his own, but not to where the Withernam is a Proceed. Per Holt Ch. J. 12 Mod. 428. Alch. 12 W. 3. B. R. in Case of More v. Watts.

Br. Surety, 14. If Cattle be taken in Withernam by Way of Execution in Replevin, the Plaintiff thereby gains an absolutive Property in them, in Lieu of his own, but not to where the Withernam is a Proceed. Per Holt Ch. J. 12 Mod. 428. Alch. 12 W. 3. B. R. in Case of More v. Watts.

15. After Eognat and Withernam if the Defendant pleads New ye' shall have his Cattle again, and even a Copy in Withernam. 2 Salk. 524. in the Case of Moor v. Watts.

(M) Re-
Return of Beasts. In what Cases without Avowry made, and what Not. [or upon a Bad Avowry.]

1. In Replevin or be nonadised the Defendant shall have a Return generally, without making Avowry, 9 Pl. 6. 5. b. 14. b.

2. But if in Replevin the Defendant avow the Writ by Plea S. P. Br. Reton, he shall not have Return without Avowry made. 9 Pl. 6. 4. b. Curll.


In Replevin the Writ was abated for Defaults pleaded in the Court, because no Place of the Father was put; and yet the Defendant was constell'd to make Avowry for Return. Curta where the Place of it is nonadised but per Prior, always where the Writ abates by Plea, the Defendant shall have Avowry for Return; and to be did here. Br. Retorne de Avers, pl. 9. cites 53 H. 6. 42. — Br. Avowry, Pl. 261. cites S. C.

But if the 1st condition be found in Abatement of the Court after Replevin made, and it is found against Plea, the Writ shall not be, and the Writ shall have Return and Avowry; For when the Court is abated for reasons remaining to Declaration or Original upon which Return may be awarded. Per Prior, quad Runias concivis, et non se. Br. Retorne de Avers, pl. 52. cites 21 E. 1. 64.

In Replevin the Writ abated and the Defendant did not avow to have Return; yet was held, That Return should be awarded in this Cafe and in every Cafe where it appears that the Defendant was at Subsion of the Beasts. If they be delivered by Replevin. Cino. 3. 159. Salkeld v. Skelton, cites 52 H. 6. 72.

The Case of the Defendant says, That the Property is in a Stranger, above how that they were the Plaintiff's this is good either in Bar or Abatement; and the Defendant need not avow for the Return of the Goods; they must be the Plaintiff's the Avowant is to have a Return. 2 Lec. 62. Mich. 25. Car. 2. B. R. Wildman v. North. — Vent. 249. Wildman v. Norton. — 5 Keb. 219, 212.

The Difference is where a collateral Matter is pleaded in Abatement the Defendant shall not have a Return without making an Avowry. / As if the Plea be made in order here, and the Plea itself does not contain any other Matter of Abatement, to be pleaded in Abatement, which was not brought in when the Plaintiff had no Right or Property. Carth. 224. Trin. 4 W. & M. 8 R. butcher v. Parker — S. com. 40. S. C. — 18 Keb. 63. S. C. — 52 Crot. 480. Ld. Raym. Rep. 217. Pash. 9 W. 5; in the Case of Parker v. Mellor; and Idr. Ch. J. said, He remonstrated it, and that Return was granted there because the Plaintiff had no Right to the Cattle; and he cited 59 H. 6. 55; where, tho' the Avowry was ill, yet the Plaintiff having no Right Return was granted. — Carth. 398. Parker v. Mellor. S. P.

3. In Replevin if the Defendant says, That he took in other Place, See (G) pl. 1. and that it is ancient Demence, and avows in this Place, and it is found S. C. — The Plea of for him, yet he shall not have a Return; Because of this Taking the Court cannot take Contumacy. 21 C. 3. 7. 51. b.

To the Jurisdiction of this Court. Br. Retorne de Avers, pl. 16. cites 21 E. 1. 57.
Replevin

4. If Aowry be for diverse Causes, and some are found against him, yet if any are found for him, be shall have Return. 5 D. 7. 13.

He shall have Return of the Whole, and yet shall render Damages for the same Taking. Br. Damages, pl. 1. citing S. 2. & 3. P. Br. Aowry, pl. 6. citing 2 H. 1. 8. & H. 6. 34.

J. P. R. 15; S. P. cites 2 Car. II. 114. 27. Whereby it appears that he has good Cause to distress — If Aowry be for Rent and Charges, and one is found for the Defendant, and the other against him, he shall have Return; but where both are found for the Plaintiff, he shall recover Damages; otherwise not. Br. Aowry, pl. 25. citing 44 El. 5. 35; by Cal.

S. P. & Br. Aowry, pl. 6. citing 2 H. 4. 44.

5. [As] if Aowry avows the Distress of one Horse for a Rent-Service and Rent-Charge, if it be found that the Rent-Service is actual and not the Rent-Charge, yet he shall have a Return, for the Aowry was justifi. 2 D. 6. 24.

If I difficulty for a Tenant, and I have Cause for the one of them and not for the other; If justify for any one of them, I shall have Return for both, cites Hob. 153. But if I distress a several Distress for a several Causes; As suppose 2 Horses, one for Freights and the other for Rent; the Justifying for one battlements me a Return for one only, and the Plaintiff shall recover Damages for the other. 12 Mod. 352. in the Case of Horn v. Lums.

In Aowry for a Beast for Damage feantain, if diverse Pless are pleaded, and several Issues taken, if one Issue be found for the Plaintiff and another for the Defendant, the Defendant shall have a Return. 27 El. 3. 86.


Br. Aowry, pl. 116. citing S. & C. that Defendant shall have Return. So, Br. Return de Avers, pl. 25. citing S. & C. accordingly, Per Danby, Newton, Palen, and Strange; but Coots de de C. Location; For where a Man brought Debt of a Sure due at 2 De, 1, and the one is not come, this shall abide all the rest; For Self for Parcel goes to all there; quiet note. But per Martin, Cartermore, and Eliceur, He shall not have Return in the Case supra; therefore above.

All the Writing shall stand; For, if to Part, or Judicature to Part, shall serve for this Part; For the Defendant is no Aowry in Aowry to all Interests to be as a mere Plaintiff. Br. Lincoln, pl. 68. citing 11 H. 6. 5. — p. Arg. Saund. 65. in the Case of Duppa Executor of Badenore v. Mayo, citing 1 Rep. Godfrey's Case.

It was held in Error, on Judgment in C. B. in such Case that the Aowry before Judgment should have shared his Aowry, Sound the Michaelmas Rent not then due, and taken Judgment for the rest. But the Defendant getting his Aowry amended in C. B. the Rule was amended here in B. R. and it is the Error arg'd. 2 Silk 530. Richards v. Cornforth — 5 Mod. 363.

10. But if the Aowry be for some Beasts for Rent due at one Day, and for other Beasts for Rent due at another Day; if it appear by the Aowry that one of the Days is not yet come, yet all the Aowry shall not abate, but he shall have Return of the Rest. 11 D. 6. 20.

11. Aowry [Replevin] against 3; one comes, and this one only makes the Aowry, and the other 2 for nothing, nor was any Proceeds made or continued against them; and he avow'd for himself only, and were'd at a Taking in
in D. where the Plaintiff counted in S. He shall not have a Return in this Case without Avowry. Br. Avowry, pl. 33. cites 49 E. 3. 24. Per Pele and Kirton.

12. Plaintiff is removed out of the County into Bank by Pwone by the Defendant. In such Case, and at the Day the Plaintiff is demanded, and does not come. Now, if the Plaintiff shall be awarded, and the Defendant shall have Return if he will. Br. Retorne de Avers, pl. 19. cites 21 H. 6. 50.

shall require what Cattle he took, and shall have Return. Raym. 53. 15 Car. 2. B R. Mich. Aven.

13. In Replevin the Plaintiff declared &c. the Defendant said, That Court in the Property is in W. N. and not in the Plaintiff, and made Return to have Return, and the Sheriff passed for him of the Property, and it appears that the Avowry is not good; yet per Prior, the Defendant shall have Return without Avowry in this Case, because the Plaintiff has no Property, and the Defendant had the first Possession of the Beasts. Br. Replevin in pl. 51. cites 39 H. 6. 55.

14. A Man was dispossessed by 20 Sheep, and the Party sued Replevin, and he was dispossessed aforesaid Plaintiff in Court of a Franchise to have the same Sheep attacked by Court, in that Replevin should not be thereof made, and the Sheriff returned it, and the Plaintiff prayed Superedes for him and his Chattels by Reason that this Court had the Ancient Seffa; and the Opinion was, That he should not have Superedes for his Goods but for his Person only; but per Laiton, He shall have Superides for both; And by several, He shall have Certainari of them. Br. Replevin, pl. 50. cites 16 E. 4. 8.

15. In Replevin, the Plaintiff was non suited, by which the Defendant had Return, and after the Plaintiff repelvied them again by Plaintiff, viii. pl. 24. where he ought to have had Second Deleverance, and the left Plaintiff was re. cites S.C. moved by Reorna. e, and the Defendant placed the Matter to the Court, and because the Deliverance was made against the Law he prayed Return, and had it without making Avowry, in such as the Deliverance was without Authority, and he shall have Second Deleverance, and ther be he shall make Avowry. Br. Retorne de Avers, pl. 32. cites 21 E. 4. 6.

16. And where a Man dispossess a Ozen, the Plaintiff removes the Plaintiff, S.P. For otherwise the Plaintiff by Final may always deceive the Defendant. Br. Replevin, pl. 44. cites S.C. — S.P. Ibid. pl. 53. cites S.C. and 22 E. 3. Fifth Retorne de Avers, pl. 22.

17. In Replevin, the Plaintiff countenances a taking of 10 Beasts, and the Defendant avowd for 23 for Damage sejant; and because the Plaintiff had Replevin of them, he prayed Writ to the Sheriff to make Deliverance of them, of which he has not declared to confine potterick that Replevin of them was made and had it in C.B. Br. Replevin, pl. 32. cites printed in his cites 1 H. 7. 12.

18. The Lord avows the taking of one Mare, as for Rent behind, fo [and a4] for the 4th Part of a Relief, and does not express the Sum due: or
Replevin.

the Relief; and for the Rent the Plaintiff pleads Tender, and demands for the Relief, because he had not expressed the Sum, and because he had distrained one Thing for the Rent and Relief, pretending that if one Cause paled against him, and another for the Aravant, that he could not have a Returno Habendo; but the Court were of a contrary Opinion. 


19. But if two Mon distrain one and the same Mare for two several Causes, and one has Judgment for himself, and the other for himself, in this Case no Returno Habendo can be made of the Mare. Brownl. 175. Pain v. Mafcal.

Lat. 12. S. C. in toto dem Verbo—
* D. d. b. pl. 6. That the Writ of Second Deliverance is to no other Purpose but to revive the first Plait, and is a Supersededes of the Writ of Returno Habendo; Cited by Killway as 22 H. 7. and that he had the Report of the Case.—


(N) Returno Habendo.

1. **The Writ of Returno Habendo is not Returnable.**

2. Withernam is delivered to the Plaintiff of the Goods of the Defendant; and the Defendant has not Day in Court; nor would the Plaintiff make Plea, the Defendant shall have Audita Querela; for he cannot have Returno Habendo, because he has not Day in Court. Per Holt J. Quere Br. Withernam, pl. 12. cites 44 Aff. 14.

(N. 2) Return. The Effect thereof as to the Thing sued for.

7. In Replevin, the Defendant avowed for Rent, and Return is ordered, he cannot have Seize upon that Judgment as to the Execution of the Rent; for the Judgment is no more than to have Return; and if he takes the Return of the Beasts, and they alter die in Pounding in Default of the Plaintiff, the Defendant has no Remedy but to distrain again. And to see that the Return is not Execution of the Rent, but only a Pledge for the Rent, in which he has no Property; for if it was an Execution for the Rent, he should have Property. Br. Executions, pl. 46, cites 21 E. 5. 21, 22.

(O) * Return
(0) * Return irrepleivable. In what Cases it shall be * Note per
Dwight's
Army
in
Dwight's
not denied,

That if a
Man has
return adjured
for him irre-
pleivable, it
is not Satisfaction for the Thing for which it is awarded, but he shall hold it till be in satisfied; and from heere it is known that he has no Property in them. Br. Retorne de Averes, pl. 6, cites 2 H. 6, 48. And if the Plaintiff after this renders sufficient Answers, and the Defendant still insists, the Plaintiff shall have a Writ of Deposition. ibid.
† The Defendant could not have Return irrepleivable, because it was the first Nonuit, but had Seco
dnd Deliverance, and, and Br. Retorne de Averes, pl. 25, cites 24 E. 3, 34. (All the Editions of Brooke are 24 & 35, 36) but it should be (35) as in Roll, and in 24 E. 3, 33 a. pl. 22.

2. When the Jury comes to give their Verdict, if the Plaintiff in the Replevin be Nonfuited, the Return shall be irrepleivable. 2 D. 4. 23.

3. If after Issue the Plaintiff makes Default at the Day of Nisi Prius, the Return shall be irrepleivable. 4 D. 6, 8. 6.

4. If the Plaintiff in a Replevin be Nonfuited, and the Defendant has a Return awarded, but before Execution the King dies, and in the Time of the next King the Plaintiff files a Writ to warn the Defendant to shew Cause why he shall not have Return, and the Sheriff returns That it was a Nonuit, and that he was warned, and did not come, by which a Return is awarded, yet it shall be irrepleivable. 1 C. 3, 9. 6.

5. If an Inquest passes against the Plaintiff, the Return shall be * Also at the Com-
mon Law. 2 D. 4. 23. 4 D. 6, 23. Return irrepleivable does not prevent but where the Issue was tried against the Plaintiff, and the Statute does not once Return irrepleivable, but where Return was once awarded before, then that he shall have only a Writ of Se-
cond Deliverance, upon which, if he made Default at another Time, viz. upon the Second Nonfuited, the Defendant shall have Return irrepleivable. Per Bab. quod Curia concilium. Br. Retorne de Averes, pl. 25, cites 4 H 6, 8. —* 1. 6. That he shall have the Diffreis as a Pledge till all the Rest, &c. avowed for he paid &c. 2 Sa. 583. Per Cur. Mich. 9 W. 3. B R. in Case of Richards v. Cornforth. — See (K.) pl. 5. 8. 4.

6. So if it be adjudged against the Plaintiff upon Demurrer. 2 D. If the Plea be to the Writ, or any other Plea, be tried by Verdict, or judge'd upon Demurrer, Return irrepleivable shall be awarded, and not Replevin shall be granted, nor any second Deliverance by the Act of Westm. 2. but only upon a Nonuit. 1 Litt. 542.

7 N 7. Bar
Replevin.

7. To file in another Court, unless in the Court of the Statute of W. 2. return irrepelevable shall be. 2 P. 4. 23.

8. Second Deliverance against Abbat and Monk, the Plaintiff did not come, and they played Return irrepelevable. Per Cur. this cannot be awarded to a Commoner; Quod fora. Br. Retorne de Avers pl. 18. cites 21 E. 3. 52.

9. In Second Deliverance, the Sheriff returned no Writ, and the Defendant appeared and played that the Plaintiff made Default, and thereby the Defendant played Return irrepelevable, and could not have it, but Sicut alias, notwithstanding they have Day by the Roll. Br. Jours pl. 18. cites 49 E. 3. 2.

10. In Replevin the Defendant pleaded in Abatement of the Writ that the Property is in the Plaintiff and another &c. and the Plaintiff confessed it, by which the Writ abated by Award, and Return awarded to the Defendant, yet there the Plaintiff shall have New Replevin, and the Return shall not be irrepelevable; For the Statute of Wm. 2. cap. 2. does not remedy false Writs, nor Abatement of the Writs in Replevin; But that the Plaintiff may have new from Time to Time; but it remedies Nonuit in Replevin, to be if the Plaintiff be nonfitted, he shall never have New Replevin, but Writ De Judicio viz. Second Deliverance; but rep. of Plea to the Writ if it be tried against the Plaintiff by Verdict, the Defendant shall have Return irrepelevable as well as upon a Bar. Contrary it seems of a Demurrer upon Plea to the Writ; Quod not Divinity. Br. Replevin pl. 6. cites 34 H. 6. 37.

11. If a Man be nonfitted in Replevin, and Return is awarded, and the Plaintiff brings Writ of 2d Deliverance, and suffers it to be discontinued, Return irrepelevable shall be awarded as well as if the Plaintiff had been nonfitted in the Writ of 2d Deliverance. Br. Retorne de Avers pl. 37.

12. At the Common Law if the Plaintiff in the Replevin had been Nonfitted either Home or after Verdict, the Defendant, who distraint, should have had Return but not irrepelevable; so as the Plaintiff after Nonfitted might have had as may Replevins as he would which was vexatious and mischievous, for remedy whereby of the Act of Wm. 2. cap. 2. restrains the Plaintiff from any more Replevins after Nonfitted, but gives a Writ of Second Deliverance. 2 Hil. 3. 340.

13. If the Writ of Replevin abates for Want of Form in Default of the Clerk, the Defendant shall not have Return at all. But if it be abate per Matter apparent by Mistake or other Default of the Plaintiff, the Defendant shall have Return but not irrepelevable irrepelevable. 2 Hil. 3. 340.

14. But if the Defendant pleads a Plea to the Writ, and the Plaintiff confesses it, then the Plaintiff shall have Return, but not irrepelevable; For the Plaintiff may have a New Writ of Replevin; For the Act of Wm. 2. only gives remedy in Case of Nonfitted. 2 Hil. 3. 340.

15. If the Plaintiff, in the Second Deliverance be nonfitted, or if the Plea be discontinued, or the Writ abates; or if he prevails not in his Suit, Return irrepelevable shall be granted. 2 Hil. 3. 341.

(O. z) Re-
Return by Sheriff; good or not.

1. "The bringing of Writ of Homine Replegiando by their Friends, and the Return of Sheriff returned that the Defendant claimed them as his Vellitas regardant to his Manor of Dale, by which he cannot make Replevin; and a S. C. good Return; quod nota, Claim of Property. Hall bid them find Surety to have them here at a certain Day, and you shall have Writ to the Sheriff to deliver them. Skene prayed Writ that the Sheriff may take Surety in Pains, and could not have it. Br. Replevin, pl. 49. cites 8 H. 4. 2.

2. But T. 32 E. 3, the Sheriff returned in such Writ, Quod mandavi Ballico Albatis de B. who returned that he took was taken was a Villain to be Aver, the Abbot, Et idem non patent dehinc aux. And it was held no Answer, pl. 15. cites S. C. and Non Omittas was awarded, quod nota. Ibid.

3. In Replevin at the Pluries, the Sheriff returned that the Beasts E. N. B. 63 were kept up in a Park among Herages; so that he could not replcy them, and therefore was amerced, and other Writ awarded to the Sheriff to make Deliverance; for he ought to have taken the Pojs Committee to make Deliverance, as well as if it had been in a Castle or strong Place. Br. For it was a Replevin, pl. 15. cites 8 H. 4. 19.

4. In Replevin the Sheriff's return'd Quod nullus Venit ex Porta Civitatis ad Domino, friends from Averia, by which he did nothing, and it was Return was made with the same Verdict, ibid. And

the Pluries, and he return'd further, Quod nullus alius brevis in ad manner fact decrevit, and therefore ill, and it was amerced. Ibid. — For it is a Contempt if one Writ resume, and he return's Quod nullus alius brevis &c. and it was said that the rest is no good Return, but it is left there (Square) and this by the Reporter, as it seems; for it is only a Note. Ibid. — S. P. D. 188. p. 12. Mich. 2 & 3 Eliz. Anon.

5. In Replevin at the Pluries, the Sheriff's return'd Quod averita Mortua sunt; and the Opinion of the Court was, That it is a good Return. Br. Return de Briefs, pl. 125. cites 32 H. 6. 27.

6. And if he be as derailed retakes his Beasts, and fees Replevin, the Sheriff may return the Special Matter. Ibid.

7. In Replevin it is no Return, That he has no such Beasts, but may return Quod averita sunt Elongata, or Quod nullus Venit ex Porta Civitatis ad Dominantia averita. Br. Return de Briefs, pl. 89. cites 5 H. 7. 27.

Where the Sheriff returns Quod averita Averia ex parte &c. gaeta ad hec incumbat.

this is a good Return; But if he returns Ad loca inerimina infra Comitatum remanunt, he shall be amerc'd; For the Law intends that he may have N title in his County. Per Jenney. Br. Return de Briefs, pl. 150. cites 22 E. 4. 11.

8. It appears by the Register, That if the Sheriff returns upon the Replevin, Sicut alias or Pluries, he must not unto the Bailiff of the Franchise &c. who has given him no Answer, or that he will not make Deliverance &c. then the Plaintiff shall have a Non Omittas unto the Sheriff, that he enter into the Franchise, and make Return; and if the Sheriff does not do it, he shall have an Alias non Omittas directed unto the Sheriff, and afterwards a Pluries non Omittas &c. But it seems that that Return, Quod mandavi Ballico Liberratis &c. qui Nullum mihi debita Reponfum, or the Return, That the Bailiff will not make Deliverance of the Castle, are not good Returns; by the Statue of Welf. 1. cap. 17. in the End of the Statute, it appears, that the Sheriff, upon such a Return made to him by his Bailiff, ought presently
fently to enter into the Franchise, and to make Deliverance of the Cattle taken; and so it appears the Sheriff may do by the Statute of Marlbridge, cap. 21. If a Plea of Witheram be in the County by Plaint before the Sheriff, and the Sheriff sends unto the Bailiff of the Liberty to make Deliverance, and the Bailiff does nothing, that then the Sheriff Ex Officio may enter into the Liberty without any Writ directed unto him in that Cafe. F. N. B. 68. (F)

9. On a Pluries to the Sheriff’s of London, they return the Custom of the City, that Replevin ought to be made in the Sheriff’s Court there, and not by the King’s Writ; Et non allocatur, and an Attachment was granted. F. N. B. 68. (G) in the new Notes there (a) cites * Dy.

Goods taken by Mallory the Lord Mayor of London; who pleaded, That the Customs of London were ratified by Parliament; but by the Opinion of the Justices of both Benches, the Return was held insufficient; and that another Writ of Pluries Replegiare was awarded to the New Sheriff and Process of Attachment against the Old Sheriff, and after the Matter was compounded.