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SHELF NO. ADAMS 373
A General Abridgment of Law and Equity

Alphabetically digested under proper Titles

with

Notes and References to the Whole.

By Charles Viner, Esq;

Favente Deo.

ALDERSHOT in Hampshire near Farnham in Surry.

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TO THE RIGHT HONOURABLE

PHILIP Lord HARDWICKE

Baron of HARDWICKE in the County of Gloucester, Lord High-Chancellor of Great Britain.

My LORD,

I most humbly ask Pardon for this Presumption in dedicating to Your Lordship this Book; But as the same is Part of a General Abridgment of Law and Equity, it cannot be so properly Address'd to any Person as to Your Lordship, whose Knowledge in both must be, and is allowed by all to be the most Excellent, and has so Eminently distinguished itself in those Respective Great Posts, successively filled by Your Lordship with so much Reputation to Yourself, and Advantage to the Publick, of Lord Chief Justice of England, and Lord High Chancellor of Great Britain.

Your Lordship has on all Occasions with the greatest Judgment, Perspicuity, and Impartiality qualified and moderated with Equity the Rigour of the Common
The DEDICATION.

Common Law without hazarding the Fundamentals of it; Nor can Your Lordship be denied the most Valuable Character of an unbyassed Distributer of Legal and Equitable Justice.

I should think myself wanting, My Lord, in Duty to my Country, (for which I have as strong Affections as any Man living,) should I not most sincerely wish, that Your Lordship may long preside in that High Court of Chancery, of which Your Lordship is so great an Ornament, and am with the greatest Veneration and Respect

My LORD

Your Lordship's

Most Obedient and

Humble Servant,

Charles Viner.
THE

P R E F A C E.

THE Commencement of this Work was with the present Century, at which Time I was admitted a Member of the Honourable Society of the Middle-Temple, and attended, as a Student, the Courts of Westminster. After the coming out of the first Volume of Mr. Danvers's Abridgment, (that most curious and exact Work) I began to flacken in proceeding with my Own, and being under some Apprehensions of having injured my Health by a very close Application, I retired into the Country, and for some Years wholly laid aside protecting my Undertaking without intermedling with Bifinets of Law, unless in preventing and compromising Differences among Neighbours, and others applying to me, at some Expense to my self but none to them. At length I resolved to revive what I had before gone thro' with, and Mr. Danvers's second Volume being then come Abroad, laid it down as a Rule to examine, whatever came in my Way, with Mr. Danvers, so far as he had gone, and to enter Nothing in my own which I found in him, intending my own only as a Supplement to his, or his only as a Supplement to my own Collections; and in that View, before I entered upon the having my own Collections transcribed, I struck out many I had before made, and for that Reason only, that I found the same under the like Titles in him. The Like Method I took afterwards with Mr. Nelfon on the coming out of his Abridgment, thinking it then sufficient for my private Satisfaction, if I might have a ready reference to any Place, for what I might desire to find; having never entertained any Thoughts of making Publick my own Collections, till after the coming out of Mr. Nelfon's and the Title (Error) of Mr. Danvers's. By this Method I observed many Cafes in Mr. Nelfon not taken out with that Care and Exactness which Mr. Danvers had done, and therefore either abridged the same, or added in the Margin some Mark or Memorandum by way of Caution, that it was not to be depended upon, or interlined what I thought was omitted, and made some other Marks for what he had added of his own, and which was not to be found in the Original Book cited by him as his Authority. As for Mr. Sibpherd's Abridgment I have scarcely ever looked into it, but having occasionally examined Mr. Hughes's find him in a Manner wholly transcribed by Mr. Nelfon, sometimes with little or no Variation, and if any it is by way of dispute only, sometimes exchanging one Error for another, supplying very few Imperfections, correcling as few Mistakes found in his Original, and sometimes, by mistaking Mr. Hughes, making some Errors where none were before; so that a literal Transcribing had perhaps been better. Had Mr. Nelfon duly considered this before his Publication of his Latin work, he would have been more decent in his Remarks on the Work of that great and valuable Person so much his Superior, and who had been dignified with the Honour of being a Judge.

My Lord Roll, whose Abridgment is my Text, has supplied the greatest Part thereof out of the Year Books, those rich Mines of the Law, and out of which those other Great Men Lord Fitzherbert and Brooke drew so much valuable Ore, which afterwards Lord Coke, in his Institutes, melted into Ingots, and which, with some little refining and purifying, have since become the current and precious Coin of
The PREFACE.

of the Common Law. While those Books were the only Magazines, or Repositories of the Law; the Profession was in great Esteem; There was then no Ebb or Poverty of legal Knowledge, but the Tides of Law rolled High. The industrious Students refrained thither for their Barthen, which both intrenched themselves, and would, no doubt, have done the like by their Politerity, had not they, like prodigious and thoughtsless Heirs, neglected or squandered away, what their Predecessors or Ancestors had amass'd for them. The Name of Plawden ought to be reverenced by every Professor of the Law, and after him Lord Coke merits their great Thanks. But to unfortunate were those Great Men in the extraordinary Pains they took to serve the Profession, that their Labours may perhaps, by an unnatural Consequence and Accident, have, in too many Instances, occasioned Ignorance instead of Improvement. In this Respect Sciences may be compared to Bodies natural, as that, which by a right Use and Application would not nourish only, but strengthen, may, by an Abuse, be converted into Poison, and destroy that which it was intended to preserve. And thus Abridgments, according to their different Use, will necessarily have very different and contrary Effects and Operations, either of doing much Good or much Harm. The Study of the Law is a very long Journey, and the Roads not the plainest, in which they may force as Polits and Mercuries to direct the Students in their Way, but ought not by any Means to be considered as their Journey's End, or Place of their last Reform and Residue.

In a Work of so great Extent as that, of which this is a Part, it cannot be expected, but that many Mistakes may be found, notwithstanding the utmost Care; and a great Part thereof having been several times Transcribed by other Hands, the Transcribers may well be supposed to have varied sometimes from the Original, and so to have made Errors where they found none; whereas, on the other Hand, it is not to be imagined, that any Original Errors, especially in the References to Books, out of which any Cave or Point is cited to be taken, should be thereby corrected.

The Reader is desired to take Notice, that the Plaites, cited out of Lord Brooke's Abridgment, are Number'd as found in the largest Edition in Folio, there being sometimes Variances between the Numbring or Figuring the Pleas in that and the other Editions, whereas those other Editions vary but in few Instances from each other.

The Reader is desired to take Notice, that where any Book is cited containing such and such References, or where it is said, that the Book cites so and so, this Author is not answerable for the Truth of such Citations or References, he not being in such Cases any otherwise concerned than to mention them, as the Book does.

The remaining Part of the Work will be printed off by three Volumes in a Year till the whole be publish'd.

The Reader is desired to correct the following ERRATA.

FOLIO 2. Pl. 4. line 5. dele the Comma after Smith, and put it in before Smith.—Faits (C) pl. 2. in the Note, r. received.—f. 18. in the Title, r. Faults.—Ditto pl. 2. in the Note, l. 5. r. Time—Faits (H) pl. l. r. cannot.—f. 50. laft l. dele Gramm (R. 7.)—f. 54. laft l. dele Habendum, dele (N)—f. 56. laft l. dele (N) —f. 109. pl. 1. r. Lealch—f. 106. l. 2. dele full point, and make it a Comma—f. 122. pl. 11. l. 3. Tal.—f. 112. pl. 8. l. 5. r. ex—f. 144. (G) pl. 3. r. and Plainiff had Judgment.—Fences (B) the last dele Improvement (E. 2)—f. 257. (H) pl. 2. Marg. * should be 5, and the second * following should be 4.—f. 292. pl. 23. l. 9. r. fictitious.—f. 340. (l. b) Marg. l. 1. r. D. 254.—f. 356. (N. b) laft l. but 2. after is dele not—f. 375, 376. in the Title, r. First Fruits and Tents—f. 383. (F) pl. 1. l. 1. r. Entry—f. 396. (U) pl. 3. l. 2. r. was not finded.—f. 424. pl. 6. Marg. r. Word.—f. 411. (D) Marg. laft l. bu. r. dele for—f. 422. pl. 6. l. r. Pered.—f. 430. pl. 4. laft l. of the Note, r. Order ought to be of every one—f. 456. (W) in the Division, po or r. but—f. 458. pl. 4. l. 2. r. Chancery.—f. 456. at the end of the first Note, for 276. r. 976.—Factions (A) pl. 2. laft l. r. Yarrwsth.—f. 500. in the first long l. of the Note, at Years dele these, and in the 2d. l. præter r.—f. 510. (C) pl. 3. l. r. three.—f. 543. pl. 9. l. in the Note, r. Agreement—f. 544. pl. 3. laft l. but 2. r. of.—f. 557. in the Division, dele the Apothecary at Creedor's.—f. 563. laft l. but 1. l. 342.
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### Former Action.

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F A C T O R.

(A) Who may be a Factor, and how considered.

1. A Factor is a Servant created by a Merchant's Letters, and takest a Kind of Provision called Factorage; such Persons are bound to answer the Loss which happens by over-paffing or exceeding their Commisston; but a simple Servant or an Apprentice can only incur his Master's Displeasure. The Gain of the Factorage is certain, however the Success of the Voyage proves. Molloy 462. Sect. 1.

2. 9 & 10 W. 3. 26. No Governor, or Deputy Governor of any of the Plantations in America, or the Judges there, or any other for their Life, shall be a Factor or Agent for the African Company or others, for the Sale or Disposal of Negroes; and any Person offending therein shall forfeit $500, to be recovered in any of the Courts of Record at Westminster. Expired.

3. By 20 H. 6. 5. No Customer, &c. their Servants, &c. shall be Factor to any Merchant.

(A 2.) What is his Power.

1. A Factor that has only a bare Authority to sell cannot Trust, but ought to take and receive the Money presently on the Sale. 1 Bulst. 104. Burton v. Sadock. — Molloy 463. Sect. 3.

2. When the Merchant delivers Goods to the Factor to sell, he has made the Factor Negotiator Gestionum, and therefore he may sell without ready Money, and 'tis good Reason, for by Chance they are Bonae periturae; but if he sells them to one whom he knows will prove Bankrupt, 'tis not good. Per Hobart Ch. Just. Winch 53. — Factor that has a general Comm mission may sell on Trust, but not take Bond in his own Name. 2 Chan. Cafl. 57. Dathwood v. Elwell. — Pleading such Bond is not good by Way of Account, but 'tis a good Plea before the Auditors by Way of Discharge. Bulst. 103. per Williams Just. cites D. 29. pl. 193.

But such Trust must be for a reasonable Time only, according to the usual Time allow'd for such Goods so disposed of, tho' his Power was general, of doing with them as if they were his own; but he cannot trust for an unmentionable Time, 25 for ten Years. Bulst. 105. Burton v. Sadock. — Molloy 463. Sect. 3.

3. A Merchant delivers Goods to his Factor ad Merchandizandum; if Factor sells he cannot sell them upon Credit, but for ready Money, unless he has a Goods to one that is worth nothing, or that cannot give Security for them, it shall be to his own Left, and not his Master's. Yelv. 227. Sadock v. Burton.
Factor.

particular Commission from the Master so to do; for if he can find no Buyers he is not answerable, and if they are bona fide, and cannot be sold for Money on the Delivery, the Merchant must give him Authority to sell upon Trust. 2 Mod. 100. Anonymus.

4. In Trover and Conversion of divers Quarters of Malt; the Case upon the Evidence was, That the Defendant having a great Quantity in a Vessel impowered one Smith, a Broker, to sell it, and afterwards the Defendant himself sold it to a Stranger, and the same Day, and before Notice of the Sale by the Defendant Smith, sold it to the Plaintiff, who demanded it of the Defendant, who denied to deliver it; and the Case was doubtful to Rolle Ch. Juft. For if the Defendant's Sale stand against the Sale of Smith, before Notice of the first Sale, then should he be chargeable for his Bargain which he could not perform without any Default in him; and on the other Side it were hard that the Sale of the Owner, who hath the absolute Property in the Goods, should be defeated by a subsequent Sale of him that had but a bare Authority. But in Conclusion he declared his Opinion, that the Sale of the Defendant should stand good, and the Broker ought in such Case to make his Sale conditionally, if the Master hath not fold it before; but he said that neither the Broker nor his Vendor should be liable to any Action for detaining the Goods tho' demanded, without Notice given of the Sale by the Master. Et partes concordarunt. Aleyn 93. Alwin v. Taylor.

5. He cannot barter any Commodities for other Commodities, but he must have express Commission and Order for it from the Merchant; neither can he transfer or set over any Bills obligatory. For albeit this Manner of Commission given to Factors is very large, yet it contains certain Restrictions and Limitations in every Merchant's Understanding. Mal. Lex Merc. 83.

6. A Factor is not barely intrusted with the Custody of the Company's Goods, and as such has a Power to invest their Money and Goods in whatever he thinks most for the Advantage of the Company, and is not to account for the Goods themselves but the neat Produce of them, so that he may convert the Company's Stock to his own Use, provided he answers it to them out of his own Eftate. 10 Mod. 144. Shepherd and Maidstone, B. R. (Alias The East-India Company's Cafe.)

7. Every Factor of common Right is to sell for ready Money; but if he be a Factor in a Sort of Dealing or Trade, where the Usage is for Factors to sell on Trust, there, if he falls to a Person of good Credit at that Time, and he after becomes insolvent, the Factor is discharget; but otherwise if it be to a Man notoriously defcredited at the Time of the Sale. But if there be no such Usage, and he, upon the general Authority to sell, sells upon Trust, let the Vendee be ever so able, the Factor is only chargeable; for in that Case, the Factor having gone beyond his Authority, there is no Contract created between the Vendee and the Factor's Principal; and such Sale is a Conversion in the Factor; and if it be not in Market overt, no Property is thereby alter'd, but Trover will also lie against Vendee. So likewise if it be in a Market overt, and Vendee knows the Factor to sell as Factor. Per Holt Ch. Juft. at Guild-hall. 12 Mod. 514, 515. Anonymus.

8. In Commissions they now generally insert these words: Dispose, do, and deal therein, as if it were your own, by which the Actions of the Factor are to be excused, tho' it turns to his Principal's Loss, because it shall be presumed he did it for the best, and according to his Difcretion. Molloy 463. Sect. 2.
(B) Transactions and Accounts between him and his Employer.

1. If a Consul beyond Sea hath Power, and cloth 

*now Goods upon a private Merchant, the Company must bear it, if the Factor could not prevent the Act of the Consul. Hill. 1630. Toth. 169. Leate v. Turkey Company of Merchants.

2. An East-India Factor was not allowed to place any Thing to 


3. If a Factor by Error of Account do wrong to a Merchant, he is 

to amend and make good the same, not only for the Principal Money, but also with the interest thereof for the Time; and on the contrary, if a Factor in his own Wroth hath forgot to charge the Merchant’s Account with some Payment made by him, or Money made over by Exchange; the Merchant is to answer it, with Interest for the Time. Mal. Lex Merc. 83.

4. Between Merchant and Factor, if the Factor has paid more than 

the Merchant could have demanded of him, the Merchant shall have no Account from the Factor till he has made sure. Sic dicitur. 2 Chan. Cales 38. as a Note on the Cafe of * Fashion v. Atwood.

5. Factor’s Account recked upon fourteen Years, and his Books and Per- 


6. Factor shall have the Benefit of Customs saved and not the Mer- 

chant that employed him. Chan. Cales 25. Smith v. Oxenden. — This was where the Customs were stolen from a foreign King; but of Customs stolen from our own King, Factor shall not have the Benefit. Chan. Cales 30. Borr v. Vandall — N. Ch. R. 87. S. C. but reports it deced against the Factor on the general Foot of Fraud.


Where a Factor smuggles Foreign Customs, and yet lets them down to his Master as paid upon Account: the Chancery would not relieve, for that the Factor ventured his Life; and to it was ruled by Hide, Lord Chancellor, in the Cafe of *Americanity and Barby; but North (Lord Keeper) said he was not satisfied of it, for that he ventured his Master’s Good as well as his own Life. Skirn. 149. Annonymus in Cance.

7. Factor deceives the Merchant in sending him from beyond Sea one 

Sort of Silk for another; Merchant sells them again to 7. S. for the same Sort of Silk for which the Factor sent it, and was ignorant of the Deceit. Per Holt. The Merchant is answerable for the Deceit of the Factor civiliter, tho’ not criminaliter; and Judgment for 7. S. 2 Salk. 289. Henn v. Nichols.

8. As to Accounts between the Agents and Factors of the African 


[See Account ( ) pl. 8.]

(B 2.) Transf
(B 2.) Transactions between Factor and Employer. 

Frauds by Factor.

1. If Factors shall give Time to a Man for Payment of Monies contracted on Sale of their Principal's Goods, and after the Time is elapsed, they shall sell Goods of their own to such Persons for ready Cash (leaving their Principal's unreceived) and then such Man break and become insolvent, the Factor in Equity and Honestly ought to make good the Losses, for they ought not to dispense with the Non-payment of their Principals Monies after they become due, and procure Payment of their own to another Man's Loss; but by the Laws of England they cannot be compelled. Molloy 463. Sect. 5.

2. If any Factor fell unto a Man certifying Goods of another Person's Account, either by themselves or amiable other Things, and gives not Advice to his Principal of the Sale of the said Goods, but afterwards having more Dealings with the same Man he becomes insolvent; the Debt for the Goods so sold the Factor shall be answerable for, because he gave no Advice to the Owner of the Sale of the said Goods in convenient Time; and it is as if he had disposed of those Goods to a Man contrary to the Commission given unto him; for the Salary of Factor's age bindeth him thereto. Law of Trade, &c. 2d Part 403.

3. Also if a Factor by Commission of a Merchant buy a Commodity for his Account, with the said Merchant's Money, or by his Credit, and the Factor giveth no Advice of it to his Principal, but sells the same Goods again for his own Benefit; the Merchant shall recover this Benefit of the Factor, according to the Custum of Merchants, and his Factor shall likewise be amerced for the Fraud. Law of Trade, &c. 2d Part 403.

4. If a Factor shall by false Entry in the Custom-house, either knowingly or of Purpose conceal Part of the Custum without Consent or Pri-vity of the Merchant, whereby the Goods become forfeit to the Prince, the said Factor shall bear the Loss of them and answer the Value thereof unto the Merchant as they did cost, if it be for Goods to be transported, or as they might have been fold, if it be for Goods to be imported. Mal. Lex Merc. 83.

5. If a Factor, by a Letter of Advice or by an Invoice of Commodities which the Merchant sendeth, doth make a false Entry in the Custom-house, the Goods not entred shall be lost, but the Factor cannot be charged with the same. Mal. Lex Merc. 83.

[See (B) pl. 6. — (F 2.) pl. 2.]

(C) Disputes between Factor or Employer, and Creditors of the other; and where the Factor or Employer dies or fails.

1. A Merchant sends Goods to his Factor, and about a Month after draws a Bill on him, the Factor having Effects in his Hands accepts the Bill, then the Principal breaks, against whom a Commission of Bankrupt is awarded, and the Goods in the Factor's Hands are seized; it has been conceived the Factor must answer the Bill notwithstanding,
Factor.

withstanding, and come in as a Creditor for so much as he was en-
forced by reason of his Acceptance to pay. Molloy 465. Sect. 8.
2. Factor having over-paid his Merchant, but having Goods unfold
of the Merchant's in his Hands, the Merchant by Parol agrees that
Factor shall pay himself out of the Monies arising from the Sale of the
Goods remaining in his Hands; Factor being indebted to others by
Parol likewise assigns to his Creditors the Debts which were due for
Sale of the Goods of the Merchant. The Merchant dies, and owes
Debts by Bond.—The Factor dies indebted by Bond likewise. Per
Lord Chancellor, the Factor had a good Title in Equity to the Debts
which in Equity are become his, and are no longer the Merchant's,
and decreed for the Creditors of the Factor. 2 Chan. Cas. 36. Fashion
v. Atwood.

3. A as Factor to B. sells Goods on Credit, and dies indebted by
Specialty more than his Assets would pay. The Money shall be paid
to B. and not to A's Administrator, as Part of A's Assets, but the
Commissary Money must be deducted for the Administrator of A. And
per Cowper C. The Factor has a Right at Law, yet he is only a
Trustee in Equity. 2 Vern. R. 618. Burdet v. Willot & al.

4. A Blackwell-Hall Factor having Cloth in his Hands advanced
Monies to the Clothier; the Clothier dies, Administrator sues the
Factor at Law for the Cloth, the Factor sues in Equity to be allowed
what he advanced, but denied per Lords Commissioners; for if there
are Debts of a higher Nature, "will be a Decofractit in the Admini-
strator to pay or discount the Plaintiff's Debt. 2 Vern. 117. Chap-
man v. Derby.

5. If one employs a Factor, and intrusts him with the Disposal of
Merchandize, and the Factor receives the Money, and dies indebted to
Debts of a higher Nature, and it appears by Evidence that this Money
was invested in other Goods, and remains unpaid: Those Goods shall
be taken as Part of the Merchant’s Estate, and not the Factor’s.—But
if he have the Money, it shall be looked upon as the Factor’s Estate,
and must first answer the Debts of a superior Nature. 1 Salk. 165. In
Canc. Whitcomb v. Jacob.

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(D) Of Joint Factors; or where one Factor is im-
ploy'd by several Principals.

1. O

N E and the same Factor may act for several Merchants, who Mal. Lex
must run the joint Risque of his Affions, tho' they are meer Strangers to one another; as if five Merchants remit to one Factor five
different Bales of Goods, and the Factor makes one joint Sale of them
to one Man, who is to pay one Moiety down, and the other at six
Months End; if the Vendee breaks before the second Payment, each
Man must bear an equal Share of the Loss, and be contented to ac-
cept of their Dividend of the Money advanced. Molloy 463. Sect. 4.

2. But if such a Factor draws a Bill of Exchange upon all those five
Merchants, and one of them accepts the same, the others shall not be
obliged to make good the Payment. Tamen quœre de hoc. Molloy
463. Sect. 4.

3. If two Men are Partners of Merchandizes in one Ship, and one
of them appoints and makes a Factor of all the Merchandizes, it was
said, and not denied, that both of them may have several Writs of
Account
Account against him, or may join in one Writ of Account if they please. Quere of that. Godb. 90. M. 28, 29 Eliz. B. R.

4. Surviving Factor shall account for what was made by himself or Co-Factor, and yet Account lies against the Executrix of the dead Factor. Chan. Cai. 127. Holtcomb. v. Rivers.—N. Ch. R. 139. S. C.

(E) In what Cases his Contrac.ts bind the Principal.

1. If a Factor enters into a Charter-party with a Master for Freightment, the Contract obliges him; but if he takes aboard generally the Goods, the Principals and the Lading are made liable, and not the Factor, for the Freightment. Molloy 466. Sect. 9.

2. The Principal orders his Factor that as soon as he hath loaded (he having Monies in his Hand) to make an Assurance on the Ship and Goods; if the Ship happens to miscarry, by the Custom of Merchants he shall answer the same, if he hath neglected his Commission; so it is if he having made an Assurance, and Lois hath occurred, he ought not to make a Composition without Orders from his Principal. Molloy 466. Sect. 9.

3. If a Factor by Order or Commission of his Principal buys any Goods above the Price limited to him, or they be not of that Sort, Goodness or Kind, as by the Authority they ought to be; this Factor is to keep the same for his Account proper, and the Merchant may disclaim the buying of them. Mal. Lex. Merc. 82.

4. The like he may do, if the Factor having bought a Commodity according to his Commission shall ship the same for any other Place than he hath Commission to do. Mal. Lex Merc. 82.

5. But in such Case if the Price of the Goods rifeth, and the Factor thenceupon fraudulently ladeeth them for some other Port, to take the Advantage thereof, the principal Merchant may recover Damages of the said Factor upon Proof made of it. Mal. Lex Merc. 82.

6. If one be a Factor for a Merchant to buy one Kind of Stuff, as Fitt, or other such like, and the said Factor hath not used to buy any other Kind of Wares, but this Kind only for his Master; if now the said Factor buys Sales, or other Commodities for his Master, and assumes to pay Money for that, now the Master shall be charged in an Assumpsit for the Money, and for that let the Master take heed what Factor he makes. Per Cur. Goldsb. * 138. pl. 46. Petties v. Soame.

7. A Motion for a new Trial in Indebitatus against a Factor on Sale of Rape-Seed, because tho' the Goods were sold to S. yet it was for the Use of D. and so were the Receipts; fed non Allocatur. For per Cur. if a Factor or Servant buy Goods generally, and do not upon the Contract declare that he buyeth only as Factor or Servant, he is chargeable in his own Right, and Judgment for Plaintiff; but if he would have stood only on Payment, new Trial might be. 2 Keb. 812. Degelder v. Savory.
(E 2.) Liable to answer Damages in what Cases in general.

1. If a Factor, having received other Mens Goods or Monies into his Custody, be robbed of the said Goods and Monies, he is to bear the Loss, and to make good the fame unto the Merchant; but not in Case where the unmerciful Elements of Fire and Water shall destroy the said Goods or Monies, or where a Focus is sacked or pilfered, which is always to be born by the Owner or Proprietor of the fame. Mal. Lex Merc. 83.

he uses all his Industry, he shall be discharged. 4 Rep. 64. in Courtoe's Case. — S. P. and if they are burned without his own Fault. 2 Mod. 100. Anonymous.

2. If a Factor buy a Commodity which afterwards becomes damnified by some Accident or Casualty, whereby the Merchant (for whose Account he bought the same) becomes a Lofer, the Factor is not to be charged with any Part of the Loss. But if the Commodities were damnified before, then he is to bear some Part of the Loss, altho' it happened to be known afterwards. Mal. Lex Merc. 84.

3. If a Factor receives Money for other Men's Accounts, which are afterwards decreed, or some Loss doth happen by exchanging the same, or being Copper Monies, or light Gold taken for Mercantiles sold, every Man is to bear that Loss proportionately according to his Sum, and the Factor is to sustain no Damage thereby, unless it were for false Coin by him received, which he is bound to know. Mal. Lex Merc. 84.

(F) Factor liable to answer Damages, in what Cases. Not observing Orders, or acting without Orders.

1. A Factor selling Merchandize under the Price limited unto him by his Principal, he is to make good the Loss or Difference of the Price, unless he can give a sufficient Reason for his so doing. Mal. Lex Merc. 82.

2. A Factor is accountable for all lawful Goods which come safe to his Hands, and shall suffer for not observing of Orders. If he has Orders not to sell any Commodities particularly specified, and yet sells them, he is answerable for any Damage that shall be received; in Case Goods are bought or exchanged without Orders, it is at the Merchant's Curtesy whether he will receive them, or turn them on his Factor's Hands. Law of Trade, &c. 2d Part 409.

3. If a Factor do pay Money for a Merchant (without Commission) to another Man, it is at his Peril to answer for it: And if he deliver another Man's Money at Interest, and take more than the Toleration of the Statute, whereby the Statute against Usury taketh hold of him, and the Money is lost, the said Factor is to be charged therewith, and to make good the Money unto the Merchant. Mal. Lex Merc. 83.

4. If a Factor be required to make Assurance for a Merchant upon a Ship or Goods laden for a certain Voyage, and have Monies in his Hands to pay for the Premium or the Price of Assurance, and this Factor doth neglect the same, and giveth no Notice of it to the Merchant, who might have made Assurance in another Place, and the said
said Ship or Goods do perish at the Seas; this Factor is to answer the Damage, unless he can give some sufficient Reason for the Non-Performance of the said Order or Commiss. Mal. Lex Merc. 86.

5. If a Factor having made Assurance upon Goods laden, which afterwards are taken by the Enemy, makes any Composition with the Assurers for the same, without Order or Commiss for it, he is to answer the whole Assurance to the Merchant. Mal. Lex. Merc. 86.

(F 2.) Liable to answer Profit or Damage. Not giving Notice of Transactions.

1. If a Factor do fall unto a Man certain Goods of another Man's Account, either by itself or among other Parcels, and this Factor giveth not Advice unto the Owner or Proprietary, of the Sale of the said Goods, but afterwards (having had more Dealings with that Man in selling of Goods and receiving of Monies) this Man becomes Insolvent, the Factor is to make good that Debt for the said Goods so sold, because he gave no Advice to the Owner of the Sale of them at convenient Time, even as if he had sold those Goods unto a Man contrary to the Commiss given unto him; for the Salary of Factorage bindeth him hereunto. Mal. Lex Merc. 82.

2. If a Factor, by the Advice of a Merchant, do buy a Commodity for that Merchant's Account, with the said Merchant's Money, or by his Credit, and the Factor giveth no Advice of it to the said Merchant, but doth sell the same again for his own Benefit and Gain, the Merchant shall recover this Benefit of the said Factor, by the Office of Prior and Consuls, according to the Custom of Merchants, and shall be moreover amerged for his Fraud. Mal. Lex Merc. 83.

[See (B 2.) pl. 2.]

(F 3.) Liable, how. In Case of prohibited Goods or Seisures.

1. If a Factor make Return unto a Merchant for the Provenue of his Commodities sold, in prohibited Goods which may not be transported, and have no Commiss from the Merchant to do the same; he shall bear the Loss of those Goods, if they be seised upon for the King, or taken as forfeited. But if it be upon Commodities to be imported, the Factor is in no Fault. Howbeit he ought to give Advice to the Merchant what Commodities are forbidden to be imported or exported, according to the Pleasure of the Princes, which are absolute Governors in their Havens, Harbours, Ports or Creeks. Mal. Lex Merc. 83.

2. If a Factor commit an unlawful Act by Direction of the Merchant, be it for the Transportation of Gold or Silver into the Parts beyond the Seas, or otherwise; and if it happen thereupon that the same be taken, the Merchant bareth the Loss: And yet the Factor is subject to pay treble Damages by the Law, if it be followed within the Year; or may be fined for the same in the Star-Chamber, altho' it be many Years after. Mal. Lex Merc. 83.

(F 4)
(F 4.) Offences by Factor. Punishment.

If a Factor or Merchant do Colour the Goods of Merchant Strangers, in paying but English Customs (altho' he did bear the Adventures of the Seas for the said Goods) he runneth into a Presumption, and forfeitteth all his Goods unto the King, and his Body to perpetual Imprisonment. Mal. Lex Merc. 83.

[See (F 3.) pl. 2.]

(G) Actions, Pleadings and Evidence.

1. It is a good Discharge before Auditors for a Factor to say that in Br. Account a Templest, because the Ship was surcharged, the Goods were cast over-board into the Sea. Dubitat tur 41 E. 3. 4. Roll. a. 124. (O) pl. 1. — So, that he was * robbed, or that the Goods were burned without his own Default. 2 Mod. 100. Anonymus.


3. If Factor that has a general Commission takes a Bond in his own Name, he cannot plead such Bond by way of Account, but it is a good Plea before Auditors by way of Discharge. Per Williams Juft. Bulft. 103. cites D. 29.

4. If the Factor makes a Contrai for his Master, the Master shall have the Action on the Contrai. Per Coke Ch. Juft. Roll. R. 337.

5. If, where the Usgage is for Factors to sell upon Trust, he sells to a Perfon of good Credit at that Time, and he after becomes In solvent, the Factor is discharged; but otherwise if it be to a Man notoriously Difcredited at the Time of the Sale, unless he can prove that he was ignorant of the Party's weak Estate and Credit. Mal. Lex Merc. 83.

6. The proper Remedy against a Factor, acting as such, is Account; but if he converts, Trover will lie against him. Per Holt Ch. Juft. 12 Mod. 602. Anonymus.

7. Where a Factor at the Canaries deservers Money for Fatorage, he cannot bring an Action for his Fatorage, unless the Principal refuse to come to an Account; and if it appears that the Factor has Money in his Hands, he may detain, and cannot bring an Action for his Fatorage; but if he were directed to vest all the Produce of his Adventure in Wines, then he may bring an Action for his Fatorage and Pains, because he cannot detain, and hath no other Remedy. Per Holt. Comb. 349. Hereford v. Powell.

8. Where a Factor or Agent of the African Company had delivered up his Accounts to his Successor, according to the Rules of the Establishment, which were afterwards burnt by a late Agent of the Company, the Lord Chancellor ordered the Plaintiff to swear that he left them with the Successor, which should conclude the Company. Mich. 31 Car. 2. 2 Chan. Cal. 11, 14. Mellilh v. African Company and Edlin.
Faculties.

9. A Factor took a Bond in his own Name, and died, and the Obligor having failed, a Bill was brought against his Son for an Account. The Lord Chancellor put the Son to prove that his Father the Testator gave particular Notice to the Plaintiff that he held on Trust, and to whom. Trin. 33 Car. 2. 2 Chan. Cafl. 56, 58. Dalhwood v. Elwall.

[See Master and Servant (B).]

(A) Faculties.

9. A Factor took a Bond in his own Name, and died, and the Obligor having failed, a Bill was brought against his Son for an Account. The Lord Chancellor put the Son to prove that his Father the Testator gave particular Notice to the Plaintiff that he held on Trust, and to whom. Trin. 33 Car. 2. 2 Chan. Cafl. 56, 58. Dalhwood v. Elwall.

[See Master and Servant (B).]

(A) Faculties.

HE Court of Faculties is a Court, altho' it holdeth no Plea of Controversy. It belongeth to the Archbishop, and his Officer is called Magister ad Facultates. And his Power is to grant Dispeniations, as to marry, to eat Flee on Days prohibited, (and so may every Diocesan) the Son to succeed his Father in his Benefice, one to have two or more Benefices incompatible, &c. It is called Faculties in the Statute of 28 H. 8. which in one Sense signifies a Dispenation. So as Facultates (in this Sense) Dispeniations & indulta, are Synonymous. This Authority was raised and given to the Archbishop of Canterbury by the Statute of 25 H. 8. 21. 4 Inft. 337.

2. 25 H. 8. 21. enacts, that the Archbishop of Canterbury and his Successors shall have Power and Authority to ordain, make and constitute a Clerk, which shall Write and Register every Licence, Dispenation, Faculty, Writing or other Instrument to be granted by the said Archbishop, and shall find Suretyment, Wax and Slien Laces convenient for the same, and shall take for his Pains such sums of Money as shall be hereafter in this present Age to him limited in that Behalf for the same. And that likewise the King, his Heirs and Successors, shall by his Letters Patent under his Great Seal ordain, depute and constitute one sufficient Clerk, being learned in the Court of Chancery, which always shall be Attendant upon the Lord Chancellor, or the Lord Keeper of the Great Seal for the Time being, and shall make, write and enroll the Confirmations of all such Licences, Dispeniations, Instruments or other Writings, as he thither brought under the Archbishop's Seal, there to be confirmed and enrolled: and shall also intitule

An Exception was taken, that a Faculty granted by the Archbishop of Canterbury was not subjoined to the Archbishop's Clerk of the Faculties, but by the Under-Clerk. It is expressly required by the Stat. 25 H. 8. that it should be signed by the Clerk himself, which is very true, but the Act is not Directory, and 'tis not said that it shall be signed by the Chief Clerk himself; so that this being signed by his Under-Clerk, and it being customary in this Office for the Under-Clerk to sign Faculties, this Exception is of no Weight. 8 Mod. 364. King v. Bishop of Chester.

Another Exception was taken in the Case above, that it was not subjoined and enrolled by the King's Clerk of the Faculties in Canm. as it ought, because he is imposed on by the Statute to render an Oath to the Person who hath obtained it; which Statute was made to restrain the extravagant Grants of the Pope in those Days, and therefore should be fully and literally performed by the Clerks themselves, and not by their Deputy Clerks; and this must be intended by the Legislatours, for otherwise this Act would have been repealed as the Statue of Wills, or as the Statue of Premilhory Notes, by which 'tis enacted, That the Signing shall be by the Parties themselves, or by any other Person authorized by them; therefore this must be done by the principal Clerks themselves, and not by their Under-Clerks, for 'tis not affigable to them; and
Faits or Deeds.

in his Book, and in all Record, such other Writings as shall thither be, and therefore brought under the Archbishop's Seal, not to be confirmed, taking for his Pains such reasonable Sums of Money as hereafter by this Act shall be limited for the same; and that as well the said Clerk appointed by the said Archbishop, as the said Clerk to be appointed by the King, his Heirs or Successors, shall subscribe their Names to every such Licence, Dispensation, Faculty or other Writing that shall come to their Hands to be written, made, granted, sealed, confirmed, registered and involved by Authority of this Act, in Form as is before rehearsed.

Faiths in Chancery, which is in the Nature of a Condition precedent, and not to be signed or subscribed by his Order. It was, that where a Man doth any Thing by the express Order of another, as it was done in this Case, 'tis as good as if done by himself; as where one expressly orders another to sign a Deed, which the Person thus ordered did afterwards sign, this is good as one determinate Act; but where the Deputy doth any Thing by Virtue of general Deputation, it must be where a Deputy may be made by Law. The Judgment was affirmed. 8 Mod. 364, 365. King v. Bishop of Chester.


[See Command. — Pluralities (G).]

Faits or Deeds.

(A) What Persons may make a Deed.

1. If an Infant deliver a Deed, it is not void but voidable. The Difference taken that the Deed of an Infant (as Letter of Attorney) whereby he gives an Authority, is void, but where he pays any Interest (as Bond, &c.) is only voidable, is not agreeable to Reason; for by that Means the Infant would be more prejudiced in paying his Estate than he would in giving a bare Authority, which cannot be maintained. Per Holt Ch. Jult. Comb. 468. in Case of Thompson v. Lench.

Where 'tis held that the Deeds of Infants are not void but voidable, the Meaning is, that Non est factum cannot be pleaded, because they have the Form thro' not the Operation of Deeds, and therefore are not void upon that Account, without shewing some Special Matter to make them of no Efficacy. 3 Mod. 312. Thomson v. Lench. —— But he may by Non consentit, &c. Per Way Ch. Jult. 2 Le. 218. in Ham-sterdam's Case.

2. Dam falsa in sua sitatem was brought by an Infant of Land and Rent, so that you may see that Grant of Rent by Involuntary by Deed is not void but voidable, as it seems. Br. Faits, pl. 53. 46 E. 3. 33.

3. 5 Eliz. 4. Sect. 42. Because there hath been some Question, whether any Person being within the Age of one and twenty Years, and bounden to serve as an Apprentice in any other Place than in the City of London, should be bounden, accepted and taken as an Apprentice.
Faits or Deeds.

4. Sect. 43. Be it enacted, That all and every such Person and Persons that at any Time or Times from henceforth shall be bounden by Indenture to serve as an Apprentice in any Art, Science, Occupation or Labour, according to the Tenor of this Statute, albeit the same Apprentice, or any of them, shall be within the Age of one and twenty Years at the Time of the making of their several Indentures, shall be bounden to serve for the Years in their several Indentures contained, as amply and largely to every Intent, as if the same Apprentice were of full Age at the Time of making such Indentures; any Law, Usage or Customs to the contrary notwithstanding.

5. If an Infant makes a Deed of Feoffment, and a Letter of Attorney to a Stranger to make Livery of Seisin, and he makes Livery of Seisin by Force thereof, he shall be taken for a Diffisor. Perk. 6. 7. cites 18 E. 4. 2. —— See pl. 1.

6. In Little Brook, fol. The Cafe is, a Person or Prebend being within Age made a Leaf for Years of his Benefice, and would, but could not, after avoid it for his Nonage; for seeing the Church had made him of full Age to discharge the Spiritual Office, our Common Law thought it fit to enable him to dispuse of his Temporalities. Callis of Sewers 202. — Watf. Comp. Inc. 456.

7. In 21 H. 7. 12 & 13. The Cafe is put by Bridges, and confirm'd by Justice Sylliard, and was not denied by any; That an Obligation made by a Mayor and Commonalty, Dean and Chapter, Abbot and Covent, shall not be avoided for the Nonage of the Mayor, Dean or Abbot. Callis of Sewers 202.

8. If a Blind Man has Understanding, he may deliver a Deed sealed by him. Jenk. 222. pl. 75.

9. If a Man be born Dumb, but can well hear, such a Man at full Age, by Delivery of his Hands by Signs, and without Delivery by Signs, may make a Gift. Perk. 11. Sect. 25.

10. And a Man that is born Dumb and Deaf may make a Gift, if he have Understanding. But it is hard that such a Person should have Understanding. For a Man ought to have his perfect Understanding by his Hearing, yet divers Persons have Understanding by their Sight, &c. And a Man born Dumb and Blind may have Understanding. But a Man that is born Blind, Deaf and Dumb, can have no Understanding, so that he cannot make a Gift or a Grant. Perk. 11. Sect. 25.

11. The Grants of all dead Persons in Law, as Monks, Friars and Canons professed, and such like others, are void, if they be not made by the Sovereigns of such Houses, or by Matter of Conclusion, or otherwise that it be in Special Cafes; and therefore if a Monk, Friar or Canon professed, who is not Sovereign of the House, grant unto me an Annuity by Deed Poll, the Grant is void notwithstanding that he be delegated afterwards, or made Sovereign of the said House, or of another House, or created a Bishop, &c. Perk. 2. Sect. 3. cites H. 14 H. 8. 16. Mich. 2 H. 3. 5. H. 32 H. 6. 31.

12. If a Feme Ceurt grants an Annuity by Deed, the Grant is void. Perk. 3. Sect. 6. cites M. 1 H. 5. 12.

13. And if a Man be seized of Lands in the Right of his Wife, and his Wife grant a Rent issuing out of the same Lands, without the Knowledge of the Husband, the Grant is void; and so 'tis notwithstanding that the Husband had Conunance of it, if it be made and delivered without his Assent, or with his Assent, if it be made in the Name of the Wife, and not in the Name of the Husband. Perk. 3. Sect. 6. cites M. 9 E. 3. 25.
Faits or Deeds.

14. And notwithstanding the Husband was abroad out of the Country at the Time of such Grant made and deliver'd, so that it is not known whether he be alive or dead; yet such Grant is void if the Husband be living, in as much as if the Grantee, by Force of such Grant, enter into the Land and distrain, the Husband, at his Return, shall have for his Entry and Distress an Action of Trespass. Perk. 3. 4. S. 6. cites H. 4. H. 4. 13. H. 2. H. 7. 15.

15. 34 & 35 H. 8. 22. Enactts, That Recoveries and Deeds involv'd, &c. by Femes covert in corporate Towns shall be of the same Force as they were before 32 H. 8.

See {Deaf, Dumb and Blind (A).} {Grant ( )} {Lunatick (B).} {Feoffment (E).} {Non Compos (B).}

(B) By what Names they may make a Deed. [Misnomer].

1. If a Man makes a Deed by Name of J. S. the Elder, where he is J. S. the Younger; yet he shall not avoid the Deed, because he is the Person who made it. 13 H. 4. 4. b.

2. So if J. Bosom makes a Deed by Name of J. Bozom, he shall not avoid it. 14 H. 4. 3. b.

3. If J. S. binds himself in an Obligation by the Name of W. S. he shall not avoid it; but if it be taken in the Name of Baptist only, it is otherwise. 3 D. 6. 25. b. 26.

It seems that one cannot plead Misnomer of the Name of Baptist, neither need he do it, for he is not the same Person. Nota, Br. Misnomer, pl. 4. cites 3 H. 6. 25.

If J. S. grants an Annuity by his contrary Name of Baptist, viz. by the Name of W. S. some think this Grant is not good, because that the Deed of W. cannot be the Deed of J. for a Man cannot have (a) two Names of Baptist, and so they conceive the Grantor may deny the Deed. Perk. 17. S. 38. cites 3 H. 6. 26.


And some hold contrary, for when they are at issue upon the Deed, the Plaintiff may give in Evidence the Day, Year and Place, where the Plaintiff delivered the same as his Deed, &c. then the Grantor hath not any Thing to help him, but to say that his Name is J. and not W. and so not his; now they say, That the Plaintiff may demur upon this Evidence, forasmuch as he hath not gain'd the Delivery of the Deed as his; they say, that he shall be conclude to say, that his Name is other, but as the Deed doth suppone. Ideo Quere. Perk. S. 39. cites M. 9 E. 4. 43.

But if 7. S. retiting by his Deed, that his Name is J. S. and by the same Deed grants an Annuity by the Name of W. S. this is a good Grant, for the Writ shall be brought upon the whole Deed. Perk. S. 40. cites 3 E. 3. Inn. Not. Edw. 132.

4. If a Man binds himself by a false Surname, as by the Name of J. S. where his Name is J. D. he shall not avoid it, but it shall estop him, because he (b) may have divers Surnames. 3 D. 6. 25. b.

(b) Br. Misnomer, pl. 4. cites S. C.

5. Debt, and counts Quod cum praedictus Jacobus, per nomem Johannis Winlow, such a Day and Year, per quoddam scriptum fuisse Obligatorum concesso, &c. The Defendant demanded Oyer of the Bond, whereby it appeared, that the Defendant, by the Name of John Winlow, fecit scriptum, &c. and the Condition was, if James Winlow paid, &c. whereupon the Defendant demurred. And all the Court held, that the Action lay not: For John cannot be James. Cro. E. 897. Field v. John alias James Winlow.
6. A binds himself by the Name of B. and he is accordingly sued by the Name of B. he may plead Misnomer, and the other may reply, that he made the Bond by the Name of B. and after by demanding Judgment, if against his own Demand he shall be admitted to say his Name is A. and then he may rejoin, and say he made no such Demand; and this he must do without Oyer; for if he pray Oyer, he admits his Name to be B. Per Cur. 1 Salk. 7. Linch v. Hook. ——
6 Mod. 225. Fox v. Tilly —— Litt. R. 184. per Richardson Ch. Jutb.

See [Eftoppel (O).] [Misnomer (A).] [Grants (B).] [Nomes (B).]

(C) To what Persons may be made.

1. A Deed may be made to a Feme Covert. 3 H. 6. 23. b.

If one enjoin a Feme Covert, and after the Baron disagrees, the Feoffment is void, to which Brian agreed. For the Feoffment was never good without the Agreement of the Baron; quere of this Opinion, for it seems that 'tis good till the Baron disagrees. Br. Feoffment de terce, pl. 56. cites H. 7. 16.

Perk. 19. S. 43. fays, that the Grant is good till the Husband disagrees, and therefore if a Rent-charged be granted unto a Feme Covert, and the Deed is delivered unto her, her Husband not knowing thereof, and the Husband die before any Dimension made by him, and before any Day of Payment; now the Grant is good, and shall not be avoided, by saying that the Husband did not agree, &c. But the Disagreement of the Husband ought to be severed. Perk. 19. S. 43. cites 15. E. 4. 2.

If an Estate be made to a Man's Wife de nunc, 'tis not necessary to over the Husband's Affent, for it (e) rests till he agree, but Affent is necessary where the Wife had an Estate before, which cannot be deceived by his Affent to the latter Estate. Hob. 204. (d) Swain v. Holman & Ux. —— Hunt. 7. —— (c) Show. 298. arguerida cites C. L. 5. 356. of a Feoffment by Livery to a Feme Covert. (d) S. C. cited arguerum, Show. 306.

If he agree seven Years after, 'tis good. So 'tis of a Difference in an Estate, and to 'tis of an Alienment in the Wife. Arg. Goldb. 13. cites 27 H. 8. in Jordan's Case, and 1 H. 7. in Dods' Case.

If an Englishman go into France, and there becomes a Monk, yet he is capable of any Grant in England, because such Profession is not triable, and also because all Profession is taken away by the Statute, and by our Religion now revived, such Vows and Profession is held void; I have heard that this was resolved accordingly by all the Justices at Serjeants Inn in 44 Elice. in one Leys' Case. 2 Roll. 43. Grant (C). Pl. 1.

If a Lay for Life be made to a Monk, the Remainder over, both the Estates are void. Per Colce Ch. Jutb. 2 Bull. 292. cited 9 H. 6. 14. and Perk. 109. pl. 508. and Pl. C. 35. in Coltrith's Café.

2. But if a Deed be made to a Monk it is void. 3 H. 6. 23. b.

3. So if made to a Channon profess, it is void. 3 H. 6. 23.


5. A Man non feme Memorice may be a Grantee. Perk. 24. S. 51.

6. A Man attainted of Trety, Murder or Treason, may be Grantee, and a Clerk convicted and a Man imprifon'd. So may the King's Villein and an Alien. And a Man outlawed in a personal Alien, and a Båflard, may be a Grantee or a Purchaser, but a Båflard cannot be Heir, nor have Heir, without issue of his Body begotten. Perk. 22. 34. 38.


[ See Grants (C). ]
(D) What Things are necessary to the making of a Deed. [And what Words.]

1. There ought to be these Things to the Making of a Deed, Perk. S. 112.
   that is to say, Writing, Sealing and Delivery. 4 H. 6. 48.
   See that
   some Kins
   and Princes
   have used to make Blank Patents and Charters sealed to be delivered to divers Men, to write what Matter forever they would in them. And that such Patent has been sufficient warrant to the Patnees, &c. Yet if a common Person seal an Obligation, or any other Deed, without any Writing in it, and deliver the same unto a Stranger, Man or Woman, it is nothing worth.

2. If a Deed be wrote upon Wood, Leather, Cloth, or the like, it is not good, but ought to be wrote upon Parchment or Paper, otherwise it is not good, because the Writing upon them may be less vitiated or corrupted. Co. Lit. 35. b.

3. The Deed makes effect from the Delivery, and not from the Date. 29 El. 3. 23. adjudged.

3. A Deed shall be good enough tho' it has not any Date. 13 H. 7. Kelway 34. b. For the Time of the Making may be alleged in Pleading.

5. If an Abbot and Convent make a Deed, and in the End the Words are In cujus rei testimonium sigillum nostrum apponimus, tho' it be not Sigillum nostrum Common, yet it is good enough to bind the Successors. 22 H. 5. 4.

6. If an Obligation be, Ad quam quidem solutionem bene & sobeliter faciendum obligo me, hactenus, Executores & Administratores meos seminer per praeentes datas, &c. tho' the Words (Sigillo meo sigillari) are omitted, yet it is a good Deed. 92 El. 10 Jac. B. R. adjudged between Meybou and Dona.

7. This Word (meum) in a Deed is not necessary, for In cujus rei testimonium sigillum apposuit is sufficient without the Word Meum; or if he seals it with the Seal of another Man, it is sufficient. 21 El. 4. 81.

8. These Words (In cujus rei testimonium sigillum meum apposui) Br. Faits, are not necessary to be in a Deed. Br. Obligation 8. in abridging 40 El. 3. 17. Kelway 41. b. Contrad 40 El. 3. 2.

9. These Words (sigillum meum apposui) are not necessary. 8 H. 6. 35.

10. There must be Grantor and Grantee; yet where a Deed tripartite of Bargain and Sale inroll'd had nor the Grantor's Name before the Words (Hath Granted) so that it was not fain, who hath granted, and (Hath) was in the singular Number tho' the Deed was tripartite, yet because a Grantor may with Certainty enough be collected from the whole Deed, the Deed was held good. 10 Mod. 45, 8c. Lord Say and Seals Cane.


12. The
12. The Year of the King is not essential to a Deed. 2 Salk. 462. Cromwell v. Grunfden.

13. Tho' a Deed be sufficiently written, viz. without Rasure, Interlining, or new Writing upon the old Writing, or without any other like Fault, and also be sufficiently sealed and delivered as the Deed of the Party, yet if the Words in the Deed in themselves are not sufficient in Law to bind the Party, the Deed will avail little or nothing against him. Perk. S. 155.

14. In the Reign of Queen Elizabeth, Deeds were often without Witness', and a Counterpart of an old Leaf without Witnesses made about that Time, was allow'd as good Evidence; and Windham Just. said, that he had seen several Deeds made in her Time without Witnesses. Lev. 25. Garret v. Lifter.

15. If A. makes a Deed to B. and delivers it to B. this is not a Deed without B.'s Agreement to it; for J. S. the Bailee, as here, is Servant to A. who makes the Deed, and not to B. to whom the Deed is made. Br. Faits, pl. 8o. 8 H. 7. 13.

(D 2.) What shall be said to be, or shall amount to a Deed.

1. A Presentation by Writing to a Church is not a Deed, but only in Nature of a Letter to the Bishop. C. L. 120. 3.

2. Debt upon Bond of 200 l. to indemnify against a Bill sealed (for the Payment of 42 l. in which the Plaintiff was bound) when he should be required; the Defendant pleaded Non est factum, upon which they were at issue; and it appeared upon the Evidence, that the Bill was written in a Book, and that the Defendant put his Hand and Seal to the same Leaf on which it was written, after a Verdict adjudged, this was a good Deed, tho' there was no Evidence of the Delivery. Cro. E. 613. Fox v. Wright.

3. Grant of next Presentation or Avoidance of a Living cannot be good without Deed, and a Letter wrote by the Patron to the Father of the Plaintiff, in which the Patron said he had given him the next Avoidance, is not sufficient. Cro. E. 164. Crisp's Cafe.

[Vide N. a.]

(D 3.) What shall be said the Deed, or only the Agreement of Persons signing it.

When an Incumbent grants a Rent by the Consent of the Patron and Ordinary, and they put their Seals to it; this is not their Deed, but only their Agreement to it. Cro. E. 57. East, Skidmore, &c. v. Vaudefvan.
(E) What Things are necessary to make a Deed indented.

1. It cannot be a Deed indented, unless it be actually indented. Cro. El. 4, 4. Frampton v. Stiles—

For if the Words of the Deed are, Hec Indentura, &c. yet if it be not indented in fact, it cannot be an Indenture. Co. Litt. 143. b. 5 Rep. Stiles’s Case 20. b. adjudged, tho there were two Parts of it.

2. If the Deed be indented, tho’ the Words of the Deed are not Hec Indentura, yet it is an Indenture. Co. Litt. 143. b. cites 5 Rep. 20. b. Stiles’s Case.

(F) [Charter-Parties] Who shall be said Parties to the Indenture to be charg’d, or to take Advantage by it.

[Or rather, who shall take Advantage or be bound by a Deed, not being Party or Sealing.]

If an Indenture of the Charter-party be made between one A. and others, Owners of the Ship called E. whereof B. is Master, of the one Part, and C. of the other Part. In which Indenture (a) A. Jure Mariti- and Covenants with B. and C. and Covenants with A. and B. and undos them to C. and B. for Performance of Covenants in 660. and the Conclusion of the Indenture is, In Witness whereof, the Parties above-aided, have put their Hands and Seals, and the said B. to the said Indenture, put his Hand and Seal, and delivered it. In this Case B. is not any Party to this Indenture, so that B. cannot release the Action, brought upon this Indenture by A. because it is an Indenture reciprocal, between Parties of one Part, and Parties of the other Part, in which Case no Obligation, Covenant or Grant can be made with any who is not Party to the Deed; but where the Deed indented is not reciprocal, but is without the Words, between &c. as Omnibus Christi fideliibus, &c. there the Obligation, Covenant, or Grant may be made to divers several Persons. Co. Magna Charta 673. where is cited Trin. 29 El. B. R. adjudg’d.

(a) Salk. 314. Nurf. v. Frampton.—(b) In the Indenture were divers Covenants to be performed by A. and by B. to C. and converso; and there was a Clause, that A. and B. bound themselves to C. to perform the Covenants. Cro. El. 36. East, Skidmore and Foame v. Vaudalfan.—The Words in 2 Inf. 673. are, that A. covenanted with C. and B. and also C. covenanted with A. and B. and bound themselves to A. and B. for Performance of Covenants in Sec. 3 Inf. 673. Scudamore v. Vandekeene.

2. If an Indenture of Charter-party be made between A. and B. Owners of a Ship, of the one Part, and C. and D. Merchants, of the other Part, and there are severall Covenants of the one Part and the other, and A. only seals the Indenture of one Part, and C. and D. of the other Part; But in * all the Indenture is Hention, that A. and B. cove- nant with C. and D. and C. and D. covenant with A. and B. In this Case A. and B. may join in Action against C. and D. upon this Indenture, for Breach of a Covenant in the Deed, tho’ B. never sealed the Deed; for he is a Party to the Deed, and C. and D. had sealed the other Part to B. as well as to A. upon which the Action is brought. Hill. 18 Car. 6. B. R. adjudg’d per Cur’ upon a Demurrer without Argument, for the Clearness of it, between Clement and Henly.

The Indenture was, and 1601. to D. the Plaintiff, as Master. The Defendant pleaded, that the Plaintiff was no Party to the Indenture. The Plaintiff demurred; and per Curiam, any one mentioned therein, is Party enough to sue this Indenture, being not between Parties, but only Hec Indentura taliur, which is all one with a Deed in the first Person; as if it was, I give so much to J. N. and so much to J. S. 5 Jeb. 115. Hill. 24 Car. 2. B. R. Coke v. Child.

(G) In
See Indorsement.

A Bond was condition'd to the Laurels from all Incumbrances made by the Obligor, and a Memorandum was also indorsed, that the Condition should not extend to an Estate of a Statute acknowledged by him to J. S. and it was held to be Parcel of the Condition connected to it as an Exception; for it is an Explanation in Writing of the Intention of the Parties, written before the sealing of the Bond. Mo. 679. Broke v. Smith.

2. So an Obligation, with a Condition upon the back of it, is a good Condition. 41 El. 3. 16. b. Before the sealing and Delivery, or else it is not good. Per Harvey Jut. Het. 137. Taylor's Case. Indorsement after sealing and delivery, and at another Time, makes a new Deed. 6 Mod. 237. Cook v. Remington.

3. If an obligation be made, and one word is put above and another below, and another in another place, yet the Deed is good. 14 H. 4. 15.

If a man be bound in an obligation upon condition, that if he pay a certain sum to his first child which shall be born afterwards, then the obligation shall be void, and before the sealing of it a memorandum is made under the condition, that it is the intent of the parties, that the sum mentioned in the condition shall not be paid till the first child, which shall afterwards be born, can ask his father's bequest, this is part of the condition as strongly as it had been put in the recital of the condition, it being done before sealing; for it is not repugnant to the condition before, but only an explanation of the condition and of the intent of the parties. Dibbitatt v. Patheue 16 Rep. between Chibburn and Horwood, upon a Deed.

5. But the obligee did not much rely upon the Law, but lied in the court of requists.

6. And in this case, if the memorandum had been, that the matter aforesaid should be parcel of the condition aforesaid; this would make it parcel of the condition. Per Montagu, in the said case of Chibburn and Horwood.

7. And in the case aforesaid, if after the memorandum, and the matter aforesaid done and alleged, there had been these words, then the condition shall be void, it had been parcel of the condition. In the said case agreed per Houghton.

8. If a clause comes in a deed after these words, in cujus rei testamentum, &c. sigillum appolai, &c. it is not any part of the deed, tho' it was written before the sealing and delivery. 1 Sa. Brook, Faiits. 72. agreed by the justices. And ibid. 76.

If a promise be put in after the in cujus rei testamentum, and subscribed to the deed before the sealing, it is then part of the deed. And tho' it be after the sealing, yet it may be as a condition annexed to the deed. Per Dodridge Jut. 3. Buit. 320. Thompson v. Butcher.

That which is written in a deed after the in cujus rei testamentum shall be parcel of the deed as well as that which is written before. Per others J. Mo. 3. pl. 12. Anon.———Per Coke Ch. Jut. 'Tis no part of the bill, but may be a condition, and must be pleaded. So in Covenant brought on Words of Covenant in a Deed, after the in cujus, &c. and above the seal, it was held good. Brown. 39. Hamond v. Jethread.———Per Brown. 105. C.

Before the sealing twenty things may be indorsed or subscribed, as condition of the obligation, and all shall stand. Mo. 679. Brook v. Smith.

9. Before
9. Before the Sealing a Leaf of Houches in which a Rent was reserved, it was imposed for the Payment of twelve Bottles of Canary Wine every Year to the Lessor.—"Twas argued for the Defendant, that the Wine arises in Covenant, that 'tis a Refervation and not properly a Rent; but for the Plaintiff it was laid not to be material, whether a Refervation or not; For that 'tis a Duty, and arises by Reason of the Thing demised, and goes along with it. 4 Mo. 74. in the Cause of Picher v. Tovey.

10. In Debt to perform Covenants in an Indenture; one Covenant was, That the Defendant would fairly give up to the Plaintiff the Goods, a particular whereof was aviz on the Back of the Indenture, It was held per Cur. that the Indorment, if made at the Time of the Executing and Delivery of the Deed, was Part of it, and therefore giving Oyer of the Deed without Oyer of the Indorment, was an in complete Oyer of the Deed relating to the Indorment, and not perfect without it. 6 Mod. 237. Cook v. Remington.

(H) Sealing.

1. That cannot be the Deed of any, who does not seal it. 6 H. See (N. a. 1) pl. 1.—Perk. S. 150.

That Words obligatory, or &c. are written in Parchment or Paper, and Obligor, or, &c. delivers the same as his Deed, and it is not sealed at the Time of the Delivery, it is but an Effroy notwithstanding that the Name of the Obligor be subscribed. Perk. S. 129.

A. by Indenture leaves to B. and C. rendering Rent and with divers Covenants, and B. and C. bind themselves for Performance of the Covenants in 41. and B. seals the Indenture, but C. does not, but both enter. This is no Obligation as to the 41. but only against B. who sealed it, as he seems there. Br. Obligation, pl. 12, and 27. cites 38 E. 3. 8. and 35 E. 3. 3. 11. —— Br. Detto pl. 80. cites S. C. because it is a Collateral Thing, that he shall be bound by his Agreement to the Leaf as to the Payment of the Rent, yet not as to the 41. unless he had sealed, per Finch. —— Br. Detto, pl. 38. cites 45 E. 3. 4. But Brooke says, Quære Legem. For that it seems not Law in the Point of the words Obligatory, and cites 45 E. 5. 11. that all of Refervations and Things necessory to the Leaf, C shall be bound by his Agreement, tho' C. had been a Feme Covari at the Time, but that of a Thing which binds the Person as a Thing Obligatory sealing and delivery is necessary. —— Br. Detto. pl. 80. S. P. cites 38 E. 3. 8. and there Brooke says, that a Penalty for Non-payment of the Rent annually is a Refervation.

2. If four make a Deed, two may make one Seal, and the other Two another Seal; and this may be abridged, and shall be a good Deed of all Four. 6 D. 4. 5. 29 E. 3. 32.

3. If Twenty make a Deed and all seal it at the same Time with Jo. 268. S. P. one and the same Seal, per it is good, and the Deed of all. * 8 D. 4. 8. + 22 H. 6. 4. b. per Jotie. —— Br. Raits. pl. + S. C. 17. pl. * S. C. 50.

One Piece of Wax may serve for all the Grantors which are named within the Deed, if every one of them put his seal upon the same Piece of Wax, or if another do so for them, &c. if the Words in the Deed imply so much, viz. if it be laid in the Deed In cujus rei Testamentum sigilla nostra appositione, or Words to the same Effect. Perk. S. 134. cites 8 H. 6. 67. 27 H. 6. 68. 70. Scarlett 165.

Per Clark Juff. Twenty Men may seal with one Seal on one Piece of Wax only, if all lay their Hands on the Seal together. Per a. J. contra 2 Le. 21. in the Case of Lightfoot v. Butler. —— Per Nay. Attorney General, that it is good. Jo. 268. in Innere Windlor. —— Cro. El. 247. Brettan v. Bolton. —— Br. Obligation, pl. 73. cites 21 H. 6. 3. and 27 H. 6. 4. 5. P. which Brooke says, seems to be intended where all Seal with one Print.

4. If an Abbot and Covent seal a Deed with a Seal, it is good enough to charge the Successor. 22 E. 3. Abbe 21.

5. If a Man seal a Deed with the Seal of another Man, it is good Jo. 311. Lott enough. 21 E. 4. 81. —— Br. Raits. pl. 75. —— For the Print of the other's Seal is his Seal. Br. Obligation, pl. 69. cites 21 E. 4. 81.

6. If
Faits or Deeds.

Tho' the Words are in cujus rei Testimonium appendix et filium filium communis; for this Seal shall be said the Covent or Common Seal for the Time, for with their common Affent they may change their common Seal at what Time they will. Perk. 1.3.2. - Br. Obligation, pl. 73, cites 21 H. 6. 3, and 22 H. 6. 4. So if it had been filia sola apposita, instead of saving the Common Seal, and yet held good, and it shall be intended their Common seal. Br. Faits, pl. 76. cites 11 E. 4. 4.

7. The Sealing of Charters and Deeds is much more ancient than some, out of Error, have imagined; for the Charter of the King Edwain, Brother of King Edgar, bearing Date Anno Dom. 956. made of the Land called Jecleia in the Isle of Ely, was not only sealed with his own Seal (which appears by these Words, Ego Edmundus Gratia Dei totius Britanniae telluris Rex neeum domum proprio sigillo confirmavi) but also the Bishop of Winchester put to his Seal, Ego Elwineus Winton Eccentia divinus speculator proprium sigilium impressi. And the Charter of King Offa, whereby he gave the Peter-pecue, doth yet remain under Seal. But no King of England before or since the Conquest sealed with any Seal of Arms, before King Richard I. but the Seal was, the King sitting in a Chair on the one Side of the Seal, and on Horse-back on the other Side, in divers Forms. Co. Litt. 9. a.

8. If Dean and Chapter or Mayor and Commonalty cause a Writing to be made, in which it is said filium filium appositius, and not filium nostrum communem, yet the Writing is sufficient, and shall bind them. But if Dean and Mayor seal a Writing made in their Names, and in the Name of the Chapter and Commonalty, without the Assent of the Chapter and Commonalty, and it is said in the Deed filium nostrum communem appositius, and the same is delivered by the Dean and Mayor without the Assent or Agreement of the Chapter and Commonalty; this is only the Deed of the Dean and Mayor, and not of the Chapter and Commonalty; causa patet. Perk. Sect. 133. cites 11 Ed. 4. 4. 22 H. 6. 4. 37 H. 6. 3.

9. If in a Deed no Mention is made of Sealing, it is not a good Deed the sealed in False, if these Words, sigillum appollii, are wanting. Br. Faits, pl. 76. cites 21 E. 4. 81.

10. Declaration of Uses of a Fine may be good by Writing only, without a Seal, even since the Stature of Frauds. Per Holt Ch. Julis. Farr. 76. in Case of Shortridge v. Lamplugh.

[ See (F) pl. 2. (1) pl. 9. (Y. 2) pl. 4. Corporation. ]

(H. 2) What Things are essential to make a good Deed.

[Signing.]
(I) What Things are necessary to make a good Deed. [Delivery, and what is a good Delivery.]

1. There ought to be a Delivery, otherwise it cannot be a Deed. 9 B. 6. 37. b. Curta.

2. There ought to be a Libery in Law or in Deed to make a good Deed. 9 B. 6. 37. b. Curta. 10 B. 6. 25. Conta 14 B. 6. 1. b.

3. If I make a Deed to B. and seal it, and after B. takes the Deed without any Delivery of me, without my Will, or otherwise, it is not a good Deed, because it wants a Libery. 9 B. 6. 37. b. Curta. 10 B. 6. 25. Conta 14 B. 6. 1. b.

4. The Deed of a Corporation needs not any Delivery, but the Apposition of the Common Seal gives Perfection to it with out any Delivery. Da. Rep. 44. b. Dean and Chapter of Ferness.

5. As if Dean and Chapter put their Chapter Seal to a Deed, Cro. E. 167, this is a perfect Deed by it without any Delivery. Da. Rep. 44. b. V. R. agreed between Limmin and Willis.

6. But if a Dean and Chapter have a Right to the Land, but they cannot make a good Leave before an Entry made by them into the Land, as if a Stranger has a volatile Leave, they may make a Leave in Writing, and affix their Seal to it, and make a Leave; for the Letter of Attorney to J. S. to deliver it as their Deed upon the Land, the putting the Seal of the Corporation Aggregate to the Deed carried with it a Delivery, ye the Letter of Attorney to deliver it as the Land shall. 13 Car. V. R. between Fluid and Gregory. Per Cur. resolved upon a Trial at War, which concerned the Dean and Chapter of Peterburgh, and Justice Jones cited a Resolution accordingly.

7. If I make an Obligation to two, and deliver it to one of them only, and say nothing of the other upon the Liberry, the Deed is void as to him. 3 P. 6. 19.

8. If a Man seals a Writing Obligatory, in which he is bound to J. S. but this is made for the School and Use of A. S. whom the Obligo intends to marry, and on the Day of the solemnization of the Marriage he delivers it to A. S. saying these Words, 255., This will serve: and immediately the Feme delivers it over to the Oblige, this is a good Delivery. D. 3 Cl. 192, 26. adnyn, Tenant's Case.

9. If a Deed not sealed be produced in Court, if the other acknowledges it, it is of force. 41 C. 3. 16. b.

10. A Statute is good tho' there was no Delivery, per Fenner Jutt. And per Popham, Debt lies upon it as upon a Record, tho' it never was delivered; for 'tis upon Record that it was delivered, and the Party is estopped to say the contrary. Cro. E. 494. in Cafe of Afce v. Hollingworth.

Vide (K) pl. 5.


12. A. makes an Obligation to B. to the Use of C. and A. delivers it to C. in the Presence of B. and says to him, this will serve. This is a good Delivery to B. Jenk. 195. pl. 2.

13. If a Patron draws a Presement in Writing, and puts his Seal to it, and lets it lie in his Study, and the Party named in it to be presented gets it without the Privity of the Patron, and carries it to the Bishop, and is infituted and inducted thereupon, 'tis merely void, and no Presentation at all. Yelv. 7. in the Case of Grendit v. Baker.

[See Corporation ( )]

(K) Delivery of a Deed, how it may be.

1. The Deed of a Corporation does not need Delivery, but the Apposition of the Seal gives Perfection to it. Dr. Rep. Dean and Chapter of Furnes, 44. b.

2. Co. 9. Thoroughgood, 136. b. Resolv'd that actual Delivery of a Writing seal'd to the Party without any Words is a good Delivery.


3. Co. Litt. 36. Co. 9. Thoroughgood, 137. b. Resolv'd if a Man deliver a Writing seal'd to the Party with these Words, I deliver this Writing to you, it is clearly sufficient, tho' he doth not say, as his Deed, or as his Act.

4. Co. 9. Thoroughgood, 137. If a Writing be seal'd, and it lies in a Window, or upon a Table, and the Obligo faith to the Oblige, Do you see the Writing there? Take it as my Deed, and he takes it accordingly, this is a good Delivery in Law. Co. Litt. 36.

5. So if he faith, Go and take the said Writing, it is sufficient for you, or it will serve the Turn. Co. Litt. 36.


Jenk. 221. pl. 75. S. C. Casing a Writing signed and sealed on a Table, and saying nothing, is no Delivery. But if he says, This will serve, its good. Le. 140. Chamberlin v. Stanton. — The Jury found that the Defendant caused the Obligation to be written, and signed and sealed it, and then hid it upon a Table, and the Plaintiff came and took it; the Question was, if this was the Defendant's Deed, and the Opinion of all the Justices was that it was not, without other Circumstances found by the Jury. Cro. F. 122. S. C.

Delivery is sufficient without speaking any Words. Per Anderson Ch. Jutt. Cro. F. 36. in Cafe of Hollingworth v. Afce. —— Co. Litt. 49. b. —— Otherwise a Man that is, mere cannot deliver a Deed, which he may do. See (A) pl. 9.

6. 31
6. If a Man seals a Deed, and delivers it to a Stranger to keep to the Use of the Maker, this is not any Deed without other Delivery. 4 H. 4. 3. b. Dubitatior.

7. If a Man makes an Obligation to J. and delivers it to B. if J. gets the Obligation he shall have Action upon it, for it shall be intended that B. took the Deed for him as his Servant. 3 H. 6. 27.

he got the Obligation, and recovered upon it. 2 Le. 111. pl. 145. Alford v. Lsa. cites Eliz. D. 167.

8. If a Man writes a Deed of Feoffment to J. with Letter of Attorney to B. to make Livery, but does not deliver it, and after alters his Intent, and razes out the Name of J. and puts in the Name of S. in his place, and delivers it to S. but doth not say any thing upon the Delivery, yet this is a good Deed, for his Intent appears. Dubitatior 35 Ml. 6.

9. But if this will not be sufficient, yet if the Attorney makes Livery to S. and the Feoffor agrees to it, it shall be sufficient, for this will explain his general Delivery before. Dubitatior 35 Ml. 6.

10. A Parchment (not a Deed indented) sealed and delivered by one fist, and then by the other, is the Deed of one as well as of the other. Per tot. Cur. 2 And. 36. Gros v. Powell 41. S. P. adjudged accordingly.

convoy Lands to B. and B. covenants to pay A. 100 l. B. delivers to A. and then A. delivers the same Deed to B. this Re-delivery does not make the Deed void. 2 And. 41. Gros v. Powell. —— Cit. E. 485. S. C. and that is a good Deed to both. ——

11. Bond to submit a Matter to Arbitration, via good deliberato atrocio partium ——If there are two, or four, &c. it must be delivered to every one. 5 Rep. 103. a. b. Hungate's Case.

12. A. delivers a Deed made to J. S. to J. D. tho' he does not say to the Use of J. S. yet 'tis a good Delivery of the Deed to J. S. if he accepts it. Clayt. 31. Anonymus.

13. An Indorsement after Sealing and Delivery is a new Deed. 6 Mod. 237.

[See Corporation ( )]

(L) * How the Delivery of a Deed may be, and what shall be said a Delivery.

1. If a Man, being out of Possession, makes a Deed of Leafe of the Land to try the Title, and annexes a Letter of Attorney to enter and deliver the Leafe upon the Land, and annexes the Letter of Attorney to the Leafe, and makes a Label of both, and puts his Seal upon the Label, and after puts another Seal upon the Letter of Attorney only, and then delivers the Letter of Attorney only as his Deed, and not the Leafe, this is not any Delivery in Law of the Leafe at all, tho' it be annexed to the Letter of Attorney, and so he delivers it in Fact, for he may well divide his Delivery to give Effect to that which he intends to deliver only. Hitch. 15 Ja. 25. R. between Davies and Bridges, in Chrastone femme upon Lease made by the Bishop of Oxford to against
against Fawkner. Resolv'd and adjudg'd per Cur., upon Evi-
dence at the Bar.

2. If a Man writes an Obligation in a Book, and there at the
same Folio puts his Seal to it, and then delivers the Book to the
Obligee as his Deed, this is a good Obligation, for he has deliv-
er'd that which makes the Obligation, and more, as his Deed;
and tho' the Delivery be void for the Surplus, it is good for the
Residue. Tr. 40 El. 2. R. between For and Wright.

3. Leafee for Years grants his Term by Deed, and sealeth it in the
Presence of divers, and of the Grantee himself; and the Deed at the
same Time was read, but not delivered, nor the Grantee did not take it,
but they left it behind them in the same Place. Yet the Opinion of
all the Juftices was, that it was a good Grant; for the Parties came for
that Purpofe, and performed all that was requisite for perfecting it,
except an actual Delivery; but it being left behind them, and not
countermanded, it shall be a Delivery in Law. Cro. E. 7. Shel-
ton's Cafe.

(M) Delivery to deliver over.

1. If I make a Writing to A. and deliver it to another as an
Esrow, and after A. gets the Deed, yet this is not my Deed,
for the Bailee has not any Authority to deliver it as his Deed.
So it seems, by this Reason, it should be the the Bailee had delivered it over as his Deed;
for this is out of his Authority, it not being appointed.

2. If a Man seals a Writing, and delivers it to a Stranger
(as his Deed, it seems, it is to be intended) to deliver to the Party
to whom it is made, after certain Conditions perform'd; if the
Stranger delivers it to him before the Conditions perform'd, yet it is
his Deed, and he is put to his Remedy against the Bailee.

3. So it shall be if he to whom the Deed is made gets the Deed
without any Delivery of the Bailee, it is a good Deed. 9 H. 6.

4. If I make a Writing to A. and seal it, and command an-
other to keep it till certain Conditions perform'd; if A. takes the
Deed out of his Possession before the Conditions perform'd, yet this
is not a Deed, because here is not any Condition either in
Deed or Law; and here is not any Word that the Deed shall be-
delivered to A. at any Time. 9 H. 8. 37. b. Cittia.

5. If
5. If I make a Writing to A. and deliver it to another to deliver to A. after certain Conditions performed, if A. takes the Deed out of the Possession of the Bailee before the Condition performed; this is not his Deed, because he does not deliver it as his Deed, but as an Escrow. 19 H. 6. 58. To H. 6. 25. Dubitatatur.

6. So if Bailee delivers the Deed before the Conditions performed, it is not his Deed. 19 H. 6. 58. Contra 14 H. 6. 1. b.

7. If I deliver an Obligation or other Writing unto a Man as my Deed, to deliver unto him to whom it is made when he shall come to York, it is my Deed prefently; and if he deliver it to him before he comes to York, yet I shall not avoid it; and if I die before he comes to York, and afterwards he cometh to York, and he delivereth the Deed unto him, it is clearly good, and my Deed, and that it cannot be, if it were not my Deed before my Death. Perk. S. 143.


9. A. delivers a Deed to B. as an Escrow, to deliver it to C. who refuses, upon which B. leaves the Deed; and afterwards C. brings Action upon it, and held good. And. 4. Taw v. Bury. —— S. C. cited 2 Le. 101. —— D. 167. pl. 14. S. C.

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(N) At what Time the Delivery shall be good. Second Delivery.

1. If a Deed be sealed and delivered, yet if the Sealing and Delivery are * all utterlv void, so that it cannot take Effect as a Deed; there a second Delivery, without new Sealing, will make it a good Deed. 8 H. 6. 7.

Delivery has no Power or Ability in Law to make the Leaf, &c. but before the second Delivery be becomes able, there the Leaf, &c. is void. But when he has ability at the first Delivery to contract, but cannot perform it till an Impediment is removed, there, if the Impediment is removed before the second Delivery, the Contract is good. 3 Rep. 35. b. cites the Case of Jennings v. Bragg.

2. As if a Feme Covert seals and delivers a Deed, a second De- livery when she is sole will make it good; for the first Delivery was merely void. Perk. S. 154.

As if an In- fant or Feme Covert deliver a Deed as an Escrow, and 'tis delivered after full Age, or when she is sole, 'tis void. For it has Relation to the first Delivery; to a convert, where a Feme sole delivers a Deed as an Escrow, &c. because it was delivered by Authority before, when she was sole. Cpr. Pl. 417. in Case of Jennings v. Bragg.


3. If a Man seal and deliver a Deed, and after the Seal is taken from the Deed, if he seals and delivers it again, then the same Writing continues, yet it is a good Deed. (For the first Deed was utterly defeated by the taking away the Seal). 11 H. 6. 27. Curia. For there other Matter is pleased.

4. But if the first Delivery be not void, but it continues a Deed Where it once only voidable, but not void, there a second Delivery will not make it good. 8 H. 6. 7.

5. As
5. As if an Infant makes and delivers a Deed, and after at full age delivers it again, this second delivery is void; because the Deed was but voidable by plea, and not void. 8 H. 6. 7.

6. So if a Man makes a Deed by Deeds, and delivers it again at large, this second delivery is void; because it was voidable by plea, not void. 8 H. 6. 7.

7. If A. be bound in an obligation to B. and after, B. delivers it to A. in lieu of an Acquittance of Money, and A. after, before any cancelling of the obligation, delivers the same obligation to B. for another Duty; this is void, because it continues his Deed by force of the first delivery at the time of this second delivery, and so the second delivery void. 1 H. 7. 14. b.

8. If a writing by the first delivery takes effect as a Deed, tho' it be void in operation, yet a second delivery, at a time when it may operate in law, shall be void, and shall not make it good.

9. As if a Parson grants an annuity; and the Patron seales and delivers a Deed of confirmation before the grant, and after the grant delivers it again, this second delivery is void; because tho' by the first delivery it does not take effect as a confirmation, but is void in operation; yet it was his Deed, for he could not plead non est factum. Ex. contra 8 H. 6. 6. b. 39 H. 6. 37. b.

10. So if I release to you all my right in the Manor of D. where you have nothing in the Manor at the time, and you after purchase the Manor, and after I deliver the release again, the second delivery is void, because it was my deed before, tho' it was void in operation. Contra 1 H. 6. 4. b. 1 H. 7. 14. b. Dubiota tur 8 H. 6. 22.

11. Debt upon bond by A. against B. who said, that the writing was sealed and delivered as his Deed, and after A. by negligence broke the seal, and prayed B. to seal it again, who did so, and delivered it to A. This is a good deed. Br. Obligation, pl. 31. cites 11 H. 6. 27. — The reason seems to be, that tho' a deed cannot have two deliveries, yet when the seal is broke it is not a deed but a writing, and a writing by sealing and delivery may be made a deed. Quod nota. Br. Faits, pl. 78. ut supra.

12. If a man be dissatisfied and make a writing of a lease for years, and deliver the Deed, and after deliver it upon the ground, the second delivery is void, for the first delivery made it a deed, and for that the lease for years must take effect by the delivery of the deed, therefore the deed delivered when he was out of possession, was void. But so it is not of a charter of feoffment, for that takes effect by the livery and seisin. But if the lessor had delivered it as an escompte to be delivered as his deed upon the ground, this had been good. Co. Lit. 48. b. (d)

13. A corporation seized of the lands in question in the several possessions of A. and B. made a deed of lease to J. S. and a letter of attorney to W. R. to deliver the deed and the possession. W. R. entered on the possession of A. and there delivered the deed, and then into the possession of B. and there delivered the deed; and this was found by verdict; the question was, if this were good for the land, for which the second delivery was, because one deed cannot have two deliveries. The first was not doubtfull; 'twas held, that as the verdict is found, this matter does not come in question; for 'tis found that the Corporation was
was seised, and being so seised made the Deed, and then there is no impediment, but that the delivery shall be good for all; for it shall not be intended, but A. and B. had possessiorion only as tenants at will to the corporation, and then the delivery in one place is good for all; and it shall not be intended, that they had a lease for years or life, except it be so flown. Cro. El. 161. Williams v. Afhef Ah.

14. A difference made a lease for years, and delivered it to a stranger as an escrow, commanding him to enter into the land, and then to deliver it as his deed, who did it accordingly. This was adjudged a good lease, for the lessor was able to make a contract as well in regard of his person as of his right and interest in the land, but was only hindered by the difference, which impediment being removed before the second delivery, the lease is good. 3 Rep. 35. b. cites it as adjudged in the case of Jennings v. Bragg. ——— Cro. El. 446. S. C. adjuvantes. But it was there laid per Anderson, that it was not his deed till the second delivery, at which time he had a good right and power to let it. ——— And the second resolution, 3 Rep. 35. b. 36. was accordingly, and that to some intent the second delivery shall have relation, as where it is for necessity, and ut res magis valeat quam percipat, but to other intent it shall have no relation, but according to the truth shall make a deed from the time of the second delivery, and not from the first, when the lessor was out of possession, and the lease therefore void; and fiatio legit iniqua operatur aliquam dimissionem vel injuriam. ——— "I was resolved 3dly, That as to collateral affairs done between the first and second delivery, there shall be no relation. As if obligor release before the second delivery, such release is void." 3 Rep. 36. Jennings v. Bragg.

Fragment, for that takes effect by livery and seizin. Co. Lit. 48. b. 3d. 

So a lease by a corporation perfected in their chapter-house, by setting to it their seal, and afterwards by letter of attorney delivered on the land to eject the tenant in possession, was held good for necessity, there being no other way for a corporation to make a lease but this. Cro. El. 167. Willis v. Jermin.

A. The lessor of the plaintiff in ejectment being in another county, and out of possession of the lands, delivered a lease to B. as his deed, to the plaintiff's use, and afterwards made a letter of attorney to B. to deliver it upon the land, which he did; the lease is void, for it was delivered in another county when A. had nothing in the land; and cito the first delivery is void to pass a thing, yet tis his deed by the first delivery, so as it takes hence its efficacy, and so the second delivery is void. Cro. El. 483. Stephens v. Ellior.

15. In case of a lease delivered as an escrow, if at the time of the first delivery the lessor be a feme sole, and before the second delivery the takes borow or dies, in such case for necessity, ut res magis valeat to this intent, by fiction of law, this shall be a deed ab initio. 3 Rep. 35. b. in the case of Butler v. Baker.

(N 2.) Second delivery necessary, in what cases.

A. Made indenture of covenant to stand seised to uses, according to perpetuities, and delivers this to a stranger to the use of the covenantee, who hearing of it, utterly disagreed to it, by which A. in every part of the deed raised the name of the covenantee, and said the name of f. s. lord keeper egerton agreed, that the deed is void as to all the benefit which the covenantor might have; but tis not therefore void for the use and eftates to the other persons; and that a new delivery is necessary, otherwise there is not any covenant for want of a covenantee. Mo. 300. Waferer v. row.
(O) Delivery of a Writing as an Escrow to be his Deed, upon a Condition performed.

1. If a Writing be delivered seal'd to the Party as an Escrow to take Effect as his Deed, upon Condition performed, it is his Deed now, for the Law regards the Delivery to the Party himself, and recks the Words which shall make the express Delivery to the Party upon the Mutter no Delivery. 9 Rep. 137. Thoroughgood's Case, and are cited 12 H. 8. Rot. 751. Upon Demurrer adjudged, and 13 H. 8. Rot. 495. Upon Demurrer also adjudged accordingly. Mitch. 3 Jar. B. K. between Wade and Blundell adjudgd. Hobart's Reports 307. between Hackford and Parker adjudgd. 8 H. 6. 26. b. Trin. 3 Jar. per Cur. Co. Lit. 36.

2. 19 H. 8. 8. Delivery of an Obligation to the Party upon Conditions to be performed, 0 otherwise but as an Escrow, and there adjudgd, that it is his Deed presently. (Nota) That he delivered it as an Obligation, which implies it to be his Deed; and then it is clear, that he cannot make it * as Escrow by Non-performance of a Condition. But note, That the Delivery to the Party explains it, for there it is agreed, that otherwise it would be to a Stranger. PaL 44 El. B. cites Trin. 43 El. B. R. to be adjudgd. Mich. 9 Car. B. K. between Baker and Shepherd, adjudged upon a Demurrer. Innu- trate Hill. 8 Car. Rot. 419.


3. A. delivers a Deed as an Escrow to J. S. to deliver it to the Tenant on certain Conditions to be performed, and before the Day A. becomes Novo compass, and then the Conditions are performed, and J. S. delivers the Deed. This is good, because it has Relation to the first Commandment. Br. Lect. Stat. Limit. 150.

4. If I make a Deed and deliver the same unto J. S. a Stranger as an Escrow, to keep until such a Day, &c. upon Condition, that if before that Day B. (he to whom the Escrow is made) shall pay to me 10 l. or shall give me a Horse, or inoffome of the Manor of Dale, or shall perform any other Condition, then J. S. shall deliver the Escrow unto B. as my Deed, in this Case, if J. S. deliver the same unto B. as my Deed, before the Conditions or Condition performed, it is not my Deed simpliciter; but if the Conditions or Condition be performed, and the Escrow be delivered by J. S. after the Conditions performed, as my Deed, then it is my Deed and shall bind me, and at the Time of this Delivery then begins it to be my Deed, and shall not have Relation to the first Delivery. But Quare, if it shall have Relation to the Time of the Condition or Conditions performed. But it feemeth not. Perk. S. 138. cites 9 H. 6. 37. 10 H. 6. 25. 41 E. 3. 29.

5. J. S. delivered a Deed to A. to the Use of B. and C. if B. would agree to the same, &c. B. dies before Agreement. —— So the Deed is void, because 'twas a Condition precedent. Mo. 300. Degoe v. Row.
Faits or Deeds.

— Le. 152. S. C. but no Judgment; but Anderton Ch. Just. and Periam J. held, that it is the Deed of J. S. tho' B. never agreed. But Walmsley contra.—

6. If A. delivers an Obligation to B. as an Escew (in which he is bound to C.) to be deliver'd as his Deed to C. after certain Conditions performed, and after C. releases to A. before the second Delivery, this is void, because tho' after the second Delivery it shall relate to the first Delivery, where there is a Necessity, Ut ris magis valeat quam peacet; yet as to collateral Acts it shall not relate at all. 2 Roll. 410. Release (B. a.) pl. 3. cites 3 Rep. 36. Butler v. Baker.

(0 2.) Pleadings as to Deeds delivered on Conditions, and to be delivered over.

1. A. by alleging, that he delivered it to the Obligee upon Condition; yet a Stranger to the Obligation, to whom the Obligee delivered it, to be delivered to the Obligee upon the Performance of a certain Condition; if Dejime be fix'd against him for this Deed by the Obligee, he (the Stranger) may plead this Bailment and Condition, and pray Garnishment against the Obligee, to acknowledge whether the Condition be performed, or not; for he is Party to the Bailment, but not to the Deed; and upon the Garnishment, the Trial of Performance, or not, shall be between the Obligee and Obligee. Jenk. 166. pl. 20. — cites 8 H. 6. 28. — 43 Ed. 3. 27. — 4 Ed. 2. — Fitz. Debt, 167.

2. A. delivers a Deed to B. to deliver as his Deed to C. C. refuses to accept it; B. leaves it, C. however sues upon it and has Judgment. And: 4. Taw v. Bury — Dy. 167. pl. 14. S. C. — 5 Rep. 119. b. says, by the Refusal, the Delivery has lost its Force, and Non eft factum may be pleaded. — t Salk. 307. S. C. cited.

3. In Debt on Bond, Defendant pleads, that he deliver'd it as an Escew, & hoc paratus est verificare. 'Tis not good, for he ought to shew to whom he delivered it, and also to conclude his Plea, and Infinitum juxta fact. Vent. 9. Anonymus. — Vent. 210. Ward v. Ford. S. C.


(0 3.) Escew. Relation thereof to what Time.

1. If I make a Deed and deliver the same unto J. S. a Stranger as an Escew, to keep until such a Day, &c. upon Condition, that if before that Day B. he to whom the Escew is made, shall pay me 10l. or shall give me a Horfe, or incoff me of the Manor of Dale, or shall perform any other Condition, then J. S. shall deliver this Escew unto B. as my Deed; in this Cafe, if J. S. deliver the same unto B. as my Deed, before the Conditions or Condition performed, it is not my Deed simpliciter. But if the Conditions or Condition be performed, and the Escew be delivered by J. S. after the Condition performed as my Deed,

S. P. Goldth. 167 and 168. in the Cafe of Heo v. Mar- shall, cites 5 H. 7. 27. notwithstanding that 27 H. 6. 7. is contrary.
Faits or Deeds.

Deed, then it is my Deed, and shall bind me, and at the Time of this Delivery then begins it to be my Deed, and shall not have Relation unto the first Delivery. But Querc, if it shall have Relation unto the Time of the Condition or Conditions performed. But it seemeth not. Perk. S. 138. cites 9 H. 6. 37. 10 H. 6. 25. 41 Ed. 3. 29.

(P) Date. [Necessary or not, and what is sufficient.]

A Date is not essential to a Deed. Per

Tirel Jut. Carr. 153. cites Perk. fo. 23. b. 2 Rep. 5. * Goddard’s Cafe. — Pl. C. 231. b. — A Deed is good without any Date, by the Delivery of the same. Per Doderidge Jut. 5 Bull. 312. and agreed. — But upon the Statute of Usesments, the Inrollment must be within six Monthes after the Date. Per Jones Jut. Ibid. 313. * S. C. cited arg. 5 Mod. 284.

For the Pleadings vide (P.)

Hob. 148. Per Hobart.

1. If a Deed has not any Date of Day or Place, yet it is good.

20 E. 4. 1. Perkins §. 120. 20 H. 6. 44. b.

2. And in such Cafe a Day and Place may be averr’d of the Delivery. Perkins §. 120.

3. A Deed is good tho’ it has no Date. Kelw. 34. b. — Nay 21. — 2 Roll. R. 274. arg. — Pl. C. 231. b. in Case of Williams v. Barkley, says ’tis the fame in Case of Letters Patent.

4. Bond was given March 25. and Release of all Demands, dated 27th, but altered to the 24th, before Execution, to avoid releasing the Bond, and the Day indorced was the 24th; yet this upon Primo deliberatum pleaded was adjudged a Release of the Bond. N. B. The Release should have been till the Day of the Date. D. 307. p. 67.

5. The Date of the Deed many Times Antiquity omitted, and the Reason was, for that the Limitation of Presumption, or Time of Memory, did often in Proceeds of Time change, and the Law was then holden, that a Deed bearing Date before the limited Time of Prescription was not pleadable, and therefore they made their Deeds without Date, to the End they might allledge them within the Time of Prescription. And the Date of the Deed was commonly added in the Reign of E. 2. and E. 3. and fo ever since. Co. Lit. 6. a.

A Date impossible as to the Year of the King, but the Year of the Lord, and the Day of the Month being well, is sufficient. Cro. J. 261. Dobson v. Kreyes. — So where the Year of the Lord was impossible, and the Year of the King was right. 8 Mod. 45. Ford v. Lord Grey.

In Wills the Ecclesiastical Law takes Notice only of the Anno Domini, but the Common Law of Anno Regis. Per Doderidge J. Lat. 11.

A Deed dated 8 Sept. Anno 78. without saying more, as 1178 or 1578, was held a void Date, because the Years were not well alledge’d. Br. Fairs, pl. 74. cites 21 E. 4. 38.

[See Grant (R. 7.)]

(P 2.) Dates.
(P 2.) Dates. Construction thereof.

1. If a next Avoidance of a Church be granted unto B. by Deed bearing Date the first Day of May in the 5 H. 7. and the same Deed is first delivered as a Deed to B. the fourth Day of May the same Year; and by another Deed dated the second of May in the same Year, the next Avoidance of the same Church is granted by the same Grantor to C. and the same Deed is delivered as the Deed of the Grantor the third Day of May in the same Year; in this Case the last Grantee shall have the next Avoidance of the same Church, and not the first Grantee; and yet his Deed did bear Date before the Deed of the second Grantee: But it is, because a Deed first takes Effect by its Delivery, &c. Perk. S. 145.

2. A date includes the Day, but a die datus excludes the Day. 2 Salk. 413. Hath v. Aftn. — 3 Lev. 439. S. C. — Roll. R. 387. (a) Bacon v. Waller. Per Croke and Haughton, that a datu, and a (c) 3 Bulif. die datus, is all one, and Judgment accordingly. — This Difference is good where it is in a Cæffe, where an Interest is to be conveyed from one to another, as in Case of a (b) Leaf for Years, &c. 'But in Matters of Account only, where no Interest is to be pafs'd, as if A. is to be accountable to B. and the Deed expresses it to be done a die datus, or a datu, 'tis all one. Per t' Cur. Bulif. 177. Anonymus. — There is no Difference between the Date of a Deed and the making of it; for the making is the Delivery, notwithstanding I Inft. 46. b. Per Holt Ch. Juft. and Sir Barth. Shower said, 'twas held by all the Court of Common Pleas, (c) to hold from the Date, or from the making, is all one. Cumb. 399. Hicks v. Harvey.

Day, and an Ejectment may be alleged the same Day. Cro. J. 258. Luellin v. Williams. Policy of Inference was, that the Defendant undertook to pay the Plaintiff 100 l. if Sir Robert Howard did live a Twelvemonth from the Day of the Date of the Policy, being the third of December 1697. and he died the third of December 1698. and Holt directed the Jury to find for the Plaintiff. And he said, if a Man born on the third of December, die the second of December twenty Years after, making a Will on that Day, it would be a good Will. 12 Mod. 256. Fanfaw v. Harris. (c) Cro. J. 647. Scavage v. Porter.

3. The Day of the Delivery of a Deed is the Day of the Date, tho' there is no Date for forth; if a Deed bear Date at one Day, and be deliver'd at another, it was really dated when deliver'd, tho' the Date of Gerens dat' be otherwife. 1 Salk. 76. * Armtt v. Bream. — 68. 5 Rep. Brownl. 39, 31. S. P. — But every Grant by Record has Relation to the Day of the Date specified in the Record, and not to the Time of the Delivery. Pl. C. 491. b. Ludford v. Gretton.

Gerens dat’ must be understood of an express Date, but Cojus dat’ may be the Delivery. 2 Salk. 495. Cromwell v. Gransden.

( P 3.) Pleading of Dates.

1. If A. be bound in a Recognizance to B. and B. grants unto A. by his Deed indented, bearing Date before the Recognizance, that if A. perform certain Conditions contained in the same Indentures, that then the Recognizance shall be of no force, in this Case it behoveth A. to take Advantage of this Deed, by averring the Delivery of the same Deed after the Recognizance entered into. Perk. S. 147. cites 29 Aff. p. 47.
2. If the *Defense* of a Recognizance be dated before, if in this Cafe any Use be to be made of it, it must be aver'd to be delivered at or after the Time of the Recognizance entred into. Heath's Max. 37. cites Perk. S. 147.

3. A Bond bears Date at S. in the County of S. and Action is brought in Coni. W. the Plaintiff ought to shew, that the first Delivery was made at B. in the County of W. where the Writ is brought. Ur dictum fuit. Quære. Brit. Faitzn, pl. 25. cites 22 H. 6. 57.

4. In Aff'le the Defendant pleaded a Releafe, bearing Date at A. the Plaintiff first, that tempore Confessionis he was imprisoned at B. and the Defendant says, that after the Imprisonment the Plaintiff delivered to him this Releafe at C. when he was at large; and because he had departed from the Place where the Releafe bears Date, the Aff'le was awarded. Quod Nona. Brit. Faitzn, pl. 46. cites 1 H. 6. 3.

5. Note, per Cotesmore, if I deliver an Acceptance to J. N. the sixth of May, dated the same Day, and afterwards J. N. delivers me a Bond, bearing Date the first of May, and in Debt upon the Bond J. N. pleads the Acceptance, it is a good Replication, that after the Delivery of this Acceptance this Obligation was delivered to me. 1 H. 6. 4. But 18 H. 6. 8 H. 6. 5 H. 7. are contrary, and *that* the Plaintiff shall count upon a primo Deliberationis in his Count, and not come in with it in his Replication, for then there is a Departure, viz. he shall count that the Bond bearing Date a Week before the Delivery, was delivered to him the 5th of May after, quod Nona, felicit, quod idem Def. per scriptum suum obligatorium gerens dat' primo die Mai, &c. et primo deliberat' to the Plaintiff octavo die Mai, &c. concepisset et teneri, &c. and then the Acceptance bearing Date the sixth Day of May shall be no Bar to the Obligation bearing Date the first of May, which was not delivered till the 8th of May. Nona. Brit. Obligation, pl. 40. Vide Brit. Faitzn, pl. 47. cites 1 H. 6. 4.

6. Trespass was laid the first of June, the Defendant pleads a Releafe until the 30th of May, (which was the Day of the Date) absque hoc quod tanquam aliquis accretus post Confectionem scriptt. This is naught, because the dics suus excludes the Day of the Date. And the Trespass ought to be absque hoc, that he was guilty after the 29th of May, which is the Day next before the Day of the Date. Pash. 5 W. & M. B. R. L. P. R. 393.

7. If a Deed bear Date before Time of Memory, it is not pleadable, if it be not upon Record, but the Party may well give such Deed in Evidence. Perk. S. 120.

8. In an Action brought by a Feme Sole upon an Obligation, if the Releafe of one who was her Husband be pleaded, &c. the Woman may say, that at the Time of the Delivery of the Releafe he was not her Husband, &c. and the Jury shall be charged to enquire of the Time of the Delivery, and not of the Date, notwithstanding that the Woman in her Plea doth not make Proclamation of the Date, &c. And 'tis to be known, that he who pleads a Deed, and he against whom a Deed is pleaded, may vary from the Date of the Deed in the Time of the Delivery. Perk. S. 146.

9. Debt was brought on Bond conditioned to perform Covenants in an Indenture bearing even Date with the Bond, (but neither Bond or Indenture had any Date). Per Cur. they ought to have aver'd a Date of the Bond, and also that the Indentures bore Date the same with the Obligation. Noy 21. Anonymus.

10. A Deed Poll was pleaded thus: (Et quod diem & mensem fine datu) fed geren' datum in codem Anno 1638. The Deed was to all Christian People, &c. and concluded thus: In Witnesses whereof the Parties to these present Indentures their Hands and Seals interchangedly
have set the Day and Year first above written, 1638. But there was no Day or Tear named throughout the whole Deed. But no Objection was made to it. Vide Carth. 340. Ward v. Everard.

11. Plea of Payment of a Bond such a Day Post datum Conditionis, is well enough, and shall be intended Post datum Obligationis; for the Bond and Condition are but one Deed, and the Date of the one is the Date of the other. Cro. E. 732. Forth v. Harrison.

12. When a Man declares that he less'd by Indenture of such a Date, it shall always be intended to be deliver'd at the same Time whereon it bore Date, if he be not shewn with a Primo deliberat at another Day; and he that pleads a Deed of such a Date, cannot by Replication, or other Pleading, maintain it to be delivered at another Time, for it would be a Departure. Cro. E. 773. Hall v. Denbeigh & al. — cites 5 H. 7. 26. D. 167, 221. — Cro. E. 890. S. P. — But when 'tis said, he demis'd May 1st, by Indenture dated March 25th, 'tis necessary to be intended, that 'twas not deliver'd the same Day it bore Date, but upon the Day of the Demise, as 'tis alledged. Cro. E. 890. Houfe v. Laxton.

Day, but primo deliberat' other Day the Party granted, or become bound, &c. and so are D. 507. a. 315. a. Cro. E. 773, 890. 5 H. 7. 27. a. to be taken upon this Difference. 3 Lev. 343, 349. Stone v. Bale.

13. Averment of Primo deliberatum ought not to be received against a Deed inviol'd; for by the fame Reason that that might be avert'd, Nunquam deliberatum may; and so upon the Matter, Non est factum. 3 Le. 176. Holland v. Bonis alias Baines. — Savil 91. Holland v. Downes, S. C. contra. And the Court were of Opinion, that a Stranger shall not be oppid'd by the Inrolment, but the Parties shall be bound by it. For the Inrolment is reputed to be of the Record, yet 'tis not a Record created by any judicial Act. For 'tis not like to a Recognition, and in all Recognizances Nulli tiel Record is a Plea. The Scaling and Delivery is the Force of such Deeds, as Deeds of Bargain and Sale, &c. and not the Inrolment. But in Cases of Recognizances, there they take their Force and effect by Inrolment, and the Conslance only, and not by the Delivery; and therefore the Time of Delivery may well enough be denied, which is but Matter of Fact; but the Conslance before the Judge is Matter of Record, and by that the Debt is created. But Bonds, Indentures and Deeds of Pecuniament take their Force by the Delivery; fo there is a perfect Act before the Conslance is taken, and before any Inrolment; and Judgment was given accordingly.

14. Tho' a Man may plead that a Deed was deliver'd after the Day of the Date, yet he cannot plead that it was deliver'd before the Day of the Date. Vide Br. Fait, pl. 28. cites 8 H. 6. 6,—pl. 94. 12 H. 6. 8.— Vide tamen Br. Fait, pl. 99. cites 11 H. 6. 48. to the contrary.

For every Deed, which hath a Date, shall be intended to be written the Day of the Date, but it is no Deed before the Delivery, and a Deed cannot be deliver'd to take Effect as a Deed, before it be written.

After the Delivery of a Bond, and before the Date, the Oblige died Intestate, yet Judgment was given for the Administrator. 3 Lev. 105. Denton v. Goddard.

15. If A. declares on a Bond as bearing Date the sixth of May, he cannot on Non est factum give in Evidence a Bond bearing Date at another Day, but he may give in Evidence a Bond that bears Date the 6th of May, tho' 'twas deliver'd at another Day. 2 Salk. 463. In Cafe of Cromwell v. Grimden; and Holt Ch. Juft. denied the Cafe in 2 Cro. 156.

Deed on Bond dated the 15 Novemb. 25 Ediz. upon Non est factum pleas'd, the Jury found a Bond dated

15 Novemb. 25 (25) Eliz. but not sealed till 18 Novemb. 26 Eliz. Resolved that the Verdict was found for the Plaintiff; for the Issue Non est factum being generally pleas'd, it appears to be his Deed; but 'twas said, that peradventure by Special Pleadings the Defendant might have helped himself. Cro. J. 156. Lane v. Pleadall.

K

16. Decla-
16. Declaration, That the Defendant the eighth of September 1689, per scriptum suam obligatorium conceit in teneri, &c. to the Plaintiff, and upon Oyer the Bond bore Date the eighth of September 1699, and for the Variance a Demurrer. And it was urged, that since the Plaintiff varied the Lien from the Date of the Bond, he ought to shew when it was first delivered; and the right way had been to declare upon the Bond with the Date it bore, and then to say Primo deliberat' at such a Time, and at this Rate one might declare upon a Bond after the Action brought. But per Cur. since it is said, that such a Day conceit in teneri, it is well, for that could not be without it were then delivered, Jud. pro Quer'. 12 Mod. 651. Lane v. Green.

17. There is a Difference between Declaring on a Deed, and Declaring of a Deed; as supposeth in Trespass for cancelling a Deed by the Defendant, made by the Defendant to the Plaintiff; in the first Case the Date must be set forth, but in the other it need not, for here it is only a Description of the Deed. Holt's Rep. 455, 456. Norris v. Ware.

18. If a Deed has no Date, or an impossible Date, you may declare, that the Defendant by his Deed on such a Day and Year did fo and fo, and upon Oyer there will be no Variance; but if you say, that by his Deed of such a Date, or bearing Date so and so, and upon Oyer the Deed has no Date, or an impossible one, it will be a Variance. Per Holt. Farr. 38. Anonymus.

Pl. 2.
In a Declaration on a Bond it was Date primo die Julii, Anno Regis Regis Caroli Secondi, 1674, whereas there is no such Date, and it is a void Date, and the Plaintiff may alledge the Deed made when he will; and tho' by the Praetor bie in Cur. * he has confin'd himself, yet the Cujus datu shall be understood of the Delivery, and not the Date. Cujus datu shall be the giving of which account, &c. If it had been Green dat', it might have been otherwise, but here it is good enough; and Judgment accordingly. 12 Mod. 192. Cromwell v. Grundale. — 5 Mod. 285. S. C. but ad notum. — Comb. 478. S. C. adjudg'd. — 2 Salk. 403. S. C. * 12 Mod. 205. Follen v. Benfon.

(Q) Day.

1. If a Deed bears Date at a Day, where it appears there is no such Day, yet the Deed is good. 20 E. 4. 1.

For the Pleadings vide (P 3.)

2. And ye may count of Primo deliberat at another Day.

21 E. 4. 1.


3. If a Deed be dated 8 December, without Mention of the Year of the King, or of God, it is a void Date, and the Plaintiff may count of a Delivery of it at any other Day. 21 E. 4. 38. b.

4. So if a Deed be dated 8th Day of December, '76, and both not say, if it be the Year of God, or of the King, it is a void Date, and the Plaintiff may count of the Delivery of it at any other Day. 21 E. 4. 38. b.

(R) Place.
Faits or Deeds.

(R) Place. [And Pleadings.]

1. If a Deed bears Date at a Place, and there is no such Place in England, yet the Deed is good and stable, and shall be taken according to where the Plaintiff counts. 20 C. 4. 1. Contra Perkins, S. 120. Because he cannot vary from the Date. If a Man bring Deeds to C. R. upon an Obligation bearing Date at Bredon, the Plaintiff shall take nothing by his Writ, because he cannot vary from the Place dated in the Obligation, and the Common Pleas hath not Jurisdiction there. But when a Deed is pleaded bearing Date at such a Place where the Court hath not Jurisdiction, if the Deed be not answerable, the Plea is good enough. Perk. S. 121. cites 2 E. 3. Oblig.

2. If a Deed bears Date at C. in L. and there is not any such Vill as L., yet the Obligation is good. 3 D. 4. 4. b.


4. It seems if an Action be brought upon such Deed, if he avers, that the Place mentioned in the Deed is in any Place in England, the Action will lie, for it is not answerable; but if it be not alleged, but appears that it is dated beyond Sea, it is otherwise, and so the Books may be reconciled; for then it cannot be tried.

5. 48 E. 3. A Deed was dated in H. which in Truth was in Normandy; but in Deed upon it, it was supposed in Kent, and the other travers'd, that there was not any H. in Kent, and the other impart'd. 48 E. 3. 3. b.

6. If an Obligation be dated at C. in London, and there is not any such Place in London, but in another County, in an Action upon it, one may allege C. to be in London. 3 H. 4. 5.

7. If a Deed be dated upon Maniplation mean, it is good. 48 E. 3. 3. b.

8. So if it be dated at H. in such County, and if H. be not Vill nor Hamlet, nor in any of them. 48 E. 3. 3. b. Dubitatim.

9. If a Deed be made out of the Realm, yet if it has not any Date, an Action may be brought here, supposing it to be made in any Place in England, which is not answerable. 20 H. 6. 44. b.

10. A Man may plead a Deed to be delivered at another Day than it bears Date upon, but not to be delivered at another Place than is comprized in the Deed. Br. Faits, pl. 28. cites 8 H. 6. 6.

11. He who pleads a Deed shall not vary from the Place where it bears Date; but he against whom a Deed is pleaded may lay, that it was made by Deeds of Imprisonment at another Place, and in another County than it bearer Date. Perk. S. 151.

12. And therefore, If in Quare ejuscecum infra terminum, or terminum qui praerit, or in Formedon, &c. the Tenant pleaded the Release of the Demandant bearing Date at Dale, &c. and the Demandant says, that he was taken by the Tenant at Dale in another County, and there was imprisoned by him, until he made the Deed unto him; this is a good Plea, and the Matter shall be tried where the Imprisonment was alleged, &c. and so a Man may vary from the Place which is comprized in the Deed; because when a Man maketh a Deed by Imprisonment, he to whom the Deed is made, may put in the Deed what Date he will. Perk. S. 152. cites 8 E. 3. 3. 22 E. 3. 16. Vifne 7.

13. An
13. An Obligation or other Deed may be made by Abbot and Convent out of their Monastery, for all the Monks may be in another Place, so that if the Deed say, Datam apud London, without speaking de domo capitulari, such a Deed is good enough, although that their Monastery were at Kingston, &c. But if their Deed say Datam in domo Capitulari, this cannot be but where the Chapter is, &c. Perk. S. 153. cites 9 E. 4. 40.

(R 2.) Avoided, how, or where it remains good.

1. If a Deed be delivered to the Party himself to be cancelled, yet if it be not cancelled, and the other gets it again, it remains a good Deed. Cro. El. 483. in the Case of Crofs v. Powell.

(S) What Act or Thing at the making of a Deed will make the Deed void. [False Reading].

And an Indeb. ment lies for such false Reading.

Sid. 312. K. v. Skeeret, &c.

But if I can read, such false Reading will not be reliev'd, for it is my own Folly. Skin. 159. Anonymous, pl. 6.

If a Deed be read otherwise than it is, and thereupon the Party executes it, 'tis not a good Deed, if the Person be illiterate. 2 Rep. 9. Thoroughgood v. Cole — And. 129. S. C. — Mo. 148. S. C. —

Whether the Party is literate or illiterate is all our. Kelw. 70. b. pl. 6. Mic. 21 H. 7.

11 Rep. 27. b. in Pigot's Cafe. Hob. 226. in the Cafe of Needler v. Bishop of Winchester.

So where a literate Person became blind, and a Deed was read fally to him, he was not bound by it.

12 Rep. 89. Shutter's Cafe.

But if a Person illiterate fally and deliver a Deed and does not ask to have it read to him, he shall never plead illiterature after; but if it be read to him in other Form, he shall plead it after. Per Anderson Ch. J. Mo. 184. pl. 526.

14 Rep. 28. in Pigot's Cafe.

2. If Agreement be to release 221. and the other makes a General Release, and he being not letter'd delivers it by Agreement as a Release for 221. only, this Deed is void. 47 C. 3. 3. b. 17.

3. If Agreement be to release all Trespaus, and in the Deed is put Release of Land, and this is delivered by a Man not letter'd, as a Release only of Trespaus, this Deed is void. 44 C. 3. 23. 44 Mt. 30.

4. So where there is not any Agreement to make any Release, but a Man comes to another not letter'd, and prays him to seal a Deed, saying, that it shall be no Prejudice to him, and he sells it without hearing it; the Deed is a good Deed, because he did not play to hear it. 44 Mt. 30. 44 C. 3. 23. Dubitat. u

5. If a Man for great Age cannot see to read, and seals an Obligation upon false Reading, he shall abold it. 3 D. 6. 52. b. Dich. 9 Fac. in the Star-Chamber, Shutter's Cafe cited 11 Rep. 28.
Faits or Deeds.

28. resolved, tho' he was literate, for now he has all his Intelligence by Hearing.

6. If a Deed be read to a Man illiterate, to be upon Condition, it is not his Deed. 9 H. 6. 59.

7. If a Deed be read to a Man illiterate, as a Gift in Tail, with a Letter of Attorney, where it is a Feoffment in Fee, it is void in all, as well in the Estate as in the Letter of Attorney, for all is but one Deed, and by the Library secundum comam Charae, nothing passes, the Deed being void. 36 C. 3. 31. b. Curie.

8. If an Obligation be read to a Man illiterate, that he binds himself by it in fl. where it is 100 l. it is void in all. 30 C. 3. 31. b.

9. If a Man not letter'd will make a Feoffment, and upon one 11 Rep. 27. b. Parchment, &c. two Feoffments are contain'd, and only one is read to him, yet the Deed, for this Feoffment which is read to him, is good. 30 C. 3. 32.

10. If three distinct Obligations are written upon one Piece of Parchment, and one of them only is read to the Obligee, and he binding a Man not letter'd seals and delivers the Deed, This is good for that which was read, and void for the others. 11 Rep. 27. b. Piggot's Tafe.

(T) What Act or Thing will avoid a Deed. Rasure, [and Pleadings].

1. Rasure will avoid a Deed. 14 H. 4. 18.

If a Deed-Poll be rated in a Place not material, the Deed is not suspicious for such Matter. Perk. S. 124.

As if a Deed of Feoffment be rated in the Addition of the Name of the Feoffee, or if the Deed comprehends Debts &c. and the Deed is rated, the Deed is not suspicious for such Matter. Perk. S. 124.

But otherwise it is, if Debt be rated, for the Word Debt comprehends the Effect and Force of the Word conceiv'd, and more; for Debt in a Deed of Feoffment comprehends in it a Warrant against the Feoffor, and so doth not the Word conceiv'd. Perk. S. 124.

And altho' a Deed-Poll be rated in a material Place, as in the Name of Baptism of the Grantor or Granter, if it appear that there was no Writing there before, it is not very suspicious. Perk. S. 124.

2. Rasure of the Condition upon the Back of an Obligation will it not make the Obligation suspicious. 41 C. 3. 10. b.

If there be a Rasure of a Bond indorsed for Performance of Covenants, the Indenture proving the Bond makes it good. Mo. 10. pl. 57. Anonymous per Hale J.

3. The Rasure of the Date of a Deed will avoid the Deed, Br. Faits, because peradventure it was dated out of the Realm. 41 C. 3. 29. b. pl. 11.

If the Date of a Deed be rated in the Place, it is very suspicious, because it may be it was dated out of the Realm. Perk S. 125. cites 44 E. 3. 42.

Plaintiff altered the Date of a Bond for Performance of Covenants from 24 to 25; per Cur, the Rasure is in a Place not material, and also tends to the Advantage of the Defendant himself who pleads it; and if the Indenture had been void by it, the Obligation had been tangle. Le. 252. Lord Dary v. Sharp.
4. But in this Case if the Plaintiff avers, That it was dated in London, and shews a Deedance thereof, which bears Date there, it is good enough; for now the Date is not material. 41 T. 3. 29. b. Perkins S. 126.

5. If the Name of the Grantor or Grantee be rasied or interlined, the Deed is very suspicious. Perk. S. 123.

6. If there be a Rasure of the Thing granted, it makes the Deed very suspicious. Perk. S. 123.

7. So it is, if the Rasure is in the Limitation of the Estate, &c. Perk. S. 123.

8. If a Man grants unto me a Rent-charge by Deed, which he hath issuing out of the Land of another Man, and the Tenant attorns, and the Grantee by his Deed reciting the same Grant, regrants the same to his Grantor, yet it is not very suspicious, because it doth rely upon another Deed, in which Relier, (viz. Recital) it is not rased; Quere, if such Deed be rased in the Date of the Place, &c. Perk. S. 125.

9. And if in Debt brought upon an Obligation, the Date of the Obligation be rased, and the Plaintiff shews forth an Indenture of Deedance proving the Obligation, the Obligation is good enough. Perk. S. 126.

10. So it is of Indentures bipartite, tripartite, or quadripartite, if one of them or all of them be interlined or rased in a material Place, they are sufficient notwithstanding the same, if to be they do not vary in the Words. Perk. S. 126.

11. Rasing of one Indenture after Sealing, does not make it void, if it agrees in Words with the other Indenture. Per Cur. Mo. 10. Anonymus.

But if one Indenture be rased in a Place material, and the other Indentures or Indenture are not rased, and the Indenture which is rased doth not agree in Words, in that Place which is rased, with them or that which is not rased, the Indenture rased is very suspicious. Perk. S. 127.

12. Several Persons enter into several Covenants. If the Deed be rased in any Clause which concerns them all, or in the Date, the Deed is avoided as to all; but otherwise the Deed is intended several to every of them, so that the pulling off the Seal of one is no Discharge against the other. Cro. El. 536. Mathewson v. Lydial.

13. In case of Rasures and Interlineations in ancient Times, the Judges adjudged on their View the Deed to be void, as appears 7 E. 3. 57. 25 E. 3 41. 41 E. 3. 10. but of late Times the Judges have left this to be tried by Jurers, whether the Rasing or Interlining was before the Delivery. 10 Rep. 92. b. in Dr. Leyfield's Cafe.

14. Rasing a Deed by the Party himself avoids the Deed, tho' it be in a Place not material, but Rasure by a Stranger does not, unless it be in a Place material. Per omnes J. Angliae. Jenk 232. cites 11 Rep. 27. Pigot's Cafe.

15. Lejfor rasas one of the Parcels out of the Leafe; this made all the Deed void. Per omnes — But per Dyer, Leffee may plead this as a Leafe Parol. Mo. 36. pl. 113. Anonymus.

If the Indentures are of Bargain and Sale of Land and Tenements, and the Indenture which remains with the Vende is rased, and the Word which is rased is Names, and in the other Indenture the Word which is rased is Hours: and the Vendor hath a Manor and also a House in the same Town where the Lands hald lie; the Indenture which the Vende hath is greatly suspicious, and so is of Interlining and other like Things. Perk. S. 128.

And if the Words which testify, That the Grantor, Obligor or Feodator, &c. have put their Seal to the Deed, are rased, the Deed is insufficient notwithstanding it be sealed. Perk. S. 128. cites 43 E. 3. 1.

16. A. is bound to B. in 20l. B. rasas out 10l. and makes the Bond only for 10l. all the Bond is void, and yet this Act is to the Advantage of the Obligor. Arguedo Kelw. 161. b.

17. A.
Faits or Deeds.

17. A made an Indenture of Covenants to stand seised to Uses according to Perpetuities, and delivers this to a Stranger, to the Use of the Covenantor, who hearing of it utterly disapproved of it, upon which A. in every Part of the Deed rafed the Name of the Covenantor, and write the Name of J. S. Lord Keeper Egerton decreed, that the Deed was void as to all the Benefit which the Covenantor might have; but this not therefore void for the Uses and Eftates to the other Perfons; and that a new Deliver is necessary, otherwise there is not any Covenant for want of a Covenantor. Mo. 300. Waferer v. Row.


19. A Policy altered by Consent after 'twas underwritten, was held well. 2 Salk. 444. Bates v. Grabham.

[See (U) pl. 6.]


[And Altering.]

1. If a Deed be altered in a Point material by the Plaintiff himself, or by a Stranger, without the Privity of the Obligee, he it by Interlineation, Addition, Raflure, or by drawing of a Pen thro' the S. C. Middot of any Word, the Deed by this becomes void. 11 Rep. 27. Pigot's Case, per Cur' resolved, fo it is not now the Name Deed.

2. As if an Obligation be made to a Sheriff to appear, &c., and in the Obligation the Name of the Sheriff is omitted, and after the Delivery of it his Name is interlined, either by the Obligee or by a Stranger, without his Privity, yet the Deed is void by it. 11 Rep. 27. Pigot's Case, resolved per Cur'.

Bond was made to a Sheriff without the Name of Office, and in an Action upon it Vincaris Com. O. was found interlined after Delivery, but not found by whom; it was adjudged for the Plaintiff, because not in a Place material. Mo. 835. pl. 1125.

3. But if the Deed be interlined in a Thing not material, by a Stranger, without the Affent of the Obligee, this shall not make the Obligation void. Resolved 11 Rep. 27. Pigot's Case.

Anonymous.
A. and B. fel! and deliver a Bond to D. then by Consent of all the Parties, the Name, &c. of C. was interlined, and C. sealed and delivered it. Resolved it is good, and the Obligation of all These. 2 Lev. 35. Zouch v. Clay.

Blanks were filled up with Consent of Obligors after the Execution of the Bond, and held good. Mo. 547. Markham v. Gornall. — Cro. El. 627. S. C. held contra.

Vent. 185. Zouch v. Clay, takes no Notice of the Consent of the Parties, but that upon the Delivery by A. and B. a Space was left in which the Name of C. was put in, who also sealed and delivered it; and held, that the Bond remained the same as to A. and B. and they could not take Advantage of it, and 'twas the usual Practice for Sheriffs to make their Bonds for Appearance in this Manner.

4. But otherwise it is, if the Interlining of the Deed be by the Obligee himself, tho' it be in a Thing not material. Per Cartham, 11 Rep. 27. Pigot's Case.

5. A Man leased for Years by Indenture, reserving Rent, and in the Counterpart of the Lease 271. was referred, and in the Counterpart of the Leasee but 261. and after a Controversy grew between the Leases and Leasee, which Rent should be paid, and the Leasee would have 271. and the Leasee would pay but 261. But
Faits or Deeds.

But after the Leffe was content to pay 27 l. and so agreed with the Leffor, and for this the Leffe made a Stroke in his Indenture, and made it 27 l. This makes his Leffe void. Fauman's Case adjudg'd cites 399. & 41. El. B. R. 76.

6. If A. leave Land to B. by Indenture dated 10 Feb. 27 H. 8. and after dies, and C. the Heir of A. by Indenture recites the Leffe, but misrecites it, that is to say, reciting it to be dated 10 Feb. 28 H. 8. and then leases it by Indenture to B. for rents, to commence after the Expiration of the paid recited Leffe, and after the Sealing and Delivery of this last Leffe, this Mifrecital is rated and removed, and made 10 Feb. 27 H. 8. according to the true Leffe, but it is not known by whom it is done, nor when (a); This shall not avoid the Interest of the Estate for Years, tho' it shall avoid the Deed, because the Deed is not of the Essence to pass the ESTATE, but the Estate being well pass'd, and it not being necessary to shew the Deed for Maintenance of the Estate, the Estate shall not be destroy'd by it. Hill. 10 Car. B. R. between (b) Miller and Mowing for Jones and Barkley contra Croke. Injunatur Trin. 10 Car. Rot. 321. In this Case Justice Jones cites Allen Sawyer's Case in the Court of Wards to be rejudg'd, That the Nature of a Deed of Feoffment doth not destroy the Estate.

But Croke, held contra, that as it is a Leffe by the Deed, it is a Contract by the Deed; and the Party interested rating the Deed, he determines the Deed and his Interest by his voluntary Act, as if he had surrended; and the Contract being by Deed, he may not determine the Deed and the Covenant; but Quod in bice his; he doth destroy it, but perhaps Quod the Leffe it may have Essence, if the Leffe will; but this is at his Election, and not at the Election of the Leffe. Cro. Car. 399. cites 14 Rep. 27. D. 26l. 10 Rep. 97. in Dr. Leyfield's Cafe, 7 E. 3. 57. 14 H. 8. 257. per Brooks 44 B. R. 3. 42.

Adjudged good, being filled up by Consent.
Mo. 547. S. C. says, it was afterwards adjudged in a new Action in B. R. upon Demurrer, the Plaintiff having plead * Folio 30. * ed the Affent of A. and B.

Aro. El. 627. S. C. but that is an Action on the Cafe brought by C. against D. in Nature of a Declit for delivering the Effect of the Bond; and there Popham held, that if it had been appointed by the Obliger before the Sealing and Delivery thereof, that it should be afterwards filled up, it might perhaps be good and not have avoided the Deed.

A Bond is made simple for Payment of a Sum of Money, and afterwards the Obliger inducts a Condition, that if the Obliger in default the Obliger by such a Day, the Bond to be void. Adjudged per Three Justices against One, that the Obligation was good; but Three of the Justices of B. R. were of Opinion, that the Judgment ought to be reversed, tho' it was not; and about twenty Years afterwards, three other Justices of the C. B. in another Cafe before them, were of Opinion, that tho' B. R. did not proceed to Revise, yet that if it came in Argument now, it would be reversed without great Doubt; and per Fitzherben, he might plead Non e facit, for when the Condition is written after the Delivery, it is not the same Deed that was delivered. Kilw. 162, 164. Mic. 3 H. 8.

Perk. S. 124.

7. If A. at the Request of B. he bound in a Statute with B. to C. as his Servitor, and upon this B. causes D. his Servant to make a Counterbond, in which he and E. will be obliged to A. to give him harmless from the said Statute, and commands him also to leave out of the Condition of it the Christian Name of C. the Place of his Habitation, the County and his Addition, who does it accordingly, and after E. seals and delivers the Counterbond as his Deed, to the Use of A. and after the said D. by the Command of B. and by the Affent of E. inverts in the Spaces the Christian Name of C. the Place of his Habitation and County, and his Addition, and after B. seals and delivers the Obligation; This is a void Obligation against E. by the said Addition in the Spaces, tho' it was done by the Affent of C. Adjudg'd his Misc. 40 & 41. El. B. R. between Barkham and Connelone.

8. If a Deed be ras'd or interlined in the Date, in the Name of Parties, in the Limitation of Estate, in the Name of the Thing granted, or the Rent reserved, as suspicious to enfeebles the Deed, because in a Thing of

Substance
Substantia. But if it be in Recital or Addition, or in other Word of Explanation in Deeds, or Words of Course and Form, This shall not impeach the Credit of the Deed, because they are only Matters of Circumstance. Per Manwood Ch. B. Mo. 230. in Fanfaw's Cafe.

9. There is no Book in the Law, which avoids Leafes or Grants of Corporations for Variance in any of these four Circumstances, viz. Addition, Interposition, Omission, Commutation; if they retain the four first Principles of Substance, viz. Name of Persons, of House, Foundations or Dedication, and Place known before the Foundation in which the House is situate. Per Manwood Ch. B. Mo. 235. in Fanfaw's Cafe.

10. Where Words of Power reserved (as to grant, sell and demise, &c.) which give a larger Power than before, are interlined, but there is no Proof when these Words were interlined, or that it was by the Direction of the Grantor, they must be looked upon as if they had been originally incorporated in the Body of the Deed. Per Reynolds Ch. B. Gibb. 244. Fitz-Gerald v. Lord Falconbridge.

11. An Interlineation (if nothing appears against it) will be presumed to be at the Time of Making the Deed, and not after. Kebo. 22. Trowell v. Cafile.

12. A Deed of Revocation, and a new Settlement made by that Deed, tho' after the Sealing and Execution thereof Blanks were filled up, and not read again to the Party, nor repeated and executed, was yet held a good Deed. 2 Chan. Rep. 410. Paget v. Pager.

(U 2.) Actions and Pleadings, as to Rasures, Interlineations, Fallee Readings, &c.

1. In a Bond the Day was omitted, and a Space left, and after Delivery the Plaintiff infers the Day; per Dyer, the better Pleading had been to plead the special Matter, per quod scriptum praedictum perditum effectum. Mo. 28. pl. 89. Anonymous.

2. It ought to be specially pleaded, and not given in Evidence. Mo. 66. pl. 179. Anonymous.

3. Action on the Cafe lies against a Stranger interlining a Bond by Order of the Obligor, and so avoiding it; and a Writ shall be awarded to inquire of Damages. Cro. El. 626. Markham v. Gomafton.

(X) Breaking off the Seal.

1. If the Seal be taken away from the Deed, it is not any Deed. Where the Seal is broken off, Not of. Here is a good Plea: but if there is any special Matter, the Jury may find it. 5 Rep. 119. b. — D. 112. pl. 50. Peres v. Bishop.
2. If there be no Manner of Print remaining, by which it may appear that it ever was sealed, it shall avoid the Deed. 14 H. 4. 36. b. Demurrer.

3. If the Seal be once severed from the Deed, and after severed together, and glued to it again, yet the Deed is void by it. 7 H. 6. 18. Curia. Perkins, S. 135.

4. If the Seal of a Deed be a little bruised, whether it be an antient or new Writing, if Part of the Seal remains, upon which there is any Print, the Deed is good enough; but if the Part which remains to the Deed has not any Print, then the Deed is insufficient. Perkins. S. 136.

5. Debt was brought upon a Bond, and after Plea pleaded the Seal was broken; the Jury were directed to find the special Matter. D. 59. pl. 12. Nichols v. Haywood.—This Accident shall not be assigned for Error. D. 59. pl. 12. Marg. cites 41 Eliz. Worlsey v. Charnock.——ibid. cites Michel v. Stockworth and Andrews.——Ow. 8. Michael's Cafe, had it been before Issue joined, it would have avoided the Deed——cited 2 Show. 29.

6. Debt upon Bond against Two, the Seal of one is broken; this avoids all the Deed, tho' the Bond is joint and several; for this implies jointly, and it is not material who broke the Seal. D. 59. pl. 12. marg. cites Paf. 3 Jac. B. R. — 2 Show. 28. Scaton v. Henfon.

7. A. and B. covenant with Six, who separatim covenant with A. and B. one of the Seals of one of the Six is broken off; this does not avoid the Deed. But if the Seal of A. or B. who covenanted jointly had been broken, the Deed had been defeated. 5 Rep. 23.——Cro. Pl. 408. Mathewfon v. Lydiate, S. C. — 470. 546. S. C.:—2 Build. 248. — cited Poph. 161.

8. A. Deed was left with Baron Snigg, and by Casuality of Fire the Seal was melted off. The Defendant being a meer Stranger, and Owner of the Land (the Plaintiff by the Deed claiming a Water-course thro' it) pleaded a special Non est factum; Plaintiff moved, that he might plead the General Issue, and then the Jury might well find all the Special Matter for the Court to judge upon: Per Coke Ch. Just. we cannot aid in this (tho' Snigg made an Affidavit); for if his Right depends on a Deed, if he lose his Deed, by this he loses his Right, and no Remedy here for him; agreed per Curiam (absente Doderidge); afterwards the Book of 43 Eliz. c. 3. was remembered, that if one has a Deed, and the Party, from whom he had it, takes it from him and pulls off the Seal, he may plead this Deed without shewing it, but shall plead that his Adversary has done this. It was urged, that Ne granta pas a Stranger may plead, but non est factum; but an Executor may plead Non est factum. 3 Build. 79. Moor v. Salter.

9. Seals were broken off from a Deed to lead the Uses of a Recovery. Yet upon Examination it was admitted to guide the Uses, it being proved to have been done by a little Boy, and that the Seals were once annexed, and being compar'd together, the Rasures of the Parts agreed. Lat. 226. Anonymus.
(X 2.) Cancelled Deeds. The Effect thereof at Law.

1. Cancelled Deeds were allowed to be given in Evidence, Proof being first made of the Truth of their being cancelled. Het. 138. Beckrow's Case.

2. Commissioners of Bankrupts had assigned a Bankrupt’s Goods to A. B. C and D. But his Deed of Assignment was afterwards cancelled, and a new Deed made to A. B. and C only, who without D. brought an Action for the Goods; and per Rainsford and Wild Jut. (Hale Ch. Jut. being sick) tho’ the Cancelling of the prior Assignment does not alter the Property, but that it remains in A. B. C and D. and tho’ D. is not Party to the Action, yet the others upon Not guilty pleaded shall recover Damages in Trover for two Parts of the Goods, and shall not be non-suited; but the Defendant might have pleaded this in Abatement of the Writ for so much. But having pleaded Not guilty, they, tho’ Jointenants with one another, shall recover Damages for their Parts; to which Sir Will. Jones, of counsel for the Plaintiff, hesitantly submitted. 2 Lev. 113. Nelthorp and Farrington v. Dorrington.

3. The Court declared, that tho’ the Deed appeared cancelled, yet it was a good Deed, and that the Cancelling thereof did not devest the Estate of the Trustees therein named, and that the Trust thereby created ought to be performed. 2 Chan. Rep. 160. Leech v. Leech.

4. Grant of an Office to A. and B. for their two Lives and the Life of the longest Liver of them, B. keeps the Deed without being produced; which in Trial of an Action brought by A. appeared to be cancelled; it was insisted, that the Estate in the Office was thereby destroyed; but per Cur’ not as to A. unless it appeared that A. had a Hand in the Cancelling it. Vent. 297. Woodward v. Afton.

5. A Rent or other Grant is not left by the Destruction of the Deed, as a Bond or Choise en Action is. Per Cur. Vent. 297. Woodward v. Afton. — The Property remains the same. 2 Lev. 113. Nelthorp and Farrington v. Dorrington. — 2 Vern. 476. Lady Hudson’s Café cited there.

6. A Father having taken Displeasure at his Son, made an additional Jointure on his Wife by a voluntary Conveyance, which he kept in his own Power, and being afterwards reconciled to his Son, the Father cancelled the additional Jointure, and died. The Wife after his Decease found the cancelled Deed, and recover’d by Virtue of it. Cited per Lord Wright, 2 Vern. 476. as Lady Hudson’s Café —— cited per Lord Wright Ch. Prec. 235.

(X 3.) Cancelled Deeds relieved in Equity.

1. A Bond was taken away fraudulently and cancelled. Deemed, that the Widow ought to have Satisfaction out of her Husband’s Estate by whom the Bond was cancelled, and as much Benefit, as if it had been uncancelled. Fin. Rep. 184. Brown v. Savage.

2. A Bond torn may be relieved in Equity. Per Finch C. Obiter. Vern. 28. in the Case of Wilcox v. Stuart.

3. A devil’d his Lands to several Relations, at the Funeral a younger Brother of the Heir at Law snatches the Will out of the Executor's
Faits or Deeds.

Cutur's Hands, and tore it in many small Pieces, the Pieces (especially of that Part in which the Land was devised) were picked up and fitted together. A Bill was brought to establish the Will; and decreed the Devifees to enjoy against the Heir, and he to convey to them, tho' no direcft Proof was made, that what was done was by his Direction. 2 Vern. 441. Haines v. Haines.

A. by Anfwer confefs'd he had in a Paffion burnt his Marriage Articles, but it being proved, that he had produced them at a Com- miilion after the Time he pretended he burnt them, he was committed to the Fleet, and tho' he made Oath he had them not, and could not produce them, yet the Court would not discharge him, till he confented to admit, they were to the Effect in the Bill. 2 Vern. 564. Santon v. Rumfey.

(X 4.) Remedy against Perfons Cancelling and Deftroying Deeds.

1. A. delivered a Deed of B. to J. S. who tore it in Sport without Malice, by Misfortune and Chance. Both A. who delivered the Deed, and J. S. who tore it, were imprifoned, and the Deed was irrecloud immediately. Br. Faits, pl. 88. cites 3 E. 3.

2. If a Man finds a Bond, and cancels it, Trespafts Vi. & armis lies, for he destroys the Thing found. Cro. E. 723. Watfon v. Smith.

3. Action on the Cafe lies for tearing off the Seal of a Deed, by which J. S. granted to the Plaintiff annum annualem Reddiutum five Annuitation of 10l. for his Life, tho' the Plaintiff showed not, whether it was an Annuity or a Rent, or that it was the Seal of the Granitor, or the Seal of the fame Deed, but only Sigillum eidem annexat'; or that he loft the Annuity; yet it was adjudged for the Plaintiff. Cro. J. 255. Afh v. Brudnell.

4. A. on the Marriage of his Son settled several Lands in this Manner, viz. as to Part, to the Use of himself for Life, and after to the Use of his Son for Life, then to his fife and other Sons in Tail, and for want of such Issue, to the Use of the Plaintiff, who was his Brother, and his Heirs; and as to other Part of the Lands, to the Use of the Son for Life, and after to the Use of the Wife for her jointure, then to the fife and other Sons in Tail, and for want of such Issue, to the Plaintiff and his Heirs; the Son and Wife died without Issue in the Life-time of A. and after their Deaths A. got the Settlement and cut it in pieces; but the Counterpart was intire, and in the Hands of A. and the Bill was brought to difcover it, and have it preserved; and the Counterpart being confifled in the Anfwer, the Plaintiff obtained an Order at the Rolls to have it brought into Court, and a Motion was made to have that Order discharged, for that the Remainder to the Plaintiff was merely voluntary, and therefore he ought not to have any Aid from a Court of Equity; but the Court would not Discharge the Order, but made the Deed be brought into Court, there to remain, and thereby bind A. from selling the Estate from the Plaintiff. Trin. 1691. Abr. Equ. 168. Brookbank v. Brookbank.

5. 2 Geo. 2. C. 25. S. 3. If any Perfom foall steal, or take by Robbery, any Exchequer Bills, Bank-Notes, South-Sea Bonds, Eaft-India Bonds, Dividend Warrants of the Bank, South-Sea Company, Eaft-India Company, or any other Company, Society or Corporation, Bills of Exchange, Navy Bills or Debentures, Goldsmiths Notes for Payment of Money, or other Bonds or Warrants, Bills, or Promiffory Notes for the Payment of
of any Money, being the Property of any other Person, or of any Corporation, notwithstanding any of the said Particulars are termed in Law a Chace in Action, it shall be deemed and construed to be Felony of the same Nature and in the same Degree, and with or without the Benefit of clergy, in the same Manner as it would have been if the Offender had stolen or taken by Robbery any other Goods of like Value with the Money due on such Orders, Tallys, Bills, Bonds, Warrants, Debentures or Notes, or secured thereby, and remaining unsatisfied; and the Offender shall suffer such Punishment as he should or might have done, if he had stolen other Goods of the like Value with the Money due on such Orders, Tallys, &c.

(Y) What Act or Thing will avoid a Deed. [In part or in all.]

1. If divers several Persons make several Covenants in one Deed, with one another, and no joint Covenant, and the Seal of one of the Covenanters is broken off, yet this shall not avoid the Deed as to the others. Tr. 2 Ja. B. adjudged between Alabaster and Hickman. 5 Rep. 22. b. 23. adjudged. Mathewson's Case.

2. If an Under-Sheriff covenants with his High-Sheriff to save him harmless of all Fines and Amencements for any Escape, and covenants also, that he will not execute any Writ of Execution above the Sum of 20l. the this last Covenant be against the Law, and void; (because by the Statute 27 Ed. cap. 12. the Under-Sheriff takes his Oath to execute all Process) yet this doth not make the other Covenants void. M. 11 Ja. B. between Sir Daniel Norton and Symms, adjudged. Tr. 12 Ja. B. same Case adjudged.

3. In the said Case, if the Under-Sheriff obliges himself in an Obligation, with Condition for the Performance of Covenants in the said Indenture, that some of the Covenants are against the Law, and void, yet the Obligation is not void by it, but he is bound to perform the good Covenants in the Indenture. Tr. 12 Ja. B. adjudged, the Covenants being several, between Sir Daniel Norton and Symms.

4. If divers covenant jointly by a Deed to do a Thing, and after the Seal of one of the Covenantors is broken off from the Deed, this shall make the Deed void as to all the other Covenantors. 5 Rep. 23. Mathewson's Case.

5. If two be bound in an Obligation, and after the Seal of one is dissolved and taken from the Obligation, this makes the Obligation void as to the other, the seal of whom remains to the Obligation not hurt; in as much as the one is discharged by the Taking off his Seal, and by Consequence the other also. 3 D. 7. 5. 11 Rep. 23. b. Pigo's Case.

6. If a Deed contains divers distinct and absolute Covenants, if any of the Covenanters be altered by Addition, Intercession or Ru-
(Z) Who shall have them.

1. If Feoffee with Warranty bail the Charters concerning the Land to another, and after enfeoff the Bailee of the Land with Warranty, the Bailee shall not have the Charters to him bailed, because the Bailee ought to have them to touch over when he shall be bailed. 39 El. 3. 1st.

2. If a Man makes a Feoffment in Fee, no Deeds or Evidences pass to the Feoffee, but only the Deed of Feoffment itself.

3. If a Man makes Feoffment in Fee to J. S. to the Use of J. N. in Fee, the Deeds belong to the Feoffee, and not to the Cessy que Use, tho' he has not and Estate continuing in himself, for he was only the Conveyance now since the Statute of 27 H. 8. For before the Feoffee ought to have it, and the Statute hath not expressly given the Deeds to the Cessy que Use. D. 10 El. 277. 58. Cuth. 37 El. B. Refold between (a) Stukecwell and Bagwell. D. 6 J. B. R. per Cur. praefer Walmey, between the Countess of (b) Huntingdon and Sir Anthony Hildmay.

Walmey Jul. said, that in one Ethin's Cafe, wherein he was of Counsel, it was held, that the Deed appertained to the Feoffee, and not to Cessy que Frat. Cro. E. 537.


They belong to the Feoffee to have his Warranty paramount, and the Feoffee shall not have them, unless there be a Covenant between them to that Purpose. Br. Charters de terre, pl. 15. 44 E. 3. 1. per Thoresp. — Ibid. pl. 38. 39 E. 3. 17. per Kybett, quod non negotio. — For the Evidences are as it were the Sinews of the Land, and the Feoffee being not bound to Warranty, has no Use of them. But Evidences which concern the Poffifion, and not the Title of the Land, the Feoffee shall have. Co. Lit. 6.

4. If a Man makes Feoffment in Fee of Land, without any Warranty, the Feoffee shall have all the Charters, Deeds and Evidences concerning the Land, as incident to the Land, to the Intent that by them he may defend the Land. Co. Lit. 6.

5. The same Law is when a Feoffment is made with a Warranty only against the Feoffee and Heirs, for the Feoffee cannot recover in Value upon this Warranty. Co. Lit. 6.

6. If Feoffment be made of Land with Warranty, upon which the Feoffee is bound to Warranty, and to render in Value, there the Feoffee, because he is bound to defend the Title, shall have all Deeds which comprehend Warranty, of which he may take Advantage. Co. Lit. 6.

7. So in this Cafe the Feoffee shall have such Deeds, which may serve to derogate the Warranty paramount. Co. Lit. 6.
Faits or Deeds.

8. So in this Case the Feoffor shall have all Deeds and Evidences, which are material for the Maintenance of the Title of the Land. Co. Lit. 6.

Deeds is bound to render in Value, there is great Reason that he should have all the Evidences material or requisite to defend the Title, and the Feoffor has trusted to his Warranty, by which he shall vouch the Deed. 1 Rep. 1. b. Lord Buckhurst's Case.

9. But when a Testament is made with Warranty, the Feoffor shall have the Evidences which concern the Possession, and not the Title of the Land. Co. Lit. 6.

10. If a Deed for Life be made, the Remainder over in Fee, this Deed appertains to the Lord during his Life. 12 H. 4.

11. And not to him in Remainder. 7 H. 6, 1. 10 Rep. 93. b. Dr. Lepheild's Case.

the Remainder Man, he may detain it. Br. Charters de terre, pl. 16. 47 E. 3. 18.

12. If a Deed for Life be, the Remainder in Tail, and Donor releases to the Leesee, who dies, this Deed both not appertain to him in Remainder. (It seems it is intended that this enlarges the State of the Leesee.) 9 H. 6. 51.

If a Man makes a Deed for Years, and afterwards confirms his Estate in Fee, the Heir of the Feoffor shall have the Deed of the Leesee for Years, as well as the Deed of Confirmation, because the Deed doth make the Confirmation good. And so of every Deed which makes his Title, or a Release, or the like, without which his Title shall not be safe, and he shall have an Action of Detinue for them. F. N. B. 138. (8) cites 9 E. 4. 53.

13. If Gift in Tail be to A. Remainder to B. in Tail, and then A. dies without Issue, B. shall have the Deed, which Nota for clear Law. Br. Charters de terre, &c. pl. 52. 3 H. 7. 15.

14. The Deed of Intail, upon Discontinuance of the intail'd Estate, belongs to the Discontinue, and not to the Heir, for he has no Possession of the Land. Per Redc. and Keble and Tremaile accordingly. But per Fairfax and Hufsey, the Deed belongs to the Heir, for it is no Chattel, nor passeth by Gift de omnibus Bonis &c. and Replevin lies not of a Deed, for it is an Inheritance as the Land is, and of the Nature of the Land, and shall go to the Heir. And if Tenant in Tail cancels or burns the Deed, the Heir is without Remedy for the Deed, but not for the Land, for he shall have Formedon tho' it was of Rent, and this without Monfrance of it, for it is in the Right. But in Avovery he shall flew the Deed, for it is in the Possession. Br. Charters de terre, &c. pl. 53. 4 H. 7. 10.

15. If Land be given to A. for Life, Remainder over [for several] by Deed, any of them who first gets the Deed shall retain it. And therefore whoever has any Land contained in the Deed, where others have the Residue of the Land, yet he that has this Parcel, may on Account thereof retain the Deed. Per Fairfax and Hufsey. Bro. Charters de terre, &c. pl. 53. 4 H. 7. 10.

16. Deed of Intail, after the Tail determined, belongs to the Donor, and in Case of his Death to his Heir, and he may have Detinue for it; and the Original and Counterpart are but one Deed in Law, and both belong to the Donor or his Heir. Br. Faits, pl. 51. 38 H. 6. 25. Br. Charters de terre, &c. pl. 47. 38 H. 6. 24.

17. Tenant
17. Tenant in Fee-simple may give the Deed or Charter of his Land to whom he will, but *otherwise of a Tenant in Faits, for in the last Case the Heir shall have it, but not fo of the Fee-simple. Br. Faits, pl. 86. 9 H. 6. 60.

The Heir shall have all the Deeds notwithstanding that his Father gave them away, for it may be that the Donee may in by Deñfe, and after the Diffîfe receiv'd to him, the Illue shall have this Releafe. Br. Charters de terre, pl. 36. 9 E. 4. 52.

18. Lease to A. for Life, Remainder to B. in Fee, after the Death of A. the Deed belongs to B. But if a Release be to A. only, this does not belong to B. after A.’s Death. Bro. Charters de terre, pl. 6. 9 H. 6. 54.

19. If A. infeoffs B. on Condition, and B. breaks the Condition, the Deed belongs to the Feoffor again; for it shall not remain as an Evidence against him or his Heirs afterwards. Br. Charters de terre, &c. pl. 5. 9 H. 6. 36.

20. If I am infeoff’d with Warranty to me and my Heirs, and after I infeoff A. in Fee, and bind my Heirs to Warranty, and die, if any one gets the Deed by which I was infeoff’d, my Heir shall have thereof Detinice by Special Count, and Non ratione terre. Br. Charters de terre, pl. 58.

21. If A. infeoff B. with Warranty to him, his Heirs and Assigns, and B. infeoff C. with Warranty, tho’ C. may vouche A. as Assignee, yet he shall not have the first Deed; for B. has made Warranty to C. and B. may be vouched, and therefore B. shall have the first Deed to have his Voucher over. 1 Rep. 1. b. the fourth Resolution in Lord Buckhurst’s Case.

22. One Pardner may have the Charters which concern her Party only, and shall have Detinice thereof against her Sister on a Special Count. F. N. B. 138. (G) the Notes there.

23. The Heir shall have a Detinice of Charters, altho’ he hath not the Land; as if I be infeoffed with Warranty, and I infeoff another with a Warranty in Fee, my Heir shall have a Detinice of that Deed by which I am infeoffed, because he may have Advantage of the Warranty. F. N. B. 138. (L) cites 9 E. 4. 53.

24. And if my Father be diffeis’d, and die, I shall have a Detinice for the Charters, altho’ I have not the Land, and the Executors shall not have the Action for them. F. N. B. 138. (L).

25. After a Leafe is determined, the Counterpart of the Leafe belongs to the Leffor. Jenk. 254. pl. 46.

26. Counterpart of a Deed, by which a Rent is reserved on a Pecuniary, does not pass to the Vendee by Bargain and Sale of the Rent, as incident, for it is not the Original Deed by which the Rent was at first reserved. Per Omnes, except the Ch. Juft. who says, that this Counterpart waits upon the Interesse, and is good Evidence for it. Yelv. 224.

27. When the Common or Statute Law gives Lands, it gives the Means to keep them, as the Evidences. Arg. God. 323.

28. If A. be feoffd of a Seigniory, Rent, Advoçaton, or any Thing which lies in Grant, and grants it over to B. with Warranty, and B. grants it to C. with Warranty, C. shall have the first Deed, because it is necessary to the making his Title, and without it he cannot make any Defence against A. or any claiming by him; and when B. grants to C. the Rent or Advoçon, C. ought to have the Effect of his Grant, and B. cannot in Derogation of his Grant detain any Thing which
which is of Necessity, and of the Essence of his Grant. 1 Rep. 1. b. fifth Resolution in Lord Buckhurst's Case.

29. If A. makes a Feoffment with Warrant, and dies, the Heir of the Feoffor shall have all Charters, which the Feoffor himself might detain (tho' the Heir has nothing by Decent) by reason of the Possibility of the Decent after. 1 Rep. 1. b. fifth Resolution in Lord Buckhurst's Case.

30. The Lord by Escheat shall have all the Charters, which concern Br. Charters the same Land, because (as Popham gives the Reafon) he is in in le de terre, pl. Poff, and cannot vouch; and therefore the Feoffor shall not detain the Evidences, for he can be at no Prejudice. 1 Rep. 2. ut supra, cites E. 4. 14.

31. A. by Deed infeoff'd B. and C. and to the Heirs of B. and the Deed of Feoffment, and other Evidences are delivered to B. and afterwards B. dies, C. shall have the Deed by which he was enfeoff'd, because it makes his Eftate; but not the antient Deeds, for they were delivered to B. the other Jointenant, for the asfuring his Inheritance.

32. And if A. after such Feoffment release to B. and C. and delivers the Deed to B. C. shall not have it, for C.'s Eftate was per'ef de terre, pl. without this Deed. 1 Rep. 2. cites 34 H. 6. 1. a.

33. But per the Reporter of the Year-Book, if a Release be made to Br. Charters two, who have joint Eftate by defeasible Title, and the Deed is delivered de terre, pl. to one of them, who dies, in this Cafe the other who survives shall have it, because it perfects his Eftate. 1 Rep. 2. b. cites 34 H. 6. 1. a. 6 H. 7. 3. b. 21 H. 7. 33. a. according to the Reafon of this Cafe.

34. It was said, that if A. infeoff B. and C. to them and their Heirs, and gives the antient Deeds to B. and B. dies, C. shall have all the Deeds, and not the Heir of B. for he can have no Lots by not having them, or Benefite by having them, as C. may; and C. shall have them as Things which go with the Land. 1 Rep. 2. b. in Lord Buckhurst's Cafe.

[See (H a) Sutcliff v. Constable (S a)]

(A a) Who may justify the Detaining them.

1. One Cofarceener may justify the Detaining of the Charters of the Land in Cofarceency against the other in Detinute, fo they belong to her as well as to the other. 3 D. 6. 19. b.

2. After Partition, the one Cofarceener cannot justify the Detaining against the other the Charters of the Land, which the alone has allotted to her. 3 D. 6. 19. b.

3. If Tenant in Fee-simpie gives the Charters concerning the Land to another, the Donee, tho' he has nothing in the Land, yet he may justify the Detaining them against the Heir who has the Land. 10 D. 6. 20. b.

4. A Lease for Life is made to A. Remainder to B. in Fee, if the Deed is delivered to B. he may retain the Deed. Br. Charters de terre, pl. 16. 47 E. 3. 18.
Faits or Deeds.

5. *Grantee of Deeds by Tenant in Tail* cannot detain the Deed of Intail against the Issue after the Death of the Grantor: But 'tis otherwise of such Grant by *Tenant in Fee-simple*. Cro. E. 496. in Case of Kellack v. Nicholson.

6. Several Writings left with Counsel for his Opinion, in order for Sale of the Land, were delivered to a Scrivener by Confest of the Parties, who finding a Deed concerning the Interest of a third Person, delivered it to him; upon Complaint to the Court, he was commanded to produce the Deed to be delivered again to the Parties, they conceiving it to be *An Abuse in his Practice*, which was under the Regulation of this Court. Vent. 46. Parry's Case.

[See Attorney.]

(B a) Kept private by, or in Custody of the Maker.

1. **The** Condition of a Bond was to convey Lands to his Son to enjoy after the Obligor's Death. In Debt the Defendant pleaded, that he made a Feoffment to a Stranger to the Use of himself for Life, and after to the Use of his Son in Tail. This upon Demurrer was held to be no Performance as it was pleaded, for the Infant was not made Party to the Conveyance, nor had he any Deed or Assurance to prove his Estate, so as he is not sure thereof, nor can have any Knowledge perhaps of such an Estate, nor Means to prove the Uses limited, which was not the Intent of the Condition. Cro. E. 625. Stutfeld v. Somerfet.

2. A is bound to make a Release to B, 'tis not sufficient to make it, and deliver it to a Stranger to the Use of the Plaintiff. Cro. E. 826. cites 20 E. 3. Aud. Quer.

But where a *voluntary Settlement* was made to Trustees and their Heir, in Trust to receive the Rents, &c., and put them out from Time to Time for the Benefit of one of his Daughters, and entered into a Bond to the same Trustees for Payment of 100l. for the Use of the same Daughter at a Day certain, but kept both Deed and Bond, and received the Profits of the Estate till his Death, on a Bill by the Daughter for a Satisfaction out of the Profits from the Time of the Settlement made, and of the 100l. from the Time it was made payable, Lord Wright said, they were the Father's Deeds, and he could not derogate from them, and decreed the Interest of the Bond from the Time: But as to the Profits of the Estate, Plaintiff and Defendants agreed to let the Profits of the Lands against the Daughter's Maintenance. But tho' the Father had by his Will given her a *Legacy in Satisfaction* of the Bond, yet the Court would not tie her up to that, but left her to her Election. Ch. Prec. 193. Ward v. Lant.

3. A Bond to a Daughter, found after the Father's Death several Years, was set aside; and Lord Wright said, it appeared to be the Father's Intention, that no Use should be made of it, but only to protect him from Taxes, as she had owned the took the Intent to be; and it was without Condition, and payable immediately; and he always kept it by him, and therefore if she had got it from him, and put it in Suit against him, he thought Equity would have relieved him against it, it being voluntary, and only for a special Purpose. Ch. Prec. 193. Ward v. Lant.

4. A Bond for 1500l. was made at the Time of a Will, and shown to the Obligee with his Will, and afterwards found with his Will, and it being for a like Sum which he had promised some Years before to give to the Obligee, on his marrying the Obligee's Daughter in Law, and whose Fortune was in the Obligee's Hands, but not adjusted, Lord Harcourt looked upon it to be only in Nature of a Legacy, and voluntary as against Creditors. Ch. Prec. 370. Loeffes v. Loven.

5. A.
Faits or Deeds.

5. A. conveys his Estate to the Use of himself for Life, with Power to Mortgage such Part as he shall think fit, Remainder to the Trustees to sell and pay all his Debts, but continues in Possession, and keeps the Deed. He becomes indebted afterwards by Judgments, Bonds and simple Contracts. The Deed of Trust is fraudulent, as against Creditors by Bond and Judgment, who having no Notice of the Settlement, shall not come in in Average only with the other Creditors. 2 Vern. 510. Tarback v. Marbury.

(Ba 2.) Take by a Deed. Who shall not, tho' named in the Premisses.

Eaue was made to A. and B. his Wife, & primogenito proli, Habendum to them, and the longer liver of them successively during their Lives; and then the Husband and Wife had Issue a Daughter born afterwards. Per three Justices the Daughter had no Estate, because she was not in esse at the Time of the Grant. Ow. 152. Stephens's Case.

(Ba 3.) Lost Deeds, &c. In what Cases Actions lie at Law, tho' the Deeds are lost.

1. Action lies not for a Deed determined, or for the Counterpart of an Indenture, in which a Warranty is contained, without a special Grant. Brownl. 222. Sutcliff v. Contable.

2. Where a Demise is made of Lands, rendering Rent, tho' the Lease be lost or mislaid, the Landlord may sue for the Rent, and declare on a Demise in general, without saying, it was a Lease in Writing; and so you may in all Cases, where it is not a Thing that lies in Grant, &c. Per Cur. 2 Vern. 98, 99.

[See Trial (B f. 6.) Lost Deeds.]

(Ba 4.) Where in Cases of Deeds lost Actions shall be brought on the Counterpart.

Covenants with B. to make an Assurance of Land before Mich. by Indenture, A. dies, the Covenant unperformed, and the original Deed comes into the Hands of the Executors of A. B. brought a Writ of Covenant on the Counterpart; and per Cur. it does not lie without the Deed itself. Per Walmesley, he may have an Action of Detinue to recover the Deed. Noy 53. Yelverton v. Cornwallis. — In Case of a Mortgage lost it was decreed, that the Counterpart should be allowed as an Original, and admitted as such at any Trial, &c. Fin. R. 239. Briscoe v. Earl of Denbeigh & al'.

(Ca) Who
(Ca) Who shall take or be bound by the Deed. 
One not named in the Premisses as a Party.

1. A. devised B. and then A. infant'd J. S. by Deed, thus, viz. 
Know all Men, &c. Deed ego A. per annum & conditum B. 
Deed & conceis, & hac presenti, &c. unto J. S. and that be done be- 
fore any Entry made by B. thefe Words, (per annum & conditum of A.) 
shall not bind him, but that he may enter, notwithstanding that 
it be true, that the Feoffment was made with his Affent and Content; 
for when he is devisifed, he hath but a Right, which shall not depart 
from him, if not by Extinguishment; and it ought to be at leaft by 
Deed, and made unto him, who at the leaft hath the Possifion of the 
Freehold in the fame Land at the Time, &c. And in this Cafe the 
Feoffee had not any Feoffment at the Time of the Feoffment, and 
the Diffiefe cannot enter in the Name of the Diffiefe, and revest the 
Possifion in the Perfon of the Diffiefe, for the Diffiefe himfelf is in 
Possifion, and he cannot enter upon himself, &c. So it cannot be, 
that the Diffiefe doth make this Feoffment, as Servant to the Dif- 
fiefe, for it is made in the Name of the Diffiefe, &c. Perk. S. 156.
2. And if a Stranger had entered in the Name of the Diffiefe, and 
by his Commandment had made a Feoffment in the Name of the Diffie- 
fee, & per annum & conditum of the Diffiefe by a Deed, containing 
in it a Warrant of Attorney to make Livery of Seifin, by fuch 
3. If J. S. be infant'd to have and to hold to J. S. and T. K. and 
Livery of Seifin is made unto J. S. according unto the Deed, it is void 
unto T. K. Perk. S. 164, cites 12 E. 3. 77. 5 H. 4. 2.
4. But if Livery of Seifin had been made unto T. K. according unto 
the Deed, then he takes by the Livery of Seifin, and not by the Deed. 
Perk. S. 164.
5. If I leafe Land to J. S. Habendum to him for twenty Years, Re- 
mainder to J. K. in Fee, he fhall take the Fee-fimple, and yet he is not 
Tracy—160. S. P. arg.
6. One granted to a Baron and Feme, being Tenants for Years in 
Possifion, that they fhould have the Lands for their Lives, and 
granted further by the fame Deed, that after their Deaths their Children 
fhould have the Land for 40 Years. Per three Justices, the Children 
fhall take by way of Remainder, tho' there be no Word of Remainder 
in the Deed; and as a Remainder they may take it, tho' they are not 
Parties to the Deed. Cro. E. 10. Anonymus. — One may take an 
Executory Estate, or by way of Remainder, that is not Party to a 
7. Lesfor devis'd to his Leffe for Years his Land for the fame Term 
he had before, paying the fame Rent at the fame Days, and under the 
rede Covenants which were in the former Leafe. Adjudg'd it was not a 
Condition, but only a Covenant, or rather a Truft. 2 Show. 40. cites 
Adjudged that they were vain Words. —— Ow. 34. S. C. they are 
not either Condition or Covenant, cited per Popham. Poph. S. as 
Michel's Cafe. ——
8. In Copyhold Grants a Perfon may take by being named in the 

S. C. cited 
per Brown J. 
Cart. Co.
9. A Demise was thus, &c. This Indenture made, &c. between A. of the one Part, and B. his Wife, and their Children lawfully begotten at the Assignment of the said B. of the other Part. B. and his Wife had a Child born at the Time, and after had several other Children. But per tot. Cur. The Child then born, or those born afterwards, took nothing. And per Ayliff Just. The Child then born should have taken, had it not been for the Words (at the Assignment) but by reason of those Words the said Child is excluded. 4 Le. 64. Trettarm vs. Friendhip.

10. A. made a Lease to B. by Deed Poll, Habend to B. and his Wife and Daughter success, Sient scellant & nominant in ordine. B. and his Wife died, per Cur. The Daughter has a good Estate in Remainder, and these Words make the Grant certain enough. 4 Le. 246. Grubbam's Cafe. Cro. J. 563. S. C. Greenwood v. Tyler. (a)


(a) But where it is reported thus: The Deed was made between A. of the one Part, and B. of the other, by which A. demised the Land to B. and his Wife and Daughter, Habendi to them, ut supradictum et, & c. coven. viventi succedaverit, for Term of their Lives; for that the last Part shows that all shall take, and not the Habendum only; and this is much enforced by the Words (ut supradictum et) and (the Succesar) is before the Limitation for all their Lives, and it was adjudged accordingly; but upon Error in the Exchequer Chamber, the Justices doubting, they moved the Parties to compound, who did so.

11. Where A. and B. are named only in the Premises of the Indenture as Parties of the one Part, and C. of the other Part, tho' J. S. is afterwards named in the Deed, 'tis a void Deed as to him, and no Covenant made to him, or by him, is good; for he is a Stranger to it, and his Sealing and Delivery is not material. Per Coker, arg. and he agreed the Cafe put on the other Side. 4 E. 2. Where a Bond was made by J. S. and ad majorum vet securitatem invent. J. D. fidejusficio, and J. D. put his Seal to it, this was held his Deed, for 'tis not mentioned whole Deed it is, and if it is the Deed of both which are named and put their Seals, &c. Cro. E. 56. East Skidmore, &c. v. Vaud Stephens. — And Wray, said, they conceived the Matter in Law accordingly in the Principal Cafe, which was of an Indenture between Parties, and a Releas made by one not Party, but who was covenanted with, and who covenanted in the Deed, and executed the Deed, was held not good.

12. A. bargains and sells Land by Indenture inrolled to B. and there was a Proviso, viz. Proviso sefmer, and it is covenanted, granted, &c. that J. S. (who was a Stranger) shall dig in the Land for Mines. Adjudged, that this Proviso doth not make a Condition or Covenant, but a Grant. Mo. 174. Lord Huntington vs. Lord Mountjoy.

13. Articles were made between A. of the one Part, and B. (not paying of the other Part) by which A. lets B. a House at 10 l. a Year, payable quarterly; and whereas the said B. both agreed and taken the House aforesaid, paying the Rent quarterly, &c. and leaving it in good Repair, and that the said Rent may be satisfied aforesaid, be it known unto all Men, that J. K. do covenant for my self, &c. on the Behalf of the said B. that the said B. shall pay the Rent, and perform the other Covenants, &c. and this Deed was sealed by B. and J. K. In an Action of Covenant brought on this Deed by A. against J. K. the Defendant upon Oyer demurred generally; but after Argument the Court was clear in Opinion, that the Action lay upon this Deed against the Defendant. Carth. 76. Salter vs. Kdigley.

14. He, that is no Party to the Deed, can neither give or take any Thing by it, &c. except it be by way of Remainder. Arg. Carth. 77: A Lease was in Cafe of Salter vs. Kidgley. — cites 3 Cro. 56. 2 Inf. 673. 2 Roll. made by A. to B. Holbro. to B. and M.

15. One, that is not Party to a Deed made between Parties, cannot S. P. but if take by the Deed, unless by way of Remainder. Per Levins Just. it be without 3 Lev. 139. in Cafe of Gilby v. Copley. — Hutt. 88. Windmīr v. a (between) Hobert. —— Hob. 313, 314. Greenwood’s Cafe.

16. A Man cannot take immediately, where he is not Party; but where do you find that a Man cannot give without being a Party? In a Deed of Feoffment a Warrant to Attorney to A. not a Party, is good now, tho' formerly held to be otherwise. Per Holt. Ch. J. Show. 59. in Cafe of Salter v. Kidley. —— Carth. 76. S. C.

17. Why cannot a Man oblige himself by a Deed, if there be express Words for it, and he seals it? Suppose at the End of an Indenture it be, And be it known unto all Men, that A. B. for himself covenants, &c. and he seals it, why should not this oblige him? Per Holt Ch. Juft. Show. 59. in Cafe of Salter v. Kidley. —— Carth. 76. S. C.

Covenant may be brought on a Deed Poll, but then the Party must be named in the Deed. 1 Salk. 197. Green v. Horn. — An Indenture of Chattel-party not being between Parties, by which one covenants with a Stranger to the Indenture to pay Money to another Stranger, both of whom are named in the Indenture, is good; and an Actton of Debt being brought thereupon by the Stranger, and the Count being by Expiration of it, was held good, tho' in Debt and not in Covenant, and tho' brought by him alone, to whom the Money was covenanted to be paid. 2 Lev. 74. Cooker v. Child. —— S. C. cited Lawv. 305. and refolv'd accordingly in the Cafe of Lucke v. Lucke.

20. Where a Deed runs in the first Person, Signing and Sealing makes a Man a Party, tho' not named therein. 1 Salk. 214. Nurie v. Frampton. —— 3 Lev. 140. in Cafe of Gilby v. Copley.


[See (F) pl. i.—Habendum.—Condition (X) ( )—Estate ( )]

(C a 2.) Bound
(Ca 2.) Bound who, and by what. Persons not named in a Deed.

There were two Obligors, the Name of one was omitted in the Bond, but both signed and executed. He whose Name was omitted, knowing nothing of the Omission, was applied to to give fresh Security, which he agreed to; but after, upon Discovery of the Omission, he refused, the other being run away; this is a proper Matter to be relieved in Equity. 3 Ch. R. 99. Crosby v. Middleton.—Per Cowper, Ch. his Hand and Seal is Sufficient Evidence, and the Omission is a sufficient Accident for Equity to relieve against. 101. — But where a Blank was left for the Christian Name in the Bond, and the Surname was interlined, and after the Obligor subscribed both Christian and Surname, 'twas adjudged sufficient. Cro. J. 261. Dobson v. Keyes.

(Ca 3.) Advantaged or bound. One not named in the Premises.

If A. gives Lands to have and to hold to B. and his Heirs, this is good, tho' the Feoffee is not named in the Premises. And yet no well advised Man will truft to such Deeds, which the Law by Construction makes good, but when Form and Substance concur, then is the Deed fair, and absolutely good. Co. Lit. 7. a.

2. The Plaintiff desired to be relieved for a Leaf made by the Defendant to him for Years, which the Defendant endeavoured to impeach, because in the Premises of the Leaf there is no Leafee named; but only in the Habendum; and the Cause being referred to the two Lord Chief Justices and the Lord Chief Baron, they certified their Opinion in Law, that the Leaf was good in Law, notwithstanding the Leafee was not named in the Premises of the Leaf, but in the Habendum only; and therefore it was decreed accordingly, that the Plaintiff should hold the said Leaf. Cary's Rep. 122, 123. cites 21 & 22 Eliz. Butler v. Dodron.

which is to design the Person and the Thing, and the Habendum to limit the Estate. 2 Roll. 67. Grant (K.s) pl. 13. cites M. 37 Eliz. B. R. per two Justices. Contra Co. Lit. 7.

[See (Ca) per tot.]

(Da) Who may take or be bound by it. One not signing it.

In the Queen's Patent there was a Clause for repairing and leaving in Repair. Refolv'd, that tho' the Leafee only takes by the Patent, and it is not made by him, yet this is as a Covenant on the Leafee's Part to bind him and his Assigns; for when he takes by the Patent, he confents to all therein, and the Words in that Clause are as spoken by him, and 'tis a Covenant that runs with the Land. Cro.
Faits or Deeds.


2. If there be two Leesees, and one only seals the Counterpart, yet the other shall be bound by the Covenants contained in it. Arg. 2 Brownl. 71. in Case of Portington v. Rogers. — So of Leesees, where he that did not seal entered and agreed to the Estate conveyed. Arg. 2 Roll. R. 63. cites 38 E. 3. 8. a. —— S. C. cited, D. 13. b. —— Jo. 309. S. C. cited, per Barkley Jusft. — Arg. Lane 78. cites 38 E. 3. 8. that a Man, that takes Benefit by a Leafe which he never signed, shall be bound by a Nomine pacte contained in it.

3. If Leesor seals, and not the Leesee, it is as good against him, as if both had sealed, in the Case of an Indenture, for an Indenture is the mutual Deed of both. Fin. Law 8vo, 109.

4. A Feme Covert is bound by the Covenant by the Acceptance of the Estate. Per Barkley J. Jo. 309. cites 3 H. 6. 4. 26. b. 43 & 45 E. 3.

5. An Estate for Life was made by Indenture, with Remainder over upon Condition. The Tenant for Life seals, and dies. The Remainder Man enters by force of the Remainder, he is bound to perform the Conditions, because he takes by the Deed. Arg. 3 Bulk. 163. cites 39 E. 3. 22.

6. A Promissory Note to pay 100l. for so much South-Sea Stock obliges the Person to transfer the Stock, by his accepting the Note. Gibb. 2. Anonymus.

[ See (F) pl. 2. (H 2.) ]

(Da 2.) Not Party or Privy, &c. In what Cases an Agreement to a Remainder, Leafe, &c. shall make the Person so agreeing liable to all Conditions annexed to such Estate, tho' not Party or Privy to such Leafe, &c.

1. A Leafe is made by Indenture to A. and B. and A. seals; B. does not, but enters and occupies. B. is liable to the Rent, per Thorpe. And Finch said, that this is a good Leafe; for his Agreement charges him. But he shall not be charged by a Condition in Gross in the Deed, which is no Parcel of the Leafe, but a Thing by it self, and Collateral, unless he seals the Leafe. Br. Dette, pl. 80. 38 E. 3. 8.

2. But the principal Case was, an Action of Debt was brought upon an Indenture of Leafe to A. and B. with a Penalty of 20l. for not performing Conditions; and A. seal'd, but B. did not, but agreed and entred as above, and was still living, and yet the Writ being brought against A. only, was abated. Br. Dette, pl. 80. cites 38 E. 3. 8. but says, Quod mirum, for he thinks this is not like a Penalty for Non-payment of Rent annually, for it is a Reservation. Ibid.

[ See Condition (X) ]
(D. a. 3) Bound or advantaged Who; By the Words of Sec (G. a) one Party only.

If a Man makes a Lease of Land by Indenture referring Rent, and in the Deed are no Words of the Leilee, but the Leilee seals the Deed and enters and pays the Rent, and after refutes, yet he is compellable, for being by Indenture it is the Deed of both Parties. Br. Eltopp, pl. 147. cites 45 Alf. 14.

2. One shall be bound by putting his Seal to a Deed indented and Delivery of the same, tho' the Words in the Deed are spoken only by another Man; and therefore if a Man makes a Lease to one of my own Land by Deed indented, for Years, without paying any more, by this Deed I shall be concluded, and yet there are no Words of mine in the Deed. Perk. S. 159. cites 14 H. 6. 22.

3. And if there be Father and Son, and the Father is feide of Land in Fee, and a Stranger leaves the same to the Father by Deed indented for Years, and the Father dies, the Leilee by this Deed shall conclude the Heir of the Leffor to say that his Father died feide in his Demeline as of Fee, and yet there are no Words of the Father in the Deed, &c. Perk. S. 159. cites 43 E. 5. 17.

4. An Indenture was between Lord and Tenant, reciting, that the Tenant held the Lord by Homage, Penalty, and 10s. Rent, the Lord confirms his Eilare, filvo antigo Dominico & servitio; and it was held, that tho' it was indented, and both sealed, yet because it is a Recital, and all are the Words of the Lord only, therefore it shall not effect the Tenant to plead Hors de son fee. Br. Faits, pl. 4. cites 35 H. 6. 34.

(E. a) Where one Part being void shall avoid the Whole

Sec (S)(U) pl. 7. (Y)

1. In Debt upon an Obligation of 20s. the Defendant pleaded Not lettered, and that it was read to him as 20s. which he had paid, and threw an Acquittance thereof, and as to the Restane Not his Deed, and the Plea was held good. Br. Non eft factum, pl. 8. cites 9 H. 5. 15.

2. Some of a Convent sealed a Deed by Durese, this made the whole Deed void, for the Deed is intire; and if it be void in Part, it is void in all, tho' the greater Number did agree. Br. Faits, pl. 52. 38 H. 6. 27.

3. If three Obligations are Written in one Parchment, and one is read to him and no more, it is his Deed as to this Part and not for the reft. Br. Non eft factum, pl. 11. cites 14 H. 8. 25. per Pollard to which Brudnell agreed.

4. So where an Obligation is in two several 10l.'s and it is read for one 10l. only, it is his Deed for the one 10l. and not for the other 10l. and a Deed nailed in Part where more is Witt to it, or is interlined after the making, this shall avoid the Deed, per Pollard to which Brudnell agreed. Br. Non eft factum, pl. 11. cites 14 H. 8. 25.

5. If
5. If two join or are joined in a Deed, whereof one has no Capacity (as a Monk or Feine Covert) yet it is good either to charge or benefit the Person able, tho’ void as to the other. Br. Faits, pl. 37. cites 14 H. 8. 25. per Brudnell Ch. J.

6. A Recognizance was made to Sir Nich. Bacon Kt. Lord Keeper of the Great Seal, and to 2 others, and this was taken and acknowledged before the said Sir Nich. Bacon Kt. Keeper of the Great Seal; upon demanding the Opinion of the Justices it this was good or not, they thought that as to Sir Nicholas Bacon is was void, but as to the other 2 it was good enough. D. 220. b. pl. 14. Patch. 5 Eliz. Sir Nicholas Bacon’s Cafe.

7. A Deed may be good in Part, and void in Part; as if a Deed be read to a Man unlearned, and Part is interlined, it is good for so much as was read, and void for the Rest, per Hutton J. Ley 79, in Cafe of the Bishop of Chichester v. Freeland.—-But Refrve avoids the whole Deed. Mo. 33. pl 116. Trin. 4 Eliz. Anon.

8. A. is bound to incoot J. S. of one Manor, and to difffe J. N. of another Manor. It was said Arguedo, that the Bond is void in the Whole, and cited 14 H. 8. 25. Godb. 213. in the Cafe of Norton v. Symms.

Hob. 14.

9. Where there are legal Covenants and Covenants against Law in the same Deed, the latter are void, and the first stand good. 11 Rep. 27. b. per Coke in Pigot’s Cafe.——Cites 14 H. 8. 25, 26, &c.

As to a Deed’s being good in Part, and void in Part, Coke thought there was a Difference when a Deed is void ab initio, and when it becomes void by Misstatement of fact. 11 Rep. 27. in Pigot’s Cafe.

Also there is a Difference when the Deed, which is void in Part ab initio, coinfls upon the Whole, and when upon diverse several Clauses. Per Coke, ut supra.

Also there is a Diversity when the several Clauses are absolute and distinct, and when tho’ several, yet one has Dependence on the other. ut supra.

The same

13. A Bond void in Part by a Statute Law is void in toto; but at Common Law it is good as to the legal Part, and void as to the Illegal. Arguedo 2 Jo. 90, 91. cites 3 Rep. 82, 83. Twine’s Cafe.


Jac. C. B. in Cafe of Norton v. Symmes——As upon the Statute of 23 H. 6. if a Sheriff takes a Bond for a Point against that Law, and for a due Debt also, the whole Bond is void. For the Letter of the Statute is void, and a Statute is a drift Law; but the Common Law doth divide according to Common Reason, and having made that void which is against Law, lets the rest stand.

Yelv. 18.

Mich. 44 & 45 Eliz. B.R.

Soprani v. Skynns. S.P.

Owen 116. held, that the Covenant shall bind, tho’ the Deed is void. Pauch. 10. Jac. Waller v. Dean and Chapter of Norwich.——* 1 Salk. 199. cites the Cafe of Caponhurt v. Caponhurt, and distint-


(E. a. 2)
(F. a.) Void or voidable only, what Deeds are.

1. A Bond, Release or Feoffment, and the like, made by Dures, is not void, and therefore the Party cannot say Non est factum, nor shall have Affidavit, but may enter and avoid them by Plea: For such Deeds are not void, but voidable. Br. Faits, pl. 68. cites 2 E. 4. 20.

2. So of a Deed by an Infant, that otherwife of a * Feme Covert. See (N) * For a Bond made by Feme Covert pl. 2, 5, 6.

3. "Tis a common known Rule, That all such Gifts, Grants or Deeds made by an Infant, which do not take Effect by Delivery of his Hand, are void, but such Gifts, Grants or Deeds made by an Infant, by Matter in Deed or in Writing, which take Effect by Delivery of his own Hand, are voidable by himself and his Heirs, and by thofe which shall have his Estate. Perk. 6. S. 12.

4. An injurious Bond is not void, but voidable by Plea. Per Warburton J. 2 Brownl. 165. in the Cafe of Walters alias Waller v. The Dean and Chapter of Norwich.

(F. a. 2) Voidable Deeds made Good by some after Act.

1. In Debt, the Prior of D. avoided an Obligation be Dures, made by his Prior his Predecessor to the Convent; and the Plaintiff eftopped him by Defeance made after he was at large upon the fame Obligation; and the beft Opinion was, that it is a good Eftoppel. And fo it appears, that a Deed made by Dures is not void, but voidable. Br. Faits, pl. 87. cites 35 H. 6. 17.

5. If an Infant infefefs or makes a Lease to B. and delivers it with his own Hand, this is not void but voidable only; and if, when of Age, he says, God give you joy of it, this is an Affirmance. Per Mead J. 4 Le. 4. pl. 15. Anon.

3. Feoffment by Husband and Wife of the Wife’s Land, rendering Rent; Kelw. 18 b. the Husband dies, the Wife accepts the Rent, this shall bind her. Arg. per Wood J. 2 Brownl. 141. in Cafe of Portington v. Rogers—So that her Deed is 4 Le. 15; per Gawdy J. not void. Cro. El. 769. Trin 42 Eliz. B. K. Shipwith v. Steed.

(G. a.) Deed—
(G. a) Deed-Poll, and what is considered as such; the Effect thereof, and Difference between it and an Indenture.

1. A Deed-Poll is that which is plain without any indenting; so called, because it is cut even or polled: Every Deed that is pleaded shall be intended to be a Deed-Poll, unless it be alleged to be indented. Co Lit. 229.

2. A Deed-Poll is that which is only the Deed of the Grantor. An Indenture is that which is the mutual Deed of both. Fin Law, 8th. 109.

3. Herefore a Deed indented was called Charta Chirographata, or Charta Communis, because each Party had a Part. And a Deed-Poll was called Charta de una parte. Co Lit. 143. b

4. Thou’ a Deed of Defence of a Statute be indented, yet it is but in the Nature of a Deed-Poll, and the Words of the Defence are the Act and Words of the Conruf. and if the Conruf and Conruf deliver a several Deed to one another, and there be a Variance in any Point material, it shall be taken according to the Deed delivered by the Conruf. 2 And. 58. Hollingworth v. Wheeler.

5. An Indenture not being between Parties is in Nature of a Deed-Poll, so as one may covenant with a Stranger to the Indenture. 2 Lev. 74. Hill. 24 and 25 Car. 2. B. R. Cooker v. Child.

6. A Deed of Covenants, being only a Deed-Poll, is, for that Reason, the Deed of the Defendant only, and therefore the Covenants cannot be mutual. 8 Mod. 41. Patch 7 Geo. 1722. Luck v. Wright.

7. A Contract by Deed-Poll cannot make that to polls, which another then enjoys, but is void. Arg. Pl. C. 433. b. in the Cafe of Smith v. Stapleton.

8. A by Deed-Poll covenants with B. to fell Land to B. for 200l. and B. by the same Deed covenants with A. to pay the 200l. — B. first delivered the Deed to A. as his Deed, and then A. sealed and delivered it to B. as his Deed; adjudged, that this was the Deed both of A. and B. and that he, that has Possession of it, may have Action of Covenant against the other, notwithstanding the first or second Delivery of it; for it is sufficient to bind both. 2 And.. 50. Mich. 37 and 38 Eliz. Croles v. Powell.

9. Upon a Recordare, the Defendant avowed for Damage-seaunt, and the Plaintiff made Title at Common Law, and the Defendant thew v for a Deed indented, running thus, Novem vrs. f. Abbavum de E. dedit fo the Plaintiff, &c. per quod idem the Plaintiff renown etatu Commonion suam quam habuit in B. &c. and it was held there, that notwithstanding Part of the Words are in the first Person, and Part in the third Person, and tho’ the Words renunciavt, &c. are all the Words of the Abbai, and not the Words of the Plaintiff who released; yet because it is by Deed indented, and both have sealed and delivered it, it is therefore good; but it was held, that because it is renunciavit, and does not favo. &c. (for it ought to be, renunciavit prefato Abbati), &c. that therefore the Deed is not good. Per Babington, & per Car. Br. Faits. pl. 1. cites 9 H. 6. 35.

* Le. 236; 19. Tho’ the Words of an Indenture are the Words of both Persons, yet is otherwise in a Deed-Poll; For there the Lelice is not lit. B. R.

Faits or Deeds.

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effopped to plead, that the Leffor nihil habuit in Tenementis, &c. Arg. 10 Mod. 47. 8 Mod. 312. in the Cafe of Shipwith v. Green. — Gawdy Serjeant agreed, that in Deeds-Poll the Words should be taken from against the Grantor, but otherwise in Indentures; for there the Words shall be taken according to the Intent of the Parties, being the Words of both. Le. 318. in the Cafe of Scovel or Scobell v. Chavel or Cavel. — But this must be intended of material Words, and not of every minute and descriptiv Word and Circumstance. Per Cur. 8 Mod. 313. Skipwith v. Green.

11. If there be a Variance between the Indenture to the Conuor of a Statute and that to the Conuor, tho' that of the Conuor to the Conuor is but in Nature of a Deed-Poll, &c. yet, so far as the Variance is, it is utterly void. 2 And. 58. Hollingworth v. Wheeler.

(H a) Counterparts of Deeds, and where they vary from the Originals.

1. If there happens to be any Variance between the Indenture and Counterpart, it shall be taken as the Deed of the Grantor is; and the other shall be intended only the Misprision of the Writer. Fin. Law, 8o. 169.

2. So of a Defeasance of a Statute by Deed-Poll, if there is one delivered by the Cognizee to the Cognizor, and another by the Cognizee to the Cognizee, if they differ in a Point material, it shall be taken according to the Deed of the Cognizee delivered to the Cognizor; and tho' these Deeds were indented, yet as to this Purpe of a Defeasance 'tis but in Nature of a Deed-Poll, and so far as the Variance is, it is utterly void. 2 And. 58. Hollingworth v. Wheeler.

3. A infeoffed B. of a Manor, rending for certain Clofes, Parcel of the Manor, 60l. Rent per Ann. A. affigis the Rent to C. by Bargain and Sale inrolled; the Counterpart sealed by B. was delivered to C. who loft it, and A. found it and tore it. Upon an Action brought by C. against A. for tearing the Counterpart, it was held by all but the Chief Jutf. that this being only a Counterpart, and not being particularly granted, it does not pass to the Plaintiff as incident; but the Ch. Jutf. held, that this Counterpart waits upon the Intereft, and is good Evidence for it. Yelv. 225. Sutcliff v. Contable.

4. Tho' a Condition may be pleaded by Indenture sealed with the Seal of the other Part; yet a Conveyance cannot be pleaded by Deed, unless sealed with the Seal of the Party agent, fid. the Feoffor, Grantor, Leffor, &c. 3 Le. 95. Guiney v. Saër.

5. A Counterpart of a Settlement in Tail was admitted as sufficient 2 Vern. 359. Evidence, that there was such a Settlement, and a Conveyance was S.C. decreed accordingly. Ch. Prec. 116. Eyton v. Eyton.
(I a) Duplicates.

1. *TWO Patentees of the same Office* for their Lives; one has the real Patent, the other only a Duplicate. The Principal Patent was wrote per Warrantiam de Privato sigillo Authoritate Parliamenti, and a little under the Seal of the other was wrote the word (Duplicate); he, that had the Principal Patent, surrendered it in the Abence of the other Patentee beyond-tea, and took a new Patent to himself and another, and the first Patent was cancell'd; it was the Opinion of several, that when the Principal Patent was cancelled, the Force of the Duplicate was gone in Law; because no Title can be made by this Patent, because it was granted and sealed by the Chancellor at his Pleasure, and without any Warrant from the King to do it. D. 179. b. Kemp v. Hales.

2. If a Fine is levied by Husband or Wife of Lands which he has in Right of his Wife, and there is a Deed made at the same Time to declare the Uses thereof, and afterwards this Deed is lost, and then another is made to the same Effect and dated as the first, that Deed is sufficient to declare the Uses of the Fine. Per Holt Ch. Juft. Holt's Rep. 735. in the Case of Buhell v. Burland.

3. Where a Person has a large Estate, and sells the biggest Part, and is constrained to deliver all the Deeds to the Purchaser, by which he has none left to make out the Title to the Residue by; upon the Vendor's moving the Court, that the Parties to the Conveyance to him might be ordered to execute a Duplicate of the Conveyance to be kept by him, Lord Keeper Wright, said he look'd upon it to be within the Convenant for further Affurance, and ordered that a Duplicate should be executed, but that it should be indorsed upon it, that this was only a Duplicate. Abr. Equ. Ca. 166. Mich. 1700. Napper v. Allington. —

But the Matter being moved again by the other Side, the Order was discharged; for that the Decree being once executed, the Court had no more to do in it. Ibid.

(Ka) In what Cases they shall be brought into or remain in Court.

1. Upon *Non est factum* found against the Deed, it may be kept in Court; but otherwise on a collateral Issue. 1 Salk. 215. Fitch v. Wells.

(a) S. P. and per Hanke, if the Party wants it to plead it in another Action, he ought to shew it, and he may have a Writ to the Toffices to remove the Deed to shew it. Br. Faits, pl. 20. cites 12 H. 4. 8. — A Certiorari was granted. Br. Faits, pl. 85, cites F. N. B.

2. Per Cur. If you had (a) denied the Deed, according to Weymark's Case, it is to remain in Court till the Cause be tried; hence, it shall only remain for the Term in which it is brought in; but the most it goes is, that upon Importance granted, it shall remain in Court till the Defendant pleads; as in an Action upon a Bond, if it be by Bill, the Defendant after Importance may crave Oyer, and therefore there it must remain in Court, till the Party is put to plead, that he may in that Cause have Oyer of it. 6 Mod. 233. in the Case of Selby v. Green.—

3. Where
3. Where Deeds and Muniments do concern as well the Defence of the Tenant for Life's Title, who also possesses the Deeds, as the Right of another in Reversion or Remainder, it is usual to have them brought into this Court for the avoiding all Perils, and the indifferent Custody of them. Cary's Rep. 26, 27. cites 40 Eliz. Dixoys v. Hilar y.

Deed whereby the Reversion and Inheritance is in another, he may detain it against the Reversioner. Per Finch C. Hill. 32 & 33 Car. 2. 2 Chan. Cakes 42. Earl of Banbury v. Briscoe.

4. It was ordered that a Settlement which concerned very much the Estates of two Persons should be brought into Court for its safest Custody, and both Parties have the Use of it as they have Occasion; and both may if they please have Copies attested. Hill. 32 & 33 Car. 2. 2 Chan. Cakes 42. Earl of Banbury v. Briscoe.

the Whole under a Will, the other infatd on an Intail not dock'd, and on a Bill brought by him it was ordered, that the Deeds be brought into Court for the Plaintiff to have the Liberty of Inspecting, tho' the Will is not for side. 9 Mod. 59, Poore v. Sidenham.

5. If a Deed belongs to Two, and he, who has the Deed, dies, the other shall have a Subpœna to deliver the maintenance of his Title, per Pigot. Quod non negatur. Bro. Confidence, pl. 3. cites 9 E. 4. 41.

6. A. on the Marriage of his Son conveys Lands to the Use of himself for Life, then to bis Son for Life, then to the Issue of his Son in Fail, and for Default of such Issue, then to his Brother and his Heirs; the Son and Wife died without Issue, living A. who got the Settlement, and cut it in pieces; but on a Bill of Discovery brought by the Brother, the Court enforced the bringing the Counterpart into Court by A. tho' it was objected, that the Remainder to the Brother was merely voluntary; and so A. was prevented from selling the Estate. Trin. 1691. Abr. Equ. Cakes 168. Brookbank v. Brookbank.

Every Remainder-man has a Right to come into this Court for Aid, to compel Persons to bring in the Deeds and Evidences relating to the Estate. Per Cur. Hill. 11 Geo. 9 Mod. 132. per Cur. in Cai. in the Case of Reeves v. Reeves.

7. A Subpœna duces Tecum was awarded against the Defendant to bring in certain Deeds, and shew Cause why they should not be delivered to the Plaintiff; the Defendant shew't, that the Mortgage was upon Condition for Payment of 40l. at a Day, and before the Day the Mortgage fell the same to the Plaintiff, and delivered the Estate by Livery and Seisin, whereby the Condition was extinct, and yet the Defendant offered to give 100l. It was ordered, that the Deeds should be delivered to the Usher of the Court, but not to the Plaintiff without special Order. Cary's Rep. 74, 75. cites 18 & 19 Eliz. Witford v. Denny.

8. Administrator durante minori, state of one Co-heir who was Executor was decreed at the Suit of the other Co-heir, to bring the Writings of the Real Estate into Court, that the Plaintiff may have Copies of them, and try her Title at Law. Mich. 26 Car. 2. Fin. R. 135. Mapler v. Pocock.

9. A forged Bond or Warrant of Attorney should be lodged in Court. Cumb. 339. The King v. Lewis — It cannot be torn or defaced by Law, but must be kept, that the King may proceed upon it against the Criminal. Vern. 66. Frankland v. Hampden.
(L a) Detinue of Deeds. Action. Who shall have it.

In Detinue of a Bag of Charters, Plaintiff counts of a Bailment by his Father, to rebail him or his Heirs, and counts specially of a Charter by which A. infeoffed one B. and the he makes no Title to the Land in the Charter, yet he shall have a Delivery, and the Count was awarded good. Br. Chartres de terre, pl. 31. cites 19 H. 6. 41.

(L a 2.) Pleadings in Detinue of Deeds.

Br. Chartres de terre, pl. 7. cites 9 H. 6. 60.

1. In Detinue of Charters the Count ought to mention the Land which the Charters concern, and the Value of the Land; for the Plaintiff in this Action recovers the Charters, and if they are destroyed, the Value of the Land in Damages. Jenk. 21. pl. 39.

But in Trespass for taking and detaining, it is good; without mentioning the Land, especially after a Verdict, for in Trespass, Damages only are recoverable, and not the Charters. Jenk. 20. pl. 39. — For the Taking contra pacem, Br. Charters de terre, pl. 26. cites 21 E. 5. 28.

Otherwise, if not sealed, he must count of a special Charter. Ibid. pl. 37. cites 39 E. 3. 7, 8.

2. Where the Count is of a Box of Charters sealed, there is no need to mention the Matter contained in the Charters. Per Brown Clerk. Quod non negatur. Br. Chartres de terre, pl. 4. cites 9 H. 6. 18.

3. If A. has Deeds to which he has no Title, and loses them, and B. finds them, A. shall not have Detinue without Request; but otherwise of him who basis Goods or Deeds. Br. Chartres de terre, pl. 9. cites 33 H. 6. 26.


5. Where Plaintiff counts of a Cheff, Bag or Box sealed, he shall not shew what Charters; for if they are open, he may demand the Charters only, and not the Box, for the Box belongs to the Executors, and this will not go to the Count for the Box only, but all the Count shall abate, per Thorpe. And Finch said, That he might have counted of a Box inclosed, and that it is not traversable, if inclosed or not. Note, Br. Chartres de terre, pl. 13. cites 41 E. 3. 2.

6. In Detinue of a Cheff of Charters, it is no Plea to say, that it was a Hamer, for it is not traversable; but only if he detains the Charters, or not. Br. Chartres de terre, pl. 15. cites 44 E. 3. 1. per Thorpe.

7. Detinue of Charters, by which A. infeoff'd his Ancestor of Black- acre, &c. and counts of his own Bailment, and found for the Plaintiff to the Damage of 40s. And if the Deed cannot be found, 40s. for the Detinue, and 100l. for the Deed. It was moved in Arrest of Judgment, because he made no Privity to the Ancestor as Heir; yet because he counted of his own Bailment, it was awarded, that he shall recover the Deed, if it can be found, and 40s. Damages; and if the Deed cannot be found, then 100l. for the Deed, and 40s. Damages. Br. Chartres de terre, pl. 28. cites 7 H. 6. 31.

8. Where one demands Charters as Heir to the Land, he shall shew the Certainty of the Land, and where it lies; but otherwise where he demands
mands by Privity of Bailment of his Father to redeem to him or his Heirs, and the Father dies, and he demands by this Bailment, there he may count generally of Land in A. and abli in the County of M. but otherwise where he demands as Heir. Br. Chartres de terre, pl. 50. cites 19 H. 6. 10


12. In Detinue of Charters by Two, if the Defendant delivers them to one of them, tho' out of Court, he shall be excused against the other, and so in Dower against Two, who plead Detinue of Charters. F. N. B. 138 (G) the Notes there.


(L a 3) Bar; What is a good Plea in Bar in Detinue of Charters.

Detinue of Charters as Heir, Baylard is a good Plea. Br. Chartres de terre, pl. 64.

2. A brought Detinue of a Box of Charters against J. S. and Counts, that B. and C. were possesed of them as of their proper Goods, and bailed them to the Defendant to deliver to the Plaintiff; J. S. pleads, that he is seised of twenty Acres in D, which the Charters concern, and that he was possesed of the Charters till B. and C. took them from him, and that after they delivered them to him, he went in the Count, and therefore he detains them, prout ei bene licuit; the Plaintiff replies, that before J. S. had any Thing, W. R. was seised of the twenty Acres, and possesed of the Charters, and gave the Box and Charters to B. and C. by which they were possesed, and then W. R. died seised and J. S. intruded, and B. and C. bailed the Box and Charters to J. S. to deliver to the Plaintiff, and prays Delivery, and J. S. rejoins and maintains his Bar, abhise hoc, that J. S. intruded, &c. and per Cur. It is no Plea, but he shall anwver to the Title of W. R. for that is the Substances, and not the Intrusion, quod Nota. Br. Chartres de terre, &c. pl. 55. cites 5 E. 4. 85.

3. Detinue of a Chell of Charters, and of one special Charter, by which Land was given to his Father in Fee by J. N. of which Land the Father died seised, and he entered, &c. the Defendant to the special Charter protendens, that the Plaintiff is not seised, &c. pro placito said, that J. N. gave to the Father of the Plaintiff, and to W. S. who seised the Father, and that W. S. gave the Charter to the Defendant, and in the refusals his Lord, and all held good. Br. Chartres de terre, pl. 73. cites 16 H. 6. 20.

4. In Detinue of Charters, the Defendant said, that the Plaintiff delivered them upon Condition, that if the Feme of the Defendant seizure the Plaintiff, that he should retain them, and said, that his Feme is yet living, and a good Plea without Title. Br. Chartres de terre, pl. 68.

See Traverss (K a)——Bailment (G)——Detinue ( )

(L a 4)
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Faits or Deeds.

(4 a) Damages in Detinue of Charters, what; and the Difference between Damages in Detinue and Trespasses.

S. P. ibid. pl. 2. Pleadings for carrying away of Charters, the Defendant pleaded Not Guilty, and was found Guilty to the Damage of 100l, and the Defendant brought Error upon the Judgment given thereupon, because the Plaintiff did not shew the Quantity of Land in his County, to fo that the Jury could not know the Damages, and yet the first Judgment was Affirmed, insomuch as the Plaintiff in Trespasses of Charters, did not recover Damages according to the Quantity of the Tenements Comprised; For he did not demaon the Charters, as in Writ of Detinue of Charters; therefore, in the one Case he shall recover Damages only for the taking, and in the other he shall recover the Charters; and in Case they are burnt or destroyed, then Damages to the Value of the Tenements; but here he shall recover Damages only for the taking contra Pacem. Note the Diversify. Br. Error pl. 61. cites 21 E. 3. 28.

2. Detinue of a Box of Evidences, the Defendant prayed Garnishment against Foe, who came and made Title to the Evidences, and the Plaintiff other Title, and the Box was opened, and the Evidence of every One delivered to him to whom it belonged, and the Plaintiff recovered Damages against the Garnisher. Br. Damages pl. 41. cites 7 H. 4. 7.

3. And, if the Garnishees have had Issue against the Plaintiff, and recovered in Default of those Charters, yet the Plaintiff shall not recover Damages in this Action of Detinue to the Value of the Land lost, per tot. Cur. Br. ibid.

(M a) Pleadings, where there must be Proseur or Monstrans of the Deed. In what Cases in general and the Reason thereof.

And it is not enough for the Party to say, that the Rent, &c. which could not pass with the Deed was granted to him, but the Court must see and adjudge of it, or else the Right appears not, and the adverse Party may cause the Deed to be Inrolled, which makes it a Part of the Plead, whereas on the Court shall Judge whether it maintains the Plea or not, per Hobart Ch. J. Hob. 233.—And that the Court may see that there is no Inheritance, Interlining or other Defect to avoid it. Arg. i. Le. 313. in Cafe of Maidewell v. Andrews.—And whether it binds the Party. per Glyn Ch. J. Sty. 459. in Cafe of Daud v. Herbert.

2. Where the Plaintiff uses a Deed, as a Deed of Grant of the Assignor of the Defendant, he shall have Oyer and View of the Deeds, and censura, if he claims by a Stranger, Noc a Diversify. Br. Monistrans. pl. 85. cites 8 All. 7.

3. In Affile, if the Plaintiff makes Title to the Reversion by Grant of the Defendant, he ought to shew Deed, for otherwise, it is not good, for it seems, if he makes such Title by a Stranger. Br. Monistrans. pl. 86. cites 8 All. 11.
Faits or Deeds.

4. In Mortgage for a Rent charge, the Allotment was taken without shewing Speciality. Br. Monstrans, pl. 28, cites 11 Pl. 29.

5. Formedon in Remainder does not lie without shewing Speciality, and yet when it is shewn the Party Tenant shall not have Answer to it. Br. Formedon, pl. 33. cites 21 E 3 49.


7. In Trespass, a Gift of Treses may be Plead without shewing Deed thereof. Br. Monstrans. pl. 147. cites 42 E 3 23.

8. In Scire Facias, upon a Recovery of an Annuity, the Plaintiff need not shew Deed; for the Record suffices per Opinionem. Br. Scire Facias, pl. 209. cites 3 H 6 40.

9. It was agreed, that where a Man declare upon Speciality, and does not shew it, or pleads Reponse, or the like, or Record and does not shew it, and they Domains in Lex for the no shewing, that this is Peremptory, quod nota, Br. Peremptory, pl. 13. cites 7 H 6 19.

10. Annuity, the Defendant demanded Judgment of Count, because it was Granted, upon Condition contained in the Deed, and the Plaintiff had not made mention of the Condition in the Count, but the Roll was otherwise, and there it appears that the Plaintiff ought to make mention of the Condition in his Count, if it be contained in the Deed, and be to be performed of the Part of the Plaintiff. Br. Count. pl 9. cites 9 H 6 15 16.

11. Centre if the Condition be Inclined upon the Deed, and not contained in the Deed; for this shall come in of the Part of the Defendant, Note a Divertic. Ibid.

12. In Deed upon an Obligation and in Debt by Executors, upon Testament; the Obligation and the Testament shall be shewn in the Declaration. Centre of Deed in remainder, and where the Deed shall be shewn, in the Count, there Variance is material, and it shall abate the Writ. Br. Variance pl. 56. cites 14 H 6 1. * Orig. Covenant

13. In every Case where the King is Party, a Man shall shew the Deed, whether it belongs to him or not. Br. Monstrans, pl. 11. cites 35 H 6 8. per Dunby.

14. A Man may Plead a Deed, by way of Defence, without shewing it. Per Littleton Choke and Brian. Br. Monstrans, pl. 60. cites 15 E 4 16.

15. Where a Man may plead a Deed without Privity, he shall have the Plea without shewing the Deed. Br. Monstrans, pl. 61. cites 14 H 8 4. per Fitzherbert.

16. A Difference was taken between Letters Patent, and other Matters of Record, which of their own Nature are of Record, and Matters in Fault, that the First might be pleaded in the same Court of Record, where they are Inrolled without shewing them, tho' they were not pleaded before. But tho' a Deed be Inrolled in a Court, yet it cannot be pleaded in the same Court without shewing it, 5 Rep. 74. b. in Wymark's Cafe in a Note by the Reporter, cites 21 E 4 49 a. The Abbot of Waltham's Cafe.

17. Where a Man does not claim the Thing granted, as Incumbent, who pleads that J. S. granted the next Presentation to W. N. who presented him, he shall not shew the Deed, for he does not claim the Patronage, but only the Incumbency, per Brian. Br. Monstrans, pl. 125. cites 21 E 4 50.

18. Note, that the Deed of Tail belongs to the Heir in Tail, and if the Father breaks it, yet the Heir shall have Formedon, tho' it be of Rent, without shewing of the Deed; For Formedon is in the Right; centre of Accuracy of Jiffis, for this is in the Puffin. Br. Formedon, pl. 44. cites 4 H 7 10.

19. Conditions to defeat Chattles, may be pleaded without a Deed, but not Conditions to defeat Freeholds; as of a Leafe for Years, or Grant of a Ward, the Condition may be pleaded without Deed. But where it is pleaded to defeat a Franktenement, be it in Personall Affion or Real, it must be pleaded by Deed. 11 H 7 22. b. per Vavfor. Quod fuit Conceffium, per tot. Cur. 20. The
20. The Grantee of a Common may plead a Release made to the Tenant of the Land in discharge of his Beasts without showing it; because he putties in his own Right, and there is no Privy between the Party who made the Release and him. Per Brudnel J. Br. Montrans. pl. 61. cites 14 H. 8. 4.


22. In any Title or Hec, or other Matter, where Land, or other Thing shall be gained or lost, the Party shall not be enforced to shew more than what makes for him. Pl. C. 410. a. in Cafe of Newys and Scholatica v. Larke.

23. As in Affidavit, a Man may plead in Bar a Fragment, which is upon Condition without mentioning the Condition in it. Pl. C. 410. a. b.


25. And so of an Act of Parliament in which are divers Branches. But per Harper J. if in the Act there be a Proviso or Exception, or other Matter which goes to every Branch, then the Party ought to plead such Provisto, &c. because such Provisto, &c. is parcel of every Branch so that the Branch is not perfect Law without it. Ibid.

26. But of Matters of Record where the Record in Parcel makes for the Party, as Fine or Recovery of One Acre, where there are in the Record 20 Acres, there all the Record must be shewn; because the Original is entire, and so is the Record grounded upon it. Pl. C. 410. b. in Cafe of Newys and Scholatica v. Larke.

27. A Deed that is requisite ex Institutione legist, must be shewn in Court, tho' it concerns a Thing collateral and conveyes, or transfers Nothing. As in Cafe of Attornment by Corporation which must be by Deed, there the Deed must be shewn; Secus where 'tis ex Privity Homo-minis; as where the Condition of a Leafe, is that the Lessee shall not Affin but by Deed and not by Parol. There he might plead the Affinment without shewing the Deed; an Affinment by Parol being then sufficient, had it not been provided against by the Condition. 6 Rep. 33. Patch 3. Jac. C. B. Bellamy's Cafe.—Alias Walker v. Bellamy.

28. Where the Deed is but an Inducement to the Affidavit, it need not be mentioned in the Declaration. 2 Bals. 228. * Babington v. Matthews.


29. But where it is in Bar, it is otherwise. Jenk. 305. pl. 80. 316. pl. 4.

30. In all Cates where a Thing cannot be demanded but by Deed, the Deed must be produced. But where it may be demanded either by Deed, or without Deed, it is otherwise. Per Glyn Ch J. Sty. 459. in Cafe of Dod v. Herbert.


32. Where A. has bound himsely to make a Deed, and is fised for not doing it, 'tis not enough to say he made the Deed, viz. Leafe, Bond, &c. but he must set it forth that the Court may judge of its Sufficiency; For it ought to be a good Deed; but if it be to deliver, or receive, or produce a Deed (that is a Deed already made), there 'tis enough to say he delivered, or shewed, or produced it. Per Holt Ch. J. 2 Salk. 498. Armit v. Bream. Mich. 3. Annæ. B. R.—6 Mod. 244. S. C.

See Bar ( ) Que Eftate (C).
(M a 2) Where the Deed or Record must be shewn presently.

1. N Ote for Law, that if a Man pleads a Record as Delitery, viz. in Abatement of a Writ, &C. he must shew it presently. per Babbington. Br. Montrans. pl. 4. cites 3. H. 6. 15.

2. Enota where he pleads it in Bar. For there the other may say that Null tiel Record, and the other may have Day to bring it in, per Babbington, qued non negatur. Br. Montrans. pl. 4. cites 3. H. 6. 15.

(M a 3) Where it shall be shewn in the Declaration, of not till demanded.

1. In Writ by him in Remainder, if the Deed and the Writ may, yet it is no Matter; For he is not bound to shew the Deed unless the Defendant demands it, and if he demands it, the Action does not lie by time in Remainder without shewing Deed; For this Action is not properly founded upon the Deed. Br. Variance. pl. 168. cites 10. H. 6. 8. 2. In Deed upon an Obligation, or as Executor upon Testament, the Obligation or Testament shall be shewn in the Declaration, and there Variance between the Writ and 7 Obligation, or Testament, is material to the Writ. Br. Montrans. pl. 74. cites 14. H. 6. 5. 3. Contea upon * Formedon in Remainder, and there Deed shall not be Shown till it be demanded, and there Variance is not material. Br. Montrans. pl. 74. cites 14. H. 6. 5. founded upon the Deed. cites 56. H. 6. 16. —— * S. P. And see ibid. * S. P. Formedan is not 4. In Deed by an Administrator, the Plaintiff shewed the Letters of Administration upon the Declaration, but not in the Declaration, which it appeared that the Administration was committed to B. and the Defendant impeded, and at the Day the Defendant said that there is Variance to the Writ, because the Letters which were shewn bore Deed at C. and not at E. and by the Opinion of the Court, the Plaintiff shall not be compell'd to shew the Letters again, because they were shewn at first as they ought, for Letters of Administration shall be shewn upon the Declaration; and an Obligation shall be shewn in the Declaration, and shall remain always in Court; but except of Letters of Administration, for it may be that the Plaintiff hath another Suit upon it in another Court, and therefore shall not be shewn but once, and the same Law of Testament; but if it had been in one and the same Term, or if the Letters had been entered Vobition, then may the Defendant plead such Variance after Imparlance. Br. Montrans. pl. 82. cites 35. H. 6. 31. 5. Formedon in Remainder, the Tenant demanded the Deed, the Defendant would not shew the Deed, the Tenant shall go fine Die; and yet if the Tenant had anwsered without demanding the Deed it had been good, quod nota in Scire Facias. Br. Montrans. pl. 83. cites 35. H. 6. 19.
(M a 4) What shall be said a sufficient Shewing.

1. In Affixe of Edcoves, a Deed of Grant was set forth, by which H. the Defendant had granted to the Plaintiff and his Heirs 20 Lord of Wood, of which the Plaintiff had 16 of the Gift of Richard his Father, and shewed only the Deed of the Defendant, and not of his Father who granted the 16 Lord, and yet good; for it is a good Grant of 20 Lord by the Defendant, tho' his Father never granted 16. quod nota. Br. Grants pl. 69. cites 20. All. 8.

2. Affixe against 2. the one pleaded a Deed in Barr, and would not that his Companion should be aided thereby; and the other pleaded the same Deed in Barr for his Part; and the Plaintiff demanded because he did not shew it; Per Mombray it suffices by the shewing of the other, by which the Plaintiff made Title. Br. Monitrans. pl. 142. cites 40. All. 34.

3. If a Man ought to shew a Deed, and does not shew it, but a Confirmation of it, 'tis not good. quod nota bene. Br. Monitrans. pl. 134. cites 12. H. 4. 23.

4. A Deed enrolled must be shewn, and not the Invoicement; and therefore if the Deed be lost all is lost. Br. Monitrans. pl. 137. cites 19. H. 6. 6.

5. Error to reverse a Judgment in C. B. in Debt, where the Plaintiff declared, That the Defendant decimo octavo Maii quarto Caroli, concessit se Tenei to the said Sir Richard Greenhill in 1280. solvend. upon Req'nt, et prof. hic in Curia scriptum Predicatam, quod debitur Predicatum in forma Predicae teneatur, cujus dat. et eisdem die & Ann.: The Defendant demands Over Conditionis scripti Obligatorii predicatam; which being read, he pleads Payment; and Illue thereupon, and Judgment given for the Plaintiff; and the Error assigned, because he does not declare, according to the usual Courte, quod per scriptum Obligatorium concepit, nor any Writing mentioned in the former Part of the Declaration: So it doth not appear to the Court, that there was any Writing obligatory, and that being faulty in Substance, no Plea or Verdict may make it good. But all the Court were of Opinion, because he shew'd the Writing, whereby he demands the Debt, and the Defendant by his Plea shews that it is an Obligation with a Condition, and Illue is taken thereupon, and found for the Plaintiff, that the Declaration is good enough; at least it appears to the Court that the Plaintiff has a just Debt, and good Caufe to recover; wherefore the Judgment is good, and was affirmed. Hill. 6. Car. 1. R. Cro. C. 209. Sir Wm. Courtney v. Sir Rich. Greenhill—cites Co. Rep. 45. 7. Rep. 25. a. 8. Rep. 133. b. 8. H. 7. 71. 18. E. 4.

(M a 5) Second Time, &c. where Deed shall be shewn after a former Shewing.

1. In Execution, W. of C. brought Debt against B. and recovered 100l. and 80l. Damages, and now be sued Sive facias against the Tenantants, and they demanded the shewing of the Tenement, and were ouit by Award, because it was shown in the first Suit, and is enter'd in the End of the Declaration, quod prorunt hic in Curia literas Testament. quod nota. Br. Monitans. pl. 69. cites 24. E. 3. 36.

2. Sive facias, the Defendant pleaded a Respection, the Plaintiff denied it, and upon this they are at Illue, the Plaintiff is Nonstant, and brings another Illue upon it, and there the Defendant pleads the same Deed again.
again remaining in the Case of the Court as a Deed denied, Judgment, an Actio; and a good Plea, and this without shewing the Deed of Release; For it remains with the Court, quod nota. Br. Monitrans. pl. 67. cites 24. E. 3. 73.

3. A Man was indicted of Murder, and pleaded a Charter of the King which was allowed, and after in Appeal of the same Murder, the Defendant was arraigned again, and the Plaintiff was non-suited, and the Defendant was arraigned upon the Declaration, and pleaded how he pleaded a Charter before, et non Allocutus, without shewing it; but he may plead all the first Record of Discharge, and have Day to shew it. Br. Monitrans. pl. 36. cites 11. H. 4. 41.

4. Debt by an Executor and foecus the Testament, as he ought, and the Defendant makes Defence and impounds to the next Term, he cannot plead Variance; For the Plaintiff is not obliged to shew the Testament again, and the Variance of the Name of the Executor in the Writ and in the Testament cannot be tried; For it may be that the Executor must shew the Testament in another Court in another Action the same Day. Br. Monitrans. pl. 53. cites * 19. H. 6. 7.

5. So, of Forfeiture in Remainder, he shall shew the Deed presently, and shall not be compelled to shew it again in another Term; and therefore the Defendant was ruled [to answer] over. Br. Monitrans. pl. 53. cites * 19. H. 6. 7.


Variance, pl. 44. cites S. C. Br. Monitrans. pl. 82. cites 36. H. 6. 16. S. P. * Br. Ellop- pel pl. 82. cites S. C.

7. Where a Man fixed Execution by Capias in Chancery, upon a Statute Merchant, return'd in C. B. 15. Hill, there per rot. Cor. he shall not have Execution if he does not shew the Obligation again, tho' he shewed it in Chancery before. Br. Monitrans pl. 73. cites 37. H. 6. 6.

8. Executed in Execution upon Statute Sipes: For there the Capias is returnable in Chancery according to the Rule there, therefore once shewing suffices for all; For 'tis all in one Court; contra where 'tis in another Court. Br. Monitrans. pl. 73. cites 37. H. 6. 6.

(M a 6) Excused by Fraud or Force.

1. WAST by Baron and Feme against Tenant for Life, the Tenant pleaded that the Baron had released him in Fee, and by Indenture, which he pleased to the Court, was agreed between them, that if the Baron acquitted the Tenant of a Statute Merchant to N. that the Release should be void, and said, that he hath not acquired him, Judgment, &c. and paid the Indenture, but not the Release; Thorpe asked where is the Release? Kirton said it was laid i'd into an indifferent Hand, and the Defendant has a Writ of Detinue pending upon it in this Court now; and because he did not deny the Indenture, Judgment, &c. Per Belke he must shew the Release; For where Debt is brought upon an Obligation of -eeed. and he shews the Indenture of Detinance proving it, and not the Obligation, the Action does not lie. Per Finche. Demurr if you will, and then dispute after. Per Belke, the Indenture is not our Deed——and the other crom. Br. Monitrans. pl. 38. cites 42. E. 3. 18.

(footnote: on certain Conditions to be performed; the Defendant performed the Conditions; the Baron put the Release and delivered it from the Lease; and he and his Feme brought Action of Waste; the Lease, upon this special Matter shall plead the Release without shewing it. Coke says it is a good Case, and cites 42. E. 3. 18.)

2. Where
2. Where the Comittee takes the Defiance from the Comittee with Force, and sets Execution upon the Statute, the Comittee shall plead it without shewing the Indenture, per Juticaries; for tho' he may have Trespass of the taking, yet the Comittee may deny, and then the Action of Trespass is gone, and yet his Executor may sue Execution. Br. Monitans pl. 26. cites 47. E. 3. 25. 26.

3. So, where an Obligation is delivered into an indifferent Hand, upon certain Condition performed to deliver it to the Obligee, and he retakes it, and then the Condition is broken, and he retakes it with Force before the Condition performed, and brings Debt upon it. Br. Monitans. pl. 26. cites 47. E. 3. 25. 26.


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In the Tenant's pleading a Statim of the Plaintiff to the Creditor, the Plaintiff found, it was upon Condition, &c. and that the Condition was broken, and he retaileth, and that the Tenant entered, and took the Creditor in which the Debt was, and yet detains the same. The Plaintiff shall not in this Cafe be forc'd to shew the Debt. Co. Litt. 225. a. 6. In a Cafe upon a Policy of Insurance, Plaintiff declar'd upon a Writing, without shewing, He was in Curia prolat. It was moved for the Defendant, that as his Cafe is, he cannot plead Non appurtun, but a special Plea grounded upon the Writing of which he has no Counterpart, whether it be entered in the Office of Assurance; and therefore, that since the Plaintiff declared upon it, he should be ruled to make a Profer in Curia, that the Defendant might sue it. And for the Plaintiff it was insinuted that he need not count on any Writing, but on an Agreement generally by Policy of Assurance; and that no Oyer can be demanded, nor his Curia prolat. Keble reports, that for these Reasons, Twifden J. held that the Defendant should not have a Copy; but that per Cur. praeter Twifden, whereas the Plaintiff declares upon a Writing, the Court on Affidavit, that he has no Part of it, will let him have a Copy. But where the Declaration is on an Agreement generally, and the Writing but Evidence, they will not grant it. But at last the Parties agreed to take and give a Copy to try it in the same Term. Siderfin reports that the Ch. J. and Windham J. held that in Action on the Cafe, where the Plaintiff declares upon a Writing, it is in the Discretion of the Court to grant Oyer or not; but Twifden contra; but that all agreed, that if the Plaintiff would shew out of his Declaration, the Words (per Scriptum) then the perpetual Imparitance should be discharged; and at last the Plaintiff agreed that Defendant should have Oyer. Vide Sid. 386. and Keb. 430. Mich. 42. Car. 2. B. R. Suiter alias Suter v. Cowell alias Coel.

If the Party, who would plead the Deed, has it not, he ought to move the Court, and the Court shall either that he shall have the Deed, or a Copy of it. See dictum prior. Sid. 50. 51. Mich. pl. 25. 26. 27. H. 1. 2.

8. B. R. The Court sometimes will compel the Plaintiff to give a Copy of an Indenture to Defendant, if the former has a Part, or that he hath left it; but this is ex Gratia Curiae, and not ex Grata Parry.
(M. a. 7) Excused, by Accident.

1. If there be *Issue in Tail of a Gift of Rent in Tail, &c. (which cannot pass but by Deed) and the Gift be executed, the Heir in Tail shall have *Formedon without swearing Deed; for he is aided by the Statute of W. 2. cap. 1. if the Deed be burnt or lost. Br. Monitrans. pl. 60. cites 15. E. 4. 16.


3. But otherwise 'tis of a Stranger to the Tail, he shall not have an Action nor make Defence, unless he swears the Deed. Br. Monitrans. pl. 60. cites 15. E. 4. 16.

4. If Tenant in Tail of Rent granted by Deed breaks the Deed, and dies, the Heir in 'Tail shall have *Formedon without swearing the Deed; for this Action is in the Right. But he shall not have *Ancestry nor *Affises, if he makes Title by Gift of Rent, if he does not swear the Deed; for it is in the Possession. Per Hussyf and Fairtax. Br. Monitrans. pl. 108 cites 4. H. 7.

(M. a. 8) By Detainer by another, who has Right to it.

1. A *Issue by an Infant against 2. the one pleaded in Barr a Deed of *Affiliation with *Warranty of the *Ancestor of the Plaintiff, in which Deed all the Tenements were comprised, and could not suffer his *Correspondent to have the Deed; and the other said that the Ancestor by the same Deed, &c. ur. in alia Barr. Per Mombray, because the Deed is in the Hands of the other, who hath Right thereto, and he cannot deraign it out of his Possession; therefore he shall have Advantage of it without swearing the Deed; by which the Plaintiff made Title; quod nota. Br. Monitrans. pl. 56. cites 49. Aff. 34.

(M. a. 9) By Detainer in another Court, &c. in another Suit, &c.

1. In *Affises the Tenant pleaded a *Release, which was before denied by the same Plaintiff in an Oyer and Terminer, and there remained to be tried, and did not swear the Deed; and upon good Advice it was adjourned into Bank; and there, because the Oyer and Terminer was discontinued, the Defendant said to have the Release; but 'twas said to the Defendant that he should have his Release before them such a Day at his Peril. Quod nota. Quare what should be done if the Oyer and Terminer had not been discontinued, so that it might have been tried? Br. Monitrans. pl. 100 cites 38. Aff. 19.

If a Deed be denied in one Court by which it remains there, it may be pleaded in another Court without swearing it. 3 Rep. 74 b. per

the Reporter in Wyman's Cases cites 12 H, 4. 3. 8. 8. 4. and 45 E. 5. 27: a see. For Lex *suum cedit ad

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2. In

See Policy of Insurance. (B)
2. In Trespass, the Caint was that Tenant in Tail leased for Years and died, the Issue continued the Estate of the Termor by Deed, and after entered, and the Tenant re-entered, and he brought Allife, and the Tenant pleaded the Confirmation; the Plaintiff denied the Deed, by which the Deed remained in Court as a Deed denied, and the Plaintiff brought Trespass allib against the same Tenant, and he pleaded the Lease, and the other pleaded the Tail, and that he is Heir, and the Defendant pleaded the same Confirmation, and was heard in the Hands of the Justices of Allife as a Writing denied; and per Hanke, he shall not plead this without shewing it, clearly; but he may have a Writ to the Justices of Allife to have it to shew, and the Plaintiff putted over, and denied the Deed. Br. Montrans pl. 38. cites * 42. H. 4. 8.

(M. a. 10) Where they, or the Estates, &c. which they relate to, are executed.

3. In quaere implicity, the Plaintiff made Title because B was seized of the Manor of A, and the Adowfon Appendent, and presented, &c. and B, died seized, and the Premises descended to three Daughters, who assigned the Manor and Adowfon to A, their Mother in Devisee, and the Church being void A, presented, &c. and the eldest Daughter granted her third Part of the Manor with her third Part of the Adowfon to J. J. in Fee, and A. attorn'd, and J. S. granted it to the Father of the Plaintiff in Fee, and A. attorn'd and after died, by which the Father of the Plaintiff entered into the third Part of the Manor, and died seized, and the Plaintiff as Heir entered, and so the Plaintiff has the Estate of the eldest Daughter, and so it belongs to him to present; and the Defendant demanded Judgment for not shewing of the Deeds of the Grant of the Reversion, Per Thorpe, where a Reversion is granted, and the Tenant Attorns, the Tenant for Life died, and the Granite enters, it shall be good Title in Allife without shewing the Deed of Grant of the Reversion; because the Possession was executed; and per Cur. because the Plaintiff is in Possession by Defect, therefore he need not shew Specialty; and if the Grant was of the Land without the Adowfon, it is laved to the Defendant by way of Anwer. Br. Montrans. pl. 65. cites 24. E. 3. 52.

2. In falsi Imprisonment, where the Defendant justifies by a Warrant to him sent, by all the Justices, this Plea is good, without shewing any Thing of the Warrant; for it may be that it is returned before the Justices. Br. Montrans. pl. 96 cites 27. Mif. 36. per Sharde.

3. In Trespass, the Plaintiff counted, that he had bona Writs by Grant of the King, and seised such Wal, and the Defendant came and carried it away: And there twas held, per Finche, that where a Man has been in Possession of the Thing, and brings a Writ of Trespass, as here, he need not shew the Charter of the King; and contra, where he demands by the Charter a Thing, of which he had not Possession before. Quære. Br. Montrans. pl. 13. cites 40. E. 3. 10.

4. In Ejecutem by J. N. against C. the Defendant pleaded that A. gave a Manor to B. and M. his Wife in Tail; and B. and M. had Allife C. and that after B. and M. gave the Manor to J. S. upon Condition that he should lease the Manor to J. N. for a Term of Years, the Remainder to B. and M. that afterwards J. S. leased the Manor to J. N. the Plaintiff, the Reversion to himself, that B. died, and M. entered and died seized, and C. entered as Allife in Tail, &c. Judgment, 6 Acetio. Chefd objected that C. the Defendant maintain'd his Entry for a Condition broken, which lies in Specialty, and yet he did not shew it, &c. But Belknap said that the Thing was executed, for which Reafon no Deed need be shewn, and if this Matter was found by Verdict of Allife, it was good, &c. Fitzh. Montrans. pl. 141. cites T. 44. F. 7. 22.

5. The
5. The Plaintiff need not shew a Fine, nor any Deed when the execution is by power of attorney; contra if it be executory: Per Hill and Hanke. Br. Fornedon. pl. 23. cites 11 H. 4. 39.

6. When a Remainder is vested or executed, Deed of Remainder should not be found after; per Threlam, and Huddey ad idem. In affi'te the Plaintiff intitled himself by Remainder, he need not shew the Deed; because by his Seisin it was vested and executed: And the same Law in Fornedon if the Remainder be once vested. Br Montrants. pl. 75. cites 14 H. 6. 26.

7. If Issue in Tail be of a Gift of Rent in Tail, &c. which cannot pass but by Deed, yet if the Deed be executed, the Heir in Tail shall have Fornedon without shewing the Deed; for he is aided by the Stat. of W. 2. Cap. 1. if the Deed be burnt or lost. Br Montrants. pl. 60. cites 15. E. 4. 16.

8. He, who in the Court, is execrated by Affidavit, may say that he hath returned his warrant to the Sheriff; for otherwise he shall shew it to the Court. Quod nota, per Cur. Br. Montrants. pl. 126. cites 21. E. 2. 66.


10. Where Land is given for Life, or in Tail, the Remainder over in Tail, &c. and the Tenant for Life, or the Tenant in Tail, dies without Issue, and he in Remainder enters; there, if Discontinuance, Dilettin, &c. is made, so that the Heir in Tail in Remainder, or he in Remainder in Tail is to make Title by this Remainder, he need not shew the Deed of the Remainder as in Fornedon in Remainder; because the Remainder was executed before. Quod nota. Br. Montrants. pl. 1. cites 18. H. 8. 4. ———

And lo is T. 34. E. 3. quod nota in a Writ of Entry for Dilettin. Br. ibid.

11. If three Tenants in Common of an Acre which make Composition to present by Turn, and every one of them has presented by his Turn once by Vertue of the Composition; in a quere impedit brought after between them, the Plaintiff need not shew the Composition; because it was executed: But otherwise, if it was not executed; and between Coparceners Composition may be made without Writing, because by the Common Law they are Privies, and as one Heir, and compellable to make Partition; and so Diveristy. Held per Shelly and Fitzherbert J. and many of the Serjeants. D. 29. pl. 194. Hill. 28. H. 8. Anon.

12. A Licence that is executed and has no Continuance need not be shewn. 6. Rep. 38. Patch. 3. Jac. B. Bellamy's Case. Writing, and there did not any Intent pass thereby, but a Restraint only set upon a Liberty; and this a Thing executed; and his Allignee to whom he had alien'd Part by Vertue of the Licence, perhaps has it for the Forfeiting his Estate. Cro J. 102. Walker v. Bellamy.


15. In Replevin the Defendant justified by a Condemnation before the Justices of Peace upon the Statue of Excise for the Non Entry of strong Waters, and a Warrant made thereupon to levy 20s. for a Fine; Exception was taken, because there was no Proceedings in Curia of the Warrant. But per Cur. the Statue does not require that the Warrant be under Hand and Seal, but only in Writing, and no Writing is to be pleaded unless it be a Deed; and that, of Things executed, a Deed need not be shewn; and cited 7. Rep. in the End of Bellamy's Cafe, and to Judgment.
Faits or Deeds.


16. In Trespass of Assault, Battery, Wounding and Imprisonment the Defendant justified by Warrant of the Council of State in Rhodeis, &c. for Commitment of the Plaintiff; Exception was taken, because the Warrant was not flown; but it was answered that it lay not in their Power, because it was delivered to the Provost Marshall, as his Authority for the Capture and Detention, and therefore did belong to him to keep; and Judgment was given accordingly for that and other Reasons, and so a former Judgment reversed. Show. Parl. Cases, 24. Dutton v. Howell and al.

[See (M. a. 11) pl. 1. Reversion (9)]

(M. a. 11) In what Cases, in Respect of the Thing Sued for being grantable without Deed, or not.

1. If a Man purcashes Rent-Service, and gets Seisin, he shall have Affile without shewing Deed thereof, and yet it cannot be purchased but by Deed; and this, by reason that 'tis of common Right, therefore need not shew Specialty after Seisin. Contra of a Rent-Charge and Rent-Sack; and the Reason is, because the Rent may be claimed by the Estate without shewing Deed, where 'tis claimed as Parcel or Appendant to the Manor where the Land is; because the Manor or Land may pass by Livery without Deed, and then the Rent goes with it. Br. Monfrans pl. 91. cites 22 Ali. 53.

2. In Affile of Rent, he, who prescribes in himself and his Ancestors, and in those whose Estates he has, ought to shew Deed of the Rent; for the Estate cannot be of Rent without Deed, by which the Plaintiff shewed Deed of the Grant of the Rent to his Ancestor, but did not shew Deed of Commencement of the Rent, and therefore ill, by the best Opinion; for a Man may prescribe in himself and his Ancestors, &c. without shewing Deed, but not in a Que Estate of a Thing which cannot be granted without Deed, without shewing Deed thereof: Contra of Acquittance in him and those whose Estate the Lord has in the Seigniory, or Common Appendant, or Eftovers Appendant, &c. there he may prescribe by Que Estate without shewing Deed. Br. Prescription pl. 29. cites 24. E. 3. 23. 39.


4. He, who is a mere Stranger to a Deed of Release, and has no means to come by it, and the Deed goes in discharge of him, may plead it without shewing the Deed; Per Brandtel and Pollard Jusitices. Contra by Brook and Fitzherbert J. But they all agreed, that he who was party in Estate, as Leafe for Years, Feoffee, &c. and all who claim Interest in the Land, cannot plead the Deed without shewing it. Quod Nona bene. Br. Monfrans. pl. 161. cites 14 H. 8. 4.

5. If a Man pleads a Conveyance of a Rent, or the like, which cannot pass without Deed, and does not produce the Deed in Plac, it is not helped by the Stat. 27 Eliz. 5. of Demurrer. Per Hobert Ch. J. Hob. 233. in pl. 295.

6. Lease for Years claims a Way to his House by a Que Estate without shewing the Deed, and held good by 3 Jusstities against one, because the Leafe has not the Deed, and it is but a Conveyance to the Action, which is grounded on the Disturbance done to him in Pottage. Cro. J. 675. Slackman v. Welt.—Palm. 357. S. C.

Cited: Mod. 52.
Faits or Deeds.

7. But if he claimed a *Rent or *Common in gross*, which cannot pass *Yelv. 200.* without Deed, it had been otherwise; For there he could not shew the *Estate* without shewing the Deed, how he came by the Estate. *Cro. J. v. Hunt. S.P.* and Brownl. 225.


8. An *Arbitrayment* under Seal is no Deed, and the Arbitrayment may be made without Deed, and therefore is not necessary to be produced in Court; For it is but a Writing under Hand and Seal. *Per Glyn Ch. J.* Sty. 459. *Trin. 1655. Dods v. Herbert.*

to the Court, *Arg. Comb.* 53. cites *Dy.* 277. 1 H. 7. 12. *Cro. Car.* 145. 10 Rep. 94. *Yelv. 200.* *Hob.* 253.—But the *a* Thing will pass without *Deed*, yet if the *Party pleads a Deed and makes a Title there-fore, he must come with a *Protetc.* *Arg. 2 Mod.* 64. *cites 1 Lc.* 370. *Roll. Rep.* 29.—And yet in some Cases where a Thing cannot pass without Deed, as a *Remainder*, or *Reversion*, a *Deed* need not be shewn; but only after Execution. *Br. Monftrans.* pl. 55. cites 21 H. 6. 23. per Fulkhory, to which Yelverton agreed.

[See See Que Estate (C)]


1. *NOTE* a *Diversitv between Monftrans of Deeds or Records, and the Oyer of them;* For he who pleads the Deed or Record, or that *Deed* or *Record* declares upon the Deed or Record, to him it belongs to shew the Deed or Record but the other against whom the Record or Deed is pleaded or declared, shall demand the Oyer of the Record or Deed, which his Adversary brought against him. *Br. Monftrans.* pl. 165.

2. When Oyer of a Deed is prayed, it is intended that the Deed is in Court, and the (ci legiter) or reading of it is the Act of the Court. *Sid.* 328. *Mich. 18 Car.* 2. in Café of *Jevons v. Harridge.*

3. When a Deed is pleaded with a *Protetc* in Curia, the very *Deed* is itself by *intendment of Law immediately in the Possession of the Court*, and therefore when Oyer is craved, it is of the Court, and not of the Party. And *after* Oyer is craved the *Deed becomes parcel of the Record*, and the Court must judge upon the Whole; and the *Demand of Oyer is a kind of Plac.* and may be counterpleaded. 3 *Salk.* 119. pl. 2. 3. 4.

(M. a. 13) Monftrans, in what Cases there must be a *Monftrans* or *Protetc*, though the *Deeds* cannot be travelled when pleaded or shewn.


2. *Forger*
Faits or Deeds.

2. Forger of Deeds lies, where Tenuor proves to be referable, and shows a forged Deed of Lease; For per Molise, he cannot be recovered without showing the Deed; and this Deed shall not be travelled upon the Receipt, by Dunby and Chockee. Br. Forger de Faits, pl. 15. cites 9 E. 4. 37.

which is intended by Affton of Covenant. Ibid. and Br. Reclct pl. 73. cites 9 E. 4. 35. Br. Traversie per fam., &c. pl 129. cites 9 E. 4. 57.

3. Executors shall not have Affton before Probat of the Testament, but if it be written on the Back, quod Probatum est, &c. this shall not be traversable, but only whether he was Executor or not, and not whether he proved the Testament. Br. Traversie pl. 129. cites 9 E. 4. 47.


Deed on a Bond Assento-
ed by Consent-
fiers of
Banks, and because he comes in by Act in Law, and hath no means to show the Obligation; it was adjudged upon demurrer to be good enough without shewing it in Court; as Tenant in Statute Merchant or Tenant in Deed shall have advantage of a Rent-charge without shewing the Deed. Hill. 6. Car. Br. Cro. C. 25. Gray v. Fielder. Yo Rep. 94 in Leyfield's Case.—Jenk. 524. pl. 80. Co. Lit. 225. b.

2. If a Guardian in Chivalry in Right of the Heir had entered for Condition broken, he might have pleaded the Estate to have been upon Condition without shewing any Deed; because his Interest was created by the Law. Co. Litt. 225. b.


But the Lord by Escheat, tho' his Estate be created by the Law, shall not plead a Condition to defeat a Freehold without shewing it; because the Deed belongs to him. Co. Litt. 226. a.

5. So a Tenant by the Castell shall not plead a Condition made by his Wife and a Re-entry for Condition broken without shewing the Deed; For tho' his Estate be created by Law, yet the Law presumes that he had the Possession of the Deeds and Evidences belonging to his Wife. Co. Litt. 226. a.


WHERE a Covenant is annexed to a Thing, which of it's Nature cannot pass without a Deed at first, in such Case the Assignee ought to be in by Deed, otherwise he shall not have Advantage of the Covenant; but where the Covenant is not so, but runs with the Estate, the Assignee shall have Covenant without shewing any Deed of Assignment. Co. E. 373. 456. Hill. 37 Eliz. B. R. Noke v. Aywer.

2. A Licence to Lease Land need not be shewn by Assignee; For he does not claim by it any Estate in the Land, but his merely collateral to
Faits or Deeds.

the Interest of the Land, and only pleaded to excuse the Fortification of the Leafe: and not like a Releafs or Confirmation; For they give or transfer a Right. 6 Rep. 38. Patch. 3. Jac. C. B. Bellamy's Case.—Alias Walker v. Bellamy.

3. Where the Condition of a Leafe is, that the Lessor shall not Affign but by Deed and not by Parol, there he may plead the Allignment without hewing the Deed, an Allignment by Parol being fullinient, if it be not provided against by the Condition. Ibid.

4. In Dole upon a Leafe for Years by the Assignee of the Reversion, it was allign’d for Error, that he claimed of Grant of the Reversion, and did not shew that it was by Deed; and without a Deed or Fine a Reversion cannot pass; and for this and another Error principally the Judgment was reversed. Cro. C. 143. Mich. 4. Car. B. R. Long v. Nethercote.

(M. a. 16) By Baily or Servant.

1. In Trespa, the Defendant justified as Servant of a Collector to disaffain for 10s. Tax, and prayed Aid of his Master, and the Plaintiff prayed that the Defendant shew the Letters Patents by which his Matter was made Collector; and was not compelled to shew them; For the Power of the Master is the All of Parliament, which granted the Tax, and not the Letters Patents. Br. Montrans. pl. 58. cites 22 H. 6. 42.


4. Baily of a Dean and Chapter may justify to cut Trees to repair or make the Pales of the Dean and Chapter's Park; without Fleaving Specialty bey he was made Baily; for he is but an Officer or Servant to them, and for their Ufe. But ecraft of them who claim Interests from the Dean and Chapter, as a Leafe or Licence to take Trees, &c. Br. Montrans. pl. 113. cites 12 H. 7. 25. 26.

5. If a Man appear as Baily in Affile for the Defendant, the Plaintiff shall not have Travers in, that he is not his Baily. Br. Baille, pl. 9. cites 15 H. 7. 17. 18. per Townend.

6. If there are 2 Comperses and eac disaffain, the may awow for herself, and justify as Baily to her Companion, and it is not traversable if he be Baily or not. Br. Baille. pl. 9. cites 15 H. 7. 17. per Collowe.

8. It is a Maxim, that where a Man is a Stranger to the Deed, and

doth not claim the Thing comprized in the Grant, or anything out of it, nor
doth claim any thing in Right of the Grantee, as Bailiff or Servant, there
he shall plead the Patent, or Deed, without flewving it. 10 Rep. 94. Hill.
8 Jac. Br. Leyfield's Case.

9. In Treppafs of carrying away Trees; Defendant faith, that long
before the Plaintiff had any thing in the Place where, &c. one P. was
sized in Fee, and by Indenture demised to J. S. the said Chief, &c. excepting
the Wood and Underwood therupon growing; Habend for the Life of one A.
and further Covenanted, that it should be lawful for the said J. S. and his
Assigns to take necessory Fireboor and Houseboat, &c. and Defendant faith;
that J. S. assigned over his Eltate to the said A. and that he as Servant
took the said Trees for necessory Fireboor, &c. to be expended upon the
Premilises, and avered the Life of A. and it was thereupon demurred, be-
cause he justifies by force of a Covenant in an Indenture, and does not flew
the Indenture, it being a Thing which cannot be granted without Deed;
and the Plea was held to be ill and adjudged for the Plaintiff. Cro. J.

10. In Affaut and Battery, the Defendant justified as Servant to J. S.
for that the Plaintiff came to joyn in the several Pitchery of his Master; and
Judgment being given for the Defendant, a Writ of Error was brought
and 2 Exceptions taken. 1. That whereas the Defendant had intitled his
Master in his Plea of Justification to the several Pitchery by the King's
Letters Patents, he had not shewn, that the King was feid of this several
Pitchery Jure Coronae, and so it might be that the King had no Power to
grant it: 2. That he did not shew the Letters Patents, which he ought
to do, because he derives a Title by them: And a Rule was given to
shew Caule why the Judgment should not be reversed. Scy. 15. Patch. 23.
Car. B. R. Jones v. Young.

(M. a. 17) By Bailiff, or other Officer of the King. 

S. P. Br.
1. A Man may be Bailiff of the King without Patent. Contrad of a For-
Bailie, pl. 2.
But he can-
not be Steriff or Eijector without Patent. cites 53. H. 6. 2. by the best Opinion.—S. P. Br. Bailie. pl. 45,
cites 7. H. 7. 10.

2. In Treppafs the Defendant may justify by Command of the King, tho'
be not the King's Bailiff; nor other Officer, quod nona by Award, and
therefore it seems that he may do it without flewving a Dead or Writing

3. Where a Man makes Cognizance to distrain, as Bailiff of the King's
Manor, for Rent or Services arrear, and prays aid of the King, he shall have
it without flewving the Patent how he is made Bailiff; because he claims
to the Ufe of the King. But if he claims of the King to his own Ufe,
there he shal flew the Patent. Br. Montrans. pl. 64. cites 15. H. 7. 17.—
Travers. per fants, &c. pl. 118. cites S. C. per Vervifor.—A Diftreff taken by one as Bailiff who is not
pl. 1. S. P. For whether Bailiff or not is not traversable, cites 26. H. 8. 9

(M. a. 18) By
Faits or Deeds.

(M. a. 18) By Cesly que Ufe, Trust, Covenantor, &c.


2. A, gives Land to J. S. and J. N. and their Heirs, to the Use of him and the Heirs of his Body, and for Default of such Illeue to the Use of B. and his Heirs; A. dies without Issue, B. brings a Formedom; but the Opinion of the Court was Prima facie, that he need not produce the Deed, because it belongs to the Feoffees, and not to him. D. 277, a. Trin. 19 Eliz. Eloff v. Vaughan. — Cro. Car. 441. Stockman v. Hampton, S. P.

D. 277 Margin. pl. 58. says it was so Resolved 2 Eliz. B. R. —— In pleading the Grant of an Advowson after the Statute of 27 H. 8, to One to the Use of another in Faits, it was held per tot. Car. that Cesly que Ufe need not shew the Deed, because it belonged to the Grantee and not to Cesly que Ufe; but that he ought to shew that it was granted by Deced; but Walmifey Contra, that he ought to shew the Deed, because the Grant is not good without Deed, and to differ from D. 277, Eloff's Case, Cro. J. 277. Hill. 6 Jac. B. R. Huntington (Earl) v. Mildmay. In a Case upon the same Point, the same Objection was made as by Walmifey; but Resolved Contra for the Reason above in D. 277, and also because Cesly que Trust has no remedy in Law to get Possession of the Deed; and also, because he is in mortue by Operation of Law and not in the Peer. Cart. 316. Trin. 6 W. M. B. R. Reynell v. Long.

3. And the Court was likewise of the same Opinion, because the Remainder should commence without Deed. D. 277, b. pl. 58. Trin. 19 Eliz. pl. 53. S. C. Cesly, and so the Party is in the Land; as Tenant in Dover, Tenant by Statute Staple or Merchant, who have a Rent-charge extended to them. Cro. C. 441. 442. Hill. 11 Car. B. R. Stockman v. Hampton.

4. In a Squa Impedis, Plaintiff intided himself to a Manor to which an Advowson was appurtenant, that his Father was settled and Covenanted (without saving per Indenturam, as in Car. prolat.) for natural Affeccion to hand feised to himself for Life, Remainder to the Plaintiff, and that his Father died; the Defendant demurred. Per Car. 'tis good; For the Plaintiff is not Party to the Deed, nor has a Remedy to come to it, and he has the Estate by the 27 H. 8 of Ufes, and now the Deed properly belongs to the Covenantor, and so was the better Opinion in D. 277, and that differs from the 14 H. 8. 7. 8. and Judgment was given accordingly, Nov. 135. Welsey's Case. Cro. J. 277. Huntington v. Mildmay. —— Hill. 71 Cro. Stockman v. Hampton. — Cart. 277. Reynell v. Long. S. P.

5. In Doli aduiiff Executrix for 10l. the Plaintiff declared upon an Obligation Conditioned to pay 5l. to A. to the Use of M. his Daughter as a Time limited in a certain Indenture, the Defendant pleads that the Indenture was made between her Tefator and one J. S. by which the Plaintiff entailed J. S. to the Use of the Tefator and his Heirs, and that the Tefator Covenanted to pay $l. to the Plaintiff within Ten Months after the Death of W. R. which W. R. is yet alive. The Plaintiff demurred, because the Defendant did not produce the Indenture, but the Court held that the Plea was good without it; because the Defendant was a Stranger to the Deed, and it does not belong to him, but belongs to the Feoffees, and he has no means to enforce them to produce it, and the Court will not impose an Impossibility, especially the being an Executrix; but the Plaintiff had leave to discontinue. Lucr. 431. Trin. 3. Jac. 2. C. B. Crotch v. Crotch.

[ See Cesly que Trust (F) ]

Y (M a 19) By
(M. a. 19) By Corporations and their Grantees, &c.

1. If a particular Man claims an Exception by a Charter made to a Corporation, he must shew it, per Haughton. *fays it has been adjudged. Roll. Rep. 296, in the Case of Buckhain v. Dunbridge.

2. Plaintiff in Ejectment declared of a Lease made to him by a College by Indenture, without paying Hic in Curia prolatis, it is not good. 1 Buls. 119. Pacht. 9. J. St John's Coll. Oxon v. Haig, alias Clerk v. Hannes.

3. But if a Lease for Years had been made to a Corporation, who cannot take without Deed, and they granted it over, the Grantee might have intitled himself without shewing the Deed; because the Lease of the Thing in its Nature might have passed without Deed, although the Persons who took it could not take it without Deed. Cro. J. 110. *cites it as to said in Case of Prideyman v. Wodry.

[See (M. a. 11) — Corporations ( ) ]

(M. a. 20) By Persons that are in by Descent.

1. He, who is in Possession by Descent, need not shew Specialty. Br. Monittrans. pl. 65. cites 24 E. 3. 52. per Cur.

(M. a. 21) By Devisee.

1. In Mortdancisor, the Tenant intitled himself by Devise, by Testament of the Ancestor, of whose Seal the Defendant demanded, and this by Custom of Devise, and Belk. challenged, because he does not shew any thing of the Devise, & non allocatur; because the Testament does not belong to the Tenant, but to the Executors, quod non nati bene. Br. Monittrans. pl. 102. cites 40 Aff. 2.

(M. a. 22) By Dilettsee.


(M. a. 23) By Grantee, Leffée, &c.

1. In Debt upon Lease for Years by Indenture, the Plaintiff may Count without the Indenture; For the Lease is the Effect and not the Indenture; For variance between the Writ and the Indenture for this Cause was agreed not to be material. Br. Monittrans. pl. 26. cites 44 E. 3. 42. — Ibid. cites 4 H. 6. 7. contra per Babington. But Brooke says, it seems the Law is contra to Babington.
Faits or Deeds.

2. In Wotf, "twas admitted that if a Man Lease for Life, and after by
Allent of the Lease makes over to another in Fee, and the Lease does not
and the Lease shall have as Affigre, without shewing the Deed of

3. 'Tis said for Law that where an Ejectment is brought against
Alleve of him in Reversion, he may plead a Condition without shewing Deed.
Br. Monitans. pl. 31. cites 7 H. 4. 16.

4. So upon a Lease for Years rendering Rent with Condition of Non-pay-
ment; the Reason seems to be because 'tis of a Chattle. Br. Monitans.
pl. 31. cites 7 H. 4. 16.

5. If Tenant for Years in whom there is Privity pleads a Release, he

6. A Lease was made by A. to J. S. and afterwards A. made another
Lease to W. R. to begin after the Determination of the Lease made to J. S.
In second Deliverance brought Exception was taken, that the Plaintiff
had conveyed to himself an Interests of a Lease made by A. to W. R.
which is made by Name of the Reversion, and to commence after the first
Lease made to J. S. ended, which is alleged to be made by Deed in-
dented, and that therefore the Plaintiff ought to shew the Indenture, and the
rather for that the Validity of the 2d Lease depends upon the Valid-
ity of the first Lease, so that to make the second Lease good, the Plaintiff
must shew the First to be good, and in order to that must shew each Deed,
notwithstanding it was made to J. S. and not to him. But the Exception
was disallowed. Pl. C. 147. &c. 3 Ma. Throckmorton v. Tracy.

7. Ejectment was brought by Lease for Years, Defendant pleaded a Bar-
gain and Sale made to him in Fee by Indenture involv'd within 6 Months,
by which he was said till Lease differ'd him; who leased after to the Plain-
tiff. The Plaintiff replied that the Bargain and Sale was upon Condition,
which was broken, abhiqu hoc that the Lessee differ'd, &c. Defendant
demurred and for Caufe fluxed, according to the Statute, that the
Plaintiff in his Replication did not set forth the said Indenture comprehending
the Condition, and after good Debate and Consideration of the Matter in
Law, it was adjudged for the Plaintiff. Mich. 32 and 36 Eliz. B. R.
Rep. 74. Wyman's Case.—Miss Dun v. Low.

8. A Man claims from a Grantee of a Patentee of a Hundred, in which
was a Leet; he must shew the Deed, if he avows for an Accommodation in

9. Plaintiff declared as a Lease by Baron and Fone, and shewed it not
to be by Deed, yet 'twas held well enough; For it may be intended by
Deed, tho' no Declaration thereupon; and tho' it be without Deed yet
'tis well enough, at least during the Life of the Baron; and 'tis a Lease
from them both during that Time. Mich. 27 and 38 Eliz. B. R. Cro. E.

10. In Trepals, Defendant, who was under Lease of the Patentee of
part of the Term, justifies under the Lease by Patent from the King. Per
tor. Cur. he ought to have pleaded Hic in Curia prolat. and for this O-
million the justiciation is not good, and Judgment pro Quer. 1 Bals. 154.
Trin.9 Jac.4 Layfield v. Hellicar.—So of the Lease of Patentees, pertiaim.
but Rhode Contra. Godib. 112. pl. 133. Mich. 28 and 29 Eliz. Anon.—
Sty. 15. P. 23 Car B. R. Jones v. Young, S. P. —But where the King comes to
the Land in the PoB, his Grantee need not shew it; For by Intendment the

11. One

[See Prerog. (Y. c. 2) Que Estate (D)]

(M. a. 24) By Grantee of a Chattel.

1. WHERE the Lord of B. and his Ancestors, &c. time out of mind, have had Foldage of Sheep for their Tenants in B, and he Grants it to W. N. for 4 Years, it is good, and W. N. may justify without shewing Writing of the Grant; For he need not [because it is] but a Chattel. Br. Monttrans. pl. 166. cites I H. 7. 24.

2. A. who was the true and rightfull Patron granted the next Avoidance to B, and after B. made C. and D. his Executors and died. The Executors granted it to J. S. and all their Interest in it: The Church voids and J. S. brings Qua. Imp. &c averse this to be the next Avoidance, but does not shew the Literas Testamentarias of B. and it seems he need not: For th'o' the Executors never proved the Testament, yet the Grant of the Avoidance is good, and is an Administration in Law. D. 135. pl. 13. Mich. 3 and 4 P. and M. Smithley v. Chomley.

(M. a. 25) By Lord by Escheat, &c.

1. LORD by Escheat shall not plead a Release made to the Deviseor by the Devisee without shewing it. To Rep. 93. in Dr. Leyfield's Case.

2. Grantee of a next Presentation was Outlaw'd, and the Church became Vacant. The Lord of the Manor, to whom the Goods, Chattels, &c. of Outlaw'd, &c. Persons were granted by Letters Patent, brought Qua. Imp. and it was Resolved, that the Plaintiff being en le Post, and not privy to the Grant in any wise need not shew the Deed of Grant to the Perion Outlaw'd. Hob. 302. Mich. 17 Jac. Holland v. Shelley.

[See (M. a. 24)]

(M. a. 26) By Lord, Mefie and Tenant.

1. WHERE there is Lord, Mefie and Tenant, the Tenant may plead a Release, made by the Lord to the Mefie without shewing it; for this amounts to Hors de fon Fee. Br. Monttrans. pl. 61. cites 14 H. 8. 4.

2. So where the Lord or Mefie has Granted his Seigniory or Militany over, &c. to which he attorns, and does not shew the Deed, for this goes in his Discharge, and it does not belong to him, and he has no means to come by it. Br. Monttrans. pl. 61. cites 14 H. 8. 4.

(M. a. 27) By
Faits or Deeds.

(M. a. 27) By Officers.

1. He, who justifies the Entry into a House as under Ejector, shall show the Communion, by which the Ejector commanded him to do so. Br. Montrans. pl. 92. cites 22. Alii. 57.
   4. Trespass of Improvisation; the Defendant justified as Servant of a Justice of Peace, to arrest the Plaintiff, who was making a Riot in Presence of the Justice, and good, without showing a Precept in Writing, for, in presentia judicium, contra in absentia Juristic. Br. Montrans. pl. 93. cites 14. H. 7. 8.

(M. a. 28) By Privies.

1. Trespass of Goods taken, &c. the Defendant justified, because he was Mayor of M. and the Vill has Goods of Outlaws by Grant of the King and he took them as Goods of the Outlaw, as Mayor, and after was removed, and another made Mayor, Judgment; and the Plaintiff demurred, because he did not show the Patent; and per Danby and Moyle, he need not as here, for now this Interest is determined, and the Patent belongs to the new Mayor. But where the Interest is determined, and the Patent belongs to himself; there he shall show it. And per Danby, he shall show the Deed in the Principal Cafe. Therefore quere, for Adjutice. Br. Montrans. pl. 11. cites 35. H. 6. 8.
   2. A Man has a Rent for Term of another’s Life, and Coyt gae Vie dies, he shall show Patent; contra, where the Remainder of the same Rent is over in Fee; For this belongs to him in Remainder. Br. Montrans pl. 11. cites 35. H. 6. 8.
   3. So of a Person, who has a Rent in Fee, and Permutes or Resigns; For the Deed belongs to the new Person. Br. Montrans. pl. 11. cites 35. H. 6. 8.
   4. He who is Privy as Laffee for Years, Forflee, &c. cannot plead a Deed without showing it. Br. Montrans. pl. 61. cites 14. H. 5. 4.
   5. A Remainder Man shall not plead a Release made to the Tenant for Life, without showing it; and yet it does not belong to him; nor has he Means to come at it. 16. Rep. 93. b. in Dr Leyfield’s Cafe.

Confirmation to Tenant for Life, Remainder to another in Fee. Litt. S 512. Because he is Privy in Efluate. Co. Litt. 311. b.

[See Reversion. (S.)]

(M. a. 29)
Faits or Deeds.

(M. a. 29) By Strangers.

1. A. Gave Land to B. in Fee rendering Rent, and to re-enter for Non-Payment; afterwards B. leased to C. for a Term of Years rendering Rent; The Rent payable to A. was arrear, by which he entered and ousted C. Now C. shall be discharged of his Rent against B. and shall pay that his Estate is defeated by the Condition as above, and that by Realon of the Rent arrear he is ousted, and so his Estate defeated, &c. without shewing the Deed of the Condition. 45 E. 3. 8. b. pl. 19.

2. He who is a Stranger to the Releefe can't plead it without shewing it, as it seems. Br. Monftrans. pl. 41. cites Littleton tit. states accordingly. 3. As in Debt against N. who said, that the Obligation was made by him, and by a Feme who took E. to Baron, and the Plaintiff by the Deed which he shewed had releas'd to E. all Actions, &c. Br. Monftrans. pl. 41. cites 11. H. 4. 39.

4. Fowmed, the Tenant said that A. was seized and leased to him for Life, and after granted the Reversion to seven, and four of them releas'd to the other three, and after, one of the three releas'd to the other two, and shewed all the Deeds; and so it seems that he ought to have shew a Deed to which he is a Stranger, if he pleads it. Br. Monftrans pl. 42. cites 14. H. 4. 32.

5. In Practice quod Reddat the Tenant made Default after Default, A. came and said that T. was seized in Fee, and leased to the Tenant for Life, the Remainder to him in Fee, and prayed to be receiv'd, and did not shew the Deed of Remainder. And the Opinion of the Court, except Pritor, was, that he shou'd be receiv'd without shewing the Deed; For be is to affirm the Possession of the Tenant, and this by Dignity. Br. Monftrans. pl. 12. cites 35. H. 6. 31. 32.

6. But quere in Fowmed, in Remainder or Wolf, where he is to recover the Land; there he shall shew the Deed of Remainder. Br. Monftrans. pl. 12. cites 35. H. 6. 31. 32.

7. And the Tenant shall have Aid of him in Remainder, without shewing the Deed and a Fortiori here; for the Deed appertains to the Tenant for Life during his Life, and not to him in Remainder. Br. Monftrans. pl. 12. cites 22. H. 6. 1.

8. And it seems, that he may make Title in Affs by such Remainder without shewing the Deed; but there the Remainder was executed. Br. Monftrans. pl. 12. cites 22. H. 6. 1.

9. In Debt upon an Obligation, that A. shall force the Plaintiff for seven Years, the Defendant said that A. served from the Day, &c. till such a Day in the seventh Year, when the Plaintiff discharged him out of his Service; and a good Plead without shewing the Deed of Discharge; because the Condition is put in the Deed, and allo the Defendant is a Stranger to the Service, and was not Servant, but A. was the Servant. Br. Monftrans. pl. 119. cites 10. E. 4. 15.

10. A Feme shall have Dower of a Rent-Charge without shewing the Deed, because the Deed does not belong to her. Arg. Pl. C. 46. in the Case of Wimbish v. Talboys.—55. S. P. Per Montague Ch. J.—Arg. 81. b. S. P. in the Case of Partridge v. Strange.

11. Where a Deed is pleaded in Discharge, and the Party does not make Title under it, there is no need of Plead, he in Curia. Mo. 870. Brown v. Goldsmith.
12. It is a Maxim, that where a Man is a Stranger to the Deed, and doth not claim the Thing comprised in the Grant, or any Thing out of it; nor doth claim any Thing in Right of the Grantee, as Bailiff or Servant; there he shall plead the Patent or Deed without shewing it. 12. Rep. 94.

Dr Leyfield's Case.

13. But when he claims the Thing, or any Right or Interest out of it, or justifies in Right of the Grantee, he must shew the first Grant. Ibid.

14. As second Grantee of a Rent-Charge must shew the first Grant, and to make his Bailiff. Ibid.

15. And the Grantee of the Rent-Charge shall not plead the Release of the Diffender to the Diffender without shewing it; for tho' he claims not the Land of which the Release is made; yet he, that hath Rent out of the Land, hath Right in the Land, which by Release of all his Right shall be extinct, and therefore must shew the Deed. Ibid.

16. If Law be mortgag'd upon Condition, and the Mortgagee (in Possession fappo'd) leaves the Land for Years, referring a Rent, and afterwards the Conditional is performed, and the Mortgagee re-enters; the Lesse, in an Action of Debt for the Rent, shall plead the Condition, and re-entry without shewing the Deed. Co. Litt. 226.

17. One need not produce a Deed of Release in Pleading, where it was to a Third Person, and he [claims not under Piin, nor has any Means to come by it]. Per Levinz. J. 2. Show. 418. in the the Case of Howard v. Denham.


(M. a 50.) By Tortfeilor.

Tortfeilor, who can't make Title, may plead a Deed without shewing it, per Fitzherbert and Broke. Br. Montfrans. pl. 61. cites 14. H. 8. 4.

(M. a 31) Monfrans. To whom.

1. In Procese quad reddat against S. he pleaded that R. was seised, and infeu'd him in Mortgage, upon Condition of Payment of certain Money at a Day; and that R. paid the Money at the Day, and entered, Judgment of the Writ. Exception was taken, because he shew'd no Deed of the Condition. But Ruled that he need not shew the Deed for two Reasons. 1. That he ought not to shew any Deed to the Demandant, because he is a Stranger. 2. It might be when R. paid the Money, and the Condition performed, that the Deed was Re-built to R. and to the Plea was adjudic'd good, and the Writ abated. Co. Litt. 226 a.

(M. a 32)
1. THE Want of a Profert may be made good by the Plac of the other Party, Pl. C. 230. b. 4. Eliz. in the Caie of Williams v. Barkley:—As in the Grant of an Advowson, where the Issue was taken on a collateral Matter. Hut. 34. Litchiloot v. Brightman.

2. In Replevin, the Defendant justified as Servant to J. S. as in his Freehold, and the Plaintiff conveyed as Patentee for Years from the Queen, without making Profert, and traversed the Freehold of J. S. It was held by all the Justices except Walmesly upon a General Demurrer for the not making Profert, that it was but Matter of Form, and not much material. For it was an Inducement only to the Traverse, and not traversable, and may be amended: And they said, that if the Defendant makes no Defence, and there wants an Avenment, the Words (Hic in Curia prolat.) may be amended and inserted; For the Truth of the Matter appears, and in this Cae the Letters Patent are not Issuable. But, Periam said, that if such Plea had been in an Avowry when it was Issuable, it should be otherwise, and it was adjudged accordingly for the Plaintiff. Cro. E. 217. Hill. 33. Eliz. B. R. Vautry v. Aplin.


4. In Trespass of breaking his Clofe, the Defendant justified, because it was the Freehold of J. S. and that he entered by his Command. The Plaintiff said that the Place where is Cutomary Lands, Parcel of the Manor of D. &c. and demisable by Copy at Will in Fee; that W. R. was feized in Fee according to the Cotom, and died feized; and that the Land demised to A. and B. two Daughters as Heirs of the said W. R. and their at such a Court, Domains conceffit et c. &c. Habend', &c. to them and their Heirs, whereby they are feized in Fee, and demised to the Plaintiff. Issue was joyn'd upon a collateral Matter, and Verdict for the Plaintiff. It was mov'd in Arrest of Judgment, because the Plaintiff did not shew the Grant, and that he shewing that A. and B. were feized in Fee, without shewing the Grant, was not good: And of that Opinion was all the Court, that the Pleading was not good; but Hide, Jones, and Whitlock J. conceiv'd, that it was but a Default in the Form; and the Issue being taken upon a collateral Matter, it was helped by the Statute of Jeofails; whereupon it was adjug'd for the Plaintiff. Cro. C. 190. Patc. 6. Car. B. R. Shepherd's Cafe.

5. 10. and 17. Cr. 2. 8. After Verdict, Judgment shall not be flied or recus'd for Default, of Alleging the bringing into Court any Bond, Bill or other Deed mention'd in the Pleadings, or of any Letters Testamentary, or of Admonification.

6. The Plaintiff declared of Taking, Cheaping, and Detaining a Cow for the Space of 8 Hours, the Defendant pled that I. S. was Patentee of all the Elysays within the Manor of H. by which he was posse'd of all Elysays, &c. and so being posse'd, the Heifer [Juvena] ahors'd, being
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an Effray, came into the Manor, by which he, as Seward of the said I. S. took and chaled the Heifer [Juvenal] aforesaid, which is the same taking, &c. and detined her till reprieved by the Plaintiff. Exception was taken to the Bar, for not producing the Patent, fed non Allocatur; because no Advantage can be taken of it but upon special Demurrer. But the Plaintiff had judgment for the Variance between the Declaration, which was [Vaccum] and the Plea which was (Juvenal), Lutw. 1553. Hlfl. 1. and 3. 2. C. B. Millor v. Bocking.

7. In Delit on Bond in the Grand Sessions of Wales, the Plaintiff in his Declaration omitted the making of a Proferit, &c. and Judgment was for the Plaintiff. This was aligned in Error; but the Court held it only Matter of Form, of which no Advantage could be taken after that in the Verdict, or on a General Demurrer, and therefore a firmed the Judgment. 2. Salk. 497. Mich. 4, and 5. W. & M. B. R. Salisbury v. Williams.


8. Administrator brought Delit upon a Bond made to the Intestate setting forth that he was Administrator to J. S. and that the Defendant did not pay to the Teller in his Life, or to him [the Administrator] since J. S’s. Death. [The Defendant pleaded] Non est Factum, and Verdict for the Plaintiff. [Exception was taken that it did not appear that Administration was committed to the Plaintiff; And per Cur. that would be a fatal Exception upon Demurrer, but is helpful by your Pleading over, whereby you admit him capable to lue. 6. Mod. 155. Paclhm. 3. Anne B. R. in the Cafe of Adams v. the Terrenans of Savage. 9. 4 and 5 Anne. 16. Helps such Omission, unless specially demurred to: And that all Statutes of these sorts shall extend to Judgments by Confession, &c.

See more Matter of Monitans or Prolet of Deeds, under the Hand of Pleadings at the several Tides throughout the Work.

(N. a) Pleading Non est Factum. By what Persons.

1. A Stranger shall not lay Non est Factum; but a Party may. Br. Compré. 2. ibid. cites 2. C. C.

2. A Stranger to a Deed may plead Non Releffia pas; but a Party to the Deed must plead Non Est Factum, if he has Nothing to plead to avoid his Deed; but where he has Matter sufficient to avoid his Deed, he may plead Non Releffia pas specially. 2. Bals. 55. Mich. 10. Jacob B. R. Richardson v. Pitell.


A Stranger shall not lay Non est Compré, but Non est Releffia pas by the Deed. Br. Estranger al Fair. pl. 2. cites 28. H. 6. 5. 26. He may lay * Non Grata pas, or * Ne Charga pas by the Deed, and such like.

Ibid pl. 2. cites 25. E. 5. 1. * — No Ne Da pas. Ibid pl. 2. cites 2 H. 4. 23. 24. — No Ne Leta pas in Case of a Lease for Life to Defendant, Remainder in Tail to the Plaintiff. But in the same Case if Non Releffia pas by the Deed was held no good Plea so that Case was. Ibid pl. 7. cites 2 H. 4. 22. — S. P. For that the Lease was without Deed, yet it was good. Ibid pl. 9. cites 9. H. 5. 5.


4. A False Corver may plead Non est Factum to a Bull Bond given to her to the Sheriff who arrested her, and it shall not etrop her. 1. Salk.


[See Stranger. (F.) ]

A a (N. a. 2) Pleading.
(N. a. 2) Pleading non est Factum. In what Cases.

1. Resignation of Word brought by Executors inasmuch as the Ancestor of the Intant held of the Tenant in Chivalry, &c. the Defendant says, that the Tenant by Deed inforse not the Ancestor of the Intant in Fee, to hold of the Chief Lord; and no Plea per Cur. without giving Cohab. to the Plaintiff, and so he did after; and then they were at Issue upon Not the Deed of the Tenant; quod non, Issue upon a Deed, which touches Frank-tenement, taken in Action Personal, which demands only a Chattel. Br. Ravillament de Gard. pl. 8. cites 2 H. 4. 23.

2. Debt was brought against an Abbot upon an Obligation of his Predecessor, where it was doubtful if he was Abbot or not, because he was elected by 10 Macks and put in by the Visitor, and another was elected by 14 Macks, and the Abbey put by Election; and the Person that was elected by 10 made the Obligation; and it is not there agreed if he shall plead the special Matter and conclude Judgment to Action, or if he shall not pay Not the Deed of the Abbot and Covent generally, and give the Matter in Evidence, or plead the Matter and conclude, and so Not his Deed; For no Judgment. Br. Non est Factum, pl. 3. cites 9 H. 6. 32.

3. But it was held there, that where an Abbot or Parson is indubitably elected, and makes a Grant or Obligation, and after is deprived or de-recognized for Pre-contradiction, or such like, it shall hold; because he was an Abbot or Parson in Poffession; but an Usher who Ushers before Installation, or Institution, or Pre-Lentation, where another Abbot or Parson is rightfully in Possession; or if one enters and Occupies in the time of Vacation without any Election; the Deeds of such are void. Br. Non est Factum, pl. 3. cites 9 H. 6. 32.

4. A is bound to J. S. where there are Two J. S's and the contrary J. S. gets the Bond and fues it; the Defendant may say that he Sealed and delivered the Deed to the other J. S. and not to the Plaintiff; Judgment to Action; and shall not be compelled to pay, Non est Factum. Br. Nonlome. pl. 65. cites 12 H. 6. 7.

5. In Debt upon Obligation under the Covent Seal, Not the Debt of the Abbot is a good Plea; and so of Not the Debt of the Covent; but Not the Debt of the Abbot and Covent is double. Br. Negativa, &c. pl. 31. cites 14 H. 6. 16. 17.

6. In Trepafs, the Defendant pleaded a Release bearing Date after the Trepafs, and pleaded the primo Deliberation such a Day after, Adjudge that he is Guilty after the said Day; and a good Plea; and the Plaintiff may well say, Non est Factum, if all be in one and the same County. Br. Trepafs, pl. 33. cites 34 H. 6. 5.

7. In Recordare, the Defendant pleaded against the Plaintiff, Not the Debt of S. after time of Memory; and 'twas held Negative pregnant. Br. Negativa, &c. pl. 35. cites 39 H. 6. 7. 8.

8. In all Cases where the Defendant confesses once the Deed, and after would avoid it by a Matter, which makes the Deed defeasible and not void, he shall never pay, Not his Deed. Mo. 43. pl. 132.

In Debt on Bond, Defendant pleaded that Factum prodeift. was made and delivered without Date, and that afterwards Plaintiff put a Date, and so Not his Deed; but held ill on Deniers; For whilst he confesses the Deed, by saying Factum prodeift and afterwards denies it; Whereas he might have had, Non est Factum, generally. Adjudged for the Plaintiff. Cro. E. 86. Mich 42 and 43. Eliz. C. B. Cophy v. Turner.

9. As in Debt upon an Obligation, the Defendant cannot plead that he has paid the Sum, and that the Obligation was delivered to him in lieu of an Acquittance, and that the Plaintiff re-took it with force from the Defendant, and so not his Deed; For he has confessed it before to be his Deed. Br. Non est Factum, pl. 9. cites 1 H. 7. 14. and 22 H. 6. 52.
other time, and which the Plaintiff accepted in full satisfaction, and delivered the Bill obligatory in the name of an Acquisition of that Debt to the Defendant, Provided on the said Bill had solely left its face and effect, and that after the Plaintiff took it from him by Force, &c. and so the Defendant says that that Bill, Non est Fœtidum. But his bond, &c. upon this the Plaintiff demanded, it was argued by a Sergeant, Stanford and Bromley, that it was no Plea; because, when a Man pleads Payment in the former County, he ought to rely upon the Deed, &c. and also, because no Acquisition was thrown of the Payment, it being aMattum, that a simple Obligation cannot be avoided by naked Matter, but by something as High in its Nature as the Obligation is, vis. by Matter in writing; and also, from the Inconvenience of putting Matters in writing and Matters in fact upon a Level. And further, that this Bill cannot be an Acquisition, because not made in the Name of the Obliger, nor any words of Account. D. 31. pl. 1. &c. Mich. 38. H. 8. Cockrell’s Case.—Hughes’s Abr. 598. pl. 3. cited B. C. by the Name of Cottrell’s Café, and says, it was held that the Re-delivery of the Deed to the Defendant could not be an Acquisition; because it wanted words of Acquisition to that Purpose.—And Nels. Abr. Bonds (H) pl. 3. to 38. s. C. by the Name of Cottrell’s Café, and says, the Plea was adjudged an ill Plea.—But Quære, if any thing is said by the Court in the whole Case. 

So in Covenant against an Apprentice upon Indemnity, Discharge by Parol is no Plea; and it is a good Conclusion to say Judgment Si Actio; but not, So Non his Deed. Br. Bar. pl. 68. cites 1 H. 7. 14. per Vvatar and Keble.—So if one pleas Acquisition against an Obligation. Per Keble. Ibid.—So if in Debt upon an Obligation, the Defendant pleads that at the time of the making he was within Age, he shall not pay, Nor his Deed; For the Deed is voidable for this Matter. Mo. 43. pl. 132. And so where any matter is to come after the Delivery. Mo. 45. pl. 132.


11. So in Case of Infancy. Ibid.— 5 Rep. 119. S. P. in Whelpdale’s. Br. Barre. Café. A Bond by Infall. or Non Compos is void; because the Law has pl. 68. S. P. appointed no Act to be done to avoid it, and the only Restraint, why the Party cannot plead Non est Fœtidum, is, because the Cause of Nullity is extrinsic and appears not on the Face of the Record. 2 Sa. 675. Hill. 9 W. 3. B. R. Thompson v. Leach.

12. In Debt upon an Obligation the Defendant said, that there was a Schedule annexed to the Obligation concerning certain Covenants, the which Schedule is now disannexed from the said Obligation, and so Not his Deed. And it was held by all the Justices, that this Conclusion was not good; but he ought to say Judgment si Actio. Mo. 43. pl. 132.

13. Where the Debt never was his Deed, as where ‘tis falsely read, and such like, be shall conclude Non his Deed. Br. Non est Fœtidum, pl. 11. cites 14 H. 8. 25. per Pollard.

14. But where a Deed is made in a defeasible Manner, or where it is available by an Act ex post Fœtidus, he shall conclude Judgment si Actio; As in Case upon a Bond made by Dare’s, or by an Infancy. or is ratified after, there shall he shew the Matter and shall conclude, Judgment si Actio; and the same upon Interlining after, per Pollard. Br. Ibid.

15. Sir Edward Ailshfield was bound in an Obligation by the Name of Sir Edmund, and subscribed it with the Name of Edmund; and in Debt brought upon it, he pleads it is Not his Deed; and all the Justices inclined, that he might well plead it. For it appears to them, that he is not named Edmund; and the Original against him was, Command Edmund, otherwise Edmund, and this was not good; For a Man cannot have two Christian Names; and if Judgment were given against him by the Name of Edmund, and the Sheriff should Arrest him by a Capias, False Imprisonment would lie against him. 2 Brownl. 48. Hill. 8. Jac. C. B. Sir Edward Ailshfield’s Café.

16. In all Cases, where a Bond was once his Deed, but before Action brought becomes no Deed, either by Reprieve, or Addition, or other Affirmation of the Deed, or by breaking the Seal, the Defendant may fairly plead, Non est Fœtidum; For at the time of the Plea, which is in the Trin. 12. Inc. present time, it was not his Deed. 3 Rep. 119. b the last Revolution in Whelpdale’s Café.

17. Obligation
17. Obligation was made by Zee, and after the Seal of the one was torn off the Deed; there, per Brian, in an Action brought against the other he may say Non est Factum, as if it had been ruled, or interlined; For a Discharge to the one shall serve both; and also, when it was his Deed 2 were obliged, and now only one is, and therefore not his Deed. Quere. Br. Non est Factum, pl. 21. Cites 3 H. 7. 15.

18. In Debt upon Bond, Defendant pleaded Non est Factum, and before the Day of Appearance of the Jubhel, Rats out the Label, by which the Seal was fixed, through the Negligence of the Clerk in whole Custody it was. 'The Judges directed, that, if the Jury find it was the Defendant's Deed at the time of the Plea pleaded, they give a special Verdict; and so they did. 5 Rep. 119. b. in Whelpdale's Cafe; cites D. 59.

19. If a Deed was once the Party's Deed, and after the Duty is expired, then he ought to demand Judgment fi Aetio; as if a Release of the Duty be pleaded, he ought to demand Judgment fi Aetio; For it was once his Deed, and therefore he cannot say Non est Factum. Per Montague Ch. J. Pl. C. 66. b. in Cafe of Dive v. Manningham.

20. W. S. was bound in an Obligation to A. in which he was named J. S. and J. S, receiving the Mithofiner sealed and delivered the Obligation as his Deed. Afterwards, Debt was brought upon this Obligation against him by the Name of W. S. otherwise called J. S. and he pleaded Non est Factum, and this special Matter was found by Verdict; and by the Opinion of the Justices of C. B. the Plaintiff shall not recover upon this Verdict. But the better way had been to have brought the Action by the Name of J. S. as named in the Obligation; and then, if he appeared and pleaded Non est Factum, he should be concluded by the Obligation. Mich. 10 and 11 Eliz. C. B. D. 279. b. pl. 9. Shotbolt's Cafe.

5 Rep. 26 b. it is laid by the Reporter, that peradventure the Obligor cannot not plead Non est Factum, because it was once his Deed.—Holt Ch. J. cited 5 Rep. 119. b. and said the Subsequent Refusal made the Deed void ab initio. 3 Salk. 307.


22. A Statute Simple being sued as a Bond, the Defendant may plead, Non est Factum, and give in Evidence, that there was no Delivery. But, if by his Bar he admits a Delivery, Judgment will be against him. per Popham. Cro. E. 495. in Cafe of Ascue v. Hollingsworth.

S. P. adjudged accordingly; but Defendant may have pleaded in a Letter of the Veris, but could not plead Non est Factum. 5 Rep. 119. first Resolution in Whelpdale's Cafe.—Upon Non est Factum, he shall not have the Advantage; because it is his Deed, and a several Deed; but because the paper was; therefore if it be pleaded in Abatement, that another sealed the Deed, who is not named, and is yet living, Judgment shall be against the Plaintiff. Per Holt Ch. J. Skin. 280. Hill. 2. W. and M. in Cafe of Bodilson at Baten v. Sandford.
Faits or Deeds.

24. A Reaent involved without Liability is of no force to make the Land pa
t, but the Involi*n may be the Poetier to fill, Not his Deed. Agreed per Omnes. Poph. 8. Gibbons v. Maltyard and Martin. Per Man
twood B. Obiter.


(See Effoppep (F). Inroll (B))

(N. a. 2) Pleadings. Non est Factum, Specially or Generaly, and at what Time.

1. DEBT upon an Obligation, in the Defendant said, that he delivered it to J. S. as an Exrcuse upon certain Conditions to be performed, to deli
er to the Plaintiff as his Deed; and said that the Conditions are not per
formed, and so Not his Deed; this is no Plea, because he does not confers any deli
very to the Plaintiff, by which he shall say, that the said J. S. deliver
ed the Obligation to the Plaintiff, the Conditions not performed, and so Non est Factum; and there is then, because otherwise nothing shall be entered but Non est Factum generally. Br. Non est Factum, pl. 16. cites 19 E. 3. 29.

2. The Defendant said that he was by, and not lettered; and that the Obligation was read to him by Name of &c Marks, where it is S. and so not his Deed, &c. and 3 H. 6. 37. is to the same Intent, and the Plain
tiff said, that His Deed; Prin, &c. ad pariham. Br. Non est Factum, pl. 2. cites 3 H. 6. 32.

3. If a Man deals a Deal, and delivers it to a third Person to keep till a certain Condition be performed, and then to deliver it to the Obligee, &c. there if he delivers is contrary to the Condition, and an Action is brought, the Defendant may plead this Matter and conclude, and so Not his Deed, because it was never delivered as a Deed, &c. Br. Non est Factum, pl. 4. cites 9 H. 6. 37.

4. But contrary where it is delivered as a Deed to the third Person, to keep till the Condition be performed, &c. there he shall not conclude, Non est Factum; and in this Case a Deal was delivered as a Deed, and the Defendant pleaded the Truth of the Matter, how he delivered it to the third Person as a Deed, and he delivered over the Condition not being performed, and so Not his Deed; and the other e contend, and found by Verdict not his Deed, yet the Plaintiff shall recover; because if pleading he has confessed a Delivery; and therefore it is his Deed, and therefore when a Verdict is found contrary to an Acknowledgment by Matter of Record, there the Judgment shall be upon the Confirmation by Matter of Record, and not upon the Verdict, per Cur. And there it is said, that where the Matter precedent as above, is doubtful to the law Gent, there the Confirmation does not over the precedent Matter, and the Jury shall not be charged with it if it be not entered in the Roll. Br. Non est Factum, pl. 4. cites 9 H. 6. 37.

5. When the Defendant comes in by Confirmation, he cannot plead Non est Factum, generally, but specially. Hill. 9 H. 6. 9. per Sott.

6. A Man is bound in 40. to J. S. where there are Two J. Ss. and the con
tary J. S. gets the Bond and sets it, the Defendant may say, that he was
and delivered the Deed to the other J. S. and not to the Plaintiff, and a good Plea. Br. Mitnomer. pl. 82. cites 11 H. 6. 12, 13.

7. If a Man makes an Obligation in my Name, I may say Non est Fac


8. If
8. If a Man delivers an Obligation to f. s. upon certain Conditions to be performed, to deliver to the Oblige as a Deed, and if not to keep it as an Easew. If the Oblige gets it contrary to the Condition, and brings Dilig, the other cannot show this Matter and conclude Judgment in Aetio, but shall conclude, and so Non eft Factum; For it was an Easew, and never a Deed, by reason that it was delivered to the Oblige, the Condition not performed. Br. Non eft Factum, pl. 19. cites 19 H. 6. 1. 38. and 10 H. 6. 25. 26.

9. Confirmation was pleaded of the Demandant, after the left Continuance in precise quod reddat, the Demandant shall not say Not his Deed after the left Continuance, for his Negligence proves, nor shall he say that he made it before, &c. and not after. For then he confesses the Deed, and shall be barred; but he may say that he made it such a Day by Directs before the left Continuance, Al bif sic, that he made it after, &c. and the other shall say that he delivered it after the left Continuance, and to the Time is only in Issue. Br. Non eft Factum, pl. 20. cites 21 H. 6. 9.

10. Debt upon an Obligation, the Defendant said, that he delivered the same Obligation to W. N. as an Easew, upon certain Aet to be done, to deliver it as his Deed, and he did deliver it the Act not being done, and so Not his Deed. Per Paffion, by this word (Obligation) you have acknowledged that it was a Deed, by which Newton held, that he said to W. N. that if the Plaintiff did such an Aet, that then, he in his Name should make an Obligation and deliver it to the Plaintiff, &c. and he has delivered it, the Condition not performed, &c. and so Not his Deed, and others contra Nevertheless if he had said that he had delivered the Writing as an Easew then it had been good. Br. Non eft Factum, pl. 12. cites 24 H. 6. 1.

11. Where the Deed is void, and not voidable only; Defendant shall say, and so Not his Deed. Br. Barr. pl. 68. cites 1 H. 7. 14. per Keble.


13. So where the Obligor is not lettered, and the Obligation being with Condition, is read otherwise than it is written, he shall plead Non eft Factum and give the Matter in Evidence. And he pleaded accordingly. Br. Non eft Factum, pl. 10. cites 15 E. 4. 17. per Brian and another.

14. As in Debt upon an Obligation of 20 l. the Defendant said that he is Lay, and not lettered, and that it was read to him, as an Obligation of 20 l. which he bad paid, and showed an Acquisition thereof, and as to the Refund not his Deed; and held a good Plea. Br. Non eft Factum, pl. 8. cites 9 H. 5. 15.

15. Debt upon an Obligation, the Defendant said that it is indorped up on Condition, that if he perform all the Covenants comprized in the Indenture made, &c. that the Obligation shall be void, and showed the Indenture which contained 4 Covenants, and that he was a Layman, and not lettered and that the Indenture was read to him upon the first 2 Covenants only, and alledged the Performance of them, &c. &c. Judgment fi Aetio, &c. and per Fitzherbert and Bradnell Justices the Deed is good in part, and in part not, filicet the Indenture; and therefore the conclusion, Judgment fi Aetio, is well; contra per Brook Justice, and that the Indenture is void in all, and therefore should conclude, and so Not his Deed; and per Pollard Justice, because the Indenture is void, therefore the Obligation is sillage, and therefore he should have concluded and so Not his Deed. Br. Non eft Factum, pl. 11. cites 14 H. 8. 25.

16. In Debt upon an Obligation the Defendant said, that the Deed was for payment of 20 l. at a certain Day, but at the time of the Delivery the Day was not W rit in the Deed, but a Space was left for inserting it; and after the Delivery the Plaintiff inferred the Day, and so Not his Deed. Per Dyer, the better pleading had been to set forth the special Matter, per quod Scriptum predict. predict esse cium. Judgment fi Aetio. Quod nona; No. 23. pl. 89.

17. Where
17. Where a Man confesses a Deed to have been once his Deed, and after
sees Matter, by which 'tis become void, he shall plead the special Matter
18. But where it appears that it was not his Deed at the beginning, he
shall plead generally Non est Facatum, per Plowden. Ibid.
19. A Bond was made by A. to two Obligees, B. and C.—B. died, C.
brought Action and declared of a Bond made by A. to C. It was adjudged
the Deed of A. For tho' it had been better pleading to have shewn that
the Bond was made to the said C. and B. now deceased, yet upon this ge-
eneral Issue of Non est Facatum, it shall be reputed the Deed of A. tho' it
was made to B. and C. Sav. 92. Mich. 30 and 31 Eliz. Paunce v. Read.
20. In all Cases where the Deed is voidable, and so remains at the time of
Pleading, the Obligor cannot plead Non est Facatum: For it is his Deed
at the time of the Action brought, and ought to be avoided by special
Pleading with conclusion of Judgment & Action. 5 Rep. 119. Trin. 2
Jac. C. B. the third Resolution in Whelpdale's Case.
21. As if Infant tests and delivers a Deed, or a Man of full age by
Dares. Ibid. cited i H. 7. 15. a. b.
22. When an Obligation or other Writing, is by Act of Parliament,
enabled to be void, the Party who is bound cannot plead Non est Facatum,
but in Construction of Law, the Deed is to be voided by the Party who
is bound by it by special Pleading of the Matter, taking Advantage of the
Act of Parliament; For tho' the Act makes the Obligation, &c. void,
yet to this the Law requires Order and Manner, which the Person Obliged
must pursue. 5 Rep. 119. Trin. 2 Jac. C. B. the third Resolution in
Whelpdale's Case.

23. In Debt upon an Obligation for letting one go at large upon Main-
prize, if it is not found, the Plaintiff is Sheriff, the Defendant may plead
Specially, and so conclude his Plea by way of Non est Facatum; but he
cannot plead Non est Facatum generally, because that is Contrariant.
Brown's Analysis. 17.
24. In Debt on Bond for 300l. Defendant, after a general impardance
Demands Oyer of the Bond and pleas Specially, that it was but for 30l.
but it was not allowed after a general Impardance; and Defendant pleaded
that it was not his Deed, which was the proper Plea in that Case.
Brownl. 76. Hill. 9 Jac. Anon.
25. All special Pleas of Non est Facatum in Case of an Esrow or Ra-
sense, &c. are impertinent; For thereby the Defendant brings all the
Proof upon himself; whereas if he had pleaded Non est Facatum generally,
he would turn the Proof of whatever is necessary to make it his
Deed, upon the Plaintiff. Per Holt. Ch. j. 6 Mod. 217. Trin. 3. Anno.
Bathel v. Patmore.

[ See (N. a. 2) ]

(N. a. 4) Pleadings
(N. a. 4) Pleadings in General.

But where the Count was that A. per Scriptum fiant figlées; For Piaitum fiant implies the Sealing and Delivery. Arg. 1. Le. 310. Patch. 33 Eliz. Maidwell v. Andrews.

1. A Bare Writing is not a Deed without sealing it; and therefore the Pleading ought to be per Scriptum fiant figlées: For Piaitum fiant implies the Sealing and Delivery. Arg. 1. Le. 310. Patch. 33 Eliz. Maidwell v. Andrews.

2. A Deed of Lease for 99 Years by him in Reversion expectant on an Estate for Life, was made in the Words Denusit set, and to Form set, and was pleaded in the same Words; yet upon the whole Pleading, it was adjudged to be a Bargain and Sale. '8 Rep. 93 b. 94. a. Hill. 7. J. B. Fox's Cafe. — But see the next Cases in the Reports of which this Case was cited.

3. if Tenant for Life by the Word Dedi grants his Estate to him in Reversion, this ought to be pleaded as a Simplex, as it is by Operation of Law, and not in the Words of the Deed. Per Holt Ch. J. Skin. 570. Mich. 6. W. and M. B. R. in the Case of Netherton v. Jethop.

4. In Error to reverse a Judgment in Replevin, it was adjudged that the Count was that A. per quaedam indenturam granted to the Defendant, and does not issue between what Parties the Indenture was made. But it was overruled; For the Defendant must necessarily be a Party, or otherwise he cannot take by it. Palm. 173. Patch. 19. J. B. R. Vulgar v. Higgins.

5. Every Deed must be pleaded expressly according to its Operation, and not according to the Words at large. Carth. 254. Tr. 3 W. and M. B. R. Baker v. Lade.

6. As where the Words Give and Grant operate as a Covenant to stand feigned, and will not take Effect otherwise; there it must be pleaded as a Covenant to stand feigned, and so Judgment in C. B. was reversed. Carth. 254 * Baker v. Lade. — 308. S. P. Ofmier v. Sheaf.

(O. a) Pleadings. What Deeds are pleadable.

1. A Deed made before Time of Memory is not pleadable; Contra of Record. Br. Ayowry. pl. 45. cites 12. H. 4. 23.

2. Therefore in Avowry, where the Tenant has a Deed bearing Date before Time of Memory, to hold by his Services, he cannot plead it; but is put to a Ne injinjus Voxes, or other like Remedy; notwithstanding that he has Confirmation of a King, which is Matter of Record, revising the first Grant. Br. Ayowry. pl. 45. cites 12. H. 4. 23.
(O. a. 2) Pleadings. Where Deeds refer one to another.

1. S. was bound in an Indenture of 20l. to J. Bosam, with a (Z) to pay 10l. at two several Days; and after, upon Payment of one of the Sums, the Obligee made an Acquisition in the Name of J. Bosam, with an (S). In Debt brought upon this Bond, the Defendant was compelled to say that J. Bosam, by the Name of J. Bosam acquired him, &c. Br. Pleadings pl. 21. cites 14. H. 4. 31.

2. In debt upon Obligation the Defendant pleaded Defences, that if the Plaintiff may peaceably enjoy the Office of Parker of B. taking 3d. per Day, according to the Deed of Grant of the Defendant, that then, &c. and said, that he had enjoyed it according to the said Grant. And per Cur. this is no Plea without showing what was the Effect of the Grant in certain. Quod nona. Br. Pleadings. pl. 105. (bis.) cites 16. E. 4. 9.

3.Debt. The Condition of a Bond was to pay 140l. with Interest on such a Day, according to the Intent of a certain Proviso or Covenant mentioned in an Indenture bearing even Date, &c. and made between the same Parties. The Defendant recites a Deed of the same Date made between the Plaintiff and Defendant, whereby, in consideration of 1400l. feint'd to be paid by an Indenture of the same Date, and in consideration of five Shillings paid to the Plaintiff, the Plaintiff assigned to the Defendant a 25th Share of Lead Works, &c. and faith that he paid the Money certain Formam Provision, in Indenture precd. mentiouat. The Plaintiff replied, that the Defendant did not pay the Money, &c. Verdict for the Plaintiff.

It was moved in arrest of Judgment, that Defendant had mistaken the Deed; For there is no such Covenant in the Deed set forth, and therefore it is a void office, and ought to be a Repleader; and to that Opinion the Court inclin'd. Holt said, that the Defendant is obliged to say, that there is no such Deed; therefore he should set forth such a Deed, or else he is gone, and must pay the Money; and that he might have pleaded Payment, Second Formam Conditionis, and well: For the Indenture is not a farther Description of the Agreement. The Counsel for the Defendant asked, what if they should set out the whole Indenture, and there is no such Covenant to which Holt anwer'd, that it was your Fault to say so in the Condition; and Judgment for the Plaintiff. (Cerites tacitus.) Comb. 377. 378. Trin. 8. W. 3. B. R. Evans v. Powell.

4. If a Bond be to perform Articles in one Deed, and that Deed refers the Party to another Deed: In order to discharge himself, he must know the Matter in the second Deed that is referred to from the first. Mich 3. Anq. B. R. 6. Mod. 237. in Case of Lady Cook v. Remington.

(O. a. 3) Indenture. What must be by Indenture and not by Deed-Poll, &c.

1. By 27. H. 8. 16. B Argains and Sales to an Use of Inheritance of Freehold shall be by Deed indented and inrolled within six Months.

2. By 32. H. 8. 28. All Leases made by Husband and Wife of Lands, &c. of the Wife shall be by Indenture.


4. By 43. Eliz. c. 11. Contracts relating to draining Wells, &c. where the Queen,
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Queen, her Heirs and Successors, both an Interest in such Writs, &c. such Contracts or Bargains shall not bind them, unless they be written in Parchment, indented and certified in Chancery, and the Royal Assent thereunto first obtained and signed under the Privy or Great Seal, when the Writs or Soils are of the Possessions of the Crown, but under the Seal of the Duchy of Lancaster, and enrolled in that Court when they are of that Kind.

5. Leaves by Eeetefinyfical Persons must be by Deed indented; For tho' the Statutes of 1 and 15 Eliz. do not appoint the Leaf to be made by Writing, yet it must therein and in the other following Properties and Qualities required by Stat. 32. H. 8. follow the Pattern thereof (Concurrent Leaves only excepted). Warf. Comp. Inc. fol. 429. cites Co. Lit. 44.

(P. a) Construction of Deeds in Equity.

1. It it be lawful for a Court of Equity in some Cases, and upon some special Circumstances, to expound a Deed otherwise than the Letter seems to import; yet this ought never to be done, so as to make a Deed, but only to avoid some Extremity. Hill. 25. Car. 2. Fin. R. 121. Cheek v. Lord Life and Harvey.

[See Grants.]

(Q. a) Averments as to Deeds in Equity.

1. A Verment by A. against a General Warranty in a Deed, and some Proof being that it was declared on the Sealing, that the Plaintiff should undertake for his own Act only; he was relieved. Mich. 14. Car. 2. Chan. Cafes. 15. Gildcot v. Hill.

2. Averments are not to be admitted in Chancery contrary to the Purport of the Deed. Tr. 32. Car. 2. 2 Vent. 345. in Sir William Beverham's Cafe. cites 2. and 1. Roll. 379.

3. In Case of a Surrender made by a Steward of a Copyhold, if there be any Mistake, that is only Matter of Fact, and the Courts at Law will in that Cafe admit an Averment, that there was a Mistake, &c. either as to Land or Uses. P. 1689. per Comis 2. Vern. 98. in Cafe of Towers v. Moor.

4. The Father purchased Land in Name of a younger Son, and another, who after the Father's Death disclaim'd; and in the Conveyance the whole Purchase Money was mention'd to be paid by the Father. It was Ruled by the Lord Chancellor, that Parol Evidence should be admitted to show the Intention of the Father, that this Conveyance was for the Benefit and Advancement of the younger Son; because it concurred with the Conveyance, and was only to rebut a pretended resulting Trust. And tho' the Father took the Profits till his Death, at which Time the Son was eight Years old, it can be no Evidence of a Trust for him; For it must be intended to have been done by him as Guardian to the Son. Wms's Rep 111. to 113. Mich. 1709. Lamplugh v. Lamplugh.

5. A. a Baronet convey'd to the Use of himself in Tail, Remainer to B. his second Cousin the Defendant (who was presumptuous Heir to the Honour in case of Failure of issue Male of A.) for Life, Remainer to the first, &c. Son of B. in Tail Male, Remainer over, with Power of Revocation to A. who sometime after revoked the old Uses, and limited new ones upon D. his younger Sitter for Life, Remainer to her first, &c. Son in Tail Male, they taking the Name of A. &c. A died, and D. brought a Bill
to establish the Revocation; and B. brought his Bill to set aside this later Deed, and to recover some Legacies given him and his Children by A's Will; B. died, and upon a Reviver of the Suit by the two Infant Sons of B. the Deed of Revocation &c. was fully proved; and on the other Side was only circumstantial Proof; as that A. had expressed his Intentions, that his Estate should go with his Honour, &c. But Mr. Parker said, that Words can have no Weight against a Deed solemnly executed, and it must therefore stand. Winb's Rep. 451. Mich 1718. Shales v. Sir John Barrington.

[See Averment.]

(R. a) Suppressed Deeds. Relief in Equity.

1. A. Was attainted, and it was supposed that he was seized of an Estate Tail. A Bill was exhibited in Chancery, because the Deeds, by which the Estate was to come to A. were not extant, but were strongly suspected to be suppressed by some, under whom the Defendants claimed. And it was decreed by Ld Chancellor, Ld Coke, and Hobart, and the Roll, and the Defendants should produce the Deeds, and the Court thereupon take further Consideration, and Order. Hob. 169. Trin. 14. Jac. The King and Ld Hun- don v. Courts of Arundell and Ld William Howard.

L. . . . . 2. Winn's Rep. 68. Mich 1712. S. C. cited in the Case of Cowper v. R. Cowper. Per Jekyl Ma. of the Rolls, who said that the Decree was drawn up thus. "That the King's Heirs, and his Farmer should hold and enjoy, till the Defendants produce the Deeds, therein particularly mentioned, and proved to have been extant, and duly executed." And this Remark, (viz.) that here we see, that the Existence of the Deeds was fundamental to the Decree, and the Proof of them fully and expressly ordered by the Court in framing the Decree.—And upon p. 682. He says, that he does not remember or believe, that any Case had been cited, where there was not some direct Proof made of the Existence of the Deed or Writing supposed to be suppressed or destroyed.

2. The Defendant entered into a Bond to keep his Fellowships, and after took away his Bond, and the Court decreed him to leave it. Toth. 128. 129. P. 15. Car. Holme v. Wild.

3. Tenor for Years dies interesse. Administration is granted to B. who dies and makes J. S. Executor. C. is Administrator de Bonis non, and brings a Bill against J. S. for the original Lease; and it was decreed accordingly. Hill. 25. Car 2. Fin. R. 59. Pretidge v. Pretidge.

4. Upon a Bill for Discovery and Delivery of old Deeds, Defendant intimated, that the Plaintiff's Claim was under One executed for Feoff, whereby his Lands were forfeited to the King, and that Defendant was in Possession several Years under that Foiture. But it appearing that the Ancestors of Defendant had the Deeds concerning these Lands, the Court ordered the Bill to be retained to enable the Plaintiff and his Heirs to make use of the Depositions therein at any Trial at Law, and Defendant to do the same, and the Plaintiff to have Record to the Records, Rolls, and Evidence of the Manor, in which the Lands lie, to view, and take Copies, (paying for the same,) and ordered that Defendant and his Heirs, Lords of the Manor, should produce at any Trial at Law so many thereof as the Plaintiff or his Heirs shall at any Time require, but at the Charge of the Plaintiff, his Heirs or Assigns." P. 28. Car. 2. Fin. R. 249. Draper and Zouch.

5. Lands were deced, where a Marriage Deed of Settlement was got back by the Father by a Trick for forth in the Bill and proved, and by him burnt or cancelled; and the Decree confirmed on a Re-hearing; and where Deeds are suppressed Omnia praesumuntur. And the Chancellor would not allow a Trial at Law, whether the Father surrendered his Estate for

Where the Evidence is suppressed by either Party, a Court of Equity will al-

6. A. gave B. a Statute for 5000l. and B. gave A. a Defence of the Statute, which was to perform a Trust of a Term; B. died. The Heir of B. by Bill, claimed the Term, as being declared by the Defence to be in trust to attend the Inheritance; but A. suppress'd or conceal'd the Defence; Finch C. decreed the Trust for the Plaintiff. P. 30. Car. 2. Fin. R. 357. Goodwin v. Cutler.

7. Where a Conveyance by Fine was Voluntary, and without Consideration, no Money being paid, and the Defendant, who was Heir to her Mother, and whose Estate was, in fulfilment, that the Fine was gain'd undesately, and deny'd having the Deed, by which the Complainant claim'd, and of which he pray'd Discovery, the Court would give no Relief, but left the Plaintiff wholly at Law to help himself; there as he could. Hill. 34. and 35. Car. 2. 2. Chan. Cafes 133. 134. Anon.

8. Detinue of Charters (during the Detainer) is a good Plea at Law in Bar of an Account; and so it is in Equity. Hill. 1658. Car. 2. Vern. 33. in the Cafe of Lady Plymouth v. Bladen.

9. The Plaintiff was a Remainder Man in Tail in a voluntary Settlement, and the Bill was for the Discovery of the Deed; but it appearing to the Court that the Entail was discontinued, the Court would not Relieve the Plaintiff. Hill. 1658. 2 Vern. 35. Kelley v. Berry.—59. Patch. 1688. Bunc v. Philips. S. P.

10. A. presented a Parlon to a Living, and took a Bond to resigne on Requeft at any Time with seven Years; A's Houfe-keeper being the Parlon's Sifer, got away the Bond, and deliver'd it over to the Parlon. A. brought Bill to discover, and to be relieve'd. The Defendants demurr'd, and the Demurrer allow'd. 2. Vern. 242. in the Cafe of Bainham v. Manning, cited by Commissioner Hutchins. Mich. 1691. as the Cafe of Mr Portelcue.

11. The Defendant suppress'd a Marriage Settlement, whereby a Remainder in Tail was limited to the Plaintiff's Father, and all the prior Estates were spent; on Proof that the Settlement came to Defendant's Hands, and that he confec'd it in an Answer to a former Bill, the Matter of the Rolls decreed the Plaintiff to hold and enjoy. Affirmed by Ld Keeper Wright. Trin. 1700. 2 Vern. 380. Eyton v. Eyton.

12. A. Tenant for Life without Impeachment of Wafle, with Power to make a Jointure on any Wife, not exceeding 100l. A Year for each 100l. brought by her, and so ratably for any les Sum, Remainder to Trustees to preserve contingent Remainders, Remainder to the first, &c. Son in Tail Male, Remainder over. Afterwards A. married M. but whether she had any or no Fortune does not appear. They part by Conven, and a Deed is drawn between A. and M. and the Remainder Man and Trustees with Covenant to settle 30l. a Year for the Provision of M. during the Separation, in Consideration of which she is to claim no Thirds or any Thing out of the Husband's Estate under the Statute of Distributions. A. executes this Deed, and lends it to the Remainder Man in the Country to be executed by him, who did &c. and return'd it to A. who kept it, and did not deliver it to the Trustees; M. apply'd for it, but could not get it; however, Money was paid her in Purfuit of the Deed. Afterwards A. cancels the Deed in Provision of the Remainder Man A. dies, M. brings a Bill against he Remainder Man to have the Benefit of this Covenant from the Death of A. and so decreed by the Matter of the Rolls, and on Appeal affirmed by the Ld Chancellor. Sel. Ch. Cafes in Ld King's Time. 75. Trin. 2 Geo. 2. Sepallino v. Twitty.

13. Defendant
13. Defendant had agreed to give a Person in Marriage with his Daughter to S. and had the Deed in his Custody. S. sued for the Deed, and set forth the Purport of the Articles by his Bill. The Defendant, in his Answer, pretended that the Articles conformed to what the Bill set forth, and afterwards burnt the Articles. All which being made to appear, he was committed and continued committed, till he admitted the Articles to be as the Bill had set them forth. Mich. 1731. i Wms's Rep. 733, where Jekyl, Matter of the Rolls, cites it as the Cae of S. Hunter, and says that the Commitment was only by an Interlocutory Order, and the Cause never heard.

14. A. by Deed settled a Term, so as that after his and M. his Wife's (the Defendant's) Death without Issue, the same was to come to the Plaintiff for the Reversion of the Term. A. died without Issue, and M. had burnt the Deed; and by her Answer did but faintly deny it, viz. That she did not remember the ever burnt or destroy'd the Deed. Two Witnesses swore to the Limitations of the Settlement; both agreed that it was in Trust to A. for Life, Remainder to M. for Life; but differed as to the Words of the Remainder; One saying that it was to the Heirs of their Bodies, and the other that it was to the Issue of their Bodies, and for Want of Issue by A. and M. Remainder to the Plaintiff. It was intended for the Defendant, that the Remainder over upon either of those Limitations of the Trust of a Term was void in Law; and therefore the admitting the Deed to be suppress'd could not advantage the Plaintiff. But the Matter of the Plaintiff's said, that tho' such Limitations as before mentioned were void, yet a Limitation in Trust for A. and M. for their Lives, and afterwards for their Children, or for their Issue, and for Want of such Children or Issue being at the Death of the said A. and M. then to go over to the Plaintiff, is good; and that since a Term might be limited in such Manner, he would intend it so limited in the present Case; For every Thing shall be presumed in Obitum Soporiferum. But he said there could be no Decree for the Poffeition, nor any present Conveyance to the Plaintiff, but being only a Remainder of a Term after the Defendant's Death, but directed that the Defendant assign over the Term to Trustees, in Trust for her Life, and after for the Plaintiff, and bring the Deeds relating to the Title into Court, and pay Costs. i Wms's Rep. 731. to 734. Mich. 1731. Dalton v. Courtworth.


[See (B. a) (X. 3.)—Discovery (M.)—Fraud. Hunt v. Matthews.]

(S. a) Deeds directed by Chancery to be delivered up, or Cancelled.
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gation, by which the Chancellor awarded in the Chancery, that the Plaintiff bring in the Obligation to be cancelled, or make an Acquittance or release it. And because the now Plaintiff refused to do it, he was awarded to the Fleet, there to remain until &c. and there he yet remains, which is the same Obligation, Judgment, &c. and Held that the Obligation remains in force, and therefore no Bar. Br. Barre pl. 45. cites 37 H. 6. 13.

2. Ancient Bonds being put in Suit were ordered to be cancelled. Toth. 88. cites Mich. 16 Jac. Garford v. Humble.

3. Bonds entered into by Menaces, Threats and Imprisonments, were ordered to be cancell’d. Toth. 88. cites 4 Car. Watts v. Lock.

4. Bonds concerning Wares were cancelled because of Cognizance. Toth. 88. cites 5 Car. Orby v. Daniel.

5. Bonds entered into for Fines and Lord’s Favours were cancelled. Toth. 89. Lever v. Arfents.

6. Marriage Brocage Bonds were ordered to be cancelled. Toth. 89. cites Feb. 17 Jac. Arlestone v. Kent.

7. A Voluntary Bond of 1500 l. entered into for no Consideration was cancelled in the Presence of the Judges. Toth. 89. cites 5 Car. Wright v. Moor.

8. Bond entered into in 22 Eliz. (being a very long Time since) was decreed to be delivered up, it being conceived that the Money was all paid, because it was not inventoried, nor any Money proved to have been paid to the Defibrator. Toth. 90. cites Lord Cavendish v. Forth.

9. A made a Pecuniary to the Mayor and Burgesses of Gloucester to the Use of a Free School and other Purposes; and a Bill being exhibited against them, and the Plaintiff not proving his Title, it was decreed for the Defendants and their Successors, and that the Plaintiff should by Christmas then next deliver them all the Evidences concerning the same. Toth. 120. cites Meffenger v. the Mayor and Burgess of Gloucester.

10. A. as Principal, and B. as Surety, were bound in a Bond to C. The Obligee’s Name was used only in Truitt for A. one of the Obligors, and if any Money was paid, ‘twas A’s Money; but it did not appear if any Money was lent. B. being sued brought his Bill, and the Court decreed the Bond to be delivered up and cancelled, and Satisfaction acknowledged with Coils to the Plaintiff. See Mich. 26 Car. 2. Fin. R. 127. Launce v. Marden and al.

11. If a Deed with Power of Revocation is revoked, he, to whom the Inheritance belongs, may, by a Bill in Chancery, compel a Delivery thereof to him in Order to be cancelled; Because the Deed of Revocation may be lost, and then ’tis unreasonable, that the other should be standing out. Patch. 4 Anne. G Eq. R. 1. says it was held in Chancery.

12. A lent Money on a bad Security, which his Lawyer advised him was a good one; he having Notice of the other Title, how it floated, (tho’ not knowing the Goodness of it,) or at least knowing, that another claimed Title to it, he must deliver up all the Writings, except the Mortgage Deed; But that he may keep, because of the Covenant therein for Payment of the Money. At the Rolls. Mich. 1722. Ch. Pree. 548. Opie v. Godolphin.

(T. a.) De-
(T. a) **Defects in Deeds supplied in Equity.**

1. A Lease was made to two during their Lives, and after to the use of both of the Children begotten by P. R. without any express Conclusion, what Child or Children? In this Case the Construction touching the Uses must be made, as near as may be to the Meaning of the Parties, who conveyed the same to Uses. Toth. 191. cites 16. June 36. Eliz. Rumeby v. Garnon.

2. The Word (Heir) was left out in a Clause of Resumption, but supplied in Equity. Toth. 229. cites July 1666. Bilston v. Church.

Chancery might help a Purchaser of Lands for a valuable Consideration, the Word (Heirs) being omitted in the Purchase Deed; but the Point was not resolved. 4 Le S. 184. M. 32. Eliz. C. B. in Hinton's Case.

3. A was pencil'd of a defective Lease from the King, which the Defendant would have avoided by a Composition made by him with the Commissioners for defective Titles; but he was relieved here. Toth. 192. cites Hill. 5. Jac. Gage v. Scory.—and says, that any other Estate whatsoever would be relieved in like Cases.

4. A Bond for 500l. by a Mistake of the Writer, was not good; but the Court ordered the Obligor to give a new Bond of like Penalty. Toth. 237. cites 10. Jac. Haddon's Case.

5. A Conveyance was defective, yet because there was a full Intention to make better Afference, it was decreed. Toth. 106. cites 2. Car. Cooke v. Cleere.

6. A Bill being brought to be relieved, as to a Covenant ill promis'd, was demurr'd to; but in Regard of some precedent Agreement, the Demurrer was overruled. Toth. 110. cites Mich. 3. Car. Vellore v. Bartlett.


8. The Allignment of a Term for Years had not Words sufficient to convey all, which was conveyed by the Grant of the Inheritance; but the Defect was made good. Patch. 30. Car. 2. Fin. R. 347. E. of Pembroke v. E. of Middlesex and Hawles, and al.

9. A Bill was brought to supply a Defect in a Settlement of Lands on the Plaintiff, the better to enable him to pay his Debts; but the Case coming upon Bill and Answer, the Court would make no Order without a Replication and Proofs. Hill. 13. Car. 2. Fin. R. 415. Sir John Tulton v. Hawtry.


11. The not Delivery of a Deed, tho' it was signed and sealed, is not relievable in Equity; by Wright Keeper. Hill. 1704. 2 Vern. 475. in Case of Clavering v. Clavering.

12. A Bond being interlin'd after execution, and so void at Law, was endeavoured to be made good or relieved in Equity for so much Money, as it was really given to secure; and that it might be considered there as a Bond. But Lord Chancellor was of Opinion, that at most, it can be a Charge by simple Contract only; it being destroyed as such by themselves, and so is, as if it had never been, and consequently can be no Bar to the Payment of a Debt of a superior Nature. Sel.Ch. Cases in Lord K's Time. 24. Tim. 11. Geo. 1. Anon.

13. A made a voluntary Conveyance to B. his half Brother, which proved defective. A. died without Issue. B. brought a Bill to compel the Heir.

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to make good the Conveyance. And Lord K. Wright was of Opinion that as the Conformation of Blood, would at Common Law raise an Ufe, and as before the Stat. 27 H. 8. such Ceilty que Ufe should have compelled an Execution of the Ufe in a Court of Equity; it would this imperfect Conveyance raise an Ufe in Refpect of the Conformation of Blood, and consequently ought to be made good in Equity. Wms's Rep. 60. Mich. 1702. Watts v. Bullas.

[ See Copyhold.—Powers. ]

(U. a) Aided, or relieved at Law, or in Equity.

1. If a Man pleads by Force of an Indenture, which is lost, on Affidavit made thereof, the Party shall be compelled by the Court to show his Counterpart, and he to plead thereto; or otherwise the Court may grant an Impartial. So 'ris, if he will depose that he never had any Counterpart. Trin. 15 Jac. B. R. Cro. J. 429. Anon.

2. A Fine shown in Evidence, there being Proof of the Purchase Money paid, was held to be good Evidence, that the Estate was passed accordingly the Deed of Ufe is lost. Clayt. 121. Grace v. Beaumont.

3. The Plaintiff having only a Copy of a Deed of Feoffment, under which the claimed the Land, (the Original being lost,) and the Defendant having a Counterpart, the Plaintiff pray'd her Bill, that the Copy might be compared to the Counterpart, and if it agreed, that the same might be allowed in pleading as a good Deed sealed and delivered; which was granted, and it was refer'd to a Master to settle the same. Patch. 13. Car. 2. N. Ch. R. 82. Griffin v. Boynton.—So of a Deed of a Will, whereof the original Will was lost. Ibid. cited as decreed 13 Car. 2. in the Cafe of Gorges v. Fosler.

4. It was said, that if a Grantee in a voluntary Deed, or an Obligee in a voluntary Bond, lose the Deed or Bond, they should have Remedy against the Granter or Obligor in Equity. Mich. 13 Car. 2. 1 Chan. Cales 79. Underwood v. Stany.

5. A Docket or Inrollment of a Decree was lost, and ordered to be new-inroll'd. 19 Car. 2. 3 Ch. R. 20. Detn. & al. v. Dickenson.

6. Proof being made of the constant Payment of a Rent till 12 Years past, the Deeds being lost, the Rent and Arrears were decreed to be paid, because it did not appear what kind of Rent it was, and to no Remedy at Law. Hills. 20 and 21 Car. 2. 1 Chan. Cales 129. Collet v. Jacques.

7. A Statute being lost, it was moved to hear it certified, and two Presidents were shewn. But per Finch K. they are Presidents not to be followed, and I will never do it; exhibit your Bill against all that are concerned in the Land, and Justice shall be done you. Mich. 27 Car. 1. Chan. Cales 270. Anon.

8. A Debtor conveyed his Estate to Trustees for Payment of Debts, but the title Deeds were burnt carelessly, and the Person, from whom the Estate was originally purchased, knowing this refused to execute a Release for the Satisfaction of a Purchaser; but he was decreed to join. Trin. 28 Car. 2. Fin. R. 262. Bentey v. Ingoldsby and Hampton.

9. An Annuity was granted, but afterwards the Deed came into the Hands of the Heir of the Grantor, yet was decreed it should be paid with Interest. Patch. 29 Car. 2. Fin. R. 293. Stokes v. Verrier.

10. A Bill of Exchange being lost after Acceptance, the Drawee was decreed to pay the Money to the Plaintiff, on giving Security to indemnify the Defendant as the Matter shall think reasonable, against any Person that may hereafter demand the same. Patch. 29 Car. 2. Fin. R. 301. Terence v. Geray.
II. A Mortgagor, having confecfed that he had lent the original Mortgage Deed, was ordered to deliver to the Plaintiff's Clerk in Court the Copy of it upon Oath, with the Names of the Witnesses. Pain. 30 Car. 2 Fin. R. 332. Corfellis v. Corfellis.

12. Where Equity relieves in Case of Deeds charg'd to be suppressed, or burnt, or cancel'd, it is necessary to prove that there were such Deeds. Per the Matter of the Rolls. 2 Wms's Rep. 681. cites it as to done in Case of the King v. the Countess of Arundel. Hob. 159. — and 1 Ch. Cases 292. in Case of Garthide v. Ratcliff. — and 1 Vern. 498. Hunt v. Matthews.

[See Account.]

(W. a.) Lost Deeds supplied by after-Deeds.

1. The Defendant acknowledged a Recognizance, which was taken away privately; the Court order'd that either the Plaintiff should be paid his Money, or that the Recognizance should be inviol'd. Toth. 267. cites 22 Eliz. Charnock v. Charnock.


3. If an Annuity is granted by one to his Housekeeper with a Bond for Payment of it, and the Bond is lost, Equity will decree Payment of the Annuity; For Service is a good Consideration, and no Turpis contractus shall be presumed, unless proved. Abr. Equ. Cases 24 pl. 7. Hill. 1700. Lightbone v. Wedon.

4. If a Fine is levied by Husband and Wife of Lands, which he has in right of the Wife, and there is a Deed made at the same Time to declare the Uses thereof, and afterwards this Deed is lost, and then another is made to the same Effect, and dated as the first; that Deed is sufficient to declare the Uses of the Fine. Per Holt Ch. J. Mich. 7. Annx. Holt's Rep 735. in Case of Pullicliff v. Butland.

(X. a) Of inpecting Deeds by Order of Court, and at what Time.

1. A Earl having a Notion that his next eldest Brother was extravagant, and having no flight of his own, cut off the Entail of his Estate by a Recovery, and by Deed and Will settled it on his younger Brother for Life, Remainder to his first Son (then in Being) for Life, with Remainder to Trustees to preserve contingent Remainders; Remainder to the first Son of that Son in Tail Male; &c. charg'd the Estate with 100 ! a Year only to his next Brother the present Earl, and died without Issue. Lord C. Macclesfield taking Notice of the Ingratitude to the Crown, to give away the Estate from the Honour, and that there being no Partition, there was no Occasion to bring the Castle to a Hearing; his Lordship, on Bill and Answer, ordered all the Deeds and Writings to be brought by the Defendant, the Devisee, before the Matter; and that the Plaintiff, the present Earl might, either by himself or Agents, have the Inspection of them; so that if any Thing has slipped the Conveyance, or if the Entail be not well doc'd, the Plaintiff may have the Benefit thereof. 2 Wms's Rep. 177. Trim. 1723. Earl of Sudlolk v. Howard.

Lord Macclesfield said that more ought to be done in this Case, than is done in a common Case, ibid. 1-8. — Yet afterwards in a Case where Prerogage was not concerned, where the Plaintiff claimed by Virtue of a Remainder in Tail ex- tant on an Estate in Tail, and was Hoist Male of the Family, and the Defendant was Hoist General, and Sitters of the Tenant in Tail,
Falfe Judgment.

Tall, and by their Answer shewed, that their Brother the Tenant in Tall had suffered a Recovery, and declared the Use to himself in Fee, referring to the Deed in their Custody. Lord G. Tallbo before the Hearing, ordered the Defendants to leave with their Clerk in Court, the Deeds making the Tenant to the Premises, and declaring the Use of the Recovery. 2 Wm's. Rep. 18 in an Addition at the End of the Page, cites about Hill 1733. Sir Edward Bysion v. Farrington and al.

2. In the Proofs of a Cause, Plaintiff provided a Deed, and the Defendant, on Petition to the Matter of the Rolls, get an Order of Leave to inspect; because the Deposition of the Witnesses referring to the Deed, made the same to be Part of the Deposition. But to discharge the Order, it was moved that Defendant can have no Right to see the Strength of Plaintiff's Cause, or the Evidence of his Title before the Hearing; and that if this were to be granted, such Motions would be made every Day, for it would be every one's Curiosity to try to pick holes in the Deed or Settlement, by which he is disinherit'd; and no such Order was ever made in the like Case; and Lord Chancellor discharged the Order. 2 Wm's. Rep. 410. Palch. 1727. Divers v. Divers.

Falfe Judgment.


Before the making of this Statute, if a Falfe Judgment had been given in a Court Baron, this should have been redressed in the Court Baron of the Lord next above him, and so upwards of the Lords Paramount; which both was an Occasion of popg Delays, and the King had also many Times Prejudice thereby; for that those last Courts could affe'd no Fine or Amortement to the King; which is to be understood, that if the next immediate Nefcie had no Court Baron, the Falfe Judgment could not be redressed in the Court of the Lord next above, for Default of Privity; but then the Falfe Judgment was to be redressed in the Court of Common Pleas, or before the Juiflices in Eyre; and now the Juiflices in Eyre being worn out, the original Jurisdiction of Falfe Judgment is returnable coram justitiaris norris apud Westm, which are the Juiflices of the Court of Common Pleas. 2. Inst. 138, 139.

(B.) Lies
(B.) Lies in what Cases; and where False Judgment, and where a Writ of Error, or any other Action; and the Difference.

1. WRIT of False Judgment lies not before Execution filed, and till the Demandant has entered. Br. Faux Judgment. pl. 6. cites M. 18 El. 3. and F. N. B.— And in False Judgment it was held a good Plea, that the Plaintiff himself is yet feited of the Frankentenem, and was so to the Day of the Writ purchased. But Writ of Error lies against him who was Party to the Judgment, whether he was Tenant of the Frankentenem or not. Br. Faux Judgment. pl. 8. cites 38 El. 3. 34.

cites 8 E. 4. 19.—But ibid. cites 7 F. N. B. contra. Brooke makes a Quere in Plena Personal, but says, it seems all one; otherwise 'tis in transitum, by Reason that the Petit Jurors may die, but it seems that the Suitsors may live. Quere.— F. N. B. 19 (A) cites 73 E. 5. 15. and § E. 4. 19. accordingly. That where the Tenant loses his Land by False Judgment in a Writ of Right in a Court Baron, he shall not have a Writ of False Judgment before the Demandant has sued upon him, &c. —— * Orig it (Sur) but in the other Editions of Brooke, it is (Sans) which is according to the Year Book, per Jenney.

2. Land is recovered in Court Baron by Plaint, where 'tis Frankentenem, SoDefendant and ought to have been by writ. False Judgment lies, but not Affidavit Error. Br. Faux Judgment. pl. 11. cites 22 Afl. 64.

3. A Sheriff in the County quah'd the Effion without the Consent of the Suitors, and the Party brought a Bill against him in the Exchequer, and it then Surie well lies. For False Judgment does not lie, because' it's not the Act of the Suitors, who are Judges there; and the Effion was call'd in Writ of taking of Beasts: and 10 Note that Suitors are in the County. Br. Faux Judgment. pl. 12. cites 26 Afl. 45.

4. Note, that of a Judgment given in Ancient Demesne of Lands at Cour- For Error or you Lose a Writ of False Judgment does not lie, because it is Coram non judice. F. N. B. 19 (D) in the Notes there (C) cites 7 H. 4. 25. 6. not be removed; For the Party may have Writ of Fals Judgment. Br. Cause a Remover, &c. pl. 4.
cites 9 H. 6. 54.

5. 'Tis said that in False Judgment the Parties have Day in Court, and in a Writ of Error not. And in Debt before the Sheriff in the County the Plaintiff recovered his Debt and his Damages, and the Defendant brought a Writ of False Judgment, by which the Record was removed by Recordia out of the County into Bank; and in the same Court the Plaintiff in the first Action may pray Execution, if the Defendant will not affix his Errors; and after the Plaintiff in the Writ of False Judgment, was confirmed. Br. Faux Judgment. pl. 15. cites 22 H. 6. 18.

6. Of Error in Court of Pecuniwaters Writ of Error lies, and not Writ of False Judgment; which proves that it is a Court of Record; and this per Littleton, quod non negatur. Br. Error. pl. 162. cites 6 E. 4. 3. and 7 E. 4. 23.


8. A Writ of False Judgment does not lie of Error in Adj!t of Frei- sence, but a Writ of Error; For Affidavit of Frei-orce is always in Court of Record. Br. Faux Judgment. pl. 22. cites the Register.

9. If False Judgment be given in a Writ of Right Close, the Party Tenant or Demandant may sue a Writ of False Judgment thereupon. F. N. B. 12. (A)
Falfe Judgment.

10. But Copyholders of Land in Ancient Demise at the Will of the Lord must sue by Bill in the Lord’s Court; and shall make Preparatation to sue there in the Nature of what Write he will. But the Falfe Judgment be given, he shall not have Write of Falfe Judgment at Common Law. F. N. B. 12. (B). Ibid. 18 (H).

11. Upon Falfe Judgment given in Courts, holding Pla by Prescriptio in every Sum in Debt by Bills before them, Falfe Judgment will not lie, but a Write of Error thereupon. F. N. B. 18 (H).

But it is said there in Ample, that it is contrary to the Julicities be removed into B. R. by a Plea.—Br. Error. pl. 20. S. P. cites 34 H. 6. 43. and 63.

12. Where Falfe Judgment is given upon a Write of Julicities directed unto the Sheriff, the Party grieved shall have Falfe Judgment, and not a Write of Error; altho’ the Judgment be of Debt, or Treipus over the Sum of 20 s. F. N. B. 18 (H).

13. A Write of Error properly lies, where Falfe Judgment is given in any Court, which is a Court of Record; as in the Common Pleas, or in London, or other City, or Place where they have Power to hold Plea by the King’s Charter, or by Prescriptio, in every Sum in Debt or Treipus over the Sum of 40s. F. N. B. 20. (D).

14. If the Record be named in the Judgment, it makes it a Falfe Judgment. Nov. 74. in Cake of Davian v. Pannier cites 1 E. 5. 36. and the reason is because he is not Judge there. Ibid. cites 6 Rep. 11. Gentleman’s Cake.

[See (D). pl. 1.]

(C.) Falfe Judgment tried by whom, and how; and of the returning the Write, and removing the Record.

* Upon Error aligned in a Write of Falfe Judgment given in the County of York, in an Indebt. affirmatum, &c. Quantum meruit, the Defendant in the Falfe Judgment, after pleading to the other Errors, founds a further Plea upon this statute thus, (vul.) “it’s good to Prebuff ill. Manifeste de la摧ure inter Legum pro se partem, &c. in Car. Com prae. fater quo Judicium Predic’t realiter reddet fuit aliquae Pro quod defec’t. prest’ superius prae Erroribus aliis. lucutum vel eorum alius fuit conten’t in Lexcuit prae. super qua Judicium prae’ in Car. Com’ predic’t reddet, fuit, praein Car. lor praein Brevis de tallo Judicio prae’ superius return’ recensatur. Et haec praemio nulla qui spe modo in Car. Com’ Regia et Examinationem defec’t predic’t procedere velit, seu debant, &c. Laww. 937, 938. Hill. 13. W. 3. Butterfield v. Sarton.—And refers to a like President in Hearn’s (395) 199.

* In a Write of Falfe Judgment on a Judgment in Ancient Land, it was said to be in Cordia Regis where it should be Regina; now by this, there is no Record made or removed but only an Error, and is as if the Suitors had brought in the Record without a Write to warrant it. F. N. B. 18. (G) in the Notes there it (d). But in a Write of Error which removes a Record if it be added, a SpecialWrite may be awarded upon the Record good relatos in Cordia, &c. But this was a Record before the Removal, and the Julicities of C. B. may carry it into B. R. in their Hands; tho’ otherwise a Roll of a Bate Court which
Falsé Judgment.

2. If the Sheriff returns that the Suitors will not record in Pardon (or Plea), *Ali that are* returned by the Sheriff to be Suitors at the Court Baron, *and in* when the Judgment was given, *ought to return the Writ, and not all those* that ought to make Suit at Court by that means the Party shall never have it certified, as it may happen. Nov. 3d.

3. Note, that Records of a Court-Baron shall be certified by all the Suitors upon a Writ of Falsé Judgment, and not by some of them; quere, how this shall be taken. Brook fays it seems, by all those who shall be in Court upon the same Plea, and not by those Suitors who never were present in this Suit. Br. Faux Judgment. pl. 16. cites 12 H. 4. 22. and 31 E. 3. Fitz. Faux Judgment 8.

4. Writs of Falsé Judgment *issue out of Chancery,* and are directed to County and Hundred Courts, &c. and are returnable only in C. B. L. P. R. 529.

(C. 2) The Effect thereof, and how it must be obeyed.

1. If a Writ of Falsé Judgment be directed to the Court of a Lord, they cannot proceed after; and if the Lord will not hold Court to allow it, *Diff-ringas Hall issue* to detrain him to hold his Court; For the Writ must be served at a Court. Br. Faux Judgment. pl. 12. cites 6 H. 7. 15.

(D) In what Court, and at what Time, and to whom Directed.

1. Falsé Judgment shall issue to the Suitors in a Barle Court, and not to the Bailiffs; For where Bailiffs have Conulence of Pleas, or Authority to hold Plea by Presumption, it's a Court of Record, and therefore a Writ of Error lies there, and not of Falsé Judgment; quod Noto. Diverbit. & Dubitabit, there what Writ shall lie of Falsé Judgment in a Court of Piepoeders. Br. Faux Judgment. pl. 3. cites 45 E. 3. 1. Br. Faux Judgment. pl. 14. cites. E 4 4 25.
(E) Pleading, and Errors in Falsé Judgment.

1. In Falsé Judgment 'twas assigned for Error, because in the Precept of Summons, &c. the Words, coram volvi, &c. were wanting; and because it appeared by the Record that he had appeared before Judgment, therefore he had affirmed the Summons; and where a Man is assigned, he shall not say after, that he was not summoned, per Wyche; and after the Judgment was affirmed. Br. Faux Judgment, pl. 31. cites 36 E. 3. 39.

2. Error upon Falsé Judgment given in D. upon a Writ of Right; it was said that the Heir shall be warned as well as the Tenant; and it was said there, that the Plea of the Tenant shall be taken, and not of the Heir: But this seems to be in Falsé Judgment, and not in Error. Br. Error. pl. 42. cites 6 H. 4. 18.

3. Falsé Judgment upon a 'Justicis directed to the Sheriff' of D. viz. J. B. and the Under-Sheriff, viz. N. T. held the County, and gave the Judgment of the Sum of 100 l. contained in the Justices; and the Defendant brought Writ of Falsé Judgment, and affirmed it for Error; and that they made the Record that the Plea was held before J. B. named in the Justices, where in Falsé he was absent; quod Nota. but the Plaintiff was nonfuit, and no Determination; but it seems to be Error: For by the Writ of Falsé Judgment the Sheriff is Commissioner; and Commissioner, nor Judge can't make a Deputy; and see here, that he shall falsify the Roll, but it seems, that he shall not say, it 'twas in a Court of Record. Br. Error. pl. 78. cites 21 H. 6. 43.

4. Falsé Judgment upon a Recovery in a Writ of Right in a Court-Baron, the Falsé Judgment was affirmed, for that the Roll was, Placita coram Benefialio & Seftatoribus, &c. where the Steward is no Judge, but the Suitors; and therefore Error, per Chock and Littleton. Br. Faux Judgment, pl. 13. cites 6 E. 4. 3.

5. Note by Fitzh. for clear Law, that in a Writ of Falsé Judgement, in nullo de Erratum, is no Plea; For they shall joyn Issue upon one Matter in Falsé, certainly alleged by the Party, and shall be tried per Pals; For 'tis not a * Record, contra in Error. Br. Faux Judgment. pl. 17. cites M. 23 H. 8.

6. In Falsé Judgment, if the Plaintiff assign the Errors, he shall not say in loco Erratum est, but he shall say, unde quidem descrivimus fidei fidelium judicium falsum falsae judicium vix. in loco. &c. Note the Divinity between Error and Falsé Judgment in this Point. And note, that upon the Writ of Falsé Judgment, the Sheriff returned, quod acceptis eccles. 4. Legalitas militiae de Cont. non acceptis, &c. & recordum illud delabo coram, &c. sub Sigillo nepo & Sigillo Precedentiorum * militarm, and held the Return not good; and that the Record was not removed by it. For the Return should be sub Sigillo &c. ex his qui Records illo intervenien; and not of 4 Knights. And for this Cause the Court could not proceed. Trin. 6 Eliz. No. 73. pl. 198.

7. A Writ of Falsé Judgment was brought in the Common Pleas of a Falsé Judgment given in the Court of Ancient Demesne, in a Writ of Right.
Falfe Judgment.

111

Right-Clofe prosecuted there in the Nature of a Writ of *Aid;* one of the Plaintiffs, who had before appeared, was nonuit and lifted, and the other Suitors would not lend the Record to the Sheriff, whereupon a Distraint was laid against them; upon which they brought the Record into Court, and there alligned many Errors in the Record of the Judgment.

1. Because in the Side of the Court no mention is made before what Judges.
2. There is no Officer named in the Record or Return of the Suitors. 3. No Day prefixed to the Tenant in the Summons, but all possuit. Curiam. 4. Tenant made Attorney within Age. 5. No Warrant of Attorney entered for the Plaintiff. 6. No Names of the Summoners returned. 7. Tenant within Age, and in by Difient offifed of Age. 8. Refusals to receive Demurrer. And upon no fin inform the Court proceeded to the Examination of Errors, and reversed the Judgment; and awarded that he should be referred to all which he had loft by Reason of the Judgment aforesaid; but no Costs or Damages; and the Suitors were amerced to 4l. Trin. 9 Eliz. D. 262. b. pl. 32, 33. Anom.

9. Exceptions were taken to a Writ of Falfe Judgment in a Court of Ancient Demence, because the Writ was *effamiit in lege de finu Sigillo tuo* Comitatus tuo, &c. and in the End, *per 4 legatus Hominum ejusdem Curiae,* &c. But disallowed, for it is the Form of the Register. Mich. 22. & 23 Eliz. D. 373. pl. 13.

A Writ was should be *sub Sigillo tuo,* &c. and *per 4 legates Hominum ejusdem Curiae,* &c. and also in the End of the Writ, before the Title, it wanted the Words *et ad finem &c.* and the Defendant refusing to consent to the amending the Writ, the Court doubted what to do. Trin. 4 & 5. P. and M. D. 164. pl. 58. and cites 4. H. 6. 6. 4. that where the Writ wants Subsance, the Plaintiff may have another Writ out of Chancery, to the Justices of C.B. reciting the Matter and commanding them to proceed to discuss the Errors contained in the Record, *quaedam eos referre.* Nisi bene.

* D. 268. in Cale of Herford v. Winde.

10. If a Judgment in an inferior Court is erroneous, no Advantage shall be taken of it upon Reading, but by Writ of Falfe Judgment; and the Judgment shall be incendi good, till it be avoided. Hill. 24 and 25 Car. 2. B. R. 2 Lev. 81, 82. Doe v. Parmiter.

11. An Action was brought in the Court of Leicester, for an artifical cutting of the Plaintiff's Saw. The Defendant demurred. Plaintiff joined. And upon the Demurrer Day was given ad Proclaimari Curiam without mention of any Day certain; and this was held to be incurable. But then it was moved that it appears to be a Court of Record, and then a Writ of Error was, and not a Writ of Falfe Judgment, if there had been a Compleat Judgment which there was not, there being only a Writ of Inquiries of Damages awarded, and to nothing further was done. Mich. 3. Jac. 2. C. B. Lucw. 951. to 954. Bullard v. Bull.

12. An Infant brought Trepasses in an inferior Court for taking of a Cow, and after a Verdict and Judgment for the Plaintiff, it was alligned for Error. 1. That *in the Prima facias* the Word *seire* &c. was inserted instead of *seiri,* &c. 2. That the Plaintiff in the inferior Court did not declare by his Proclaim any. 3. Because it is hid in the Record, that the *Jury elet. Trias. & Jurors. suspect* per Cor where the Jury is to be tried by Triors, and for these Reasons Judgment was reversed. Lucw. 954. to 957. 3 & 4 Jac. 2. Wilton v. Leathit.

[See (B).] — Error. [(J. c.)—K. c.) &c.] ——See more in Townsen's Tables 155. and Cornwall's Tables 173, 175.]

(F.) How
(F) How the Judgment shall be.

1. In a Writ of False Judgment, if the Judgment be reversed, the Suisors are arrested; and the Court shall give the former judgment where the Suits ought to have grown. F. N. B. 18. (N.) A Note there.

2. In a Writ of Right-Che, if the Writ of the Defendant be abated, whereupon he brings False Judgment in C. B. and there the Judgment is reversed, and the Writ awarded good; then he shall hold Plea in C. B. and a Judicial Writ shall issue from the Common Pleas, in Nature of Protestation made in the first Writ; and if the Protestation were in Nature of Affidavit, the Justices shall direct a Writ unto the Sheriff to summon the Jurors to come out of Ancient Demesne thither, and all the Matter shall be tried and determined in C. B. And altho' the Judgment be given of the Land in C. B. yet the Land shall be Ancient Demesne. Quod vide M. 3. 3. in tit. Faux Judgment. F. N. B. 19. (D.) cites 4 Inst. 279.

3. Tenant in Tail levied a Fine of Land, which was Ancient Demesne, with Proclamations; a Forredon was brought of the Land within the Court of Ancient Demesne, and the Defendant pleaded the Fine in Bar of the Estate Tail by the Custom, and Judgment was given there accordingly. Whereupon a Writ of False Judgment was brought in the Common Pleas, and it was a Question in that Case, if the averring of the Custom for bearing the Estate Tail there was good against the Statute of Dons Conditionibus, which was made within Time of Memory. Ld. Dyer makes a Note, that if the Judgment should be reversed for that Error; yet the Judgment given here can be no other, but that the Party shall not have Judgment to recover Seilin of the Land which is Ancient Demesne, but only that he shall be * restored to his Action, &c. which will be adjudged there according to their Custom. Mich. 22 and 23 Eliz. D. 373. a. b. pl. 13.—cites 37. Aff. 4.

(G) Execution awarded where, and how. And of Scire Facias.

1. It was shown to Thirning, that a Man had recovered Land in Ancient Demesne, and before that Execution sued he, who lost, brought a Writ of False Judgment, so that the Record is in C. B., and the Plaintiff does not pursue it, and the Defendant cannot now have Execution in Ancient Demesne. And Thirning said, he may set Execution as well by Scire Facias as upon a Writ of Error in B. R. For when the Record is there, they will award Execution. Br. Faux Judgment. pl. 6. cites 12 H. 4. 23.

2. 'Twas agreed that if the Plaintiff upon Scire Facias ad Adjourn. [Adjourn] Errors appears, the Court shall proceed to the Examination of Errors; but if he makes Default, the Defendant shall have Execution; For the Court is not bound to examine the Errors, tho' they are apparent, unless at the Affirmation of the Party; and that a Man cannot be non-suited in a Writ of Error; For he has not Day in Court; contrary in a Writ of False Judgment; but in the Sci. Fa. upon Writ of Error, he may be non-suited; quod non negatur. Nevertheless 'tis not expressly ruled. Br. Error. pl. 11. cites 29. H. 6. 18.

3. The Original is determined by the Nullity of the Plaintiff in False Judgment, per Alcount; and therefore, per Pilon, Execution shall be awarded in Bank pretently; and to be that the Record shall not be remanded.
manded into the Country, but Execution shall be made in Bank. B. Faux
Judgment. pl. 17. cites 29 H. 6. 18.

4. In Faux Judgment J. T. recovered against R. S. in a Jus tici es
directed to the Sheriff of D., 1699 t. which Recovery was removed into C. B.
at the Defendant, by Writ of Faux Judgment returnable 15
Hill. 21 H. 6. at which Day J. T. appeared, and R. S. was nonfuited, by
which J. T. brought Scire facias to have Execution, returnable 15 Palto,
and the Parties appeared, and the Plaintiff [in the Court below] prayed Execution.
Yelverton objected to it, and said he could not have Execution, and showed a Writ of Faux Judgment, good coram vobis refised returnable 15 Johns. and prayed Process against J. T. and tendered surety to sue with
Effet, and affixed Error, that the Justices was directed to the High
Sheriff, and the Under Sheriff held the County and the Plea between the
Parties, and the Record was entered as before the High Sheriff, where in
Fact it was before the Under Sheriff, and to the Judgment Coram non
Jus tice; and because both Parties appeared ‘twas held in vain to award any
Process against the said J. T. upon which J. T. said that the said J. T.
was otherwise nonfuited in another Writ of Faux Judgment, therefore Judg-ment
li Aetio. Per Paillon. j. if a Record be removed out of this Court of
C. B. into B. R. by Writ of Error, and Scire facias is brought against the Party,
and after the Plaintiff in the Scire facias is nonfuited, and the other brings
the Scire facias to have Execution, and the other brings Writ of Error, good peces
this refised, and affigns Errors; yet the other ought to have Execution
without answering to the Errors. Br. Faux Judgment. pl. 9. cites 21 H.
6. 34.

5. But if he will first sue a Writ of Error, and pray Scire facias against
the Party, and after is nonfuited; there, if he first Scire facias to
execute the Party, who was nonfuited shall have a Writ of Error, good
coram vobis refised, and align his Error, Corina in the Scire facias; per
Paillon. j. ibid.

6. And so there seems a Diversity where he first Scire facias is and
is nonfuited, and where he first Scire facias and does not sue it out; and
therefore, if in the first Writ of Faux Judgment no Process was sued,
then ‘tis at supra. ibid.

7. And so it seems that Nonfuited after Appearance and Process sued is per-
emptory, and a contra before Appearance; For if he does not sue out Pro-
cesses upon it, then it cannot be * after Appearance. ibid.

а Que to as to this in Faux Judgment—* Orig. (Pals) but it seems it should be [Pals.]

8. And so it appears by this Case, that if the Record comes into a more
High Court, and Execution is awarded there, the Record shall not be remanded.
Ibid.

9. If a Writ of Faux Judgment be brought in C. B. of a Judgment
given in an Inferior Court, by which the Record came into the Bank;
yet this is not of Record to have Execution, nor otherwise; but whether
the Judges affirm or disaffirm the Record, so that they meddle therewith,
than 'tis of Record; and then Execution lies, or a Writ of Error, and not be-

10. When the first Judgment is reversed by Writ of Faux Judgment. Br. Executi-
the Plaintiff in the Writ of Faux Judgment may have a Writ of Scire facias in Bank against the Party to have Execution in the Writ of Faux

11. Writ of Faux Judgment was brought of a Judgment given in the
County Court upon a Plaint there affirmed in an Action upon the Case for
an Affirmat to the Damage of 39 s. and costs to 10 s. And to delay
Execution of the Costs and Damages the Writ was brought. And the Record
was removed, and the Writ served, and the Plaintiff was nonfuited;
on which the Defendant prayed a Scire facias against the Plaintiff to
have Execution. And by good Advisement the Writ was granted; for o-
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therwife
Falfe Latin. Falfe Oath.

therwife he shall not have any Judicial Writ to have Execution. For the
Record shall not be remanded into another County, &c. Mich. 15 & 16
Eliz. D. 329. a. b. pl. 14. 12. See the like Point, 20 and 21 H. 6. But there was a New Writ of
Falfe Judgment directed to the Justices of C. B. good coram cibis residi,
and Error thereupon Affigned, in order to prevent Execution in the Scire
Facias; Et Curia avifare vult, &c. D. 329. b. pl. 44.

(A) Falfe Latin.

Falfe Latin does not overthrow Indictments, if by any int
endment the Indictment can be made good. Cro. E. 158.
B. R. 5 Rep. 151. b. Long’s Cafe, S. P.

1. F

ALSE Latin does not overthrow Indictments, if by any int
endment the Indictment can be made good. Cro. E. 158.
B. R. 5 Rep. 151. b. Long’s Cafe, S. P.
* 11 Rep. 3.


in Auditor
Curie’s Cafe.—S. P. by Coke, Trin. 12 Jac. 2 Bals. 241. in Cafe of Marham v. Jolly.—# And that is
only original Writs, but judicial Writs, or Fines, shall not be impeached for Falfe Latin, 4 Rep. 131.

3. In Debt on a Bond, if the Obligation be falfe Latin, the Declaration
ought to be good Latin; as if the Obligation be Wiginti, the Declaration
ought to be Wiginti; and then the Court is to conclude it be a Variance.
2 Show. 155. Hill. 32 and 33 Car. 2. B. R. Anon.

4. Falfe Latin does not abate an Appeal. 4 and 5 W. and M. B. R. 1
Salk. 328. Bennet v. Preton.——4 Mod. 159. S. C.

5. False Latin was held to be cured by a Verdict. 8 Mod. 380. Trin.
[ See 4 Geo. 4. 26. at tit. Latin. Inf. ]

(A) Falfe Oath.

T

ILL the Statute 3 and 11 H. 7, which gives Power to exa
mine and punith Perjuries in the Star Chamber, there was
not any Punishment for any falfe Oath of any Witnesses at
Common Law; and now there is a Form of Punishment
provided for Perjuries by the 5 Eliz. yet before the Statute 3 H. 7, the
King’s Counsell used to Assemble and Punish such Perjuries at their Dis-
cration; and there was no Punishment for Perjury at Common Law but in
Cafe of Attaint, as appears D. 272. But in the Spiritual Court, pro Lazione
fidei, they use to punith them. Cro. E. 520. Mich. 38 and 39 Eliz. C. B.
Dampont v. Simpon.

2. If one makes a Falfe Oath, the Party is punishable for it by an Ac-
tion on the Cafe; if it be not Perjury for which he may be indicted; there is
a Difference between a Falfe Oath and Perjury; For one is Judicial the
other is Extrajudicial. And the Law inflicts greater Punishment for a
Falfe Oath made in a Court of Justice than else where, because of the
Preservation of Justice. Per Roll. Ch. J. Trin. 1652. Sti. 337. in
Cafe of Howell v. Gwinn.

3. At the Common Law one may be indicted for a Falfe Oath in an Af-
(See Perjury.) Falfe
Fallifying and Recovery.

(A) The Effect thereof, and how Discountenanced and Punished in Law and Equity.

1. IN Precipe quod reddat against Two, if the One comes and takes the entire Tenancy upon him, upon which they are at Issue, and it is found against the Tenant, by this he shall lose his Moiety; for it is found against the Tenant for his part, because it is tried per Pais upon Issue; contra of Plea to the Writ by Demurrer. Note the Difference. Br. Peremptory, pl. 73. cites 8 E. 3, 17.

2. Plaintiff, in a Suit in Chancery against an Executor, shall have the same Advantage thereof, as if the same Plea were found False by Verdict at Law; and shall have all the same Consequences here as follow on a False Plea at Law to all Intents. Mich. 25 Car. 2. 2 Chan. Cases 251. Parker v. Dee.

Fallifying Recoveries.

(A) At Common Law.

1. At Common Law, if one had suffered a Recovery in any Real Action against him by Default, (if he was lawfully Surronded and no Error was in the Proceeding,) he had not (the Cafe of an Infant only excepted, for the Tenderness of his Age and defect of Intelligence,) any Remedy but by Writ of Right. And this was the Reason that Tenant in Tail, Tenant by the Curtesy, Tenant in Dower, or for Life, after a Recovery by Default, had no Remedy till the Statute W. 2. cap. 4. gave them a Writ of Quod sit de forcite. Nota per Coke. 6 Rep. 8. b. in Ferrer's Cafe.

2. Where False for Life was, Remainder in Fer, if a Stranger had recovered against the Tenant for Life before the Statute of Wills, 2. he was barred; and if it were by Joint Action, and after the Tenant for Life died, he in Remainder was barred; because he never had Possession of the Land to maintain an Action. But if he in Recovery had entered upon Tenent for Life, and Dispossessed him, and after the Tenant for Life had re-entered upon him and died, he in Remainder might have had a Writ of Right against him who recovered; because the Wife was joined upon the user Right of the Thing which was in Demand, which of them had meer Right, viz. the Demandant, or the Tenant, and not whether he has Right to the Possession upon which was defeated by the Entry of the Tenant for Life; For if he could have gotten Possession to convey an Action unto him, altho' the Possession afterwards did fail him, yet in Trial his Right did not fail him; but it shall be found that his Right is Eigne, but a Right without a Possession gives no Action. But yet at Common Law, it was said, he was not without a Remedy before the Statute; because he might have had a Fornditon in Remainder, tho' he never had any Possession by a Recovery in a Mordantsfor; and, it was said, that if Tenant for Life upon a Recovery had against him, had died before Execution, he in Remainder might fallify the Recovery in a Scire Facias. Hughes's Abr. 816. pl. 11. cites 12 E. 4. 21. [But I do not find it there.

3. It
3. If Tenant for Life, where the Remainder was over in Fee, had suffered a Recovery, he in Remainder was without Remedy at Common Law. And the Reason of the Striftness of the Common Law, was to prevent multiplicity of Suits, Trials, Recoveries and Judgments, in one and the same Case. 6. Rep. 8. b. in a Noto of the Reporters.

(B) Falsifying. What Things may be Falsified; in what Cases, and how.

1. *Recipe quod Reddat against Two*, who made Default, and at the Grand Cape they appeared and Waged their Laws of Non Simulans, and at the Day one came and the other not; there if the Demandant recovers the Massive where the other is Tenant of the Whole and is Ousted, he shall have Affile; per Stone. Quere: For he might have taken the whole Tenancy absque hoc that the other had any thing, and have Waged his Law, &c. Br. Affile, pl. 470. cites 6 E. 3. and Fitzh. Saver Default, 67.

2. In Formedon the Tenant vouch'd one, who came, and joined issue with the Demandant, and a *Veire Vocias Itijid*; and before the Day of Return the Voonbee died, and [fo] did not come at the Day; by which *Petit Cape itijid*, and fo the Demandant recovered by Default; this Judgment may be revered by Action of *Defeit*, per Cur. but not by Affile, and therefore fee that the Judgment is voidable, but not void. Br. Affile, pl. 159. cites 8 Alf. 32.

3. In Affile if a Man recovers by *Verdict*, and before Judgment the Tenant gets a *Relate* of the Plaintiff, he cannot plead it; but if he be Ousted, he shall have Affile, per Tank, to which there was no Answer. Br. Affile, pl. 366. cites 43 Alf. 19.

4. If the Demandant in *Pratice quod reddit retefactus is Right no see between the Niff prius and the Day in Bank, and recovers, and enters; the Tenant who left shall have *Affile* by the Relate, per Townend. Br. Affile pl. 57 S. cites 3 H. 7. 40——S. P. ibid. pl. 424 cites M. 6 R. 2, and Fitzh. Alf. 70——S. P. ibid. pl. 492.

5. *Celty que Ufe in Tail*, before the Statute of Uses, suffered a Recovery against him upon a Feint Title and died, the Feoffees could not falsify it in Affile by way of Entry; but they shall have Writ of Entry ad Terminum qui Preterit, or Writ of Right, and shall falsify it by this Action. Br. N. C. pl. 153 cites 30 H. 8. 147.


8. *Nor* by the Date of the Concord; tho' that be matter of Record. 10 Mod. 43. 44 ut sup.

9. Whenever a Recovery is falsified, it is by *Writ of Error*, or by *Pleading*; and in some special Cases by *Motion*. Pig. of Recov. 166.

(B 2) By
Fallifying Recoveries.

(B. 2.) By Entry, &c.

1. Efficit is brought against J. who alleged to S. pending the Writ, and the Demandant took the Rent and Homage of S. pending the Writ, and after had Judgment to Recover; the Moot Opinion was, that the said S. shall avoid the Recovery by this Acceptance; Quære, indubiously as it was not pleaded before Judgment, so that it is matter in Fact; but per Stare by this Acceptance the Writ was abated, and the Action extinct. Br. Acceptance, pl. 3. cites 21 E. 3, 18, 19.

2. Where the Demandant in Precipe quod Reddat enters upon the Tenant pending the Writ, and the Tenant loses the Land by Default after Appearance by Petit Cape, upon which he cannot Aver this Entry by way of Plac before his Default evoked; by which Seinit of the Land is adjudged, and a Prefisation is entered of this Entry made by the Demandant to seize the Affile of the Plaintiff; and so fee that of this Entry he shall have Affile against him, who hath recovered the Land against him by Judgment after the Entry, per Cur. Br. Affile, pl. 17. cites 45 E. 3, 42.

3. In Scire Facias. A brought Precipe quod Reddat against B. and pending Br. Brief pl. entrying the Writ J. N. entered, and A recovered and brought Scire Facias against 9 cites S. C. him, who entered to execute the Recovery, and the Tenant pleaded, that he was seized till by the said B. dispossessed, against whom the said A. brought the Precipe, pending which Writ the new Tenant entered; and by the Opinion of the Court 'tis no Plea; for he ought to allege elder Title, or that there is Covin between the Demandant in the Precipe and the Tenant, quod nota. Br. Fauxif de Recov. pl. 2. cites 3 H. 6, 34.

4. Wherefore the Tenant alleged, that before B. had anything J. S. Br. Brief pl. was seized in Fee, and enfeoffed him, by which he was seized, till by the 9 cites S. C. said B. dispossessed by Covin, against whom the said A. brought the Precipe, and pending the Writ he entered, and after he omitted the Covin and pleaded fut supra; and 'tis admitted there, that elder Title of Entry, than the Tenant has upon whom he enters, suffices, 'tis not elder than the Title of the Demandant in the Precipe quod Reddat; For there 'tis agreed that such Entry shall be void. Ibid.

5. So if the Lord enters upon his Villain, or the Mortgagee upon the Mortgagor pending the Writ. Ibid.

6. Contra, if a Man Dispossesse the Tenant pending the Writ, this shall not abate the Writ, and therefore this is no Cause to fallify; and per Marten there the Matter supra is good, but yet this is no Plea in Scire Facias, why of Affile, and by an Original, and not in Writ judicial by way of debatting. Quære inde; for concord. 7 H. 4. Ibid.

7. In Precipe quod Reddat; where Foremedon is brought against C. and I enter pending the Writ, and the Demandant recovers after; there the Recovery shall bind us both, contrary if I had Title before the Writ of Foremedon; and therefore 'tis usal to bring the Writ against the Mortgagor and the Mortgagee, the Lord and the Villain; For a lawful Entry, pending the Writ, shall abate the Writ. In these Cases, and several others, the lawful Entry of a Stranger shall abate the Writ, quod nota, and by such Entries the Party, who entered lawfully, shall fallify the Recovery, per Marckham. Br. Entry congrable, pl. 34. cites 21 H. 6, 17.

8. If Tenant for L的眼睛 be impugned, and prays in aid of a Stranger, he in Reversion may enter; but if he does not enter, till the other has recovered, then he cannot enter, but is put to his Writ of Entry ad terminum qu. presents, or Entry at Common Law, and shall fallify the Recovery there. Br. Fortisimo de Terres, pl. 57. cites 24 H. 8.

[ See Error (B) — Remitter (G. 2). ]

(B. )
(B. 3) In what Cases. In respect of the Place where.

1. In Seire Facias against the Heir upon a Recovery in Affiss by Default, against his Father, he said, his Father had nothing the Day of the Writ of Affiss, nor at any time pending the Affiss, but J. N. who was seized in Fee, whole Estate he had, Judgment, &c. and by all the Justices he shall have the Plea, because he claims by a Stranger and not by his Father; and per Choke the Father himself shall have this Plea in Seire Facias upon a Recovery by Default, quod quare. Br. Collins and Avoid, pl. 6. cites 33 H. 6. 21. — And see 33 H. 6. Fitzh. 22. it is agreed there also, that Recovery by Default may be avoided as above. Ibid.

2. Affiss was brought in Suffex by B. and E, his Wife against J. F. and twas adjourned into the Exchequer Chamber, and the Plaintiff was of 3 Acres of Land, the Tenant pleaded in Bar that a Stranger was seized and enforced him and gave Colour, &c. the Plaintiff said that, at another time the Same brought Writ of Demifion against a Stranger, and demanded her reasonable Dower of the Frankenement which was J. F.'s late her Husband in 3 Vills, and the Writ was forced, and the Tenant made Default, and the Demandant made by Demand of the third Part of the Manor of B. and 3. of which Manor of S. this Land in the Plaintiff is Parcel, upon which, Grand Cape ensued returnable, &c. and the Plaintiff recovered by Default and had Execution and this Land (inter aliæ) put in Execution, by which he was seized till by the Tenant diffeffed, to which the Tenant said that 4 Acres of the Land Parcel of the said Manor of S. are in W. which is one of the Cinqe Ports where the King's Writ runs not, and so the Recovery fails and faint in Law, and demanded Judgment, and the Plaintiff demurred. per Fortefcue Ch. J. if the Recovery was void of the Land in the Cinqe Ports, yet it is good as to this, which is now put in View; by which he awarded the Affiss, quod nota; and quere, it this was because the Plaintiff did not make Title, or because the Recovery is good of Land in the Cinqe Ports, if Exception be not taken; it seems to be for both Points, and so it seems the Recovery good; but see that (it may be consilient of) stand together, because all was not in the Cinqe Ports, nor does it appear, what part was in the Cinqe Ports. Br. Pauix. de Recov. pl. 15. cites 36 H. 6. 32.

3. A Recovery of Land in the County of E. which lies in the County of H. is void. Ibid.

4. So of a Recovery of Land in Ancient Desefue which lies not in the Manor of Ancient Desefue. For this is coram non judge. Ibid.

5. But a Recovery in Formedon in B. R. or a Fine levied there, is good enough, per Fortefcue Ch. J. Ibid.


1. A Man shall not avoid a Judgment given against his Ancestor in an Action real passed by Trial in Fines, by saying that his Ancestor had nothing in the Land at the time, &c. Contra of a Recovery by Default, there he may say, that his Ancestor had nothing at the time &c. but J. D. whole Estate he has; by all in the Exchequer Chamber. Br. Judgment, pl. 95. cites 33 H. 6. 17.

2. And twas said there that he, who pleads a Recovery by Default, ought to aver the Tenant to be Tenant of the Land at the time, &c. Contra, where he pleads recovery in Action tried, by all in the Exchequer Chamber. Br. Judgment
Falsifying Recoveries. 119

Judgment, pl. 93. cites 33 H. 6. 19. — 36 of a Recovery in Fillee against any Assignor. The same Year, Po. 19. in Scire Facias, per Judicium Cur. Ibid.

3. In Scire Facias upon Recovery of Land against A. the Tenant said, that A. was not Tenant of the Frankenmant the Day of the Writ purchased, nor ever after; but B. was Tenant whose Title he has, and a good Abundance of the Recovery. Br. Confess and Avoid, pl. 49. cites 14 E. 4. 2.

4. If Judgment be given in the Marriage between two, who are not of the King's Households, it is void and Coram Non Justice, and the Defendant may avoid it by Plea, or have Writ of Error. Br. Judgment, pl. 123. cites 20 E. 4. 15.

See (G. 2)—Error (A).

(C) Falsifying Recovery. In what Cases. In the Point tried.

1. In Annuity, per Fortescue where a Man hath Fillee a Son by one Venter He (to con- and a Daughter by another, and the Land is entailed to him and his second Issue, and he looses by false Verdict, and dies; the Attaint is given to the Son; and therefore the Daughter may falsify the Recovery in the same Point, that was tried. Br. Faux Recov. pl. 12. cites 22 H. 6. 28.

— Quere; For Tempore H. S. was held, that the Attaint goes with the Land, as a Writ of Error shall go, and that the Daughter shall have Attaint, and shall not falsify. Ibid. pl. 50.

2. So where a Man settled in Borough English hath two Sons, and looses by false Oath, and dies; the Attaint is given to the eldest Son, and therefore the youngest shall falsify in the Point tried, quod Yelverton omnino negavit. Br. Faux. Recov. pl. 12. cites 22 H. 6. 28.

3. If a Recovery be had against Tenant in Tail, and the Title is Tried against him (feliciter) quod Non detur, &c. the Fillee has no Remedy but by Attaint; For he shall not falsify in this Point; but if the Verdict be upon another Special Matter, and not upon the Title, or if it was a Recovery by Default, in these Cases, the Heir in Tail may falsify the Recovery. Br. Faux. Recov. pl. 4. cites 34 H. 6. 2.

4. So the Successor of a Person shall falsify upon a Recovery by Default, in like Cases, where the Title was not Tried. Ibid.

5. So upon a Recovery by Default against Tenant for Life who dies. He in Reversion may falsify; and so it seems here, that a Man shall not falsify in a Point once tried. Per Prior and Moyle. Ibid.

6. A Feme may falsify in Doower, where a Recovery is pleaded against her Baron by Action tried, viz. in another Point which was not tried; but not in the same Point which was tried. Br. Faux. Recov. pl. 7. cites Trin. 36 H. 6. in Fizbh. Tit. Faux, &c. 27. per Fortescue.

7. If Tenant in Tail makes Manumission to his Villein whom he has in Tail, and after the Villein brings Action against him, and the Tenant in Tail pleads Villeinage against him, and he says, that Frank, &c. and foil to Fillee, which is found against the Tenant in Tail, who has Villein and dies; if the Villein brings Action against the Fillee, and he pleads Villeinage in the said Villein, and the other Fillee by him by the Trial against his Father, there, per Littleton Justice, the Fillee in Tail ought to plead the Matter, and con- fesse and avoid the Trial and Record; because his Ancestor had made him Manumission. Br. Confess and Avoid, pl. 49. cites 13 E. 2. 2.

8. Where Trial of Frank passes against the Ancestor in Tail, who Alleges the Villein to be regardant, the Heir in Tail shall not by this be

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It stopped to allude that he is, and was Villein in Glos to him and his Father, &c. by the fault. Opinion. ibid.

9. A Termor, who is received upon a Recovery given against his Lessor, may alldy in the Point of the Writ and traverse it: For otherwise the Covin will not aid the Termor, if it be upon a true Title: quod nota bene, per Pollard and Fitzherbert. Br. Faux Recov. pl. 48. cites 14. H. 8. 4.

10. Where it is said in the Books, that Proves shall not alldy in the same Title, or in any other Writ of the same Nature; but he may bring Action of a higher Nature, and to try the Matter again. 6 Rep. 8. 40. and 41 Eliz. in * Ferrer's Café.

21 also bewitch the same Parties, per Doderidge J. Cro. J. 456.—* Pig. of Recov. 160. cites S. C.

11. There is a Difference where the Parties have not the absolute Fee in them, as Parson, Pretenders, &c. there the Successor is not bound, but in Action of the same Nature he may alldy, or have Juris Utrem; but where, by the Common Law, they have the mere Right, as Billop, &c. there they can't alldy. Pig. of Recov. 160. cites 6 Rep. 8. 4.

[See (G. 2) (II)]

(D.) Falling and Recoveries by Terms.

In the Eye of the Law, the Party who is the Tenant in possession, may, as an Estate for Life, be an Estate of Freehold, and in an Action or Recovery of a Precipe quod reddat doth lie, from higher and greater Estate than a Lease for Years, tho' it be for a Term of or more, which never are without Suspicion of Fraud, and they were the leasable value, for that at the Common Law they were subject unto, and under the Power of the Tenant of the Freehold, the Learning whereby the lease was, is worthy to be known. When Littleton wrote, if a Man had made a Lease for Years by Writing, and he had the Freehold had suffered himself to be impeded in a real Action by Cooling, for the Lease of his Term, and made Default, &c. the Statute of Gloucester gave the Lees for Years some Remedy by way of Receipt, and a Trial, whether the Demandant did move the Plea by good Right or Cooling: and if it were found by Cooling, then the Termor should enjoy his Term, and the Execution of the Judgment should stay till after the Term ended. But this Statute extended not to five Cases. 1st If the Lease was * against Writing, for the Words of this Actare, (to that the Termor may have Recovery by Writ of Covenant) 2d. It extendeth only to a Recovery by Default. 3d. The Termor could not be relieved by this Statute, unless he knew of the Recovery, and was received. 4th. By the better Opinion of Books, it extendeth not to Tenant by Statute Merchant, Statute Staple or elect. 5th. Not to Guardian. But now the Statute of 21. H. 8. does give Remedy to all the said Cases, sitting in the Case of the Guardian, and gives them Power to alldy all Manner of Recoveries had against the Tenants of the Freehold upon Ejected and untrue Titles, &c. So Litt. 40 a


This Statute which enables that a Termor may be received to alldy, requires a Delin, and that the Termor should have it before Judgment, &c. as above, and extend only to the Case of the Tenant, and to his Default after Default: It does not extend to five Prejudging: nor where Judgment is given upon the Default of the Owner; For the Stat goes only to the Default of the Tenant. It acts the Tenant by Statute and Tenant by Eject. The Termor and Tenant in Statute and Eject after Judgment against the Tenant may alldy a Recovery had against any of them, by the Stat. 21 H. 8. 13. The Stat. of Gloucester is used at this Day for a Termor. If he have a Delin, and come before Judgment, he may
2. A Quare impedit is brought against the Patron and Incumbent to
prent to a Rectory, of which the Incumbent has made a Leafe for Years
B. by Deed. The Patron of the Incumbent confesses the Action; The
Leafe for Years is not to be held, alfo’ he come before Judgment, and
hears his Leafe, and hears Title of his Leifor, and the Fraud and Collu-
Sion; For a Parfon incumbent may, when he will reign, his Rectory,
and avoid his Leafe; and the Abfence of a Parfon for the Space of 30
Days in a Year fhall avoid the said Leafe; alfo, if he will fuffer a Judg-
ment and Recovery of it against him, fuch Recovery fhall avoid the said
Leafe. The Statute of Gloucefter is to be underfoon of Leafles made by
fuch Leifors, as could not defeat fuch Leafles by their own Acts. Jenk.
impedit, and falfify the Recovery at Common Law, who is not in efct but Termor. Dr. Paufl de
Recov. pl. i. cites 26. H. 8. 2—— It {hould be 2. pl. 3.

3. A Woman brought Dower against her two Daughters and another,
and in Truth the third was but a Termor, and the Wife had no Cape of
Dower; but this was only to make the Termor to lose his Term; for
they all made Default at the Grand Cape, and now the Termor prayed
to be received, and heurwed Cape that the Husband made a Leafe for Years,
and after the Leafe levied a Fine to the Leifor, and they granted and
rendered back again to the Leifor for the fame Years, rendering the fame Rent;
it was argued that the Statute of Gloucefter is, that 1f the Farmer have,
that is, if he may have Covenant as in the 19 E. 3. and here he may
have Covenant, and prayed to be received, and heurwed his Plea. Ander-
fon Ch. J. held that a Tenant may falfify by the Common Law. And
it being infufed, that the Leafe is after the Title of the Dower, Peryam
J. faid, that alfo’ it be after, yet if he have Matter which goth in the
Definition of the Dower, he fhall falfify well enough, as if the have Title
of Dower and five Years past after the Fine levied. And Anderfon and
Peryam faid that the Statute of Gloucefter was made, that a Termor
should not be put out of Potfition, but here the Termor is named; Ideo
quere; and after, at another Day, Shuttleworth moved it again, and
faid the Termor fhall not be received, because he is named in the Writ,
and the Court was of the fame Opinion then; but they faid that he might

4. M. and his Wife brought Dower against E. To parcel, he pleads Non
Tenure, and to the other Parcel, Ne unique Seife que Dower, which goes to the
Trial; and there the Tenant makes Default, and upon that a Petit Cape is
awarded, and now, at a Day in Bank, one Lunnard prays to be received
upon the Statute of Gloucefter, to fave his Term, &c. but Hendon al-
lledged to the contrary. 1. That Statute is not to this Purpoft in Force.
By the Common Law’ Tenant for Years cannot falfify. 6 Rep. Pertain’s
Café. Then, becaufe it was hard, that a Recovery fhould be had by Covin,
and the Leefe for Years without Remedy for his Term the Statute of
Gloucefter was made, which gives a Receipt for the Leefe for Years; after
the Statute 21 H. 8. was made, which gives the Leefe Power to falfify. The
common Experience of the Court is, that if an Unvele Facias Sufficient
title, there is not any faving of the Term of Leefe for Years. Hill. 39
Eliz. in Beff’s Case, a Receipt was mov’d and denied. For if the Leefe
had a good Term, he might have Trefpas for Entry upon him; tho’
Littleton fays in his Chapter of Tenant for Years, that he fhall be
received. Hutten faid, the Statute of Gloucefter aids them only, who knew
and had Notice of the Recovery; but 21 H. 8. aids them who had not Notice
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11. And it is better to prevent Miscriff, than to remedy it after, and as to that a final Bar; that he was of Counsel in some Cales, where the Leefe was received. And if the Leafe be not good, the Leffor may avoid it by Plea Sell, Traverfe, or Demurrer: And he remembered the issue taken upon the Term, and found against the Termor, in the Cale of Fithian v. Servant Harris. Sed adjournatur. Hltd. 14+ Trin. 5 Car. C. B. Moor v. Everey.

5. Affisse is brought against the Tenant of the Frankentenam and the Termor, who pleads and lofes; but the Termor is acquitned of the Difci- fin. The Termor is without Remedy to have Aduant; for he loit nothing, neither the Frankentenam nor Damages; nevertheless some hold contrary, and Adjournarur, quere if he hall not falsify. Br. Faux. Recov. pl. 41.

6. Note by all the Justices that, of Error in a Recovery, none shall have Advantage but the Party or his Heirs; for a stranger shall not falsify for Error, nor by Dilatations, but by that which disproves the Caufe of Action. Br. Error pl. 89, cites 9 E. 4. 13.

7. Tenant by Eloit or Termor shall not falsify a Recovery of the Frankentenam by the common Law; for they cannot have the Thing that is recovered; for the Recovery is of the Frankentenam and the Term is only a Chattel, per Danby contra Litt. Br. Faux. Recov. pl. 11. cites 9 E. 4. 38.

8. Where Termor, Recognizor, &c. are received in Default of the Ten- ant of the Frankentenam, there the Demant shall have Judgment against the Tenant of the Frankentenam, with a Ceftiff Executio during the Leafe or Extent. Br. Faux. Recov. pl. 25. cites 7 H. 7. 10. per Moodle.

The Reason only for Years was esteemed in Law to be a
left Estate than a Ffehold for Life is this. In former Days all Action were real, and Lands being leased for long Terms, and Fines taken for such Leases; it was usual for the Leffors, or their Heirs to falsify common Recoveries, and by that Means the Leases were evicted; because they could not falsify their Recoveries, till enabled by this Act. But in those Days, the Terms for Years were usualliy granted for a short Time; For no body would take long Terms, because the Tenant of the Freehold could destroy them, ad Libritum, by falsifying a Common Recovery, as aforesaid; Therefore those Estates for Years were accounted the lease, and next to Estates at Will. per Car. Mich. 11 Geo. 9. Mod. 102. in Cale of Theobald v. Diffay.

The former Act of 6 E. 1. 11. extended only to London; but this Act extends to all Leases out of London; and by this Statute the Leaffe shall be received to falsify the Recovery before Judgment, and it shall suspend the Execution; but then he must not only over the Collienne, but plead issue bar to the Plainiff's Title; and this Statute extends to all those Cales where the Voucherc or Tenant les Judgment go by Default. Pig of Recov. 11.

10. Where the 21 H. 8. 15. in the Preamble, speaks of Leases made for great Fines for the Incomes, and the ProvHo is, That all such Termors shall or may falsify: It has always been taken that the Statute extends to Leases either for a small Fine or for no Fine. 11 Rep. 33. b. Trin. 12. Jac. B. R. in Poulter's Cafe.

11. Tenant in Tail acknowledged a Recognizance of 100l. and dies. A Scire Facias was brought against the issue in Tail, who hanged this Scire Facias, made a Leafe for Years of the Land in Question to the Defendant, and pleads to the Scire Facias, that he had Rums per Difcent of Fee fimple from his Father, and that he was not the Ten- ant of the Land, all which was found against him, that he was Ten- ant of the Freehold, and that he had Land by Difcent from him in Fee Simple, all which was put in Issue, and hinging this, he made the Leafe to the Defendant. Judgment was given against the Issue in Tail, that the Land should be liable to this Recognizance; the Leafe was made before Judgment to the Defendant; the Defendant being the Leffe, pleads

which this is all this Matter, and in the special Verdict this is all found: The Plain-
Falling Ind Recovery.

12. Tho' by the Statute H. 8. a Termor may fallify, yet it must be the Termor himself, and not another for him. 1 Saik. 291. Mich. 8. Amra. in the Case of Lady Lindsey v. 1d Lindsey.

13. 34 and 35. H. 8. 20. Is that it shall not extend to prejudice the Lefsee or Lessee, of any Tenant in Tail of any Lands, &c., whereof the Reversion or Remainder at the Time of a Feigned Recovery was, shall be in the King, made in Writing intendment of any Crowns Lands, &c., for 21 Years or three Lives, or under, whereupon the acceded Rent or Rents is; or shall be yearly referred during the same Term or Terms; but the same Lefsee or Lessee shall enjoy his or their Term or Terms, according to the Stat. of 32. H. 5. 28. this Act notwithstanding.

14. In Replevin, the Case was, a Defeclusor instituted a Stranger, and after the Defeclusire brought an Affise against the Defeclusor only, and the Affise, pending the Affise, hit the Land to the Plaintiff. The Defeclusor pleads to the Affise nil Tot, nil Diffellin, &c., and found against him; whereupon the Defeclusire recovered. The Question was, if the Termor for Years should fallify this Recovery; that is to say, that the Defendant in the Affise Ne Diffellin pas. And it was agreed by the Court that he might; For the Termor here did not claim by him against whom the Recovery was bad, and there is no Doubt that the Freehold, out of which the Term is derived, is not recovered, and the Freehold is not bound by it. And the Doubt at Common Law was, if the Termor might fallify, where the Recovery was against the Lefsee; but it was never doubted, but that, where a Recovery is not against the Reversioner but against a Stranger, who bad nothing in the Land, the Lefsee might fallify in the Point tried. and so is 1 H. 7. 19. Cro. E. 284. Trin. 34. Eliz. B. R. Flower v. Rigden.

15. And it is a Rule, that every Stranger to a Recovery may fallify; for he cannot have Error or Attaint, if he came not in pending the Writ by him against whom the Recovery was, for then he is bound, and afterwards he was so adjudged, that he might Fallify in the Point tried. Cro. E. 284. Flower v. Rigden.

16. Tenant in Tail made a Fo. a) the fine to his owu Son, who was then of full Age, and afterwards he disfied him, and then levied a Fine; but after the first Proclamation, the Son entered and made a Fo. then all the Proclamations were made, and afterwards both the Father and the Son died; then the Affise of the Son made a Lease to W. R. and died seized, and the Affise of the Tenant in Tail brought a Foreseen against the Heir of the said Fo. who was in by Devent, and recovered against him by a Joint Defence of his Title; and then he turned the Lefsee for Years out of Possession, who thereupon brought an Ejectment. The Court thought that he might fallify the Recovery had by the Fos in Tail, because the Court also thought, that the Estate Tail was bound by this Fine; but because it appeared by the Pleading, that the Fine was levied by the Father to that very Person, to whom the Affise of the Son had granted this Lease for Years, and who was now Plaintiff, and it not being
Falsifying Recoveries.

(D. 2) By Heir, Reversioner, or Remainder-man; and How.

1. A Recovery had against Tenant for Life was falsified by the Reversioner, because the Ancestor of the Reversioner in the Inheritance, had Relieved his Right before the Execution of the Fine, which was pleaded in Bar to 7 S. then Tenant; and so the Execution falle and feint in Law. Br. Faux. Recov. pl. 21. cites 29 All. 1.

2. If a Man recovers against Tenant for Life, he in Reversion shall not falsify by Entry; but shall have Action of an Assignment Aquiet in the Tenant, and shall falsify therein; But if Tenant for Life prays Aid of a Stranger, he in Reversion may enter before Judgment, but after Judgment he is put to falsify. Br. Faux. Recov. pl. 44. cites 24 H. 8.

3. 14 Eliz. 8. Enacts that all Recoveries had or presented by Agreement of the Parties, or by Custom against Tenants by the Curtesy, Tenants in Tail, after Possibility of Life extinct, for Term of Life, or Lives, or of Estates determinate upon Life or Lives, or any Lands, Tenements, or Heridaments, whether of such particular Tenant is so forfeit, or against any other, with Voucher 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 Remainder, and for their Heirs and Successors) be clearly void.

4. This Act shall not prejudice any Person, that shall by good Title recover any Lands &c. without Fraud, by Reversion of any former Right or Title; also, every such Recovery had by the Assign and Agreement of the Person in Reversion or Remainder appearing of Record in any of the Queen's Courts shall be good against the Party so offending.

Where the Provofe of this Act speaks of an Assign of Record by him in Reversion, or Remainder, it is to be understood, that such an Assign must appear upon the same Record, either upon a Voucher, or Prayer, Receipt, or the like; For it cannot appear of Record, unless it be done in Course of Law, and not by any Extrajudicial Entry, or Memorandum. Co. Litt. 392.

[See Error 'B']

(E) Falsifying
(E) Falsifying Recoveries. By other Persons than Tenants.

By Privies, or Strangers.


2. If Praecipe quod Reddat be brought against Fawke, and Three confest the Allain, or make Default, and the Fourth demands the View, and the Demandant recovers 3 Parts; there if the Fourth be Tenant of the Whole, and be ousted by Judgment against the Three, he shall have Ailise; For he shall not be bound by Judgment against Strangers, where he himself is the Tenant, per Skrene. Br. Ailise, pl. 38. cites 12. 4. 59. and T. 4. H. 6. 36. accordingly.

3. A Stranger may falsify a Recovery in the same Point tried, per optiman opinionem; and per Babington, he may do so upon Plea in Bar, but not upon Plea to the Writ. Br. Faux. Recov. pl. 3. cites 9. H. 6. 24.

4. If a Man purchaseth pending Writ, and the Demandant proceeds, and recovers, the Purchaser shall be bound as well as his Factor, and shall not falsify, tho' he be a Stranger. For he comes in by him, who is bound and under his Title. Br. Faux. Recov. pl. 15. cites 36. H. 6. 32. per Wangford.

Recon. pl. 32. As if A interfie B. to re-interfie A. and B. suffer a false Recovery: Now if B. interfie B. is bound; but if A. comes upon B. before Execution without taking Efface, he shall falsify; —— Br. Elllop. pl. 90. cites 85. H. 6. as held to by all the Justices and Serjeants.

5. In Ailise, a Recovery is pleaded against a Stranger, and the Pothesion of the Plaintiff meane between the Title and the Writ brought, there the Plaintiff may falsify the Recovery, as to show that the Tenant ought not to have pleaded a Reliefe, or that the Tenant did found the Writ, or that the Tenant had not any thing in the Land found the Writ; for there prove the Recovery void, or without Title; and therefore a Stranger may falsify, per Wangford and Foreclee Ch. J. Br. Faux. de Recov. pl. 15. cites 36. H. 6. 32.

6. So where he proves the Recovery void, or the Title Nul, per Wangford and Foreclee Ch. J. Ibid.

7. But where a Recovery is pleaded against a Stranger, and the Title of the Plaintiff Meane, &c. he cannot falsify it in Title; For he is as well ellipted as the Tenant himself. Ibid

8. But every Stranger may have Allegation to prove the Title Nul, or the Recovery void. Ibid.

9. And if Praecipe quod Reddat be brought against him, who has nothing, and he appears, and pleads, and hyses, he shall be ellipted for ever; because he was privy. Ibid.

10. But his Heir may have thereof Writ of Error, or shall save it by way of Anwser; quere inde. Ibid.


12. If two Coparceners make Partition, and one is unpard to prays Aiid of the other, who is summoned, but does not come in, and the other disavows the false Warrantry paramount as it they had joined, and to the other shall have Pro Rata, and [yet] the other shall never falsify the Recovery, per Kebble. Br. Faux. Recov. pl. 24. cites 4. 1. 7. 2.

13. A. had Lands defended to him in Ancient Demises extended by Statute Merchant, B. purchased the Lands, and had a Recovery by Sufferance in the Court of Ancient Demise upon a Voucher, and called A. then A. brought a Subpena; and it was holden that A. could not falsify

K. K.
Falling Recoveries.

the Recovery, and therefore should be referred to the Position by LAW: Chancery, for he had no Remedy by Law. Where, notwithstanding a double Judgment, yet the Judges directed them to the Chancery. Torch. 135.
cites 7 H. 7, 10.

14. If a Man gives Land in Tail, Remainder over in Fee, and the Tenant in Tail dies without Issue, and a Stranger intrudes, and Remainder-
man in Fee brings Forfeiture in Remainder, and recover by Default, and
after makes Forfeiture in Fee; and afterwards the Intender brings Action of
Despite and recovers the Recovery, in this Case he in Remainder shall never
have any Remedy nor Aktion, but it shall go in Advantage of him who

15. 21 H. 8. 15. Exhibts, that no Statute of the Staple, Statute-Merchant,
or Execution by Elegit shall be avoided by such signed Recovery, but such
Tenants shall also have like Remedy to fally such Recoveries as is here provided
for the Left for Years.

16. Quere, if a Man impleads the Feeor upon Condition, and the Feeor
enters for the Condition broken; it seems there that the Writ shall abate,
therefore it is usual to implead the Mortgagee and Morrogar, and the
Lord and the Vilein; and lo see that the Entry of a Stranger shall abate

17. Debt was brought against J. S. as Executor, and pending this Aktion.
J. D. brought Debt against him as Administrator, for a true Debt,
(wheras in truth he was Executor) J. S. conciled the latter Action, and
pleads this Recovery in Bar of the first Action, and it was resolved to
be no good Plea; First, because the Recovery was had against him as
Administrator, and so is void. alas! this had been only a Plea to the
Writ, and a Stranger shall not fally that which is only to the Writ;
2dly, he, that first lueth, shall first be served, and the Executor might
have pleaded the first Action against him, that brought the second. Trin.

18. The Rule, that one shall not fally, where himself is Party, has three
Exceptious. 1st, If I can shew by way of Replication, that this Recovery
is void in Law, I may fally it in an Affis, as 36 H. 6. 32. 39 Att.
pl. 6. and 6 E. 3. 54. 2dly, If a Man recover against me certain Tenements
in B. and they lie in A. and I bring an Affis of my Franktement in A.
3dly, Where the Recovery by Default was upon a Writ abated; as if an Affis
were brought against my Father, and he died hanging the Affis, and
Judgment is afterwards given against him in this Case because the Writ
was abated de facto, I may fally the Recovery per Doderidge J. Cro.

19. An Infant brought an Affis in B. R. for lands in Middlesex, de-
pending which the Tenant in the name Affis brought an Affis for the same
lands in C. B. which last Writ bore Date, and was returnable after the
first Writ; and the Demandant in the second Writ recovered against the
Infant by Default by the Affis, who found the Seton and Defeat; and
upon a Plea in Bar of the first Affis of that Recovery, the Infant by
way of Replication, set forth all the special Matter; and that the De-
mandant at the Time of the second Writ brought, was Tenant of the
Land; and prayed that he might fally the Recovery; and it was adjudg-
ed that he might fally the Recovery; For in all Cases where a Man shall
not have Error, nor Attaint he may fally. But in this Case he could
not have Error nor Attaint, because the Judgment in C. B. was not given
only upon the Default, but also upon the Verdicte. And it should be in
vain for him to bring an Attaint, because he shall not be admitted to give
other Evidence than what was given at the first Trial, alfo he shall fally
the Recovery, because it was a Pratifice to defeat and take away the Right
of the Infant, and to leave him without any Remedy whatsoever. Hill.
13 Jac. in B. R. Godd. 277. Plow's Cafe.

(F) Fallifying
(F) Falsifying Recoveries. By other Persons than Tenors. In respect of Covin.

1. In Affile the Tenant pleaded a Recovery by himself in Formedon against N. and the Estace of the Plaintiff mene, the Plaintiff said, that pleading the Affile against the Tenant, and the same N. the Tenant confessed N. after brought the Formedon against him by consent and Covin between them, and demanded Judgment; and a good Plea; and the Plaintiff recovered in Affile. And "tis said that if he was Tenant the Day of the Writ purchased, and the other had entred upon him of his Allent, and he had brought a Formedon and Recovered, that yet the Plaintiff should recover by the Affile. Br. Faux. Recov. pl. 17. cites 25 Aff. 1.

2. If Foelee upon Condition suffers one, who has good Right, to recover by a False Writ, as if he brings ad Terminan qui preteriti, as supposing the Leafa made to A. where it was to E. and where his Entry was not lawful, Foelee may Enter and falsify the Recovery. Br. Faux. Recov. pl. 3. cites 24 E. 3. 8.

3. So a Foelee, who demands Dower, may falsify such Recovery; quod nota; For the may fay, quod non Dormit praelato A. Modo & Fonna, &c. Ibid.

4. In Formedon, the Tenant confessed the Affile; by which Proclamation was made, if any could lay any thing why the Demandant should not recover, and a third Person came and alleged Covin to poll him of his Entry, where he had inaeolved the Tenant upon Condition broken and the Tenants, [hewed Caufe] &c. by which Judgment was stayed. Br. Judgm. pl. 18. cites 7. H. 4. 19.

5. In pleading Recovery to be by Covin the Cause of Covin must be shown, per Cur. Br. Faux. Recov. pl. 3. cites 9 H. 6. 41.

6. Note, 'twas said for Law in Attaind, and not denied, that where J. is dispossessed by V. and a Stranger recovers against him bona fide, or by Covin by Title, which is younger than the Title of J. there J. may enter upon the Recoveror, and plead this Matter, and the Recovery itself, &c. and a good Plea. Br. Entre Congeable, pl. 4. cites 34 H. 6. 44.

7. Consee of a Statute may falsify a Recovery had against the Conuelor; and it was agreed in a Manner by all, that if the Consee has no Remedy by the Common Law, then he shall be restore by Equity. Br. Faux. Recov. pl. 25. cites 7 H. 7. 16. may have Affile and falsify Recovery had by Covin against the Conuelor. Br. Faux. Recov. pl. 48. cites 21 E. 3. 1.----Ibid. pl. 57. cites 19 E. 3.

8. If one be oulted by Covin, between the Demandant and him that ouls the Tenant, and the Demandant brings an Affile against the Party that ouls the Tenant; the Tenant may have an Affile; and on the special Matter thew'd, shall avoid this Recovery. Pig. Recov. 156, 157. [ See Executor (P. a. 4)—Fraud. ]

(F. 2) Falsifying Recoveries. Barred by Covin, notwithstanding a true Title.

1. Where a Man pending an Affile encoffs another, or suffers him to enter upon him by consent, and to recover by Formedon by an other Gift, this shall not hinder the Plaintiff in Affile, but that he shall Recover. Br. Collation, &c. pl. 28. cites 25 Aff. 1.

2. A Man had Title of Action, and caused J. N. to enter, against whom he recovered; there by this Covin the Tenant, who was oulted may falsify the Recovery, notwithstanding that the Title was true, and he shall not have Affile, and he, that recovered, shall not be by this remitted; quod nota.
Falsifying Recoveries.

nota bene, where the Defendant himself is privy to the Cause; for otherwise, it forms that, the Covin is no Plea in another Cause without alleging want of the Covin in destruction of the Title of the Party. Br. Faux. Recov. pl. 42. cites 41 Aff. 29.

3. It was held clearly by Parthley, Tank, and Kirton, that if both Action to obtain Land, and by his Affiant, and Covin the Tenant be oust'd, and he, who has *Alia, brings his Action against the Defendant, he, who was oust'd, shall have Affic, and the Possession of him, who recovered, shall be adjudged by Abatement against him, and not by Recovery, because he was a Defendant, 44 E. 3. 46. pl. 63.—Br. Colluition, pl. 16. cites S. C. —ibid. pl. 31. cites S. C. and 41. Aff. 2.

4. In Dover, the Tenant said, that be himself dissised J. N., who re-entered pending the Writ, and prayed Judgment of the Writ; and a good Plea. The Defendant said that J. N., re-entered by Covin to abate the Writ, and no Plea; For where his Entry is cloak'd, it cannot be Covin. But where a Man has Title of Formendon, or a Female Title of Dover, and makes another to enter, against whom he or the recoverers, it may be avoided by Covin; For the Entry was a Wrong, and a Man may do a Wrong by Covin, but he cannot do a Right by Covin; quod nota, per Littleton and Cur. Br. Colluition, &c. pl. 20. cites 15. E. 4. 4.

5. A Man granted a Rentcharge, or such like, where a Stranger who had good Title, brought a Writ against the Grantor, and he confess'd the Action to the intent to defeat the Rentcharge; there the Grantor hath no Remedy, nor he cannot falsify it by this Covin, because the Title is true. But where a Man who has Title, confesses another to enter and after he brings an Action against him and recover, 'tis otherwise; nota the Diversity. Br. Faux. Recov. pl. 46. cites 5 H. 7. 40.

6. Covin may be, where the Title is good, and the Title shall not give benefit to him, who has it, for cause of the Covin; For the Mixture of good and ill together makes all ill, and the truth is obscured by the Falsity, and the Virtue is merged in the Vice. Per Mountague Ch. J. Mich. 4. E. 6. Pl. C. 54. b. in Cafe of Wimbith v. Talbois.

7. As where G. T. seised in Tail to him, and the Heirs Male of his Body, discontinued, and retook to him and E. his Wife, and to the Heirs of their two Bodies, and had Issue T. and W. and died, and E. his Wife survived, and T. had Issue E. and died and after W. by Covin of E. his Mother brought Formendon upon the first Tail against his Mother, and the appeared at the first Day, and W. recovered per Nient desire, and E. the Daughter of T. the eldest Son and Heir of G. entered by the Statute of 11 H. 7. the Entry was adjudged lawful by the same Statute, which says, that the Recovery is void, and need not say that the Recovery was executed; For since 'tis void it never shall be executed; and E. the Heir aver'd, that she the same Perdon, to whom the Reversion belonged, and did not know how she was Heir to it, and yet well, per Molinet and Hales Justices, contrary Browne and Mountague Ch. J. of C. B. But all agreed that it was a Recovery by Covin, notwithstanding that it was upon true Title and good, tho' that she did not have cause of the Covin, quod nota. Br. Entrec. Cong. pl. 140. cites 32. H. 8. and * Pl. C. to. 43.—Br. Colluition, pl. 47. cites Tempore H. 8. Wimbith v. Talbois.

*Wimbithv. Talbois

(G) Falsifying
(G) Falifying Recoveries for Dilatoryes.

1. **WHEREA** a Baron lost by Dilatory, which does not disaffirm his possession, as _Nonsuit_, Mistouney of the Wilt, &c. and dies; the Feme shall have Writ of _Decree_, and falsify the Recovery, per Wiche quod non Negatur. Br. Faux. Recov. pl. 8. cites 50 E. 3. 9.

2. A Man shall not falsify in Dilatories, as in _Ultery,_ Excommunica- tion in the Demandant, and the like; nor by entry of the Demandant into the Land _pounding the Writ_, nor, because the Land was in ancient Demence, and the like; For thole do not disprove the Title of the Demandant. Br. Faux. Recov. pl. 15. cites 36 H. 6. 32. per Fortescue Ch. J.


_S. P. per Catesby._ But he may in that which goes in de-

protection of the Withe, or _Action_; For a _Stranger_ shall not plead Mistouney nor _Joanenancy_, but he may plead _Nonsuit_._ Because in such Case the Recovery is void where the Tenant had nothing, per Catesby._ Br. Faux. Recov. pl. 12. cites 9 E. 4. 12.

Per Anderson and Beaumont, a Stranger cannot falsify a Recovery for _Joanenancy_ or _Nonsuit_, or by such Dilatories, but for matter of _Substance_ only _Cro. 471. (bis)_ in Case of Further v. Further._ See S. C. at that Inf._

A _Stranger_ shall not falsify in _a Thing_ which _proves the Writ abated_; as by the Death of any Party; but otherwise of _a Thing_ which _proves the Writ abated_, as if a Feme Plantaft takes Baron pending the Writ, &c. Br. Faux. Recov. pl. 15. cites 9 E. 4. 12. _per Catesby._ But in Debt upon an Obligation against F. and others, Administrators of J. S. who pleaded that one D. had brought Debt in B. upon an Obligation of 1001. against one of the Administrators, and recovered by _Nobil Dict_, and that they had Kien in _his_ name to satisfy over and above the said Debt; and it was thereupon Demurred. Glanwill mov'd, that this was not any _Plen_ for, in regard the _Defendant_ in the _first Action_ might have a-

 louis the Bill by saying that he had an _Administrator_ not named, this recovery shall not bind any Stranger; this Recovery is also corens being by Default, and in Proof thereof, _See 9 Ed. 4. 12._ But Anderson and Beaumont held, that it was a good _Plen_ Prima Facie; _For a Stranger cannot falsify a Recovery by reason of _Joanenancy_, or _Nonsuit_, or by such Dilatories, but only for matter of _Substance_; and, if the Recovery be for a true Debt, it is not reason, but that the Administrator might suffer it to pass by Default; and it is reason, it should be allowed to all the others; and if there be any _Geee_ it is to be avowed by the Plaintiff; for _Prima Facie_ it shall not be so intended, but that it is true; and if there be any _Corin_ in it, he may falsify it for that cause; and a Recovery against one Administrator shall bind him and all his Companions, and therefore it is reason it should bind all Strangers; and of that Opinion Owen and Walmley said they were; but they would be advised, _per Cro. 471. (bis)_ Hill 38. _Eliz._ B. R.Further v. Further._ Br. Faux. Recov. pl. 54. cites 21 E. 4. 23.

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(G. 2) By whom. For or against Successor of Parson.

1. _Composition_ was made between _an Abbot_ and _Dean_ for Tenth to the Dean, and Annuity to the Abbot; and after the Abbot brought _Writ of Annuity_ and _Recovered_; the Dean died, and the Abbot brought Suits Facias against the Successor of the Dean, who pleaded that the Composition was made _by the Dean without the Chapter_, which cannot change but for Term of Life; and a good _Plea_; and fo shall falsify by _Plea_ per Finch, _because he cannot have Writ of Right in this Case_; quare of the Fallassifying; _For_ Bellknap held the Contr ary. Br. Faux. Recov. pl. 52. cites 39 E. 3. 17.

2. Judgment given against a _Parson_ of a _Church_ upon an _Action_ tried shall Bind the Successor; tho' the Predecessor did not _proy Ad_ before of the Patron and Ordinary._ For the Successor may have Writ of _Errors_, or _Assizes_, and not falsify the Recovery. Br. Judgment, pl. 141. cites 8 H. 6. 25. per Strange.
Writ this cell...
By whom. Tenant in Tail.

1. In Affife the Tenant pleaded a Recovery by Default in a Writ of Entry Sur Dilectum made to his Grandfather against L. Mother of the Plaintiff, to which the Plaintiff, and that A. was seized in Fee, and gave to N. his Father and L. his Mother in Frankmarriage, and N. died, and L. survived, and died, and the Plaintiff, as Heir, Abnique hee, that the Grandfather or the Tenant, who was supposed to be d iffeeted, had ever any thing, Prit, &c. and so it seems that the Plaintiff in Tail may falsify the Recovery; but it seems by this that he cannot falsify it against him that is to execute the Recovery; For the Plaintiff was taken if the Recovery was executed or not. Br. Faux. Recov. pl. 19. cites 28 As. p. 32.

2. In Affise, the Plaintiff recovered in a Writ of Decease against Tenant in Tail by Nieuft defire, the Tenant died, his Issue entred, the Plaintiff brought an Affise, and made her Title by the Recovery; now the Plaintiff in Tail filed, that he uniquee appearre and falsified the Recovery; quod mirum, without Action brought of Formedon to recover the Land. Br. Faux. Recov. pl. 20. cites 29 Aff. p. 52.

3. If a Man recovers against Tenant in Tail by Issue Recovery, and does not first Execution, but dies, the Plaintiff enters, the other outs him, the Plaintiff shall have Affise, and if the other pleads the Recovery, the Plaintiff shall falsify it with Allegation of the continuance of the Possession, but if execution had been first it is otherwise; For then the Plaintiff is put to a Formedon, and shall falsify in this. Br. Faux. Recov. pl. 10. cites 7 H. 4. 17.

4. Formedon is brought against Tenant in Tail, who pleaded that N. demd. pens, where he had a Release from the Donor to plead, or a Deed of his Ancestor with Warranty and Affise, defended in Fee; and his Issue for the Donor, by which he recovered; the Tenant in Tail dies, his Issue brings Formedon; the Plaintiff pleads the Recovery by Action tried; there the Plaintiff in Tail may falsify it by the matter supra, per Fortescue, which Patton and Aduce Justices utterly denied; For he shall not falsify in the same Point which was tried; because he may have £ Attain, nota. Br. Faux. Recov. pl. 11. cites 19 H. 6. 39.

5. Tenant in Tail, who is not the eldest Son, as where he is Son by a second Venter, shall falsify; because he cannot have Attaint. Br. Attaint, pl. 124, cites 22 H. 6. 28. per Fortescue.

6. If a Venter be had against Tenant in Tail, and the Title is tried against him, viz. quod Non Debit, &c the Issue has no Remedy but by Attaint; For he shall not falsify in this Point. But if the Venter be upon an other special Matter, and not upon the Title, or if it was a Recovery by Default, in these Cases, the Heir in Tail may Falsify the Recovery. Br. Faux. Recov. pl. 4. cites 34 H. 6. 2.

7. The Plaintiff in Tail cannot falsify in the same Point which was tried; but Reddition or Confession shall not bind the Plaintiff in Tail from his falsifying, and notwithstanding Recovery in Value supplied, yet the Plaintiff shall falsify in the Point, supposing that his Ancestor was not Tenant at the Time, &c. and so the Recovery void, per Choke J. and per Brian, such Recovery shall not bind the Tail, but where the Tenant was seduced by force of the Tail at the Time of the Recovery, &c. and when the Heir of the Donor is voached. Br. Faux. Recov. pl. 30. cites 12 E. 4. 14.

8. The Justices were of Opinion, that, if Issue passed by Jury against Tenant in Tail, and he has Issue and dies, and all the petty Issue dies, yet the Plaintiff in Tail shall not falsify in this Point which was tried. Quod nota. Br. Faux. Recov. pl. 31. cites 13 E. 4. 3.

But if the Plaintiff, if Tenant in Tail dies, and A. and B. provide, the Heir in Tail shall not be stopped to falsify in the same Point. For the Attaint is given to the survivor, Quere. Br. Editor, pl. 168. cites 13; E 4. 2. and 3.
Fallingify Reoveries.

9. A Tenant for Life, Remainder to B. in Taill. A. was for Years; a Recovery is had against B. living A. the Recoverors enter, and out the Levee for Years; the Son and Heir of B. Receiveth with Warrant to him to whom the Recoverors have affurled the Lands; the Levee enters; B. dies; the Reliefor dieth, &c. It was held, that the Entity of the Levee before that the Warrant had attacked upon the Pollification, which passed, had avoided the Warrant. And the Lord Anderson conceived, that the Recovery should not prejudice the Issue in Tail, but that the Issue should Faltify the same. Mich. 36 Eliz. C. B. 2 Le. 58. Ards v. Smith.

10. A Precipe is brought against Tenant in Tail, who prays in Aid of a Stranger as Tenant for Life, who enters into the Aid, and bars the Demanaunt, and afterwards the Tenant in Tail dieth; his Issue is at Large to claim the Estates Tail, altho' the Mouth of his Father was elopped as to it. 2 Le. 27. in Cate of Ards v. Smith.

11. Tenant in Tail, brought a Quotid et deforcent and counted upon an Especial Tail, whereas it was a general Tail, and recovered and died; the said Recovery shall not conclude the Issue. 2 Le. 57. in Cate of Ards v. Smith.——cites 33 H. 6. 18.

12. A. Tenant for Life, Remainder to B. his Son in Tail. A. entered into a Statute and dies. The Conufite fed a Scire facias against B. The Sheriff returned Scire facis, &c. and thereupon Execution was had without any Plea pleaded by the Heir, and the Heir, being oupted by the Execution, brought Ejectment. It was adjudged, that B. was bound, and that he had no Remedy by Ejectment, Error, Aud. Quer. or any Way, but against the Sheriff, in Cate he made a fable Return; But Windham J. thought B. the Heir might faltify this Recovery in Action of a Higher Nature, but not in this Action of Ejectment, because it is of a Lower Nature, according to Ferrer's Case, 6 Rep. But Twener J. doubted if he could faltify in any Action, because it is no more than a Term. Mich. 13 Car. 2. B R. Sid. 54, 55. Day v. Guildford.


[See Recovery Common. (C. a).]

(H. 2) By Infant or Feme Covert.

1. If a Man recovers against a Feme Covert without naming the Baron in the Writ, the Baron and Feme shall have Affise, per Shard and Stouf. Br. Judgment. pl. 147. cites 12 E. 3. and Fitzh. Affise 147.

2. But if it be not reformed in the Life of the Baron, but he dies; then the Feme shall be barred by such Recovery, and is put to her Writ of Right, per Shard and Stouf. Ibid.

3. Brook says the Case is briefly reported, but he believes that it is intended of a Recovery by Action tried, and by Appearance of the Party; For if it was upon a Recovery by Default, it feems to him that the Feme would have Writ of Error, For Infant shall have a Writ of Error of a Recovery had by Default against him; and so was used in the Time of H. S. and Anno 2 M. 1. Ibid.

4. Affise by Infant; the Tenant pleaded Recovery of the same Land in Affise against the same Plaintiff; to which he said, that at the Time of the Recovery he was within Age, and the Affise was taken by Bailiff, and at the Time of the Recovery A. held it for Term of Life, the Recovery to the new Plaintiff and his Sister; and the Opinion of the Court was that the Infant shall have well have the Plea quare causam, whether because he was an Infant, or because it was taken by Plea of the Bailiff, or because the Infant was not Tenant; for it seems by 18 Aff. 16. that Recovery upon Appearance cannot
cannot be confessed and avoided in Pleading, contrary of Recovery by Default; For there the Pledger shall aver that he was Tenant at the Time of the Recovery, to which the other shall have Answer. Br. Confess and avoid pl. 33. cites 26 Aff. 6.

(I) At what Time.

1. In Affidavit, a Recovery is pleaded against the Plaintiff, and he hath Cause to signify it, and does not, but takes Issue upon another Point, which is against him, and he is barred by Judgment; there if he brings another Action, and the Recovery is pleaded against him, he can't signify it, because the Judgment, which was made in Force; and the Plaintiff might have taken this by Plea at first, quod Nota, by the Opinion of the whole Court. Br. Faux. Recov. pl. 39. cites 49 Aff. 4.

2. Debt by a Prior; the Defendant pleaded the Custom of London at large of Foreign Attachment, and that one H. brought Debt against the same Plaintiff, which was returned Nihil in London, and thereupon this Debt was attached in the Hands of this Defendant, and to the Plaintiff recovered, Judgment li Aetio; and the now Plaintiff said, that the Recovery was by Error; For he said he did not owe the said Sum to the said H. which was by him demanded in London Modo & forma prout; and let him shall not have the Plea to signify the said Recovery in London now, because he might have come into London within the Year, and have pleaded and disproved the Debt, and have barred the then Plaintiff, and because he did not, therefore, now he hath passed his Time and cannot signify it. Br. Faux. Recov. pl. 16. cites 39 H. 6. 19.

3. If Tenant for Life suffers a Recovery, he in Reversion may signify during the Life of the Tenant for Life, or after his Death. Fig. of Recov. 165, 166.

[See Trial (B. 2).]

(K) By Warranty and Affets.

1. Note that where Tenant in Tail discontinues with Warranty, and leaves Affets and dies, and 2 by Conspiracy cause E. to enter and quit the Alliens, against whom the Issue (within Age) of the Tenant in Tail recovers in Serve factus upon Fine of the same Tail, that in this Case he who loth shall have Action and signify the Recovery by the Warranty and Affets. Br. Faux. Recov. pl. 13. cites 27 Aff. 74.

(L) For want of Jurisdiction.

1. It was admitted, that a Man may signify a Recovery had against himself for a Point, which proves such Recovery to be void, as because it was Coram non Judice. Br. Faux. Recovery. pl. 38. cites 39 Aff. 6.

2. In Trespass, it was not denied, but that if a Fine be levied of Land in Ancient Demesne at the Common Law, and after a Recovery is had in the Court of Ancient Demesne, that this Recovery is feint in Law, by which he signified it. Br. Judgment pl. 17. cites 7 H. 4. 3.
(M) For Prior Right.

1. *If* I am *seised by Title, and A. *uses me*, and *I recoup him, and A. recovers against me by Affife*, I may have *Attaint or Affise of my first Possession*; and therefore if *the Recovery in the Affise he pleaded, the Plaintiff may confefs and avoid it*, because his Affise was of *Elder Possession*. Per *Parning*. Quere inde, *the Judgment of the Affise being in Force*. *Br. Affise. pl. 186. cites 13 Aff. 1.*

2. *Note, was said for Law in Attaint, and not denied, that where J. is *seised by W.* and *a Stranger recoups against him, the Title of J. is younger than the Title of J., where J. may enter upon the Recoveror and plead this Matter, and the Recovery Mefe, &c.* and *a good Plea*. *Br. Entre congeable. pl. 4. cites 34 H. 6. 44.*

3. *Writ of Forcible Entry*; *the Plaintiff makes Title by a Recovery in a Writ of Right against the Lessee of the Defendant; the Defendant pleads that at the Time of the Writ of Right brought, his Lessee had alienated the Reversion to A. to whom he Attorned, and held good*. *Pig. of Recov. 159. cites 1 H. 7. pl. 7.*

4. *If A. has Title* by *Forcedon or Cui in Vita and enters, and B. recoups against him; B. is remitted to his first Action*. *Br. Judgment. pl. 111. cites 23 H. 8.*

5. *But if B. recoups against A., by false Title by Action tried, where A. is in by good Title, he shall then have Error, or Attaint, or Writ of Right*. *Ibid.*

(N) For Feint Pleading.

1. *Parson made a Lease for Years, and afterwards in a Quare impedit brought against him and the Patron* they pleaded feintly; *Lease shall not fallify, because if the Parson had resigned, the Lease had been gone*. *Pig. of Recov. 159. cites T. 26 H. 8. pl. 3.*

(O) Pleadings.

1. *In Affise, the Tenant pleaded Recovery in Mortdancetor against N. and the Plaintiff said, that N. against whom &c. was not Tenant of the Frankentenement; and it was admitted a good Plea*. *Br. Faux. Recov. pl. 37. cites 19 Aff. 4.*

2. *Where a Recovery is pleaded against my Ancestor, I may say, that my Ancestor had nothing in the Land at the Time, &c. without showing who was Tenant thereof; contra in Avoidance of a Fine. Quere, if it shall not be intended a Recovery by Default; For it seems to be contrary upon a Recovery upon Appearance*. *Br. Judgment. pl. 24. cites 14 H. 4. 33.*

3. In
Falsifying Recoveries.

3. In Warranty of Charters, the Defendant may say, that the Plaintiff in the first Action entered upon the Plaintiff then Tenant, paying the Rent, which Matter the Plaintiff might have pleaded and did not; Or that the Plaintiff in this Action had nothing in the Land left by the first Action; and a good Plea to Arden in a Precipe quod reddat, quod non negatur. Br. Faux. Recov. pl. 45. cites 21 H. 6. 49.

4. In Affizé, if the Tenant makes a Bow at large, and the Plaintiff makes Title by Recovery, and the Tenant disposes the Recovery by proving it to be void, 'tis no Plea without making Title to himself; For if the Plaintiff was in by a void Recovery, this is no Retort to the Tenant; For 'tis not lawful for the Tenant to enter upon him, if he has no Title; and for that the Tenant shall not avoid the Title of the Plaintiff without making Title to himself. Br. Affizé. pl. 103. cites 35 H. 6. 33. 34.

5. A, pending a Writ of Entry sur Diffeiun against him, recovered by For- ward against his own Feoffee. The best Opinion was that the Tenor's shall be of the Difféline and not of the Forfeiture. Br. Faux. Recov. pl. 27. cites 7 E. 4. 19.

6. A man recovered Land, and brought Scire facias against W. N. and after he brought Scire facias against f. Tenant, who said that W. N. against whom the Recovery was had, was not Tenant of the Fronten- tement the Day of the first Scire facias, &c. nor ever after, but one A. whose Eliete be the new Tenant hath, &c. and so the Recovery void; and this was held a good avoidance of the Recovery; and yet Sentenure generally is no Plea; and it seems that this Recovery was by Default; For it is said elsewhere that upon Recovery by Default, the Tenant may say that, he was not Tenant the Day of the Writ, &c. nor after; For in pleading such Recovery, the Party suift over that the Writ was brought against such a one, then Tenant of the Land; but he who appears and pleads and lofes, shall not do so. Br. Faux. Recov. pl. 32. cites 14 E. 4. 2.

7. Note, by the Justices, that the Tenor may fallily a Recovery against his Leffor being in Reversion at the Time of the Recovery, as he may of a Rent which the Leffor suifted to be recovered against him; and per Brian and Townsend, he shall say that before the Writ brought against his Leffor, the Leffor granted his Recovery to W. N. to whom he Attorned before the Writ brought, and so was not Tenant at the Time of the Writ brought, and Recovery had. Br. Faux. Recov. pl. 23. cites 14 H. 7.—pl. 59. cites 1 H. 7. 9.

8. Precipe quod reddat Sur Difféline in the Poit; the Tenor for Years by the Statute of Gloucester, prayed to be received, and said that this Recovery is by Covin to make him lose his Term, and traversed the Difféline; and per Pollard and Fitzherbert he cannot do otherwise; For the Covin is not material without traversing the Point of the Writ. But per Port, if the Tenor in Tail makes Discontinuance, and the Discontinuance makes a Lease for Years, the ligue in Tail brings Forward by Covin of the Discontinuance to make the Termor lose his Term; there the Covin is only material. Per Pol- lard the Tenor is without Remedy in this Case; for the Heir in Tail shall be remitted; for by them where the Recovery is upon a true Title, the Covin is not material. Br. Collution, &c. pl. 21. cites 14 H. 8. 3.

9. In Precipe quod reddet the Tenant pleaded in Abatement of the Writ, that one A. after the last Continuance had brought an Affizé against him, and recovered by Action tried, viz. by Verdict; and the Demandant said that this Affizé was brought by Covin between the said A. and the Tenant to the Intent to abate his Writ; and there 'tis granted by all the Court, that this is no Plea without flourishing Cause of the Covin. Pl. C. 46. b. Arg. cites 9 H. 6. 41. —And Plowden said he agreed the Law to be fo; and the reason is because the Title was tried by Verdict of 12 Men, and then the Demandants saying that 'twas by Covin, can't be intended true against the Verdict. Ibid.

10. But where (as in the principal Case) the Recovery was by Default, in which Case there is no Title; but the Default of the Defendant wou
Falsifying Recoveries.

the Cause of the Judgment, by which in this Case, and where the Recovery is by Default, a Man shall aver that it was by Covin generally, and so to the Diversity. Arg. Pl. C. 46. b. in Cafe of Wimbith v. Talbot.

11. By the 21 H. 8. 15. the Lessee shall be received to falsify the Recovery before Judgment, and it shall suspend the Execution. But then he must not only over the Collation, but plead some Aff to bar the Plaintiff's Title. Pig. of Recov. 51.

12. Notwithstanding the Statute of Gloucester, and the 21 H. 8. it never lay in the Mouth of a Tenant to the Precipe to plead a Lease for Years, or to stop Execution upon any such Plea. If an Affirm he brought against Tenant for Life, he cannot lay that there is a Lease for Years precedent to his Right, tho' the Tenant for Years himself may falsify a Recovery against him in Reversion. Trin. 1 Ann. B. R. 7 Mod. 42. Per Holt Ch J. in the Case of Smith v. Angell.

(P) Bar. Plea in Bar to the Falsifying.

1. A Ssise by A. against the Lord C. of Land in T. in the County of E. the Defendant pleaded in Bar, that at another Time he himself recovered the same Tenements against the Plaintiff in the County of W. and the Plaintiff sued to reverse the Judgment in B. R. affirming them to be in the County of W. and had Judgment and Relaxation, and after the Tenant brought Affirm in the County of W. against the Plaintiff, and recovered the Land in the County of W. Judgment if the Plaintiff who sued to reverse the first Judgment, affirming them to be in the County of W. shall now have Affirm in the County of E. For he ought to have brought Affirm and not to have sued to reverse it; for it was said, that where a Man recovers Land in a Bafe Court, which does not lie within the Jurisdiction of it, and brings Writ of Falsify Judgment of it; he shall not have Affirm after, because he affirms that it lies within the Jurisdiction; quod Nodata, by some; but here the Affirm was taken, because it cannot be intended to be of the same Tenements which are in Plain. Br. Judgment. pl. 58. cites 10. Aff. 25.

2. In Mortadecnor against the Baron and Feme and S. the Baron disclaimed for himself and his Feme, and S. vouched the Baron, who came and pleaded a Recovery by Affirm tried by himself against one S. by Dwn suit infra dataten, where in Truth he recovered against S. named in the Writ pending this Affirm; and said that the Estate of the Acestor of the Demandant, of whose Seisin be demanded, was Mesne between his Title and his Recovery; to which the Demandant said, that S. was seised, and enfeoff'd this same S. with Warrant, of which Seisin S. was seised at the Time of the Judgment given, and so the Recovery falle and feint in Law, Judgment, and prayed the Affirm, and the Vouchee demurred thereupon; and because by the Demurrer all the Points of the Writ are confiected, therefore the Demandant relates his Damages and had Judgment to have Seisin of the Land immediately, Quod Nodata; and so good Cause to falsify, because the Feoffment and Warrant were not pleaded in the first Affirm. Br. Faux. Recov. pl. 22. cites 30. 25.

3. A Man cannot falsify, unless he makes himself a Title to the Land; For tho' the Recovery be void, yet when the Recoveror is in by it, it is not lawful for the Plaintiff to enter and out him without Title, and therefore it is no Plea without making Title; For where the Tenant in Affirm pleads a Bar, the Plaintiff must make a Title to himself before he can avoid the Bar. Br. Faux. Recov. pl. 15. Per Fortescue Ch. J. cites 36 H. 6 32.

4. In
(Q.) Other Action. In what Cases after Recovery against a Man by Default, he may have other Action, and what.

1. 13 E. 1. 4. re- 

W

Heres before Time, if a Man had left his Land by Default, he had none other Recovery than by a Writ of Right, which was not maintainable by any, that could not claim of meer Right as Tenants for Term of Life, in Free Marriage, or in Tail, in which Estates a Recovery is refused.

And provides, that from henceforth their Default shall not be so prejudicial, but that they may recover their Estate by another Writ than by a Writ of Right, if they have Right; And that,

For Land in Free Marriage left by Default, such a Writ shall be made.

2. In Assife the Defendant pleaded in Abatement of the Writ, that paying the Writ f. N. had recovered against him by Dam just infra stetam of elder Date, and was by nient dedire; and notwithstanding this the Assife was awarded, quod Nota; quere Cautiam, whether, because that the Tenant did not say, that he, who recovered, entered; or because the Recovery was by Nient dedire, and not by Action tried. Br. Briel pl. 278. cites 22 Aff.

3. Per Mordaunt, Wood, Townfend and Brian, If Tenant for Life be implicated, and prays Adj of him in Reversion, who is summoned, and makes Default, and the Tenant for Life con[l]ies, or lefts otherwise, yet he in Reversion may have Writ of Right, or at Terminum quit præterit, and shall fallify the Recovery. Quod Nota Bene. Br. Faux. Recov. pl. 24. cites 4 H. 7. 2.

[See Bar. (E) ]

N n  

(R) Other
(R) Other Action. In what Causes a Man may falsify by other Action.

1. If such particular Tenants as Tenants in Deed, &c. lose by Action tried in a real Action, it seems, that at this Day they themselves are without Remedy. per Coke. 6 Rep. 8. b. and says that with this accords 30 E. 3. 7.

2. If Tenant for Life be impleaded, and prays Aid of him in Reversion, who is summoned, and makes Default, and the Tenant for Life confesses, or loses otherwise; Yet he in Reversion may have a Writ of Right, or ad Terminum qui praestvisit, and shall falsify the Recovery, quod Nota Bene; per Nordant, Wood, Townend and Brian. Br. Faux. Recov. pl. 24. cites 4 H. 7. 2.

3. If a Man loses in Alliæ, the Tenant is not put to his Writ of Right, but may have Alliæ of Mortdanceler, per Coke. 6 Rep. 8. b. cites 5 Alliæ 1.

4. So Recovery in Alliæ is no Bar in Formedon in Reverter, per Coke. 6 Rep. 8. b. cites 6 H. 4. 2.

5. Real Actions, as Writs of Right, Writs of Entry, &c. and their several Appendages, as Grand Cape, &c. were several great Titles in the Year Books, but now much out of Use; For in most Causes at this Day the Entry of him that has Right being lawful, Men choose to recover their Possessions by Ejectment, excepting that in common Recoveries the Form of such real Actions is preferred. And sometimes, tho' rarely a Writ of Deceker or Formedon; because ordinarily, where an Entail is suspected, a Common Recovery is had. And sometimes in the Grand Actions in Wales they proceed by a Quod et Deforceat. Ld. Hales's Pref. to Roll's Abr. pag. 5.

(S) Equity.

1. A Had Land extended to him in Ancient Demesne by Statute Merchant, and afterwards B. purchased the Land, and recovered by Sufferance in the Ancient Demesne Court upon Voucher, and entered and ousted A. who brought Subpoena; and it was Held, that A. could not falsify the Recovery, and therefore should be restored by Chancery; Because there was no Remedy at Common Law. Br. Conscience. pl. 8. cites 7 H. 7. 11.
Father and Son, or Child, &c. Or Parent and Child.

(A) What Actions a Father, &c. may have on Account of his Child.

1. 

RESPASS quae Filiam & Hæredem suaum requit & abduxit lies for the Father, but not for the Mother; For the Father of Common Right shall have the Word of his Son or Daughter; per Catesby. 

2. Father shall not have Action against a Matter for beating his Son and Heir Apparent, and laning him so as he is dispraised as to his Marriage. Le. 50. Patch. 29 Eliz. B. R. 

3. If the Son marries without Consent of the Father, the Father has no Remedy. Le. 50. Gray v. Jelës—See 3 Mod. 222. King, alias Michel v. Thorp.

4. The Father shall not have Action for taking any of his Children except his Heir; and that is, because the Marriages of his Heirs belongs to the Father, but not of any other his Sons or Daughters: And the Father has no Property or Interest in the other Children, which the Law accounts may be taken from him. Cro. E. 975. Trin. 42 Eliz. B. R. Barcham v. Dennis—but Glanvil J. contra. Ibid.

(B) Inter se; as to Legacies, &c. to the Children by Others.

1. 

BONDS released by the Father, which he had taken in the Names of his Sons, being Infants, thought good and allowed. Toth. 88. cites Hill. 20 Jac. Simonds v. Lomley.

2. The Grandfather devised Lands to his Son to pay 10 l. per Annum to the Son's 3 Daughters, the Father gives 200 l. in Marriage with one; whether the 10 l. per Ann. shall be included in the 200 l. or not? 'Twas decreed that it should be included. Toth. 141. cites Mich. 13 Car. Kirkington v. Aly.

3. The Father received a Legacy of 100 l. and another of 50 l. left to B. his eldest Son by the Grandfather and Grandmother; afterwards the Father gave Bond to pay his Son, whom he had disinherited, 6000 l. 'Twas infaltest
initiated that the Bond included the Legacies. But Ld. Jeffries, in favour of a disinterested Heir, would allow no more than what they could prove to have been actually paid towards Satisfaction of these Legacies, and Eb Nomine in as Part of the Legacies, and the reft to be paid with Interest.


4. A Legacy of 150 l. to the Daughter of B. was paid to B. who after, on her Marriage with J. S. gave her 1000l. Portion, and settled a Church Leafe upon her, and maintained her and her Husband 14 Years at his own Houfe. The Matter of the Reefs decreed the Legacy with Coils, but it, tho' he would not discharge it, he disliked the Suit. Hill. 1793. Ch. Prec. 228. Sir George Chatuly v. Lee.

5. Children not demanding their Legacies of their Father when they come of Age, or after, is no Discharge of them; And the Father is bound to maintain them during their Minority, and their Portions given by a Stranger are nothing to him more than if they had not any; and where they lived to be fit for Service and served their Father; their Service was more worth than the Interest of the Legacy (which was 50 l. a piece) and fo Interesse was allowed. But where one of the Daughters married, and She and her Husband had a Year's Board after Marriage, the Father must be allowed for it, unless an Agreement be proved to the contrary. Pach. 7 Ann. 3 Ch. R. 168. Strickland v. Hudfon and Ma-

[ See Devife (L. c.) ]

(C) Allowances to Parents for Maintenance out of Children's Fortunes.

1. A Devised 250 l. to his Son, and made his Wife Executrix, who married another Husband. On a Bill brought against them by the Son for the Legacy, the Defendants would have discounted Maintenance and Education; but the Court would not permit it fo as to diminish the principal sum; For it was said that the Mother ought to maintain the Child. 2 Vent. 353. Mich. 33 Car. 2. Anon.

2. But a Sum of Money paid for the Binding him out an Apprentice was allowed to be discounted. 2 Vent. 353. Anon.

3. And the Mother was decreed a reasonable Allowance for Maintenance of her Son from 2 Years of Age, when the Father died, to 18, when the Son died; he having received the Rents of 33 l. per Annum defcended from the Father on the Son, as Heir at Law. Pach. 7 Ann. 3 Ch. R. 164. Wallis v. Everard.

(D) Coertion. What Acts done by a Child shall be said to be done by Coertion, and fo relieved againft-

1. A Father prepared a Bond conditioned for Payment of 120 l. a Year to him for Life by his Son, to whom a very large Estate had been devolved, and upon proposing it to the Son, he refused to execute it, laying it was more reasonable that the Father should depend upon his Honour. Upon which the Father left the Bond with the Son, saying, if he would not sign it he might let it alone. But afterwards in the Father's Absence the Son signed it, just before he went to travel, and directed, that it should be delivered to his Father. Ld. C. Parker said that those Words might be spoke fo, as to amount
Fealty and Homage.  

amount to a Threatening and to intimidate; but it might also be otherwise, and the Father seemed to acquiesce under the Son's Answer. And that for ought appeared it was his free Act, and what he thought himself obliged in Honour to do, and therefore without any Proof to impeach it, it should not be set aside in Equity. Wins's Rep. 602. 607. Hill. 1719.

2. If it should ever appear that the Power of a Parent over a Child has been abused, as by his gaining a Release of the Child's Orphanage Part by Threats, &c. a Court of Equity will certainly set aside a Release thus unjustly gained. per Ld. C. Parker. Patch. 1723. Wins's Rep. 639, 640. In Cafe of Blunden v. Barker.

(A) Fealty and Homage.

1. 17 E. 2. N.ACTS that when a Freeman doth Homage to his Lord, he shall hold his Hands between the Hands of the Lord, and say thus:

I become your Man from this Time forth, for Life, for Member and for worldly Honour; and shall owe you my Faith for the Lands that I hold of you, facing the Faith I owe unto our Lord the King, and to mine other Lords.

When a Freeman doth Fealty to his Lord, he shall hold his Right Hand upon the Book, and shall say thus:

Hear you my Lord R. that I, P. will be to you both faithful and true, and shall owe you my Fidelity to you for the Land that I hold of you, and lawfully shall do such Customs and Services as my Duty is to you at all Times offered. So help me God and all his Saints.

2. Seisin of Homage and Fealty is so ineffectible in Law, that no Distresses for them of any Goods or Chattels of whatsoever Value, is in Judgment of Law excessive; and tho' the Lord dilthrein oftentimes for them, that the Tenant cannot manure his Land, yet the Tenant shall not have Affise of Seisin Distresses as he shall have for Rent or other Profits. 4 Rep. 8. b. Mich. 17 and 18 Eliz. C. B. Bevil's Cave.

3. Fealty gives Seisin of all annual Services sufficient to make Seisin in Avowry, but not in an Affise; but of accidental Services this gives Seisin in Affise. per Omnes J. 2 Brownl. 99. Trin. 9 Jac. C. B. Anon.

4. A Distress is a good Demand of Fealty, but the Lord cannot avow for Fealty upon a Demand made after the Death of the Tenant. Mo. 883. Trin. 15 Jac. C. B. Kingwill v. Crawley.

But if after Fealty demanded, and refused Tenants dies, the Lord may dilthrein after his Death for it per Hobart. Nov. 24. Crawley v. Kingwill.

5. If a Man holds Land at Will rendering Rent, Fealty is not incident to it; for it is but a Rent distrainable of Common Right. Co. Litt. 37. b.

6. One within Age may do Homage, but he cannot do Fealty; because that is to be done upon Oath. 2 Inft. 11.

7. Homagium is either Ligeum or Feodale. Vaughan. 279. in Cafe of There are 2 Craw. v. Rainfield.—cites 7 Rep. 7. Calvin's Cafe.

kinds of Ho-

mages, So-

vile and Feodale; Sovereign Homage is due to the King only in Right of Sovereignty; and this commonly is called Lige Homage, from Ligando, because it binds the Subject to the King; But so also was the other anciently, because it likewise binds the Tenant to his Feodal Lord. Spelm. Glof. Verbo Homagium. 296.

O 6.

Fee
Fee-Farm Rents.

(A) Notes in General.

FEE-Farm, or Feod Firma is when any one, of the Gift or Grant of another, holds to him and his Heirs rendering either the half or the third Part, or at least the fourth Part of the true Value. And such Tenant is bound to no Services, but what are contained in the Charter itself, except Fealty, which all Tenures are liable to. Spelm. Gliff.

Verbo Feodum. Page 221.

By 22 Car. 2. 6. Sess. 4. Letters Patents granted by the King of certain Fee-Farm Rents, before the 24th of June 1672. are confirmed.

Sess. 10. Purchasers may buy and enjoy the same Rents, notwithstanding any Statute of Mortmain.

This Act of Parliament was not necessary to enable the King to make a Grant of these Rents, but to encourage Purchasers, and to give such Privileges to the Subject, which the King could transfer without Act of Parliament, and to cure and supply the Defect of Nullity or Absolute; And the Act itself is an Authority that the King might alien; For the Act declares the Letters Patents good, which were granted before. per Holt Ch. J. Mich - W 3. B B. Skin. 606. In the Bankers Case. — Fee Farm Rents will merge in the Inheritance. per Parker C. Mich 10 Geo 1. 10. Mod. 526. Atherley v. Vernon.

(B) Conveyances thereof. How directed to be made by the Trustees.

22 Car. 2. Cap. 6. Sess. 6. Enacts that the Trustees and the Survivor or Survivors of them, shall execute to Purchasers, Indentures of Bargain and Sale containing a Conveyance of the said Rents, and vesting the Consideration of Money paid, which shall be enrolled in any of the four Courts of Westminster, within six Months after the Date thereof.

Sess. 12. Instructions to be observed in the Sale of these Rents, yet so as the Non-PutESCENCE of them shall not weaken Purchasers Titles.

1. Contracts for Sales shall be signed by the Lord Treasurer or Commissioners of the Treasury, or two of them.
2. The Trustees shall convey to such as by Order from the Lord Treasurer or Commissioners of the Treasury, or two of them, they shall direct.
3. Every Contractor shall at or before sealing his Conveyance, pay one Moity at least of his purchase Money into the Exchequer; and before he receives his Conveyance give such Security as the Lord Treasurer or Commissioners, &c. shall approve for the other Moity.
4. Such as pay down their whole Money, shall be allowed for present Payment of their second Moity, not exceeding 10l. per Cent.
5. Immediate Tenants liable to pay any Rents, shall be preferred in the Purchase of it before others, so as they tender themselves to the Lord Treasurer or Commissioners of the Treasury, to contract within six Months after passing the said Patent; and Notice thereof published by Proclamation, and perfect their Contract, and pay or secure the Money within six Months after, at such Rate as shall be agreed, not exceeding 20 Years Purchase.

6. If
22. Cor. 2. 6. Sel. 1. Enacts that Purchasers shall hold the same discharged of any Breach of Trust, which may be pretended to be committed by the Trustees, and may recover the same as the King might, excepting the Prerogative Provisions out of the Exchequer.

Sel. 9. Purchasers of Rents reserved by any Letters Patents of Lands and Tenements, &c. and sold after the paying of this Act, shall enjoy them, any Cancelling, Avoidance, or Determination of such Letters Patents notwithstanding. This Act shall not be confirmed to avoid any Covenants or Agreements on the King's Part, in the original Reservation of such Rents; nor Decrees in the Court of Augmentation of Court of Exchequer before the 23d of October 1642, or since 29th of May 1662, whereby Fee Farmers were to be discharged, and Allowances out of the said Fee-Farm Rents to be made.

To encourage purchasing Fee-Farm Rents, this Act gives the Purchasers the same Power of Discharges, not only on the Land of the Tenant, but on any other of the Premises.

A. claims a Fee-Farm Rent under this Statute, and there is a Sequestration on the Land, out of which the Fee-Farm Rent infues; the Court cannot order the Sequestrators to pay the Arrears out of the Money in their Hands, but declared the Grantors might take his Rent, and saving the Sequestration, per Cowper C. Hill. 1715. 2 Vern. 715. Att. Gen v. Mayor, &c. of Coventry.

The Court left him at Liberty to disseize for his Rent at Law, without incurring any Contempt in Equity, and that no Lease or Estate derived under the Sequestrators should be made Use of in Evidence against the Claimant of the Fee-Farm Rent, to prevent the Discharges. Wms's Rep. 388. S. C.

The King might disseize on any other Lands of his Tenant, as well as on those out of which the Rents infue; yet, if the Tenant Alienated the Lease or Lease at Will only his other Lands, the Crown can't disseize on those Lands. Hill. 715. Arg. 2 Vern. 14. Att. Gen v. Mayor, &c. of Coventry.

S. P. Held by Cowper C. Hill, as cited by the Ld. Ch. J. Parker and King. Wms's Rep. 391. Hill. 715. S. C. &c. If there be an Estate upon an Estate of such other Lands, the Goods or Chattels on the Premises to extended would not be liable; For this is a greater Estate than an Estate at Will. per Cowper C. Hill, as cited by Ch. J. Parker and King. Wms's Rep. 391. S. C.

As to the Case of the Att. Gen. v. the Mayor of Coventry, the Reporter says, that afterwards Ch. J. Parker informed him that he thought it might have been proper to have determined, that the Sequestration was at the Hand of the Court upon the Estate, and where a Right to a Fee-Farm Rent appeared'd to be prior and indisputable, the Court might reasonably enough have order'd Payment, else A. for ought appear'd, would be in a worse Condition, than if there had been no Sequestration; For till the Sequestration, the Corporation paid the Rent voluntarily, and now are disabled purely by the Sequestration; and putting A. to disseize was putting the Cause of the Suit upon the Estate; whereas nothing appear'd to be contrary, but that the Corporation was liable of A's Right to the Rent, and der'd it might be paid. Wms's Rep. 391. 392.

By 22 and 23 Cor. 2. 24. S. F. 2. All Purchasers thereof are to be kept harmless from all Incumbrances made by the Trustees.

(C) Purchasers indemnified and favoured; and how enabled to sue.
(D) Extent of the Act, as to the Power of the Trustees, and what they might Convey.

22 Car. 2. Cap. 4. Sec. 9. Enacts that Rent not usually paid by the greater Space of 40 Years last past, shall not be inserted in such Letters Patents, and Tenants shall hold their Lands discharged of any Rent, reserved by Virtue of any Patent of Conveyance, or Commission not defective Titles, not usually paid by the greater Space of 40 Years, until the same shall have been recovered by due Course of Law. And by

Sec. 14. So much as is due for any Uses out of the Premisses to be settled upon Trustees shall continue to be paid; and the Trustees are hereby authorized to convey, for Performance of such Uses, such of the said Fee-Farm Rents &c. as shall amount to the Sums charged, after which Conveyance, the Purchasers of the Residue to be discharged thereof.

(E) How to be ordered till Sale. And liable to what Payment or Allowances.

By 22 and 23 Car. 2. 24. Sec. 4. Till Sale of the said Rents, the Receivers of the King's Revenue shall gather the same.

9 and 10 W. 3. 8. Subjected Fee-Farm Rents to Payment of Taxes.

7 Geo. 2. Cap. 7. S. 5. Enacted that Lands, &c. subject to Fee-Farm Rents, &c. if such Rent amounted to 20s. per Ann. or more, the Landlord may deduct the Taxes; such Deductions to be allowed by the Persons intitled to the Rent without Fee or Charge for such Allowance.

S. 26. Receivers of Fee-Farm Rents to allow 2s. per Pound to the Parties without Fee on Penalty of 20L.

(F) Pleadings by Purchasers.

22 Car. 2. Cap. 24. Sec. 8. All Purchasers may make a general Jusification, without producing any Letters Patents, by saying that the Trustees were feigned in Fee, and so granted to them. And by

10 Anne. 18. S. 4. Where any Fee-Farm Rents, intended by the Acts of 22 Car. 2. and 22 and 23 Car. 2. to be sold, and which are sold pursuant thereto, shall be named and described in any Deed or Fine, Declaration, or other Pleadings, by such or the like Names or Descriptions, as the same were described in the Indentures of Bargain and Sale made by the Trustees for Sale thereof, such Names and Descriptions may serve for conveying or pleading the Title to such Rents from and under the Trustees.

Sec. 5. Provided, that this Act shall not give any Benefit in Pleading, or deriving a Title to any Rent, which hath not been paid or levied within 25 Years, next before the Time of such Pleading or deriving a Title.
Fees.

(A) Fees of Sheriffs.

It was the Ancient Law of England that no Sheriff or other Minister of the King take no Reward for doing his Office, but be paid of that which they take of the King; and he who shall do so, shall render the double to the Plaintiff, and shall be punished at the Will of the King.

For Reward of any Subject for the doing his Office, to the End he might be free, and at Liberty to do Justice, and not be fettered with Golden Fees, as Petters to the Suppression or Subversion of Truth and Justice.

Here are understood Estates, Covenants, Bailiffs, Gaolers, the King's Clerk of the Market, Admirers, and other inferior Ministers, and Officers of the King, whose Office do any Way concern the Administration, or Execution of Justice, or the common Good of the Subject, or for the King's Service; That none of the King's Officers or Ministers do take any Reward for any Matter touching their Offices, but of the King. And some do hold that the King's Hereditas are within this Act; for that they are the King's Ministers, and were long before this Statute.

A Provisions of the King brought an Action upon this Statute against J. B. Under Sheriff for taking a Reward his Fee contra Pormam Statutum, of a Prisoner in his Ward, &c. the Defendant said that he did not take contravention Pormam Statutum, &c. and the Defendant gave in Evidence, that he and all Under Sheriffs there time out of Mind have used to take Reward of every Prisoner taken for Sufficient of Felony and acquitted, which were in their Ward, when they are acquitted, called Barr Fees, and that the Prisoner was in his Ward for Sufficiency of Felony, and before such Justices, &c. was acquitted of the Felony, by which he took a Reward for a Barr Fee, &c. and the Plaintiff demurred upon the Evidence, &c. and by the Opinion of all the Justices, this is out of the Case of the Statute; For the Intent of the Statute is, so he takes of them, that be in Ward, to ease them, but here, when he is acquitted, he is no Prisoner, for if he escapes, the Sheriff shall not be charged of the Escape, and this Fee was assigned by the Court for a Barr Fee by their Discretion in Consideration of the great Charge, which the Sheriff has in keeping, keeping, and carrying back the Prisoners, and to keeping the Number of Servants to carry them, and in Attendance for fear of Escape; and to the clear Opinion of the Justices was, that the 20d. for a Barr Fee is out of the Case of this Statute. Br. Fees, pl. 6. cites 21 H. 7. 9.

And if a Sheriff takes of the Prisoner his Clouts, or Money out of his Purse in spite of his Teeth, 'tis out of the Case of this Statute, because Trepanum. Br. ibid. — Br. Preceptitam. pl. 36. cites 21 H. 7. 13; S. C.

The Common Law giving no Fees to Sheriffs, made them backwards in executing Writs, by Reason of the great Danger both in taking delinquent Men, by Reason of Refrainsence; and also in detaining them, for fear of Escape, so that they would have great Rewards, or otherwise would do nothing. Whereupon the Parliament thought fit to stint their Fees, as in the 29. Eliz. 4. per Dodgeridge J. Lat. 13. in the Case of Walden vs. Veley.

2. Capitula Judicati. in Magna Charta. Fol. 155. Article 99, of Sheriffs and other Bailiffs and Ministers of the King, taking Gifts or Reward for executing their Offices. See also there Article 121.

5. He, who renders himself, and has Superideas before he is arrested by Capias in Debt, shall make an Attorney in Bank at the Day, and this thou Cep! Corpus be returned, and shall pay no Fees upon the special Matter returned, tho' be does not find the Superideas to the Sheriff till after the
taking, if he renders himself to him before the taking. Br. Fees, pl. 4.
cites 21 H. 6. 20.

6. It was held, that a Sheriff cannot take Money for Fees, upon Delivery of Warrants General to his own Bailiffs, but must pay till the Money is levied. But in Case of special Bailiffs of Plaintiff's own naming, the Sheriff may take his Fees presently. Clayt. 79. 15. Bar. Baynes v. Robinson.

7. If, upon a Statute, one Sheriff takes the Body, and another the Goods, per Cur. both shall have their Fees. And wherever the Sheriff hath double Trouble, he shall have double Fees. Comb. 222. Mich. 5. W. & M. B. R. Pope v. Hayman.

(A. 2) Fees by Sheriff upon Executions.

*This Statute does not extend to their executing of Writs of Execution in Counties, and there they are allowed 12d. in the Pound for the first 100 and 6d. in every hundred afterwards. But then they ought to pay their own Bailiffs out of their Poundage Money for their Pains. But of late, the Sheriffs of Cities do demand the same as Sheriffs of Counties have; and I have heard they have recovered it L. P. R. 598.*

1. *29 Eliz. 4.* Naifs, that it shall not be lawful for any Sheriff, Under Sheriff, Bailiff, of Franchise, or Liberties in any of their Offices by Colour of their Office, to receive or take of any Person, directly, or indirectly, for serving and executing any Execution upon the Body, Lands, Goods, or Chattels of any Persons, more than 12d. for every 20s. where the Sum does not exceed 100l. and for every 20s. over and above the Sum of 100l., which they shall so levy or extend, and deliver in Execution, or take the Body in Execution for, upon pain that every Sheriff, &c. and every their Officers, which shall directly, or indirectly do the Contrary, shall forfeit to the Party griev'd his treble Damages, and shall also forfeit the Sum of 40l. one Money to the Queen, and the other to the Prosecuter.

2. Provided that this Act do not extend to any Fees to be taken for any Execution in any City, or Town Corporate.

It was resolvered that the Proviso extends to a City Corporate, when Judgment is there given within their Franchise, and Execution upon that, and not when Judgment and Execution issues out of Superior Courts; For in the first Case, the Officer is not at that * Grand Care and Peril. But as to the Sheriff of a County, his Travel and Labour is all one, be it in the Body of the County, or in a Franchise; but if that Town be a County of itself, there the Sheriff shall have their Fees according to this Statute. And new Judgment was given for the Plaintiff Nov. 76. Walden and Gelfer v. Vesey.

*§ Mod. 92. Brockwell v. Lock. Because he is at left Trouble, the Jurisdiction is narrow and the Sheriff not so much in Danger of an Eclase; but where in the principal Case the Jurisdiction being the Palace Court of the Bishop of Rochester, and as large as the Diocese, so was infallible not to be within the like Reason. But Non allocatur. In an Information on this Statute against the Sheriffs of Gloucester, for taking above 12d. in the Pound for executing Process upon Judgment in C. B. the Defendants pleaded the Proviso in the Statute, whereof all Cities and Corporations, and their Officers are excepted, upon which it was demurred; for Owen Sergeant, moved that this Proviso extended only for serving Executions upon Judgments in their Courts but not upon Executions of Judgments in other Courts; and so it may be collected by the Common and Body of the Act. But all the Court Courts, for it shall be Exceeded as well for serving Executions upon Judgments in other Courts, as in their own Courts. Cro. E. 264. 265. Mich. 33 and 34. Eliz. C. B. the Sheriffs of Gloucester's Cafe.

And, whereas it was Objected, that the County of the City of Gloucester extends seven or five Miles further than the City, and that this Execution was not in the City, but within the County of the City, and it is not within the Proviso, the Court said, that if it had been so Plead, per adjuration it should be otherwise; but as it is Plead, it appears not to the Court, and the same was Adjourned for the Defendants. Cro. E. 264. the Sheriff of Gloucester's Cafe.—Lit. 19. 52. S. P. per 5. J. v Walden v. Vesey.


3. The Sheriffs of London brought Debet against upon the Statute of 28 Eliz. 4. for the Fees there allowed for the making of an Execution. And upon Nihil Debet the special Matter was found of the Statute, which was that the Sheriff should not take Ultra &c. it is a Sum for making.
of an Execution; and all the Court thought, that this implied, that they should take so much, which is not Prohibited; and that the Statute gives on Action for this, yet because it is a Duty, Action is given by Necessity by the Law. Therefore Judgment was given, that the Sheriffs should recover the 121. which were demanded. No. 853. pl. 1160. Patch. 14. Jac. B. R. Proby and Lumley v. Mitchell.

4. No Fee is due to the Sheriff for executing a Cap. Ulter, or for a Warrant to execute it, or for a Return of it, per ret. Cur. H. 52. Mich. 3. Case. C. B. Wildthire’s Cafe. A Sheriff was committed for taking

5. 292. for a Warrant on a general Cap. Ulter. For all the Judges held, that he shall not take any Fees for making of a Warrant or Execution of that Writ, but only 21. 4d. which is given by the Statute 23. H. 4. for it is at the Suit of the King. But upon Cap Error, and executions in Chancery, which is after Judgment. in other cases. Mich. 7. Jac. 1. 2. Brownl. 285. Sheriffs of Berkthorpe’s Cafe.

5. There was much doubt upon the Words of the Statute, and the *Per 5. Juff. Court divided upon the Point, whether the Sheriff should not have 12d. a quidnunc Crew in the Pound for every Pound to 100l. and after that 6d. or whether he should have but 6d. for every Pound when the Execution is more than 100l. Nov. 75. 76. Walden and Gurney v. Veafully.

6. 100l. and 6d. for what is over 100l. Poph. 175. S. C. Welden v. Veley.—Poph 176. cites the Case of Empton v. Bathurst, where two Judges Contra one held, that, where the Sum exceeds 100l. he should have but 6d. and for levying of every 20s. of the full 100l. but that Judgment was given upon other Points, (but adds) that all the Court seemed to be of Opinion, that he shall have 12d. for every 20s. of the first 100l. and 6d. for every 20s. of the Rest - Held accordingly upon the first Argument on a Declar. Sum Quaere, quin adiuvatur. Cro. E. 155. Gurney v. Somes.—Per Hubert and Winch. J. the Sheriff shall have 6d. only if the Sum exceeds 100l. Mich. 25. Jac. B. R. Winch. 31. in Case of Empton v. Bathurst.—Let 52. accordingly. Walden and Gurney v. Philp. S. C.—S. P. adjourned and affirmed in Error. Cro. C. 286. Lister v. Bromley.—Ja. 357. Mich. 8 Cur. B. R. S. C.

6. Per Glyn Ch. J. There are no Fees due to the Sheriff for executing an Habere facias Pellisfncam; and so let it be declared, altho’ they have usually taken Fees for executing such Writs. Patch. 1659. in Case of Den v. Albist L. P. R. 597.

7. In an Action against a Sheriff for his Fees it was Objected, that this was a Ca. Sa. the which was not a Satisfaction, and the Statute does not give any Fee to the Sheriff, but only permits him to take a Fee not exceeding such a Rate. But per Cur. the Utage has always been since the Statute of 28 Eliz. to take a Fee upon a Ca. Sa. and such a Fee is allowed to the Sheriff for his Trouble, which he had in the Execution; and therefore, if there be a second Execution, he ought to have a Fee for that also for his Trouble, as well as for the first; and per Holt Ch. J. an Action would lie for his Fee for the Error permitting him to take it, makes it a Duty. Skin. 563. Mich. 5 W. and M. B. R. Pope v. Hayman.

8. It was held by the Court, that the Statute extends to all Judgments in Writs minister, and that, whether the Sheriff executes them in a County, or a Franchise, he shall have his Fees within this Statute, viz. 1s. per Pound for the first 100l. and 6d. per Pound for every other 100l. and to it is of the Bailiff of a Liberty, when he executes any Execution on a Judgment given in the Courts at Writs minister within his Liberty; but if the Bailiff or other Officer, executes Process on a Judgment given in a Court of a Corporation, or Liberty, he is not entitled to Fees within this Statute. 1Salk. 331. Patch. 7. W. 3. B. R. Brockwell v. Lock.

9. It was resolved, that the Statute 29. Eliz. 4. does not extend to real Executions, but only to Executions in Personal Actions, therefore it does not extend to an Habere facias Pellisfncam, or Pellisfncam. Patch. 9. W. 3. C. B. 1 Salk. 331. Peacock v. Harris.

10. Nor does it extend to Executions upon Statutes-Merchant, Recognizances, &c. for the Act is to be understood of Cases where the Judgment Redhibit in rem, and not by the voluntary Consent of the Party. 1Salk. 332. Peacock v. Harris.
Fees.

11. Upon a 

12. Powell jun. J. said that it was the Opinion of Holt Ch. J. that the Sheriff should have Fees for executing an Elegit, but he said he doubted of that; because it would be unreasonable when the whole Debt is 500l. and perhaps the Land extended but 20l. per Ann. that the Sheriff should have Fees for 500l. Treby Ch. J. said, that he should have Fees according to the Statute levied, and not according to the Debt recovered, as upon a Fieri Facias. To which Powell answered, that that could not be; because the Party might detain the Land till he was satisfied the entire Debt, and the Plaintiff is, by having made his Election, barred of all other Executions. 1 Salk. 332. Peacock v. Harris.

13. If an erroneous Writ be delivered to the Sheriff, and he Executes it, he shall have Fees, tho' the Writ be erroneous. 1 Salk. 332. Patch. 9 W. 3. B. R. Earl v. Plummer.

14. For Fees of executing an Elegit, Debt lies. Extent generally is the Word of the Statute of Eliz. and that an Extent upon an Extent upon an Elegit was an Extent within the Statute, as well as an Extent upon the Statute. 1 Salk. 333, 334. Mich. 4. Anne. B. R. Tyson v. Paske.

(A. 3) Fees of other Officers.

(A. 4) Of Coroners.

1. 3 E. 1. 10. Westm. 1. Enacts, that they shall take nothing of any Man to do the Office of Coroner, in pain of great Forfeiture to the King.

2. Coroners, who had taken half a Mark at divers times of the People contra formam Statutum, were thereof indited, and put into the Grace of the King and made Fine. Br. Fees, &c. pl. 9. cites 27 All. 14.

3. 3 H. 7. 1. Gave him a Fee of 13s. 4d. upon the View of the Body, of the Goods of the Murderer, &c.

4. A Coroner received 1d. of every Wrishe when they came before the Judges in Eyre, as belonging to his Office, which was neither against the Common Law, nor this Statute; for he took it not for doing his Office, but a Right due to his Office, which might have a reasonable Beginning, viz. for and towards his Travel, Attendance, and Charges. 2 Init. 176.

5. 1 H 8. 7. Enacts, that, where any Person shall be Slain by Misadventure, the Coroner shall not take any thing for doing his Office on pain of 40l. The Justices of Able and Justices of Peace are impowered to hear and determine the said Offence.
(B) By Officers in Court. [Detainer of the Body till paid, Justifiable in what Cases.]

1. A Gaoler may retain a Prisoner for due Fees. P. 14 Car. 3. R. agreed per Jur. in Jennings's Case.

But a Gaoler cannot retain a Prisoner for Meat, Drink, or Lodging, for those are not of Necessity for him to provide. P. 14. Jur. in 3. R. per Jur. agreed.

2. If due Fees are due to an Officer and upon a Habeas Corpus he sends the Body charged with his Fees; it seems that he ought to be detained till the Fees paid. A Question in the said Case of Jennings.

[See Gaoler (C) (D) Warden of the Fleet (B)]

(C) In Courts. [Marshall, &c.]

1. 2 H. 4. 3. N. 5. The Fees of the Marshall of the Marshmallow of the Kings Household, and Judges. N. 55. Upon Prayer of the Commons that the Marshmallow of the King's Bench, and others, and the Marshmallow of the Fleet shall not take other Fees than shall be limited in this Parliament, under pain to lose their Offices, and to render treble Damages, to which it is Answered, that this Petition is committed to his Council, to call to them the Chancellor and Justices to Examine it, and Obtain due Remedy, as to them shall seem [good] by Authority of Parliament.

2. In Attain, the Plaintiff was Nonpfitted, by which Judgment was given, and every one of the Petit Jury paid 12d. to the Fee of the Marshmallow, and went quite, and so it seems that 'twas in B. R. Br. Fees, &c. pl. 7. cites 19. All. 13.

3. By 2 H. 4. 23. The Fees of the Marshmallow of the King's House shall be as in times past, and no more, viz. for him that comes in by Capias 4d. and if he be bailed 2d. more of the Defendant in Trespass that finds him Bail to answer the Suit 2d. for every Commitment by Judgment 4d. for every one delivered of Felony, and of a Felon bailed by the Court 4d. And if the Marshmallow, or his Officers take more, they shall lose their Offices, and pay treble Damages to the Party, and the Party grated grated shall have his Suit before the Steward of the same Court.

Here a Server of Bills shall take no more than 1d. for every Mile distant from the Court to the Place where he doth his Office; but when he serves a Venire Facias, or a Driftings, he shall have the Double; if such an Officer takes more be shall be imprisoned into a Fine to the King at the Direction of the Steward, and be from thenceforth forjudged the Court.

4. The Marshmallow cannot detain any Person after that he is discharged from the Court, for any thing but for Fees of the Court, and not for Eating and Drinking, and other Things, which he had bought of him in Prison, if he does otherwise, perhaps he may be indicted of Extortion. Br. Fees, &c. pl. 15. cites 3. Eliz. 4. 18.

5. Gloves were demanded by the Court for themselves and Officers, before they would allow the Reading of a Pardon. Bath. 22. Car. 2. B. R. Sid 452. the King v. Webber.


Q. Q. (C. 2) Ecclesiastical.
(C. 2) Ecclesiastical.


3. Rot. Parliamenti 1 H. 5. Numero 23. The Commons pray that where by the Law of England in time of your Noble Progenitors, it was Ordained, that no Ordinary or Holy Church of the Realm should have any Executors of the Testament of their Testators for proving the same Testament, and for the making an Acquittance in this Party, but 28. 6d. and now they will take 40. 2d. &c. pray, that if they take it more than 28. 6d. they shall lose ten times as much as they do take, &c.

Answer.

1.[4] The King has charged the Lords Spiritual to Ordain due Remedy, and if they do not, the King will have it well in Memory, and cause it to be amended in Time to come. The like 2 H. 5 second Part; Number 2. 3 H. 5. Number 47. where this is made an Act for a Year.


3.[6] Rot. Parliamenti 46 E. 3. Numero 37. Complaints of the Ordinaries for taking from Executions, the Seals, and *Chains of the Testators, or Fines and Redemptions for the said Seals, or otherwise they will not deliver Administration of the Testator's Goods, &c.

Answer.

[7] Let the Prelates and other their Ministers have the Seals and Chains of those who will give them willingly, so that none be constrained to give them against his Will.

8. By 31 E. 3. 4. Bishops shall retain their Officers from taking Excessive Fees for Proofs of Testaments, in Fines to have them Indicted before the Justices for Extortion, as hath been heretofore used.

9. Where a Bishop acts as Judge, he shall have his Fees; as where the Church is litigated, he is not bound to award a jus Patronatus, unless required by the Party, or his Clerk and at their Costs. But where he acts as an Officer only, as where the Court writes to him to certify Bailtary, Matrimony, &c. it shall be at his own Costs. Br. Fees pl. 1. cites 34 H. 6. 38.

10. By 21 H. 8. 5. Nothing shall be given for the Probate of Wills, or Commission of Administration, when the Goods of the Dead exceed not 51. face only 6d. to the Register. Nevertheless the Judge shall not refuse to prove such a Testament, being exhibited unto him in Writing, with Wax ready to be Sealed, and Proved Communi forma, but shall dispatch the Party without Delay.

For the Probate of a Will, and all other Things concerning the same, when the Goods of the Dead exceed 5l. but not 40l. the Judge's Fee is 2s. 6d. as before, and the Register's 12d. and when they exceed 40l. the Judge's Fee is 2s. 6d. as before, and the Register's as much, or the Register may refuse the 2s. 6d.
Fees.

25. 6d. and take a Penny for 10 Lines of the Will, each Line being conceived to contain 10 inches in length; and for these Fees they shall dispatch the Party without frufratory delay.

Nothing shall be given for Letters of Administration, unless the Interests Goods exceed not 5l. and when they exceed 5l. but not 40s. the Officers Fees are only 2s. 6d.

The Fee of the Copy either of the Will, or Inventory, is the same with that above allowed for Registering of the Will, or else the Register may take a Penny for every 10 Lines of the length as aforesaid.

The Officer, that takes more than his due Fee, shall forfeit that Excess to the Party grieved, and besides 10l. to be divided between the King and the same Party grieved.

This Act shall not alter the Customs where less Money hath been for Probate of Testaments.

The one or the other, there can be taken of the Executor &c. but 1s. only viz. 2s. 6d. to the Ordinary, &c. and his Munificents, and 2s. 6d. to the Scribe for Registering the same; unless the said Scribe may refuse the 2s. 6d. and have for writing every 10 Lines of the same Testament, whereof every Line to contain 10 inches, one Penny.

3d. High Court of Justice v. Rawle. If the Executor Fails, that the Testament in Paper may be transcribed in Parliament, he must agree with the Party for the transcribing; but the Ordinary, &c. can take nothing for it, nor for the Examinatioin of the Transcript with the Original, but only 2s. 6d. for the whole Duty belonging to him.

Where the Goods of the Dead do not exceed 100s. the Ordinary, &c. shall take nothing, and the Scribe to have only for writing the Probate 6d. to the said Testament be exhibited in writing with Wax thereto annexed, ready to be sealed. Where they do amount to above the Value of 100s. and do not exceed 2s. there shall be taken for the whole but 3s. 6d. viz. 2s. 6d. to the Ordinary, &c. and 1s. 6d. to the Scribe for Registering the same.

Where by Custom less hath been taken in any of the Cases aforesaid, there is to be taken; and where any Person requires a Copy or Copies of the Testament so proved, or Inventory so made, the Ordinary, &c. shall take for the Search, and making of the Copy of the Testament, or Inventory, if the Goods exceed not 100s. 6d. and 12d. if the Goods exceed 100s. and exceed not 2s. 6d. and if the Goods exceed 4s. 6d. 2s. 6d. or to take for every 10 Lines thereof, of the Proportion aforesaid, a Penny.

11. Most of the Fees in the Spiritual Court are appointed by Consitution, and not the Authority of Confinction which intitulcs Professors, &c. to take Fees, for which an Action will lie by the Common Law, and Rule was to declare upon a Prohibition.

12. A Prohibition was granted to a Suit for Fees in the Spiritual Court by an Apperitor upon a Suggestion, that there were no such Fees due by Custom. For that is triable by Law, and not by a Declaratory, or Vicen-tier Praetoripr, which is allowed in their Courts; but they may sue there for their Due, and Customary Fees.

[D] Punishment for taking more than usual Fees.

1. If any Officer or Judge take more than the usual Fees, he is punishable at the Common Law. Per Chamberlain J. 2 Boll. R. 263.

[See Coroner (H). Extortion.]
Fees.

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what CaCcs they may not iniift, and Punlfhment of Officers iniilling, on prompt Payment, before
they will do the Duty of their Office.

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becaufe the Party did not give him his Fee or Colts.
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make Execution, until his Fee be paid
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Execution, what Remedy now hath the Party j And it
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feemed to me, that he may have an Account, or an Aftion upon the Cafe
Noy. 76. Walden and Gefner v. Veaieley.
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was paid. But
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a Hab. Corp. the Officer ought to bring the Prifoner to the
and his Refufal to bring him, unlels paid his Fees aforehand, is a
Contempt i For the King's Writ mult be obey'd, and the Court will tax
the Charges, and compel Payment, it the Officer and Prifoner cannot
agree, or Payment is not made according to the Agreement.
2 Jo. 178.
Mich. 33. Oar. 2. B. R. the King v. the Steward ol'
3.

Court,

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An Under

Sheriff retuled to execute a Capias ad Satisfaciendum till
he had his Fees ; and upon Motion againll him, the Court faid, that
the Plaintiff might bring an Ativm againll him tor not doing his Duty,
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or might pay him his Fees, and then indibi him Jor Extortion.
1 Salk.
cites Noy. 75.
M. B. R. Helkott's Caie.

&

(E) Fees granted, and aicertained, how.

A LL

new Offices erected with new Fees, or old Offices ivith new
Fees
are ivithin the Stat. 34 fl. i. Stat. 4. for that is a Tallage
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put upon the Subject, which cannot be done without Allent by Act of
J.

2 Inlt. 533.
Parliament.
2. If the King grants an Office 'xith a Fee,
cannot Charge the Subje£t. per Rainstord

3. The Queen grants an

Office

of

it is

void; becaufe the King
15 and 16 Car. 2.

Hili.
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Regijiring Policies of Infurance^

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The
afterwards 43 Eliz. 12. direfts, how the Office lliall be regul-.ited.
Patent was void; but what Validity it ha-:, is derived from th, laid Statute ; but there being -no Fee li7uited, it was objected, that there was no
But it was anfwered, that tho' there v\'as no certain Fee,
Office at all.
yet the Party mult have zvhat he reafonably deferves, as e\ery cne mult
that does any Thing for another at his Requelt.
Now the Policies mult
be entered by the Statute, and the Law will allow a reafonable Matter
for entering them.
And Ufage, lince the Statute has no-.v lectk-d ic, if not
as a Fee, yet as a competent Recompencc (or his LjbuHr; as Labourers
Rates, tho' not Fees, yet are .Quantum jVLrmts. per Hak^ Ch. B. Hill.
4. No Court has a Poivcr of fettling the Fees of its Officers, io as to
conclude


conclude the Subject; but thus far they may go, as to judge what are reason-able Fees. Hill. 14. W. 3. 12. Mod. 669. Ballard v. Gerard.

5. A. was libelled against in the Ecclesiastical Court for Fees, and upon S.P. and by Motion a Prohibition was granted; For no Court has Power to estab-lish Fees. The Judge of a Court may think them reasonable, but that is not binding: But if, on a Quantum Meruit, a Jury think then reasonable, then they become established Fees. Mich. 3. Ann. B. R. 1 Salk. 353. Gilf ord’s Cafe.

And so of the Table of usual Fees of a Court not newly erected. 12 Mod. 669, cites 15 Car. 2.

Veale v. Prior.

(F) Prohibited, or due, in what Cases, and how much to Officers in Courts.

1. 2 H. 4. 10. E Nals, that when divers Persons are jointly indicted of one Felony or one Trespass, and they all plead to any Issue as not Guilty; the Clerk of the Crown shall not take for the Venire Fascis, nor for entering of the Plea, but one Fee, viz. 2s. for them all, and not several Fees for each Person.

indicted of two several Felonies or Trespasses, and is acquitted, he shall pay but for one Deliverance.

This Act is made in Affirmance of the Common Law. 4 Indl. 74.

2. 1 Jac. 1. 10. Enacts that none shall take any Money, or promise for the Report of any Order or Cause refer’d unto them by any of the King’s Judges or Court, directly or indirectly, on Pain of 51. and to lose his Office or Place in the same Court. But not to prohibit the Clerk from taking for his Pains in writing the Report 12 d. for the first Sheet, and 2d. a Piece for the rest.

3. If a Client, when his Business in Court is dispatched, doth refuse to pay unto the Officer in Court the Fees, which are due to him for doing his Business; the Court will upon Motion grant an Attachment against the Client, to have him committed, until he pays the Fees due. per Roll Ch. J. 1659. For the not paying the Fees is a Contempt to the Court, and the Court is bound to protect their Officers in their Rights. L. P. R. 598.

4. It seems clear, that it is no Excuse for not obeying a Writ of Habbes Corpus ad Faciendum, that the Prisoner did not tender the Fees due to the Gaoler. Alfo it seems to be the better Opinion, that the Want of such a Tender is no Excuse for not obeying a Writ of Habbes Corpus ad Faciendum & Recipiendum; however, it is certain, that if the Gaoler bring up the Prisoner by Virtue of such Habbes Corpus, the Court shall not turn him over, till the Gaoler be paid all his Fees, nor, as some lay, till he be paid all that is due to him for the Prisoner’s Diet; for that a Gaoler is compellable to find his Prisoner Sustenance, but this is denied by others. 2 Hawk. Pl C. 151. S. 21.

(F 2) Determined by Accession of other Office.

1. No for Law, that if a Man has a Fee of a Lord, and after it be Office and made a Justice, this Fee is not void by the Law; but after the Office, pl. 47. making him Justice, he is not to take any Fee, unless of the King. Br. cites S. C. N. C. 23 H. 8. pl. 116.
2. So of him who has the Office of Steward, and after is made a Justice. Ibid.

3. And by several, where a Man is Bailiff of a Manor by Patent, and after is made Steward of the said Manor, both Patents are good; For the Suitors are Judges, and not the Bailiff. Ibid.

(G) Actions, and Pleadings in Actions for Fees.

Mo. 699. says 1. If A. deliver'd an Execution to the Sheriff at his Suit against B. and in Consideration that the Sheriff without any Fee will execute it, he promised the Sheriff to pay him a certain Sum, which was the same as the Sheriff was allowed to take by the Statute of 28 Eliz. Glanvill J. held the Consideration not good: For at Common Law he ought not to take any Fees, but it was Extortion, which the Statute is only to discharge the Sheriff from; but the other Justices and Baron's held it to be a good Consideration, and were of Opinion to have affirmed the Judgment. But another Error being assigned, viz. That the Tales de Circum-altribus was returned by the Plaintiff, who brought the Action by the Name of Sheriff of the same County, and therefore Judgment was reversed. Cro. E. 654. Hill. 41. Eliz. B. R. in Cam. Seace. Stanton v. Suliard.


Rwm. 369. S. C.

2. The Sheriff may have Debt in the Statute for his Fees, and therefore having taken a double Bond for Payment of his Fees, it was resolved that the Bond was void. Pog. 176. cites it as resolved M. 19 Jac. C. B. Emplion v. Bathurst.

3. Case was brought by a Sheriff against the Grantee of a Hundred for Fees for Fees, and had Judgment. 2 Jo. 194. Patch. 34. Car. 2. B. R. Cole v. Ireland.


5. In the settling a Dispute, whether the Warden of the Fleet might return a Non est Inventus whereupon to found a Sequestration, or that such Return must be by the Serjeant at Arms before a Sequestration could go, Lord Chancellor ordered the Registar to look into Precedents, and certify him, how the Practice had gone. But said, that if the Serjeant at Arms was intitled by the ancient Custom to a Fee by the Caption in such Cases, it could not be altered without an Act of Parliament. Mich. 1720. Ch. Prec. 551. Jephson's Case.

(H) Actions for Fees, in what Court.

1. A Demurrer put into a Bill for Fees for soliciting to discharge a Tenure, and which was discharged accordingly, yet the Demurrer to stand. Toth. 85. cites 12 Car. Read v. Gilbert.

2. A Bill for Fees was dismissed. Toth. 84. cites 15 Car. Harding v. Tedwell, and Moor v. Rowe.


4. There is no suiting in the Court of Admiralty, or Court of Honour for Fees, per Eyre J. who said that a Prohibition was granted by all the Judges.
Fees. Feigned Action. 155


5. Pratt J. said, he saw no Reason why Fees in the Spiritual Court may not be recovered at Common Law, as well as Fees in Chancery. 10 Mod. 264. in the Case of Clerk v. Lee.


7. A Prohibition was mov'd for to the Controllory Court of the Bp of London to stay Proceedings in a Suit commenced there by a Parish Clerk, for his Dues, according to a Rate agreed to by the Parish. Against the Prohibition, it was said, that he is to be chose by the Parfon, and that his Office is Ecclesiastical, and consequently his Fees are of Ecclesiastical Consequence. On the other Hand it was urg'd, that, whoever has the Nomination of him, his Office is merely Temporal, and the Profits of it must be fo likewise, and especially in the present Case, where they are demanded pursuant to a Rate. Per Cur. the Questions, who has the Right of Nomination, and what Estate the Clerk has, whether at Will only, or for Life, are quite inmaterial in the present Case. The Law is certain, that his Office is Temporal, it was so determined in 2. Brownl. 38. And if fo, his Salary, or whatever is given for the Service of that Office, must of Consequence be of Temporal Consequence. But whether his Office be Temporal or Spiritual, if the Matter in demand is Temporal, the Ecclesiastical Court can have no Jurisdiction. Now here the Demand is in pursuance to a Rate agreed to by the Parish; and there is no Doubt but he may bring his Action upon that Agreement. And accordingly a Prohibition was granted. Hill. 12 Geo 2. C. B. Pitts v. Evans.

[Vide (C 2). Prohibition (F).]

For more of the Head of Fees, see under the Heads of the several Officers.

Feigned Action.

(A) Feigned Action, or Issue, in what Cases.

1. In such Cases, which are merely local, and the Venire can be altered, they will, upon good Reason, make them try it upon Feigned Action, and if no Confent be, they will grant Imparcellance. Per Pemberton Ch. J. Pach. 34. Car. 2. B. K. Skin. 44. in the Case Ld of Salisbury v. Grayham.

2. And Dolben J. remember'd the Case of Ld Gerard of Bromley.
lev and Spencer in the Exchequer when Hale was Chief Baron, who, upon Affidavit, that the Plaintiff had lived long in Lancashire, and kept great Hospitality, and bid every Body welcome, &c. and the Defendant was a Southern Gentleman, and lately came into Lancashire, Hale did not suffer them to proceed in their Ejectment in Lancashire, but made them try it in five leigned Actions by a Jury of Hertfordshire. Skin. 44. Pach. 34 Car. 2. B. R. at fup.

3. On a Motion for a Mandamus to the old Church-Wardens to deliver the Parish Books to the new Church-Wardens, &c. 'twas afterwards shewn for Cause against the Motion, that 'twas new, and the like had never been made before in this Court. But 'twas insisted on, that the old Church-Wardens had a Right to keep the Parish Books, and so the Rule was discharged. For a Controversy between Parish Officers, which of them ought to keep the Books, must be tried at Law by a leigned Issue. 8 Mod. 98. Mich 9 Geo. 1. the King. v. Street and Stroud.

### Felo de se.

(A) How considered, and what Person may be so.


2. Homicide against a Man's own Life brings him under the Notion a. b. 37. 2 H. of Felo de se, if at the Time he were of the Age of Discretion and Corpus Mentis. 1 Hawk. Pl. C. abr. 72. cap. 27. S. 2. 1 Vol. in Fol. 67. S. 92. 3 Inst. 54. 1. cites as in the Marg. *

(B) Forfeiture of what.

1. Felo de se shall not forfeit his Lands, but his Goods, Chattels, Leafes and Debris. Bacon's Use of the Law. 39.


3. A. was indebted to B. in 2000 l. — B. is Felo se, and Inquisition returned. An Act of Oblivion is passed, by which all Forfeitures, &c. are pardoned. Yet there being no Words of Restitution in the Act, the Administrator of B. cannot recover against A. — Nor the King neither; For the Pardon operated only to the Benefit of A. 1 Saund. 362, 363. Mich. 21. Car. 2. Toomes v. Ethirington.


4. A
4. A Felo de fe forfeits all his Chattels whatever in Possession, and all personal Goods in Action, which he has falsely in his own Right; and all Chattels real, which he holds, either jointly with his Wife, or in her Right, and all personal Things in Action; and as some say, entire Chattels in Possession, to which he is entitled jointly with another on any Account, except Merchandize: But he forfeits nothing, that he has as Executor or Administrator; and as some say, a Mott only of such joint Chattels as may be severed. 1 Hawk. Pl. C. abr. 72. cap. 27. S. 5.—1 Vol. in Fol. 68. S. 7. cites as in the Marg. * 

5. Neither is his Blood corrupted, or his Lands of Inheritance forfeited; nor does his Wife lose her Dowry. 1 Hawk. Pl. C. abr. 73. cap. 27. S. 6. cites as in the Marg. *—1 Vol. in Fol. 68. S. 8.

(C) What shall be said of such Offence.

1. In some Cases a Man may be a Felo de fe by Conspiration of Law, without any Intention against his own Life; as, where one is killed by the breaking of a Gun, which he discharges at another with an Intent to Murder him; or by falling down on a Knife, which a Person struck by him to the Ground, happens to have in his Hand. 1 Hawk. Pl. C. abr. 72 cap. 27. S. 3.—1 Vol. in Fol. 68. S. 4. cites as in the Marg. * 

2. But if a Man be killed by hastily running on a Knife or Sword, which a Person assaulted by him, and driven to the Wall, holds up in his Defence; he shall not be adjudged a Felo de fe, but the other shall be judged to have killed him de Defendendo. 1 Hawk. Pl. C. abr. 72. cap. 27. S. 3.—1 Vol. in Fol. 68. S. 5. cites as in the Marg. * 

3. If a Man be killed by another on his own Request or Command, yet is he not a Felo de fe; but the other is as much a Murderer, as if he had acted merely on his own Head. 1 Hawk. Pl. C. abr. 72. cap. 27. S. 4.—1 Vol in Fol. 68. S. 6. cites as in the Marg. *

(D) Relation. To what Time the Forfeiture shall relate.

1. No Part of a Felo de fe's personal Estate is vested in the King before the Self-Murder is found by some Inquisition; and therefore the Forfeiture is favored by a Pardon before the Inquisition. But if there be no Pardon, the whole is forfeited immediately after the Inquisition, from the Time of the Wound. 1 Hawk. Pl. C. abr. 73. cap. 27. S. 7.—1 Vol. in Fol. 68. S. 9, 10. cites as in the Marg. *

(E) Inquisition, by whom, and how to be taken.

1. If the Body can be found, the Inquisition ought to be taken by the Coroner super Titu: Copios; and it was a Quisition, whether an Inquisition so taken be reversible? But if the Body cannot be found, the Inquiry may be by Justices of Peace, or by the King's Bench. 2 Lev. 14. if the Felony were in the County, where the Court lies; and such an In- 

S.
Felony under Colour of Law.

1. A Man came to Smithfield Market to sell a Horse, and a Jockey coming thither to buy a Horse, the Owner delivered his Horse to the Jockey to ride up and down the Market to try his Paces; but instead of that, the Jockey rode away with the Horse: This was adjudged Felony. Keling 82.

2. Coming into a House by Colour of a Writ of Execution, and carrying away the Goods is Felony. 2 Vent. 94. cites Parr's Case.—Sid. 254.


3. A comes into a Semifolresse Shop and cheapens Goods and runs away with the Goods out of the Shop, openly, in her Sight, this is Felony. Raym. 276. Chiller's Case.—So, under Colour of Outlawry, to take a Man's Goods, when the Officer knows there is no Outlawry, is Felony. So Suing a Replication to get another's Horse, and then running away with the Horse. So by Ejectment falsely obtained getting into Possession of a House, and converting the Goods. Patch. 31. Car. 2. in Scaee. Raym. 276. in Chiller's Case.


But, when A Special Trust prevents the Felony, until such Special Trust is determined. Patch. 8. Geo. 8 Mod. 76. King v. Malin.

determined, the Party may be guilty of Felony. As where a Carrier carries Goods to the Place appointed, and after takes them away, and deposes of them, this is Felony; because by bringing them to the Place appointed, the Bargain for his bringing them is determined, and the Possession is then in the first Owner. Keling 83. cites 13. E. 4. 9. b.—So, if one delivers Goods to a Porter in London to carry to a certain Place, and he takes them and carries them away to another Place, and there deposes of them: this is Felony, which seems to be warranted by the 13. E. 4. 9. ibid.

Feme.
(A) Capable of what.

1. **THE Office of Reaper or Moover of the Manor of D.** was granted to a Feme with a Fee of 22 Quarters of Corn yearly, for exercising the said Office for Term of her Life. Br. Grants. pl. 127. cites 30. All. 4.

2. A Feme sole may be a *Baily*, and chargeable in Account, as *Recep- trix Denominator*, & ut Balliva. Br. Account. pl. 43. cites 19 H. 6. 5——

Ibid. pl. 68. cites 4. E. 4. 25.

3. Sistres of an Hospital incorporated, may by Custom together with the Brothers *chofe a Master*. Br. Action fur le Statute. pl. 9. cites 34. H. 6. 27.

4. A Woman may be a *Commissioneer of Sewers*, and the Ordinances and Decrees of Sewers made by her and the other Commissioners of Sewers are not to be impeach'd for the Cause of her Sex. Callis of Sewers 201, 202. cites Councils of Warwick's Cafe.

5. *Custody of a Castle* was granted to a Feme to be exercised *Per se vel Depositions finum and held, that it may be good, thus it was objected, that it appertains to the War, and to be executed by Men only. Mich. 1. Jac. B. R. Cro. J. 18. Lady Ruffell's Cafe.

6. A Woman was appointed by the Justices to be *Governess of a Work- house* at Chelmford, and it was moved to quash the Order, because it was in the Nature of a House of Correction, and so the Office was not suitable to her Sex. But per Cur. abente Holt, 'tis a good Appointment, and she may be capable of executing the Office, either by her self or Deputy; as the Lady Broughton did, who was *Keeper of the Gatehouse* at Westminster.


In an Affirmation for Money had, and received to the Plaintiff's Ufe, tried in London coram Lee Ch. J. the following Cafe was made for the Opinion of the Court of B. R. (viz.) that upon the Death of Robert Bly, *Sexton of the Parish Church* of St Botolphs without Aldergate, two Candidates offered themselves to be elected in his room; viz. the Widow of the Sexton deceased, and the Plaintiff: That upon calling up the Books, the Plaintiff appeared to have a Majority of Male Votes, but that afterwards, the Widow polled 45 Women, and then she had the Majority; that the Widow, and all the Female Voters were *House-keepers*, paying *Scot and Lot*, and to all Parish Rates and Alleiments. And the first Question was, whether a Woman was capable of this Office. (2dly) Whether Women could vote in such Election. After three Arguments at Ear, it was resolved, that the Office of Sexton was no publick Office, nor a Matter of Skill or Judgment, but only a private Office of Trust; (viz.) to take Care of the Church, the Vestments of the Minifter, and the Books, &c. of the Parishioners; and therefore a Woman was very proper to execute it, and if there was any Thing to be done in this Parish by a Sexton, not pro-
Feme.

per for a Woman (as in every Place the Office varies in some Respect or other) the Court said, the Cafe was defective in not setting it forth. 

Trin. 13 Geo. 2. B. R. Olave v. Ingram.

8. And secondly, it was resolved, that being a Matter of no publick Concern, but only relating to themselves and the rest of the Parishioners, Women have likewise a Right of Election of such Officer; For they have an equal Interest in the Church, &c. as the Male Parishioners, and therefore ought to have an equal Right to appoint a Perfon to take Care of it. 

Trin. 13 Geo. 2. B. R. Olave v. Ingram.

[See Barretor (B).]

(B) Feme Sole Merchant. Who is; and of her being a separate Trader in General.

1. FEME Sole Merchant is, where the Feme trades by herself in one Trade, with which her Husband doth not meddle, and buys and sells in that Trade; there the Feme shall be sued, and the Husband named only for Contormity, and if Judgment be given against him, Execution shall be only against the Feme. Cro. Car. 69. Patch. 3 Car. C. B. Langham v. Bewett.

—But if the Wife sue the same Trade, that her Husband does, 'twas adjudged, 'tho' not reported by Croke, that she was not within the Custom. Mod. 26. Mich. 21 Car. B. R. Anon.

S.P. for Debt owing to her within the City. But for those due to her elsewhere, the Husband must join. Mich. 8 Ann. B. R. 14 Mod. 293. Mrs. Poole's Cafe.


4. In a Writ of Execution the Sheriff returned, that the Plaintiff brought his Action in the Sheriff's Court against the Defendant and his Wife as a Feme Sole Merchant, and had a Verdict; and how that by Custom in the City of London the Lord Mayor is Chancellor, and may call Caufes before him out of the Sheriff's Court, and rule them according to Equity; and shews how that the Lord Mayor had called this Cafe before him, and ordered the Plaintiff should have Judgment, and that the Defendant should pay Costs within 14 Days; and that she should pay the Debt by 50 s. quarterly, or else that Execution should go; and that this was the Reason why he could not make Execution: The Court held the Return sufficient, and the Cafe reasonable, tho' it had of late been abated. Skin. 67. Mich. 34 Car. 2. B. R. Barns v. Barns.

5. Cafe was brought in the Mayor's Court upon an Indeb. Aff. for 57/. according to the Custom of the City. The Evidence was for Goods sold to the Defendant's Wife in her Life, the Jury found, that Defendant had been a Freeman, but left off his Trade 20 Years before, and turned disdaining Teacher, but the Wife lived apart from him within the Liberty of the City, and exercised the Art of making Gimp-Lace, and the Husband no Ways intermeddled; that she paid her own Rent, kept no Shop but worked in the Garret; that she had Goods of the Plaintiff to carry on her Trade, amounting to 57/. And that after her Death the Defendant paid divided Payment; Judgment was given by Rider for the Defendant, and he declared, that Treby was of the same Opinion. Mich. 2 W. and M. Show. 193. Fabian v. Plant. — The Reporter who argued this Cafe for Defendant, makes a Quare, and lays it deserves Consideration, if such a Feme Sole...
Sole Trader dies, and leaves an Estate, and the Husband poiffleffes himself of it, if he shall not be answerable for her Debts.
seen in Mr. Lightfoot's Casebody. Told 184.

6. If the Husband relinquifh, or become Bankrupt, or be over 50, or of another Trade, or never intermeddle with her Trade, she is within the Caufon. Show. 184, in the Cases of Fabian v. Plant, cites Het. 9, 10. — or if both exercise the fame Trade diftinctly by themselves, and not intermeddle with one another, Het. 9, 10. Patnch. 3 Car. C. Bower v. Langham.

7. A Woman, whose Husband had left her above 12 Years before, had carried on a Trade in her own Name as a Widow, and gave Receipts in her own Name, being fled for a Debt contracted in the Way of her Trade gave Coverture in Evidence, and gave Evidence of her Hufbands having been lately alive in Ireland; and Holt Ch. J. directed the Jury to find for the Defendant, and fo they did. 12 Mod. 603. Mich. 13 W. 3. Anon.

8. A Widow and Administratrix of B. used to deal in Tea in B's Life Time, and bought 4 Tubs of C. at fo much per Tub, one of which A. paid for and took away, leaving 50 l. in Earmief for the other 3; Ruled at Guildhall, per Holt. Ch. J. that the Husband was liable on the Wife's Contract, because they cohabitated. Patnch. 3 Anne. 1 Salk. 113. Langfort v. Administratrix of Tiler.

Fences.

(A) Who muft make them: and againft whom; And where none were before.


2. A feifed of 200 Acres of Common Moore, owner's B. of 50 verfus BOream.—The Purchafer is bound to enclofe or * keep the Beasts within the 50 Acres, and fo ought A. to do of the Residue for his Beasts, and adjudged accordingly. Mich. 22 and 23 Eliz. D. 372. pl. 10.—Arg. cited 2 Roll. R. 229. in Cafe of Holbech v. Warner. + For if the Beasts of either, escape into the Lands of the other, Treff- pafols lie, tho'

wild Dogs drive the Beasts of the one into the Lands of the other. F. N. B. 128. (29B) in the Notes there cites Rail. Ext. 621 and 23 E. 4. 10.

3. A, having 2 Clofes adjoining, sells one of them, per 2 Juit the Vendor shall make the Incofure, but per other 2 Juit. the Vendee shall make it. Mo. 775. Trin. 2 Jac. Doily v. Drake.


T r (B) Cases
(B) Caves of Trespasses through Fences; or, where no Fences are.

1. If A. has Land adjoining to his own Park, and it belongs to him to Fence his Park; yet he is not bound to Fence against his own Land. per Newton. Ch. J. But by Pullen e contra. Br. Curia Claud. pl. 2. cites 22 H. 6, 7, 8. and Brook says, that he is of Opinion with Newton.

2. If A. has Land on one Side of a very large Field, and ought to Fence against it; and B. has Land on the other Side, and ought to Fence against it; if the Beasts of A. enter into the Field, and thence into the Clofe of B. and for Default of the Fence of B. yet B. may have Trespasses against A. and to Vice versa. Br. Curia Claud. pl. 2. ut supra per Newton.

3. If A. be bound to inclose against B. and B. against C. and Beasts escape out of C's Land into B's Land, and thence into the Land of A. In this Case A. shall not have Trespasses against C. But if A. be bound to inclose against B. and B's Beasts escape into A's Land, and thence into the Land of one D. a Stranger, there D. shall have Trespasses, and B. be put to a Curia Claudenda against A. F. N. B. 128. (298) in the Notes there, cites to E. 4. 7. 36 H. 6. Bar * 68.

4. If Cattle break in at my Fence, I cannot punish the Owner; But if after Notice be suffer'd them to continue there, he shall be punish'd, tho' it be thro' my Default. 2 C. 93. Arg cites 22 E. 4. 49.

5. A. and B. exchanged Lands, whereupon A. agreed to make the Fences and maintain them. -A. did not make them, but for Want thereof, B's Beasts break into A's Ground. -A. brings Trespasses. Per 3 J. against Popham, this Agreement is no Bar to Trespasses, tho' by Deed; but his Remedy is by an Action of Cafe on the Promise, if without Deed, or on Covenant, if by Deed. Mich. 41 and 42 Eliz. B. R. Cro. E. 709. Nowell v. Smith.

6. One cannot have Trespasses for breaking another Man's Fence; but if he be damnified by the breaking of it, he may have Action on the Fence against the Party that broke it, per Roll. J. Mich. 24 Car. B. R. Sti. 131. in Cafe of Sir A. A. Cooper v. St. John.


[C. See Consequential Losses. — Diftres (B). — Improvement (E. 2) — Rent (P. C). — Trespasses (l. a).]

(C) Actions for want of Repairing Fences.

1. TRESPASS on the Cafe lies for not inclosing against the Land of the Plaintiff, by which Defendant's Cattle entered ad Dummum, &c. For in this Action he recover Damages only. Br. Curia Claud. pl. 5. cites 11 R. 2.

2. If A. and B. have Lands adjoining, where there is no Inclosure, and the Beasts of the one escape into the Land of the other; Trespasses lies; and the Writ shall be Squrei Claudium fugri, For it a Clofe in Law. F. N. B. 128. (298) in the Notes there, cites 22 H. 6. 9.

3. A.
3. A. and B. had Lands contiguous, and the Fences were always made by them who had the lands of B. The Beasts of B. escaped into the Lands of A. for want of B's repairing his Fences, and thence into the Lands of C. for which C. brought Trespass against A. and recovered; whereupon A. brought Cae against B. and had a Verdict; but it was moved in the Court of Judgment for want of good Pleading; & adjournatur. Hill. 29 Jac. B. R. Cro. 1. 665. Holbach v. Warner.

4. A. Writ for one Vill against another Vill, to make them repair their Fences, was granted; but per Cur. it shall be but in the Nature of a Scire faciet, returnable in this Court. Sci. 26. Patch. 23 Car. B. R. Anon.

5. A. was possessed of a Clofe adjoining to a Clofe of B. the Fence between the said two Clofes had Time out of Mind been repaired by the Tenants and Occupiers of B's Clofe. The Fence was not repaired, so that B's Cattle came into A's Clofe. A. brought an Action on the Cae against B. sifting forth this Matter, and had Judgment in C. B. and upon Error brought in B. R. this Judgment was affirmed; and per Cur. either Trespass or Cae lies; Trespass, because it was the Plaintiff's Ground and not the Defendants; and Cae, because the first Wrong was a Non Feuance, and neglect to repair, and that Omission is the Gift of the Action; and the Trespass is only confecional Damage. Mich. 9 Anne. B. R. 1 Salk. 375. Starr v. Rookesby.

[See (A) (B).—Conseffional Losses.]

(D) Curia Claudenda. In what Cae it lies, and for whom, and when.

1. CURIA Claudenda lies to inclose between House and House, and Court and Court; and by this Action the Defendant shall be compelled to make the Inclosure. Br. Cur. Claud. pl. 5. cites 11 R. 2 per Richill. and Fitzh. Barre. 36.

2. If A. has a Clofe adjoining to a Clofe of B. which B. is bound to make the Inclosure between the two Clofes, but he does not make it, a Curia Claudenda lies. Br. Curia Claudenda pl. 1. cites 2 H. 4. 11.

3. If A. be bound to inclose against B. who has 20 Acres adjoining, and A. purchases one Acre contiguous adjacent to the Inclosure, A. shall not be compelled to inclose. F. N. B. 129. (299) cites it as resolved 21 H. 6. 3. 22 H. 6. 8.

4. A. was feised of the Park of C. in C. and B. was seised of 30 Acres in C. adjoining. A. and all those, whole Estate, &c. he has, used to make the Fence between the Park and the 30 Acres. B. put his Beasts into the 30 Acres, and they for want of a Fence entred into the Park. In Trespass for this Entry, A. Proteffando that he, &c. had not used to make the said Fence pro Placito said, that one C. is seised of 10 Acres lying between the said 30 Acres and the Park; and because B. by pleading as above, had confecional the Trespass; A. had Judgment; For the Replication is good; Because A. is not bound to Fence but against him, who has the Land next his Park, unless in a Special Cae. Br. Curia Claud. pl. 2. cites 22 H. 6. 7. 8. Sackville v. Milward.

5. If A. has a Clofe which he has used to inclose, and for, let an Acre of Land adjacent, and then let his Inclosure for with Land, &c. yet he that has the contiguous Land, shall not for
Fences.

As if B. or another had Common in the 10 Acres; but then this ought to be frown. Br. Curia Claud. pl. 2. ut lupra.

For trespass in the Land by Rejoin of his Common, tho' he is not owner of the Land. Ibid.

A Commoner in the Land adjoining may dilate 7, 8.

Damage feant, but he shall not have a Curia Claudenda for the Damages sustained by him; For the Writ supposes ad Nocumentum liber Testament; so that the Plaintiff ought to have the Suit. F. N. B. 128. (C.) —P. N. B. 128. (B) and in the Notes there (A).

Curia Claudenda lies only where a Man ought to inclose by Prescription; For if he is bound to it by Indenture, or Composition in Writing, then Writ of Covenant lies, and not Curia Claudenda. Br. Curia Claud. pl. 2. ut lupra.

One may have a Curia Claudenda before he is damnified, and shall have damages; For this is not traversible. Br. Curia Claud. pl. 3. cites 5 E. 4. 118, 119.

In Averwy, the Plaintiff said that the Land adjoined to the High Way, and was open in Default of Inclosure of the Tenant, and he chased the Beasts into the Way, and they escaped in, and the Defendant took them, and the Plaintiff made fresh Suit; and did not allege Prescription, that the Tenant ought to make the Hedges, and yet well; the Defendant said that they were there for two Nights, and no Plea without a Travers of the Escape, or the fresh Suit; For one of them ought to be traversed. Br. Averwy. pl. 135. cites 15 H. 7. 17.

A Curia Claudenda lies not for Tenant for Years. Fin. Law. 8vo.

(E) Curia Claudenda. Pleadings, &c. in that and Trespasses.

TRESPASS of a Close broken and Grasfs eaten; Velerton pleaded, to the Vi &Arms, and the Entry guilty; and, to the rest, we are seised of an Acre of Land in B. which is adjoining to your Close in F. and we put our Cattle in our Acre for Pature, and there is a Hedge between the Land of the Plaintiff and our Acre, which the Plaintiff, and all those, whose Estate he has in this Land, have used to make time out of Mind; and because the Hedge was open, broke, and walle, our Cattle entered into his Land, and did the Trespass, &c. which is the same Trespass, of which the Plaintiff brought his Writ, &c. Judgment li Aetis, and a good Plea per toto. Cur. Br. Trespass. pl. 129. cites 19 H. 6. 33.

Trespass of a Close broken, and Grasfs eaten, the Defendant said that A. is seised of a Close in D. containing 100 Acres, and B. is seised of another Close adjoining, containing 30 Acres, and the Plaintiff and those whose Estate, &c. have used, time out of Mind, to make the Hedge between them, and the Plaintiff abated the Hedge, and B leas'd his Close to the Defendant for 10 Years, &c. and he put his Cattle into it, and they entered into the Close of the Plaintiff for Default of Inclosure, and eat the Grasfs, Judgment, &c. Per Velerton this is a good Answer to the Depatature, but not to the Breaking; and per toto Curt the Act of the Beasts is the Act of the Defendant, and the Entry of them is a breaking in a Manner, by which they awarded the Plaintiff not to answer, quod Noto. Br. Trespass. pl. 136 cites 21 H. 6. 5.
3. 

Trespass of a Close broken and Grafs eaten, the Defendant said that T. P. was seised of a Close containing 7 Acres there, and leased it to the Defendant for 7 Years, the Term commenced, &c. during, &c. and the Plaintiff was seised of another Close adjoining, in which the Trespass is supposed, and that the Plaintiff and all those whose Estate, &c. have used to make the Fence time out of mind, and the Defendant put his Cattle into his Close, and they entered into the Close of the Plaintiff for Default of his own Inclusion, &c. he ought to blow again whom he ought to make the Fence, &c. and so he did; and that the other Defendants, as Servants of the Defendant, came in Aid to put the Cattle into the Land, &c. and no Plea; but shall say Not Guilty for them; For they did nothing but put the Cattle into the Land of their Matter. 

Br. Trespass, pl. 155. cites 22 H. 6. 36.

4. Contro, where they justify for Common of their Matter; For there they Br. Precept- confess that they put the Cattle into another Soil which is Trespass, unless it is, pl. 25. be excused; but in the first Case, the Matter only is the Trespassor with cites S.C. his Close, and not the Servants. Ibid.

5. And for other Cattle, the Defendant justify'd, that they escaped into the Land of the Plaintiff, and eat his Grafs, and be freely retake, and no more said, that T. P. his Plea, but is a Confession of the Trespass, by which he prescrib'd in the Escape, &c. &c. as appears. Ibid.

6. Have to have Escape in the Close of the Plaintiff, and that for the Escape the Plaintiff, for any of those whose Estate he hath, ought to have Satisfaction, or Aends, if they are freely re-taken, &c. but per Port, this Precept does not lie in the Mouth of the Tenant for Years, but he ought to say, that the said T. P. is Lessee, and all the other Estates, &c. for them and their Tenants for Life for Years, and at Will Ever had free Counsil; by which he pleaded accordingly: And per tot. Car. it is a good Pre- script; For it may have lawful Commencement, as by Grant of those who were seised of the Land, where the Trespass was, &c. Br. Precept, pl. 25. cites S.C.

6. Curia Claudia may be in the Right, (viz.) in the Debt, as well as in the Debt and Solvit. Br. Curia Claud. pl. 3. cites 5 E. 4. 118, 119. Where the Question is as to the Right of Infeign to charge the Inheritance, the Title should be shown in the Debt and Solvit, and where it is in Escape of Trespass only. Vide. 5 Mich. 3 Jac. B. R. Bullo v. Ridge. ————Ibid. 76 says, that this Judgment was reversed in the Exchanger Chamber. [But does not say for what.]

7. If in Curia Claudia the Defendant says, that it is well included, the Plaintiff shall recover immediately; For by this Bar the Matter is confused, per Keble. Br. Barre. pl. 111. cites 16 H. 7. 9.

8. The Judgment in Curia Claudia, is to recover the Inclusion and Damages for the Non-inclusion. Br. Barre. pl. 111. cites 16 H. 7. 9. per Fineux.

9. The Declaration must bee the Certainty of the Land, which the Plaintiff hath adjoining to the Defendant, and the Certainty of this Land, which the Defendant hath adjoining there, which he ought to include; and to allege a Precription of the Inclusion. F. N. B. 128. (E).

10. If A's Beast's escape into the Land of B. where B. ought to include, A. shall have no Advantage thereof on the general Infeign, but ought to plead it specially. F. N. B. 128. (298) in the Notes there cites 18 H. 8. 6.

11. It is a good Infeign to trespass the Precription; For if the Plaintiff be not bound to Incluse (the he has voluntarily Included) it will be no Purpoze. F. N. B. 128. (298) in the Notes there.

12. If the Defendant pleads that he is seised in his Demesne as of Fee of the Close of D. the Plaintiff may reply, that J. S. was seised, Alleign Fee, that the Defendant was seised in his Demesne as of Fee, and so cause the precise Estate to come in Question. But if Defendant had pleaded generally that he was seised of the Close adjoining, or that the Close adjoining was his Freehold; there the Plaintiff shall reply, that he had nothing in fee pl. 52. 53. Close adjoining at the Time, &c. and this shall make the Infeign. F. N. B. Mich. 21 and

128. (298) in the Notes there cites D. 365 * Sir Francis Leek's Case. 22 Eliz. S.C.

13. In Case, the Count was, that A. the Plaintiff was possesed of a Close R. Roll R. 30 Mar. 18 Jac. called H. in H. and that B. the Defendant was possesed of U. Palm 534.
Fences. Fens.

S. C. and they both Report, that Chamberlain J. was of the same Opinion with Doderidge and Houghton, that the Prescription was Infufficient. * S. P. 1 Salk. 336. Mich. 9. Anne B. R. in Case of Starr v. Rookesby.

14. A. was Possessed of a Close adjoining to a Close of B. the Fences between the said two Cloes had, Time out of Mind, been repaired by the Tenants and Occupiers of B's Close. The Fence was not repaired, so that B's Cattle came into A's Close; A. brought an Action on the Close against B. setting forth this Matter, and had Judgment in C. B. and upon Error brought in B. R. this Judgment was affirmed; and per Cur. the Plaintiff has made himself a sufficient Title in his Declaration, by proving the Defendant bound to this Charge by Prescription, which Prescription is sufficiently alleged; For by * Tenentes is meant the Owners of the Fee Simple, and by Occupatores those that come in under them. That Tenentes is to taken, appears by the Writ de Curia Claudenda, which is a Writ of Right, and lies only for a Tenant in Fee; and as this is a Charge upon the Land, which runs with it, there is good Reason, why every Occupier should be bound; and it is sufficient for the Plaintiff to Charge the Tenentes, and Occupatores; because it is impossible, that he, who is a Stranger, should be able to know, and set forth their particular Estates, Titles, and Interests; but the Prescription is annexed to the Tenentes, that is to say, Tenants of the Fee; yet, on a Travers of the Prescription, it would be good Evidence, that the Tenants for Years have from Time to Time fenced, and repaired; For perhaps the Estate has not since Time of Memory been in the actual Occupation of the Owner of the Fee. 1 Salk. 335, 336. Mich. 9. Anne B. R. Starr v. Rookesby.

[See (C)]

Fens.

(A) Contracts relating to Draining them.

1. 43 Eliz. II. Estats that all Contrattoes, or Bargains made of part of such Wafles Commons, or several Grounds, (lying in or near the same) as are subject to surrounding, between the Lords, Commoners, or Owners thereof, on the one Part, and the Drainers on the other Part, shall be good in Law according to the Manner and Forms of such Contrattoes, or Bargains. Where the Queen, her Heirs and Successors, hath an Interest in such Wafles, &c. such Contrattoes or Bargains, shall not bind them, unless they be written in Parchment, indentured and certified in Chancery, and the Royal Affent thereto first obtained and signified under the Privy, or Great Seal, when the Wafles or Soils are of the Poffessions of the Crown, but under the Seal of the Duties of Lancaster, and enrolled in that Court, when they are of that Kind.
This Act shall not impair, or take away the Interest of such Lords, Com-
muners, or Owners in any Part of the Residuum of the Wastes or Commons not
Affixed to the said Drainers, or any Franchises, or Liberty, but that the
same may be lawfully used, as if this Act, or such Contract, or Burgam had
not been made.
This Act not to be prejudicial to Ports, or Havens, neither shall it be put in
Execution within 8 Miles of Tynmouth, or 6 Miles of Lynn.

Feoffment.

(A) Livery. [Or what is a Feoffment.]

1. A Feoffment properly is, where there is a Transmutation of Posses-
sion from one Person to another. Br. Feoffmt. de terres, pl. 1. 10.
2. A Feoffment properly betokens a Conveyance in Fee, tho' sometimes
'tis so called, when a Feehold only passes. Co. Litt. S. 1. 9.
3. A Feoffment is by the Feudists, called an Involution. See Spelm. Glois, verbo Feofare.
4. If a Man makes a Deed of Feoffment to another, and delivers the
Deed to him in the Land, or upon the Land, 'tis a good Feoffment, by all
the Justices in C. B. Br. Feoffmnt de terre pl. 72. cites 35 H. 8.
5. A feied in Fee leaived to B. for Years; after A. made Deed of Feof-
ment to Leffe of the same Lands in Fee, by the Words, Dedi & Concessit,
with Letter of Attorney, within the same Deed, to make Livery to Leffe.
The Deed of Feoffment was delivered to J. to deliver the fame to B. who
delivered the fame accordingly.—(Leffe may take the Conveyance as a
Feoffment, or Confirmation) Leffe delivered the fame to the Attorney,
named in the Deed, who made Livery accordingly.—By Acceptance of
which Livery B. has determined his Election to take by Feoffment. 2 Le.
Trin. 28 Eliz. C. B. Lennard's Cafe.
6. If Tenant in Tenal be dissatisfied, and makes a Deed of Feoffment, and
delivers the fame to the Difractor, who delivers the same to the Attorney
named in the Deed, who makes Livery accordingly; this is a good Feof-
ment and Discontinuance, per Anderson. 2 Le. 192. Lennard's Cafe.
7. 'Tis not a Feoffment without Livery and Attorney. Cro. J. 637.
Notwithstanding a
Confession on espress'd the Ue shall not change, nor any Estate shall vest be it but at will, until the Livery be
made thereupon, per Popham Ch. J and agreed by all the Justices Pop. 99. in Cafe of Collard v. Collard.

[ See (B. 2. ) ]

(A. 2) The Force of a Feoffment. And what is Extin-
guished by it.

1. If my Entry be taken away, and I oult the Tenant, and after Enseoff
him by Deed, he is remitted, and I shall be Barred; For this is a good
Confirmation. Br. Feoffmnt de terre, pl. 84. cites 11 H. 7. 20.
2. And if a Feme soho hath Title of Dower, enters and Enseoff the Heir
by Deed, her Title of Dower is determined; For 'tis a good Confirmation and
and discharge of the Dower, and c. contra, without Deed. Br. Feoffment de terre, pl. 84. cites 11 H. 7. 22.


5. Possibility to be Tenant by the Curtesy is gone by Feoffment; fo of Assignmt; and fo of Writ of Detent. Arg. 2 Roll. R. 337. cites 9 H. 7. 14 H. 5. 3 E. 3.


[See Fines (C. 2)—As to barring Entails see Estates (X. 2) &c.]

(A. 3) Uses Veisted, or Changed. In what Cases by a Feoffment.

If a Man makes a Feoff-ment, and assigns a Selion to the Deed, containing the Use, he cannot change the Use afterwards. Br. Feoffments. Uses, pl. 47. cites 50 H. 8.

& if he expresses the tse in the Deed of Feoffment. But contrary where he declares the Use by Words of a Will, viz. I will, that my Feoffees shall be feited to such a Use; there he may change the Use, because it is by Will, &c. Br. Feoffments al Us. pl. 47. cites 50 H. 8.

1. A made a Feoffment to B. to the Use of his left Will expressed in the same Deed, viz. to his own proper Use for his Life, and after to F. C. his Son in Tail, &c. and after he made a Leafe for Years, and died; and 'twas the Opinion of the Court, and of all except Shelly, that he may alter his Will in this Cafe; for where this word Will is expressed in the Deed, or Schedule, he may alter his Will notwithstanding the other Words; but where the Use is declared upon the Livery without this word Will, there he can't alter his Will. Br. Feoffment, &c. pl. 1. cites 19 H. 8. 11.

2. The Lord Audley made a Feoffment to B. G. and others, and afterwards by Indenture reciting the said Feoffment be declared, the same was made to the Intent his Feoffees should perform his left Will, to this Effect (viz.) my Will is, that my Feoffees shall stand feited, &c. to pay all my Debts, and afterwards that they make an Estate of the Lands to me and Elizabeth my Wife, and to the Heirs of our Bodies, with divers Remainders over; the said Lord had Issue by one Wife a Son, and by another a Daughter; the Feoffees made no Estate to the Lord and his Wife; adjudged, that, by this Feoffment and Deed, no Use was changed; For tho' the Feoffees shall be feited to the Use of the Feoffor and his Heirs (for there was no Confederation, for which they should be seited to their own Use) yet the same can't make a new Use to the Lord and to his Wife in Tail; neither can this Writing take Effect as a Will; because it appoints an Estate to be made to the Lord himself, and he can't take by his own Will. 2 Leon. 159. 21. Eliz. in Can. Ed Audley's Cafe.

3. If a Feoffment is made, but no Livery, and Feoffee enters, he is become Tenant at Will to the Feoffor; because he enters by his Confin; but Feoffor may out him when he pleases. Co. Litt. S. 70. pag. 56. b.

4. A Feoffment to a Man upon Condition, that he shall eat; shall be good; but a Bond with such a Condition void. For in the one Cafe, let the Man should have any temptation to do the Act, the Law secures him the Possession of the Land without performing the Condition; and in the other,
other, frees him from the Penalty of the Bond; so that the Law has the same End in View in making the Feoffment good, and the Bond void, viz. the Prevention of the Fact; per Parker Ch. J. in delivering the Opinion of the Court. Hill. 11 Ann. B. R. 10 Mod. 134, in Case of Mitchell v. Reynolds.

[See E fate (I. 6) Jointants (L) Uses (A. a. 4)]

(A. 4) The Difference between Feoffments at Common Law, and Feoffments by the Statute 1 R. 3.

THERE is a Difference between a Feoffment at the Common Law, and a Feoffment according to the Statute of R. 3, which operates sub modo. Feoffments are the Ancient Conveyances of Lands; but Feoffments according to the Statute of R. 3, are Upanarts and have not had continuance above 150 Years. In Case of Feoffments at the Common Law the Feoffee ought to be seized of the Lands at the time of the Feoffment, but if a Feoffment be according to the Statute of R. 3, in such Case the Feoffee need not be in Possession. Feoffments at the Common Law, give away both Estates and Rights, but Feoffments by the Statute of R. 3, give the Estates, but not the Rights. In Case of Feoffment at the Common Law, the Fee is in, in the Person, viz. by the Feoffee; but in Case of Feoffment by the Statute of R. 3, the Feoffees are in, in the Poit, viz. by the first Feoffees. So a Feoffment by Cestui que Use by force of the Statute of R. 3 will not be taken upon any thing but what the Statute requires. Godb. 318. Arg. Patch. 21 Jac. in Case of the Ld Sheffield v. Ratcliffe.—cites 5 H. 7. 5. 21 H. 7. 25.


1. LEssee for Life may surrender to him in Reversion, without making any Livery. 44 Ant. 3. Cidna.


3. If a House or Land appertaines to an Office, this may pass by Grant of the Office without Livery. Co. Litt. 49.

4. If a House or Chamber appertaines to a Corody, it may pass by Grant of a Corody without Livery. Co. Litt. 49.

5. A Freehold may, by Custom, be surrendered without Livery. Co. Litt. 49.

6. It was held by all the Justices in the Exchequer Chamber, that if the King makes Feoffment of the Land, which be held by the Dutey of Livery, in Fee, or for Life, he must make Livery as well as a common Person, if it be not of the Lands within the County Palatine; for they pass by Letters Patents of the Duties without Livery; but a Lease for Years of them, or of other Lands ought to be by Deed, quod nota bene, and quere if the Act of 1 E. 4. which annexed it to the King and his Heirs, was remembered. Br. Feoffment de terre. pl. 51. cites 21 E. 4. 60.

7. If a Man makes Feoffment to the King by Deed, 'tis good without Livery, if he inroll the Deed, otherwise Not, quod nota; For the King cannot take but by matter of Record. Br. Feoffment de terre. pl. 69. cites 29 H. 8.

8. If a Deed be inrolled in London, it binds as a Fine at Common Law, but not as a Fine with Proclamations; and Livery of Seisin is not requisite upon
upon such Deed; and it is Discontinuance without Livery; and because the Custom there is tayed by diverse Acts of Parliaments, it shall bind as a Fine. Br. Fines, pl. 110. cites 31 H. 8.

9. Gift of Land, Relief, and Tythes in Fee and no Livery made, the Tythes do not pass; tho' words of Grant will pass them without Livery. Mo. 496. Arg. cites Patch. 24. Eliz. Bofome's Cafe.


11. A is Lessee at Will, Leslor leaves to A, for Years, Remainder to B, in Fee; 'tis good tho' no Livery be made; For* Poelfion countervail Liv- the Lessee at ry. D. 269. b. Marg. pl. 20. cites Patch. 38 Eliz. C. B. Cooper v. Calambil.

12. Grant by Deed of all my Trees growing within my Manor of D. to A. and his Heirs; A. shall have Inheritance in them without Livery and Seisin. 11 Rep. 49. b. Mich. 12 Jac. in Litorid's Cafe.

13. Inheritance in Land may be granted without Livery, tho' the Land itself cannot, as Fifherman Terre per Morton, J. cites 17 E. 4. 6. and Fitzh. Praccep. 55. And Windham, J. said, that it may Trees, which are an Inheritance in the Land. Lev. 171. Trin. 17 Car. 2. in Cafe of Jemmet v. Cooly.

14. A. seld in Fee of a Trust Estate, and having two Daughters B. and C. conveyed the same to B. and her Heirs by Deed in Nature of a Poelfion without Livery and Seisin; and held that the Trust palled tho' the Deed was not executed by Livery, and that 'twas sufficient to declare the same, which as the Law then stood might be declared by Parol. N. Ch. R. 86. Cranbarn v. Delmahoy.

15. Where Grants are made for Life or Lives in pursuance of a Power, Livery and Seisin is not necessary; because it is only the Execution of an Authority. As in Cafe of Leaves for 3 Lives made by bare Tenant for Life who has such Power; and fo of a Sale of Land by Executors by Virtue of the Will. 12 Mod. 201. per HoltCh. J. in delivering the Opinion of the Court, Trin. 10 W. 3. in the Cafe of Saunders v. Owen.

(B. 2) What amounts to a Feoffment.

1. Leafc and Release countervaila a Feoffment, Br. Feoffment de terres. pl. 5. cites 44 E. 3. 3. — Leafc for Years and Release is good Feoffment, because Frankentenement partes by the Release, per Cul- ppper said to have been so adjudged, per Bellknap. But Culpper said, if it was of a Grant of a Reversion after the Death of Tenant for Life, it would be otherwise, as he thought. 11 H. 4. 33. a. b. — Br. Feoffment de terres pl. 10. S. C. adds, that it would be otherwise, if it be with Warn-

2. Release to Diflesor is Extinguishment of the Action and Right, and not a Feoffment. Br. Feoffment de terres. pl. 10. cites 11 H. 4. 33. per Hanciord. And per Thirming, Feoffment is, where there is a Frankten-
tation of Poelfion from one to another, which there is not upon a Re-

3. A made a Feoffment to the Use of himsell in Tail, Remainder to B. his Son in Tail. A died. B. entred, and by Intentence bargained and je-

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*Note: The text contains references to various legal authorities, such as Acts of Parliaments, cases cited in reports, and legal terms. The document appears to be a legal treatise discussing various aspects of feoffment and related legal principles, including grants, releases, and the nature of feoffments.
Feoffment.

fold (without any Words of Deed &c. conceiv'd) the Lands to the Use of J. S. in Fee, and the Indenture was a Letter of Attorney to make Livery which was made accordingly. J. S. by the said Indenture covenanted, that if B. before such a Day paid 45 s. then J. S. and his Heirs would stand feited, &c. to the Use of B. and his Heirs; and if B. did not pay, &c. Then if the said J. S. did not pay to the said B. within four Days after, 10 l. that J. S. and his Heirs should thenceforth be feited to the Use of the said B. and his Heirs, &c. and B. covenanted further, to make such further Assurance, as the Counsel of B. should advise; both failed of Payment; B. sued a Fine to J. S. without any Consideration, &c. was adjudged a good Feoffment well executed by the Livery, notwithstanding the Words of Bargain and Sale only, and that the Covenant to be feited to the new Use conditionally upon Payment and Nonpayment being in one and the same Deed, should raise the Ufe upon the Contingency according to the Limitation of it. Trin. 26 Eliz. B. R. Le. 25. Benicomb v. Parker.

* Where one, who hath a Feehold in Possession, levies a Fine conccce, &c. this enures as a Feoffment with Livery on Record; but where he hath but a Receiuer or Remainder, it enures only as a Grant thereof, without Tort presumed or done to the Possession of a Stranger, who hath the Freehold. Arg. Mo. id. 629.

5. A. feited in Fee encolled B. his Son in Fee, to the Use of the said A. D. 38, pl. 358. for Life, and after to the Use of B. in Fee; and after this to the Intent that A. should be able to make a Lease to B. for 60 Years; B. without any Writing Feoffavit Dictum A. de Tenementis praeditis habend. idem A. & hereditibus suis. The Court held the Feoffment good, and in this is upon the implication, that A. shall have the Land to him and his Heirs intended. And. 51. pl. 126. Lancast v. Aller.

6 A. Bargain and Sale was made to J. S. and his Heirs by Deed indentured but not enrolled, and the Bargainer made Livery of the Land, and covenanted Formam Charta, &c. This was Held a good Feoffment. 2 And. 68. Denton's Cafe.


(B. 3) Void; what shall be said a void Feoffment.

1. 1 R. 2. 9. Every Gift of Feoffment of Lands made by Francl, or Maintenence shall be void, and the Difficise (notwithstanding such Attention) be recov'd, shall recover against the first Difficisor both his Lands and double Damages provided he commence his Suit within a Year after the Difficise, and that such Feoffor be then Permn of the Profs.


land and Tenements, are wrongfully delayed of their Rights and Actions, by Gifts and Feoffments made, &c. and also recites that many dificise others, and made Feoffment to Persons unknown, &c. And ordiats and enacts, that the Dificises shall have their Recoveries against the Difficisors who are Persons of the Profit, (which is as much as to say, that they are Celsfys que Ufe,) so that they commence their Suit within a Year after the Difficise done. And to the Preamble declares, that the Makers of the Act intended to remedy, was to those who had right, and paid Title, or were disclosed, and the Parvus gives the Remedy only to Dificises, and it must be a Difficise in Fact, and after this Ufe made; in which Cafe Remedy is given to such Dificise against Celsfys que Ufe, and a Recovery against such shall bind him and the Feoffor; and fo this Act makes no other but Celsfys que Ufe able to lose the Land of the Feoffees in a just Action brought by the Dificise, but does not make him able to lose the Land of the Feoffees in a just Action brought by the Feoffor, and to such Remedy there is given, and then to the Feoffor, and he shall have Action against the Person of the Profit. Ibid. pl. 19. cites it as Held by Firr-Jones Ch. J. and E. grierch J. and divers Others. And such Feoffment would not make a Remedy in Prejudice of a third Person, as it seems. Ibid. Co. Litt. 569—Hank. pl. C. 265; S. 5

2. Where
2. Where Baron and Feoff, being Ceiling give Use in Right of his Wife, make a Feoffment, and the Baron dies; this Feoffment is not void ab initio, but is now determined. Br. Feoffment de terres. pl. 1. cites 27 H. 8. 23. Per Fitzh.

3. A Feoffment by a Feoff of her Jointure made by her first Baron in Poildevon, or in Use is void by the Statute of 11 H. 7, as to the Her, but not as to all. Per Fitzh. Br. Feoffment de terres. pl. 1. cites 27 H. 8. 23.

(B. 4) Good. In what Cases a Feoffment may be good, where a Grant is not good.

1. If a Grant be made to B, by the Name of Knight, where B is no Knight, it is a void Grant. But Contra of such Deed of Feoffment, by Reason of the Livery of Seisin. Per Roll and the best Opinion. Br. Grants. pl. 50. cites 4 H. 6. 1. [See Grant (D).]

(C) Of what Things it may be made.

1. A Feoffment cannot be made of incorporate Things; Because no Livery can be of them. Co. Litt. 49.

2. A Feoffment cannot be made of an Advowson in Grofs; Because no Livery can be of it. Contra 11 H. 6. 4.


3. A Feoffment and Livery may be made in an Upper Chamber; For a Tenant may have an Inheritance in it, and it is Corporal. Co. Litt. 49. b.

4. Feoffment by Tenant in Common is good of his Majesty, but undisposed, and not in Seeralty. Br. Feoffment de terres. pl. 75.

5. No Livery can be made of a running Water, because it is fugitive. Secus of Water in a Flawing Pool. 4 Le. 238. pl. 385. Mich. 6 Jac. B. R. Anon.


(C. 2) What amounts to a Livery upon the Land, or in Law.

1. If Words may amount to a Livery within View, much more it shall upon the Land, as I am content you shall enjoy this Land, &c. according to the Deed, &c. Co. Litt. 48. a.

2. But bare delivering the Deed upon the Land amounts to no Livery of the Land; For it has another Operation, (viz.) to take Effect as a Deed. But if he deliver the Deed on the Land, in Name of Seisin of all the Lands contained in the Deed, this is a good Livery. Co. Litt. 48. a.

3. So Delivery of any Thing upon the Land in the Name of Seisin of that Land, tho' it be nothing concerning the Land, as a Ring of Gold, is good. Co. Litt. 48. a. fyys that it had been so resolved by all the Judges.


5. If

5. If a Feoffment be of diverse Lands, and an House, in which the Feoffor dwells, and devolves the Feoffment in the House, but says nothing of the Land, yet 'tis good for all. For they having an **intention to give and take** Livery, 'tis a good Feoffment; For they supposed there for that Purpooe. *Cro. E. 145.* Tr. 31 Eliz. C. B. **Mills v. Snowball.** — *C. B. 146.* S. C. 'Tis good Livery if Feoffor intended to make Livery.—But *Le. 207.* states this Case thus, if a Feoffment be of a House, and the Deed is delivered in the House without other Circumstances; the same does not amount to a Livery of Seisin. But if he does say All, by which the Intent of Feoffor appears, that the Feoffee should have Livery of Seisin, as if the Parties so of Purpose to the Place intended to pass, to the intent the Deed may be delivered in that Kind; it amounts to a Livery. *Le. 207. Mills v. Snowball.*

Land, because it would have amounted to a Livery in Law; yet not being found that the Land was 


6. If a makes a Deed of Feoffment of Land, and delivers the Deed, and says no more but, take and enjoy the Land, or take the Land according to the Deed, or such Words which amount to a Livery, when he delivers the Deed nothing patlitch; It the Law requires more Ceremony than the Delivery of the Deed on the Land. *C. J. 82.* Vaughan v. Holdes; 

So where the Feoffor sold, *Sed. cent.* you should have it in the House according to the Deed to 

you made. This is not a good Livery; For there is no Intent expressed, either by Words or Circumstances, to make Livery. But rather impart an *Intention* and Promise to do a future Act. *Le. 5. Hill & Jac. Mound's Case.*

[See (T).]

(D) Feoffment: By what Name a Feoffment may be made of the Thing.

1. A House may pass by a Deed of Feoffment, which makes mention only of a Curteilage. *13 P. 4. to. 6. Dubitatir.*

2. A Feoffment may be of a Manor by the Name of a Knight's Fee. *17 E. 3. 8. b.*

3. If a Man seised of a Manor leaves Parcel of the Demesnes for Life, and alter makes Feoffment of the Manor to which the Life, and the Tenants of the Manor attorn. The Reversion of this Land so leften for Life, shall pass by this; Because it is Parcel of the Manor. *Rich. 15 J. B. R. because Bore and Palmer per Houghton.*

4. If a Manor be known only by the Name of Sarret, and he, who is seised of this Manor, makes Deed of Feoffment by the Name of Seeriot, and delivers Seisin seculans Forman Charter; the Manor shall pass by it. For the making Delvers seculans Forman Charter, refers to the Estate, and not to the Name. *B. 40. and 41 Cl. B. 26. by 2. between Ever and Heidon.*

5. If a Man by Deed grants Vetusum to another and his Heirs, and makes Livery seculans Forman Charter he shall have by this Vet- 

tum rex, *viz.* the Corn, Grass, Underwood, Sweepage, and such like.

6. But in this Case he shall not have the Soile by this Grant; Because he has by this but a particular Right in the Land. For by this, he shall not have the Houses, Timber-Trees, Mines and other real Things, Parcel of the Inheritance. *Co. Litt. 4. b.*
Feoffment.

7. So it is of Grant of Herbage of Land, the Soile shall not pass, but he shall have only a particular Interest; But shall have a Terriage, and a great Claim Chyntum bregit. Co. Litt. 4. b.
8. If a Man by Deed grants Separately Pfchiamon in a River, and makes Livery Secundum Fornam Chartae, the Soile shall not pass by it, nor the Water. For if the River becomes dry, the Grantor may take the Benefice of the Soile. Co. Litt. 4. b.
9. So if a Man grants Aquam fluor, the Soile does not pass, but the Fithery within the Water shall pass. Co. Litt. 4. b.
10. But if a Man by Deed grants the Probits of his Land, and makes Livery Secundum Fornam Chartae, the Soile shall pass. Co. Litt. 4. b.
11. By the Grant of Boilloury of Salt, the Soile will pass. Co. Litt. 4. b.

And he may bring Affife of Compend of Turbarry, and shall recover but he cannot bring Affife of the Soile. Br. Feoffment de terres pl. 21. cites 5 Aff. 9.

12. Scire facias upon a Fine of certain Lands, the Tenant pleaded a Feoffment by the Anceilor of the Plaintiff with Warranty of the same Land, by Name of the Manor of D. where in fact the Land is no Manor, and yet a good Plea by Judgment, by Reason of the Livery of Seisin of the same Land. Br. Sci. i. pl. 220. cites 22 H. 6. 39.
13. If a Man has a Manor in the County of S, and Land is held of the Manor which lies in the County of S. By Grant of the Manor with the Appurtenances, in the County of N. the Services of the Land in the other County shall pass; and by Livery of the Manor made in the one County, the Services of the other County shall pass. Br. Grants. pl. 32. cites 21 E. 3. 18.
14. If a Man has a moveable Estate of Inheritance in 13 Acres Parcel of a Meadow of 80 Acres, the Charter of Feoffment ought to be generally of 13 Acres, lying within the Meadow of 80 Acres, without bounding or describing it in Certainty, and Livery may be of the 13 Acres allotted to the Feoffor for the Year, secundum Fornam Chartae, and this is good Livery to pass the Content of 13 Acres in what Place heever it lies in that Meadow. Co. Litt. 48. b.

(E) What Persons may make [Feoffment or] Livery of Seisin, and to whom. [In Respect of Incapacity in the Person]

1. If Infant makes Feoffment, and makes Livery himself, it is a good Feoffment till it be defeated. 43 E. 3. 12. b. 9 H. 6. 5.
cities 18 E. 4. pl. 27.—Br. Coverture. pl. 1. cites 26 H. 8. 2.
2. And it is not material of what Age the Infant is at the making of the Feoffment; For whether he be within Age of Dilection, viz. of 5 or 7 Years, or beyond the Age of Dilection, viz. 16 or more, his Feoffment is not void. 9 H. 6. 6. b.
3. If a Man de non fane Memoriam makes Feoffment and Livery himself, it is not void. Contra 9 H. 6. 6.
Feoffment.

175.

175. must be understood of a Feoffment, or a Fine. That is being the ancient and only Conveyances at that Time. Per Holt. Hil. 9 W. 5. B. R. 2 Salk. 42. 7. in Case of Thompson v. Lewis.

4. But if he makes Livery by Attorney, it is void. 7 P. 4. 5. b. 12. See Fats (A) pl. 5. — Br. Feoffment de terre. pl. 3. cites 7 H. 4. 5. — Ibid. pl. 9. cites 7 H. 4. 12. — Ibid. pl. 48. cites 18 E. 4. 27.

5. If a Man makes Feoffment by Deeds, it is not void. Contra It is only voidable. Br. Feoffment de teres. pl. 43. cites 13 E. 4. 27.

6. If Baron and Feme are Jointtenants, and Baron makes Feoffment and Livery, the Feme being upon the Land, and disagreeing to it; yet it is good. 21 E. 3. 6. b.

7. If 4 join in a Feoffment, whereby one only is feilded of the Land, yet it is a good Feoffment. 42 b. 3. 12. b.

8. If Infant feilded of Land, joins in Feoffment with a Stranger, who has nothing in it, yet it is a good Feoffment. 42 E. 3. 12. b. See Pass Feoffment himself it is voidable, as it seems; like Feoffment of an Infant, or one (A) non finem Memoriam. If it be by Letter of Attorney, it seems a Diffelion.


9. He, who is outlawed in action personal, and Office is found, that he was feilded of such Land the Day of the Outlawry, may make Feoffment of his Land well enough; For the King is not seised. Br. Office Devant, &c. pl. 2. cites 9 H. 6. 25.

10. The King cannot be seised without Deed inviol'd; For no Livery can be made to him. Br. Office devant, &c. pl. 41. cites 5 E. 4. 8.

11. There are some Persons, who may make Livery of Seisin in their own Right, and also as Servants to others: And some cannot make Livery of Seisin in their own Right, but as Servants unto others they may. And some may make Livery of Seisin by themselves in their own Right unto some Persons, and unto others they cannot; and some shall make Livery of Seisin, and take by the same Livery., &c. Perk. S. 183.

12. All such Persons, as may Grant by themselves, may make Livery of Seisin themselves, viz. in their own Right, and as Servants unto others, in the same Manner and Form, as they may grant, &c. Mutatis mutandis, &c. Perk. S. 183.

13. If a Man assign's a married Woman, and makes Letter of Attorney unto the Husband to make Livery of Seisin according to the Deed, and he makes Livery of Seisin accordingly, it is a good Feoffment; For the Husband is but a Means to convey the Freehold to the Wife; for by this Act done, no Freehold doth pass from the Perfom, &c. Perk. S. 196.

14. Livery to a Corporation is not good, unless it be executed by Letter of Attorney. Admitted 14 Jac. B. R. Cro. J. 411. in Case of Ipswich Bailiffs v. Martin and Parker. [ See (R. 2) ]

(E. 2) What Person may make Livery, and to whom; In Respect of Estate.

1. If a Man leaves Land for Life, and the Lessor thereof assign's a Stranger, and makes a Letter of Attorney unto his Lessor to make Livery of Seisin
Seilin accordingly, and he makes Livery; in this Case it hath been said by some Perfons, that the Lessor might enter upon the Feeftot for a Forfeiture, notwithstanding the Livery of Seilin made by himfelf; For they fay that the Feeftot took nothing by him; for the Lessor had nothing to do upon the Land, if not to fee whether Wall were done, and to dilstrain for his Rent and Services, if they were behind. Perk. S. 690.

2. If A. and B. Jointly or in Fee, leave C. for Life, and C. grants his Effedit to B. Some think that this fhall efcape by Way of Surrender; becaufe every of the Leforrs is fided of the Whole, and of the whole Reversion; and the Grant of the Eftate of the particular Tenant cannot take Effedit by Way of Grant, without Livery of Seilin; and the Grantee cannot take Livery of Seilin of the fame Land, becaufe he hath the Reversion in Fee of the whole Land in him immediate to the fame particular Eftate, and in his own Right. Perk. S. 62.

3. Difeffor cannot induce Difeffee by matter in Fact; becaufe the Entry of Difeffee is lawful upon him, &c. Perk. S. 197.

4. If Feeftot be made to the Ufe of W. N. for Life, and after, to the Ufe of J. S. and his Heirs, there Cefly that Ufe in Remainer or Reversion may fell the Remainer or Reversion in the Life of W. N. but he cannot make Feeftot till after his Death. Br. Feeftots al. Ufes. pl. 44. cites 25 H. 8:

5. A. grants Lease to commence at Mich. to B. Remainer in Fee C. Tho' A. makes Livery and Seilin to B. yet the Livery and Seilin, and the Remainer fhall be void, becaufe he has no prefent Eftate to which the Livery may be annexed, nor on which it can reit on the mean Time. Arg. Pl. C. 176. Pauch. 3 Mar. 1. in Cafe of Throgmorton v. Tracy—cites Litt. 12.—See And. S. Okedon v. Sands.

6. A. leaves to B. for Years, the Remainer to the Right Heirs of the faid B. and makes Livery; the Remainer is void; becaufe there is not any Perfons in effe, who can take by the Livery prefently; and every Livery ought to have its Operation prefently; But where a Lease is made to B. for Life, the Remainer to his Right Heirs; there he has a Fee executed, and it fhall not be in Abeyance; For there he takes the Freehold by the Livery, per Dyer and Manwood. Mich. 19 Eliz. 4. Le. 21. pl. 67. Anon:

7. Cefly que Ufe before the Statute of 27 H. 8. of divers Lands by feveral Conveyances, the Ufe of fome being раulted upon Recovery, of fome upon Fine, and of fome upon Feeftot; and he made a Feeftot of all thefe Lands by Deed, with a Letter of Attorney to make Livery; the Attorney entered into part of the Land, and made Livery in the Name of the Whole; and it was agreed by all the Justices, that the Lands paffed, notwithstanding in other's Possifion, viz. other Feeftots, cited by Dyer. 20 Eliz. C. B. Le. 265. in Bracebridge's Cafe, as Keller's Cafe.

This Cafe is in other Books called by the Name of Jamington v. Ri- der, and Jamington v. Richards, and Rider v. Jam- ington, but the Points something varying, they are not here cited.

* S. P. per Anderfon.

Feoffment.

10. A Leissee for Years, Remainder to B. in Tail; Remainder over. A. Cro. E. 53. and Vo. 411. S. C. but not S. P. Hill. infest'd J. S. and made a Letter of Attorney to W. R. to enter into the Lands and seal the Feoffment, and deliver it in his Name, to the Use of B. and his Heirs. B. made Letter of Attorney to C. to enter in his Name, who entered accordingly. This was held a good Feoffment, tho' both A. and the Attorney were Diffidens. For it is good between the Feoffor and Feoffee. For the Remainder Man by the Feoffment, and Entry, is remitted, and the Term gone, the Preceding having come to it. Gouldsbe. 92. Trin. 53 Eliz. Mounton v. Webb.

11. If Leissee for 10 Years, makes a Lease for 1 Year to Revenue; there he in Revenue, who has the Land for a Year, may make a Feoffment to the Leissee for 10 Years; and it is good, per Clench. 41 Eliz. Trin. B. R. Ow. 66. in Case of Knotts v. Everhead.

12. A Leissee for Years, Remainder to B. for Life, Remainder to C. and D: enfeoff'd A. by Deed, and made Livery. The Conveyance was held void; For it could not work by Livery to the Tenant for Years, who was in Possession before. Arg. Vent. 360. Hill. 33 and 34 Car. 2. in Case of Moor v. Pitt.

13. Some Persons may make Livery to some, who cannot do it to others, who yet may take by Livery from others. As if one Jointeant makes Feoffment to the other; This cannot be a good Deed at Common Law; For he cannot make Livery and Seisin, because the other is jointly seiz'd with him. Yet this Deed shall ensue by way of Confirmation, and must be so pleased; and not literally as the Deed is worded. 4 Mod. 150. Mich. 4 W. and M. B. R. in Case of Barker and al. v. Lade. Linnell to S. Stranger for Years, the Remainder for Life, in Tail, or Fee to his Companion, and Livery is made to the Leissee for Years; that this Remainder is good. But yet it seems not good, because it had not been good, if Livery had not been made to the Leissee for Years; so it appears, that the Remainder shall pass by the Livery; and one Jointeant cannot make Livery to his Companion, &c. Ideo Quaere Perk. S. 197.

14. But if 2 Coparceners are, one of them may entail the other of her Part, or Portion. Perk. S. 193.

[F] What Name [a Man] may make Feoffment [by].

1. W. Porter may make Feoffment by the Name of W. Fannmilworth. 14 D. 4. 35. b.

[See Fails (B).---Grants (B).]

(G) To what Person (a)---[In Respect of Estate (b)]---[and what is Name sufficient of Feoffee(b)].

1. One Coparcener may make Feoffment to the Other. 17 E. 3. 47. b.

Confirmation without Livery; For it countervails Remis & Confirmari. Br. Confirmation pl. 18. cites to E. 4. 3. per Littleton.

2. One Jointeant cannot make Feoffment to the Other; Because he is heir of all before. Contra 32 C. 3. Age. admitted per Edw. S. P. But if he be heir of all before. Contra 32 C. 3. Age. admitted per Edw. S. P. But if he be heir of all before. Contra 32 C. 3. Age. admitted per Edw. Zu. Z 3 A.
Feoffment.

3. A Feoffment may be made to an Abbot, or Prior, by the Name of Abbot or Prior of such a Place; not without naming them by their Names of Baptism. 39 C. 3. 13. b.

4. If the same Law is of a Mayor, or Dean. 39 E. 3. 13. b.

5. If Deed of Feoffment be made to J. S. and Letter of Attorney to make Livery to J. S. unless he be a Chaplain. 4 D. 6. 1. b.

6. *Livery can’t be made to the King; For he can’t be enfeoff’d, but by Deed inrolled of Record. Br. Prerog. pl. 66. cites E. 4. 7.

(H) By what Name the Feoffment may be made to the Feoffee. Name of Feoffee. [Misnamed].

1. A Feoffment to J. S. Militi, is good, tho’ he be not a Knight; Because it passes by the Livery. 4 D. 6. 1. b.

2. A Feoffment may be made to Julian, by Name of Gilder or Gill. 29 Att. 16.

3. If a Feoffment be made to J. and A. his Wife, where his Wife’s Name is M, she shall take nothing by this Feoffment. 3 Affile 4. But Quere.

[See Grants (D).]

(I) What Thing is necessary to perfect the Livery. Feoffment by Livery within the View.

1. If a Deed of Feoffment be delivered, and Livery within the View made, yet it is not a good Feoffment, if the Feoffee does not enter into the Land; For it is not executed before Entry. 38 E. 3. 11. b. admitted 38 Att. 2. Co. Litt. 48. b.

2. When a Livery is made within the View, if the Feoffor, or Feoffee, dies before Entry of the Feoffee, it is void. Co. Litt. 48. b.

3. If a Man makes a Charter of Feoffment, and makes Livery within the View; and the Feoffee darest not enter for fear of Death, but claims it; this shall be good Execution of the Livery, and shall vest the Frankenement in him. Co. Litt. 48. b.

4. In Affile, ’twas found by Verdict, that A. was seiz’d in Fee, and made a Deed of Feoffment to M. and her Heirs; and before Livery A. marries M. and at the Church Door, extra Terrain, freed her the Land, which was in another County, and delivered her the Deed, and said, that he would that she should have the Land Secondam Formam Charite; and were married, and after they entered; and the Baron, in the Life-Time of M. his Wife, claimed nothing, but in Right of M. his Wife; and M. died; and after the Baron devized the Land to J. S. in Fee, and died; and the Issue of M. brought Affile against the Devisee; and upon this Matter he recovered by Judgment; For the sweating of the Land and their Entry was taken instead of a Livery, and the Baron in his Life did not disagree to it; and the Devise was not taken for a Disagreement; and it is said in the time of H. 8. that express mention shall be made in the Pleading, that the Land was within the View. Br. Feoffment de terre. pl. 55. cites 38 E. 3. 11.

5. Tho’
5. The Livery be made within View, yet the Lease shall be pleaded to be made where the Land is; For 'tis no Livery nor Lease till the Entry of Livery, per Dyer and Welton Justices, D. 233. Marg. pl. 10. Mich. 6 and 7 Eliz. Apric. v. Rogers,—or Sir Walter Denniss's Case.

(K) What shall be said an Execution, of the Livery.

1. If a man makes, and delivers a Foestment to a Feme at the Door of the Monastery, and makes Livery to her within the View, and after takes her to Wife, and after they both go from the House to the same Land; and the Baron never after claimed anything in the Land, but in right of the Feme. This is an Execution of the Livery. For by this he agrees to the Entry of the Feme; or this Entry shall be an Entry for the Feme. 38 E. 3. * 12. Adjudged 39 Am. 2. Adjudged. For there is no alteration of the Estate consequent upon the Intermarriage. View, 186.

He showed her the Land after he had delivered her the Deed, and said he willed that she should have that Land according to the Form of the Deed; after Marriage the enactment, and he never disclaimed or claimed, but in her Right. The Wife died. The Baron deriv'd the Land. But the Land lay in another County, yet in the Heir recovered against the Devisee. Br. Foestment de terre, pl. 11. cites * 23 E. 3. 12.

* This should be 28 E. 3. 11. b. 12.

2. A. and B. Femes jointрастs in Fee; A. made a Charter of Foestment to J. S. and Livery within View, and bid him enter; and after he was executed, married him. Resolved that this Livery was well executed after Marriage; For an Intercit paid by the Livery within View, which cannot be countermanded. Hill. 23 and 24. Car. 2. B. R. Vent. 186. Parions v. Perus.

(K. 2) Livery to one, where it will serve for others.

1. If a Man enoiths 4 by Deed, and makes Livery to the one in the Name of this, is a good Foestment to all; but if a Man enoiths 4 without Deed, and makes Livery to the one in Name of all; there it veils nothing but in him, that takes by the Livery, per Choke, quod Nota Diverity, quod nullus negavit. Br. Foestment de terre, pl. 16. cites 15 E. 4. 18. * 72. S. P. cites Temp. H. 8.

2. Livery is not good to a Mayor and Commonality, or other Corporations, without Deed to receive it by an Attorney; But per Keble a Foestment made to them, and to another is good without Deed, if the other takes the Livery; but Hulcote Contra; For they shall be Tenants in common by their several Capacities; For which they ought to have several Liberates of the Seining. Br. Foestment de terre, pl. 41. cites 7 H. 7. 9.

3. If a Foestment is made to 2, Habend. one Money to one, and the other Money to the other; this Operates as several Conveyances, and not as one; For there must be 2 Liberates, because there are several Freeholds and Liberates to one feudum Forman Chartae will not enure to the other per Holt. Ch. J. Wms. Rep. 18. 19. Hill. 1750. in Cafe of Fiher v. Wigg.

(L) What Possession, or Estate, will hinder the Livery.

1. If a Statute Merchant be extended, if Foestment be made by Receiver and Livery, the Tenant by the Statute continuing it Possession, it is void. 7 D. 4. 19. b.


3. Se Livery is neither settled nor attorned. Br. Foestment, pl. 60. 3. So.
3. So if a Man be seised of a Manor in Leaue for Years, and makes Feoffment of this and of another Manor whereof he is seised in his Hands in the same County, and makes Livery in that not in Leaue, in the Name of both, without ousting the Tenant of the other Manor: This Manor shall not pass by it. 11 H. 4. 71.

D 18. pl. 106 - So in Cafes of a
Leafe of 2
Houses in the
feveral Feoffs-
fions of B. and
C. and a Letter of Attorney to make Livery; if B. and C. are Tenants for Years or Life, the Delivery of the 2d House is void; but if B. and C. are Tenants at Will, the Delivery is good for both. Patch. 32. Eliz. B. R. Cro. E. 181. Williams v. Ash et Ash.

5. But in the land Cafes otherwise it is of a Tenant at Will; Because this determines the Will, and both pass. D. 28. H. 3. 106.


Br. Feoff-
ment. pl. 2a. cites 8 E. 1. and Fizh.

Aliet. 418. — D. 349. pl. 39. per Manwood and Dver, who affented to a Cafe in Point cited by Monmouth as the Lady Upton’s Cafe. — Receiver in Rel. expectation on the Death of Tenant for Life, made a Feoffment to Lessee for Years, to Leaday of Tenant for Life. This is no Feoffment, because he had no Freehold. Cath. 110. Hill 2 js. 2 B R. Swift v. Heath.

8. If Lessee for Years, the Remainder for Life, &c; and he in Reversion in Fee makes Feoffment and Livery to Lessee for Years: This acceptance of the Feoffment, cannot entitle as a Surrender for the Estate for Life in Remainder; yet it shall enter as a Grant of his Estate for the Time to the Feoffee, or at least a Licence to him to make Livery, and is a good Feoffment. P. 49 Eliz. B. R. between Fedes and Kountoart. But Sirch. 40 and 41 Eliz. B. R. this was adjudged to the contrary.

9. If a Man makes a Charter of Feoffment of 2 Acres, whereof one is in Leaue for Years to an Infant, and, of the other, he is lifted in Demenef, but the Feoffor is Curator or Guardian to the Infant, by which he is poissessed of this Acre also, and makes Livery in the Acre in Demenef, in the Name of both; this is good to pass both. D. 38 J a. in the Exchequer, per Cur.

see’s being.


10. If a Man leaves a House and divers Cloises in one County, to 25 Years, and after makes a Deed of Feoffment of all to C, and makes Livery of Servit in the Cloises, the Lessee or his Wfe, or Servants then being in the House, the Livery is void in toto; For the Lessee cannot be upon every Parcel of the Land to him demised, for the Continuance of his Possession in it, and therefore his being upon any part of the Thing demised is insufficient to continue his Possession in the whole. Co. Litt. 48 b. Co. 2. Bettisworth 31 b. Adjudged. Dice D. 28. H. 8. 15. 107.


11. But if the Lessee be absent, and has not any Wife or Servants in Possession, the he has Cattle upon the Land, yet if the Lessee makes Livery of Servit of the Land, it is good. Co. Litt. 43 b.

12. If
Feoffment. 181


12. If Lefsee for Years leafs Parcel of the Land for a certain time, and after the Lefsee makes a Deed of Feoffment, and makes Livery in this Parcel, which is in the Possession of the 2d Lefsee, putting him out of Possession. This is good Livery, tho' the first Lefsee was in Possession of the Estate. For by his Lefsee he has blighted the Possession of it from the Receiver. 2 Rep. 52. Bettsworth's Cae.

13. But otherwise it would be, if he had leased this Parcel at Will. 2 Rep. 52. Bettsworth's Cae.

15. If a Man leases a House for Years, and after makes Feoffment with Letter of Attorney, and the Attorney comes to the House to make Livery in the Absence of the Lefsee, and commands the Servant of the Lefsee to come out of the House, who does so, and in his Prefence makes Livery; and immediately the Master returns, to whom the Attorney notifies the Livery, to which the Termner agrees, living the Term; this is a good Livery and Feoffment. D. 20. Cl. 362. 22. But if the Servant continues in the House, and the Attorney makes Livery by his Affent, it is void; For the Servant cannot put the Matter out of Possession, he himself continuing in Possession. Cr. 7. 9a. per 2.

16. If he in Reversion makes Feoffment and Livery in a House in Leafe for Life or Years, the Termner being at Market, and his Wife and Children being in the House; this does not pass. D. 28. 8. 12. 107. It may be in the Abundance of the Husband, tho' the Servants and Children be, and continue in the House, it is a good Livery. Quere if the Wife affents, but continues in the House? But if a Man commits his House to his Servants, and one affents to the Livery, and goes out; if the Rest continues there, and Livery is made, it is no good Livery of cinin. Godb. 158. pl. 215. Mich. 6. Jac. 6. B. R. Anon.

17. If a Man makes a Lease for Life, and after makes a Deed of Feoffment of it, and makes Livery upon the Land, by the Affent of the Lefsee, and in his Prefence, this is a good Livery; For the Affent of the Lefsee shall be a Lease at Will, or a Surrender for the Time. Cr. 40. Cl. 6. per Cur. between Sheppard and Gray.

18. If the King be Lefsee for Years, the Reversion in Fee to J. S. and J. S. enters upon the Land, and makes Feoffment, this is a void Livery. Because he cannot put the King out of Possession. Vit. 9. 8a. 23.

19. If the King, Lefsee for 40 Years, makes Leafe for 20 Years, and after he in Reversion enters upon the Lefsee for 20 Years, and makes Feoffment, this is a good Livery; For this future Interest of the King cannot preserve the Possession of the Lefsee, but that he may be ousted. Vit. 9. 8a. in the Exchequer; adjudged between the Under-Lefsee, it is good without Atornment of the first Lefsee. Br. Feoffment, doterres. pl. 63. cites 8. H. 8.

20. If Lefsee for Life be, the Reversion in Fee to J. S. who dies, his Heir being to use Livery for this Reversion, and after Lefsee for Life; before Livery feed, makes Feoffment of the Land; this is a good Feoffment, and the Reversion is continued by it, notwithstanding the Interest of the King. P. 43. Cl. between Chalkon and Stanley, cit. D. 9. 3a. 23.

21. If Baron and Feme are Seized of Land in Fee, and the Baron makes Feoffment, the Feme continuing upon the Land; yet this does not hinder the Livery; but it is a good Feoffment. 21. 8a. 25.

22. So if when the Baron makes the Livery, the Feme continues * Orig. [Dit-] upon the Land, and claims in of her Estate, * Disagreeing to the Livery; agreement.] yet this is good Feoffment. 21. 8a. 25. adjudged.

23. If Land defends to J. S. who enters into Part of the Land, and not into the Residue; and after makes Feoffment of the whole, and makes Livery only in that into which he had entered in the Name of
of the whole, yet all shall pass. D. 13 Ja. B. R. adjudged upon
Evidence, between Bridgman and Chalton.

24. If Tenant in tail makes Feoffment in Fee to the use of himself in Fee; and after leaves for Beasts and dies, by which the Issue is registered before Entry, and the Estate of Issue changes into a Tenancy at Sufferance; and after the Issue makes Deed of Feoffment of this Land, into which he has not entered, and of other Land which is descended to him; and into which he has entered, and makes Livery in that into which he has entered in the Name of the whole; all shall pass, tho' the Tenant at Sufferance was in Possession of Part.
D. 13 Ja. B. R. adjudged upon Evidence between Bridgman and Chalton.

25. If it be found by Office, that A. was seised in Fee of Land held of the Queen in Socage, and died without Heir, by which it escheated to the Queen; whereby the Lands are seised into the Hands of the Queen. Upon which B. comes, and lays that he is next Heir to A. and traverse the Office; and upon this Issue is joined, and pending the Issue, B. makes a Deed of Feoffment with Letter of Attorney to C. to make Livery, and after the Issue is found for B. viz. that he is next Heir to A. and upon this Judgment is given, that the Hands of the Queen be amov'd, and after the Attorney makes Livery according to the Warrant of Attorney *; and after an Amoove Manum is awarded and executed. This is a good Livery; For now by the Judgment against the Queen, the Possession of the Queen was utterly defeated and disaffirmed, and the Heir restored to the Right of the Possession; so that he may enter at his Pleasure. New Entries. 197. 1. adjudged between Tresy and Brown and Others.

[25] If a Man seised in Fee of an Orchard, makes Feoffment of it, and goes into the Orchard, and cuts a Turf and Twigg, and delivers it in the Name of Seisin to the Feoffee over a Wall of the same Orchard, the Feoffee then being in other Land not being [mentioned] in the Feoffment; this is a void Livery. P. 2 Ja. B. adjudged.

26. If a Man be dispossessed of one Acre, and is seised in Fee of another Acre, and makes Feoffment of both, and makes Livery in this of which he is seised in Fee in the Name of both; yet nothing of the other Acre whereof he is dispossessed, shall pass. D. 28. P. 8. 18. 106.

where Distraint had made Leave at Will of this Acre.

27. If Leftee for Life of one Acre makes Feoffment of this and of other Land, whereof he is seised in Fee, and makes Livery in this, whereof he is seised in Fee, in the Name of both; all shall pass. 9 D. 7. 25. b.

28. If Leftee for Years of one Acre makes Feoffment of this, and of other Acre whereof he is seised in Fee, and makes Livery in this whereof he is seised in Fee, in the Name of the whole; yet the other Acre does not pass. 9 D. 7. 25. b.

29. If Cellfys use within [the Statute of] R. 3. makes Lefce for Years, and after during the Term, makes Feoffment of the Land, and makes Livery in other Land in the Name of the whole; nothing passes of this Land in Leafe; because he hath nothing in use nor in Possession there. D. 35. P. 8. 58. 4.

30. Baron seised in jure Uxorioris made Leave for Years, and died; the Feone enfeofled 9 s. but the Termor was not enfeofled, and after, the Feone relied to the Termor, &c. and yet the Feoffee recovered the Affile; For the Lease was void by the Death of the Baron and the Feoffment of the Feone, which was an Entry; Quod Nosta; and therefore the Release void. Br. Feoff-
ment de terre pl. 61. cites 7. Al. F. 19.

31. In Affile it was found that the Father of the Plaintiff, whose Heir he was, gave all the Tenements that he had in D. to the Tenant, except the Chamber in which he lay sick, and after the Seisin gives the Chamber, and removed himself into the Hall, and then died; and good by the Opinion of the Court, and said that he entered into the Hall by Sufferance of
of the Tenant, without claiming any Thing there to his Use, by which the Feoffment was awarded good, and the Plaintiff had of it, Nota & so it seems here, that a Man cannot make Livery of the Chamber in which he lies, * quod non videtur Lex. Br. Feoffment de terre, pl. 24. cites * Perk. S. 211. acc. cites 1. Aff. 6. 17

Aft. 61—If a Man lies sick within a Manor, the Manor to a Stranger; and lays upon him, that he shall take Seisin presently, and command all his Servants to be Attendants upon him, as their Lord and Master, and thereupon the Venncce takes Seisin, and perhaps giveth unto the Servants 226. to drink, and the Tenants of the Manor attend upon him, and the Venncce goes from the Manor about his Business, and the Feoff dies upon the same Manor; yet it is a good Livery of Seisin, according to the Words, of the Eatee, &c. Perk. S. 212. cites 45. Aff. P. 20. Br. Feoffment, pl. 35 cites S. C. 32. If the Diifictor enjoin the Difficirce and two others, all accuses to the Difficirce; For his Entry was lawful, and he remitated before the Livery, and fo the Livery void; contra if the Entry had not been lawful. Br. Feoffment de terre, pl. 99 cites 29. Aff. 33. Feoffment made during the Captivity of the King by Reason of Ward, &c. was void. Br. Feoffment, pl. 63. cites 50. Aff. 2. 34. If a Feoffment be made of a House or Land by Deed, and the Feoffor, in coming to the House or Land with the Feoffor and others, &c. reads the Deed of Feoffment, and afterwards goes into the House or Land, and delivers Seisin accordingly, 'tis good, notwithstanding that the Feoffor remains upon the Land, or in the House all the Time, and takes the Profits at the Sufferance of the Feoffor Perk. S. 210. 35. If a Man enters into my Lands by wrongfull Title, and I being there, he encoffs a Stranger thereof, and delivers Seisin unto him, 'tis void; For he can't give Seisin before he himself hath Seisin, and he had not Seisin at the Time of Livery of Seisin; for the Law will adjudge the Possession in me, who have a Right unto the Possession; because I am present at the Time of the Delivery of Seisin. Perk. S. 219. 36. If Husband and Wife purchase Land jointly in Fee, and the Possession being executed in them accordingly, and afterwards the Husband encoffs a Stranger in Fee, and the Wife says that she will not agree thereunto, nor go off the Land, but continues there at the Time of the Livery of Seisin, notwithstanding the same, all the Land title belongs by the Feoffment. Perk. S. 223. cites H. 21. E. 3. 6. of the Feme after the Death of the Baron, the Plaintiff was nonnull. Br. Entre Cong. pl. 22. cites S. C. and says it seems a perfect Discontinuance, and that the Heir of the Feme shall have Can in Feoff, and not Affide. 37. But if Mayor and Commonalty be jointly seized of any Land in Fee, so of Dean and the Mayor against the Will of the Commonalty encoffs a Stranger of the same Land, the Commonalty being upon the Land, when Livery of Seisin is made; nothing paties by this Feoffment, &c. Perk. S. 224. cites T. 12. E. 3. 33. 38. If a Lease for Years be made to A Remainder to B. in Fee, in Tail, or for Life. If A. enters before the Livery, it is good; but the Remainder is void. Co. Litt. S. 60. a. Pag. 49. a.——Arg. Pl. C. 156. in the Case of Throgmorton v. Tracy. 39. A Tenure for 1000 Years made a Deed of Feoffment, by Dedi cesso & Feoffi, and a Letter of Attorney to make Livery, and after, the Attorney delivered Seisin, the Legee being present upon the Land, not contradicting it. Quere, if the Land paties by the Feoffment, so that the Legee may enter for a Forfeiture, or that the Term paties first by the Words, Dedi & coacellit Terram before Livery? &c. As Way thought prima Facie, but Dyer contra; but by both, the Livery by Attorney is good enough, and the Presence of the Legee upon the Land is no Impediment to the Feoffment. D. 352. b. pl. 20. Patch 22. Eliz. Anon. 40. A feoff of a Manor leaves Part, and then gives Grants, Bargains, and sells the Manor, and makes Livery in that Part in Possession, in the Name
Feoffment.

Name of the whole Manor; nothing passes but what was in his Possession, and the Reversion of such Part, as was in Lease, shall not pass without Assignment; but if the Deed be enrolled after, then the whole partial; and the Reversion being settled by the Inrolment, the Assignment, coming afterwards, has no Relation, per Wray Ch. J. Mich. 25 and 26. Eliz. B. R. Le 6. Stoneley v. Bracebridge.

41. Leases and Leases being on the Land, the Law judges the Possession in him that has the Right to it, and that is, the Leesee; and Livery ought always to be given of the Possession, and the *Presence of the Leesee, who has nothing to do there, cannot disturb it; but the Presence of the Leesee will hinder Livery by the Leesee. Patch 36. Eliz. B. R. Cro. E. 322: Read and Morpeth v. Errington.

(M) In what Cases Livery may be made within the View.

1. If a Man be distress'd: if Disleesee dares not to enter the Land, he may come as near to the Land, as he dare for fear of Death, and make his continual Claim, and then make Livery of it within the View; For this Claim settles the actual Possession in him. 38. Ait. 23.

2. If a Man makes a Deed of Feoffment, with a Letter of Attorney to J. S. to make Livery, the Attorney cannot make Livery within the View; For his Warrant is to be intended of an actual Livery, and not of a Livery in Law. Co. Litt. 52. b. cites it to be resolved, P. 3. C. 25. in Camharn's Case.


(N) In what Cases Feoffment may be made by Livery within View. To whom.

1. If A. leaves for Years to B. the Remainder to C. in Fee, and makes Livery to B. within the View; This Livery is void; For none can take by Force of a Livery within the View, but he who takes the Franktenement himself. Co. Litt. 49. b.

(O) In
Feoffment.

(O) In what Place.

1. If a man be in one county within the view of land in another county, he may will make livery within the view of it. 38 S. P. If the feoffee enters, the feoffment do not extend. Co. Litt. 48. b.

2. Livery within the view is good, tho' there is not any charter of feoffment of it. Co. Litt. 48. b.

(P) How, and in what manner, livery of seisin within the view may be made, [or on the land, &c.].

1. 9 Rep. 137. Thoroughgood's case. A man makes charter of feoffment, and within the view of his lands, lays to the party, see you the land; enter into it and enjoy it according to the effect of this charter; and the feoffee enters, this amounts to a good livery and seisin of the land. But otherwise it would be, if he had been out of the view of the land at the speaking of the words. 18 B. 6. 16. b. 6 Rep. Sharp's case. Co. Litt. 48. A man has the charter of feoffment, and lays to the feoffee, God give you joy of it; this is adjudged a good feoffment; yet no livery was made, and it does not appear that it was within view. 41. 3. 17. b. But if it seems, it is to be intended, that it is a livery within the view, but it appears there that the feoffor was not upon the land. 41. ait. 10. adjudged. Co. Litt. 48.

2. If a man within the view of land delivers a charter of feoffment of it to the feoffee, and faith, I will that you have the tenements which you see there, the which are comprised in this charter according to the purport of the charter, and lays the land; this is a good livery within the view, but it appears there that the feoffor was not upon the land. 38 S. P. per Pop. 41. ait. 49. a. Co. Litt. 48. a. Er. Feoffment de ter. pl. 62.

3. If a man delivers a deed of feoffment to the feoffee within the view, and lays the land to him without laying any more, and the feoffee enters, and feoffor agrees to this entry; yet it seems that it is not a good feoffment. Contra 38. 3. 12. per Dowbray.

4. If A. enteoffs B. his son in fee, and after B. enters within the view, and lays to A. that where he had given to him the land, as fully as he had given it to him, he vouchsafes it to him, [he gives it him again], and after, A. enters; this is not good livery within the view. Contra 39. ait. 12. adjudged. But Queere.

5. If a man lying sick upon certain land, of which he is seised in fee, and agrees to make a feoffment of the land to another, and lays to him, that he vouchsafes, that he shall take seisin immediately, and commands all his servants, that they take the feoffee as their lord, and master; this is good livery within the view. 43. ait. 29.

6. If a man seised in fee, in consideration of the marriage of his cro. E. 1. 24. son with another, comes upon the land, and lays to him these words: Stand toth Ente-Ass, which was his name, I do here give this land to thee and thy heirs; this is good livery, (it seems that this is an actual livery). 37. 26. et. in the Exchequer Chamber, per Cur. between Callan and Callan.
7. But if he had said, Stand forth Euxice, I do here, reserving an Estate to me and my Wife for our Lives, give thee this Land [and] in thy Heirs. This shall not be a Livery, and so by Consequence a Feoffment to the Use of himself and his Wife for Life, the Remainder to Euxice, the Euxice cannot have an Estate without such Operation; because he makes the Reservation first, and so good, and his Intent does not appear to pass it by way of Feoffment to Life. 37. El. Erchener Chamber, between Callred and Callard, adjudged, and the Judgment before given in B. R. revolved accordingly.

8. If it appears, that a Man intended to make an actual Livery, this shall never amount to a Livery in Law. 32. J. B. agreed. D. 28. P. 8. 18. 107. If he makes Livery in the House, and this being in Lease [is] void, it shall not pass a Close then in the Possession of the Feoffor. Dubitatir.


A Feoffment was made of a House and Land which was within the View of the House, and no Livery made, but only the Deed of Feoffment delivered as his Deed, in the House and this was adjudged no Livery for the Land; and per Popham, nor for the House, without mentioning that he should take the House. Mo. 458. pl. 632. Mitb. 38 and 39 Eliz. B. R. Sharp v. Swan.

10. If a Man delivers a Charter of Feoffment upon the Land, to the Feoffor, in Name of fein in the Land contained in the Deed, this is good Livery. Co. Litt. 48.


(P. 2) Livery within the View Countermanded. By what Act.

( Q ) [Livery.] By Letter of Attorney. How it is to be executed.

1. If the Deed of Feoffment be to J. S. and the Letter of Attorney to J. S. Capellano; he cannot deliver fein to J. S. unless he be a Chaplain. 4. D. 6. 18.

2. If a Deed of Feoffment, with Letter of Attorney to make Livery, be simple, and the Attorney makes Livery upon Condition, yet it is good Execution of the Letter of Attorney, in as much as he has performed
Feoffment.

penfum'd all which he was commanded, and more. (But the Condition is void) 26. Ann. 39. Agreed.

If a Deed of Feoffment and Letter of Attorney to make Leve be simple, and after the Feoffor commands the Attorney to make Livery upon a certain Condition, and he does it accordingly; it being this is not a good Feoffment, but a Dehifin to the Feoffor. For it seems that it is a Revocation of the first Letter of Attorney, and then this cannot create a new Power to make the Feoffment without Deed. Distillatur 26. Ann. 39.

4. If a Man makes a Deed of Feoffment to two, with a Letter of Attorney to J. S. to make Livery, and the Attorney makes Livery to one of them in the Name of both. This is a good Livery; For it is an actual Livery to both. Tr. 1651. Littiat Tr. 1650. Rot. 1769.

If the Attorney does the Command of his Master, and more, yet it shall be good for that, which hath Reference to his Commandment, and void for the rest, unless in special Cases. Perk. S. 189.

As if the Warrant of Attorney be to make Livery unto one Man, and the Attorney make Livery unto two; it is good to him to whom the Warrant doth extend, and void unto the other. Perk. S. 189.

And so is it, if the Warrant of Attorney be to make Livery of black Acre, and the Attorney makes Livery of white Acre and black Acre; in this Case all is not void; for it is good for black Acre, because the Attorney hath done all the Commandment of his Master, and more. Perk. S. 189.

If a Warrant of Attorney be made to make Livery of feoffin unto two, and one of them die before the Livery of feoffin made, and the Attorney make Livery of feoffin, according unto the Deed, unto the other Feoffor who is Living, it is good unto him for all the Land. Perk. S. 192. cites 22. Ann. 9.

The Attorney must pursue his Warrant, otherwise he does not deliver Seifin by Force of the Deed. Co. Litt. 52. a.

If Letter of Attorney be to deliver Seifin upon Condition, and the Attorney delivers it absolutely, it is void. And so some hold, if the Warrant be absolute, and he delivers it on Condition, it is void. Co. Litt. 258. a. b. Co. Litt. 559.

If Letter of Attorney be to three jointly and severally to make Livery, one only may make Livery, or all three may; but two cannot. Br. Jointment. pl. 1. cites 27. H. 5. 6.

But in such Case it was doubted, if Livery made by two, the other being present, and saying or doing nothing, be good Livery. It was agreed, if the third had been absent, it had not been good. Pack. 38. H. 5. D. 52. pl. 34. Pennington v. Morfe.


When
14. When Letter of Attorney is made to four Conjunction & Divisum, and one executes Livery in one Part. By this Act the Authority is not absolutely executed or determined, but that they Conjunction & Divisim may after proceed to give Livery in the other Parts entirely, or by piece-meal, and Livery is well executed by one in one Parcel, and by other in other Parcel. Mo. 280. Mich. 34 and 32. Eliz. C. B. Barley v. Trevillion. ——And 264. S. C.

15. Feoffment of 20 Acres with Letter of Attorney to make Livery. If 1 Acre or 19 Acres are evicted by lawful Entry or Action after the Letter of Attorney was made—Yet the Attorney may make Livery in that which remains. Per Anderfon Ch. J. Mo. 280. ut fup.

16. If he makes General Livery of all where all cannot pass, by reason of the Eviction, yet it shall be good for that which may pass. Mo. 280. ut fup.

17. Feoffment of two Acres, whereof one is in Leafe for Years, with Letter of Attorney to make Livery thereof, and lays not, (or of any Part thereof); yet may the Attorney make Livery in the Acre in Possession alone; and if he makes Livery in the Acre in Possession only, in the Name of both; this shall be good of the Acre in Possession, tho’ it cannot be of that in Reversion, because it is in Leafe. per Anderfon Ch. J. Mo. 280. ut fup.—Poph. 193. Slarings Cafe.

18. If a Letter of Attorney be made to enter into all, or any Part of Lands in the Name of the whole, and to make Livery; the Attorney may enter into any Part, tho’ in the Possession of several Tenants, and make Livery generally of the several Tenements apart that he enters into the Possession of. per Hale Ch. Baron and tot. Car. Mich. 14. Car. 2. in Seacc. Hard. 314. Friend v. Drury.

19. A feized of 2 Acres, makes Feoffment of both, and Letter of Attorney to enter into both, and deliver Sein of both according to the Form, &c. of the Deed. The Attorney enters into one only, and delivers Sein Secondum Formam Carte; this Livery is good, tho’ he said not in the Name of both; For when he deliver’d Sein of one Secondum Formam Carte, it is Tantamount, and implies a Livery of both. Co. Litt. 52.

Maynard reply’d, that my Lord Coke err’d much in this, and that it is not Law; but if the Authority be general, as to make Livery and Sein, and he (enters into) takes Possession of one, and then makes Livery of more Secondum Formam Carte, it is good; and said that this is the Difference taken in the Books 5 El. 3. 65; 3 El. 5. 32. 27; H. S. 6.

20. A Deed was made to three, Habend. to two for their Lives, Remainder to the third for Life, and there was a Letter of Attorney to make Livery to the two, but instead of making Livery to the two, he made Livery to all three. The whole Court held the Livery good, and the Chief Justice said, that whatever the ancient Opinions were about purseling Authorities with great Examinations and Niceties, yet this Matter of Livery upon Judgments of Writings was always favourably expounded of later Times, and where it plainly appeared that it was not pursed at all. As if a Letter of Attorney be made to three jointly and severally, two cannot execute it, because they are not the Parties delegated; For they do not agree with the Authority, and Judgment was given accordingly. 2 Mod. 78, 79. Patch. 28. Car. 2. C. B. Norris v. Trull.

(R) Feoffment
Feoffment by Letter of Attorney.

A Feoffment may be made by Attorney 11 H. 4. 71. 26. S. P. per.

2. So it may be received by Attorney 11 H. 4. 71.

3. A Stranger cannot make Feoffment of my Land by my Agent; for it is not my Feoffment. 40. Ull. 38.


6. If Lease for Years be made to A. by Deed, or without Deed, the Remainder in Fee to B. and Livery is made to A. This is good, tho' he be but an Attorney to take Livery for him in Remainder; For this enters only pro hac in Remainder. Lit. 8. 60. Co. Litt. 49. b.

7. If a Lease be made to A. and B. for Years without Deed, the Remainder in Fee to C. and Livery is made to A. in the Absence of B. in the Name of both; This is good Livery to best the Remainder in C. Co. Litt. 49. b.

8. But if a Warrant of Attorney be made to two to take Livery In Case of a jointly, and Livery is made to one of them, in the Absence of the other, in the Name of both, it is void. Co. Litt. 49. b.

9. If A. makes a Deed of Feoffment to B. and C. with Letter of Attorney to make Livery, and he makes Livery to B. in the Absence of C. in the Name of both, it is good. Co. Litt. 52.

10. If the Land be in Lease, if Letter of Attorney be made, the better way is to add this Clause, Ac Omnes alias inde expellendi, otherwise it is a Question, if he may enter upon Leesee. D. 2 and 3. 3. 131. * 11.

It is no good Feoffment, because it is a Dilemma to the Leesee, and not a lawful Act, per 2. 2. But 3. J. and the Attorney, and Solicitor General e contra. Patch 2. and 3. P. & M. D. 131. pl. 11. * 11. It seems, that the giving the Attorney Power to make Livery is sufficient. See Mo. 111. 226. Trin. 10. Etr. per Dyer and Welsh, who cited it as the E. of Warwick's Case. 

* It should be 71.


12. If a Charter of Feoffment be made, by Deed indentured, between A. and B. with Letter of Attorney to C. to make Livery; tho'
Feoffment.

C. be not any Party * to the Deed, yet the Warrant of Attorney is good, and the Estate shall pass by this Livery. [B. R. between Dicker and Maland. Rot. admodum per Cur. upon special Petition, in which the Opinion of Coke is denied, Contra Co. Litt. 52 b.]


14. If the Letter of Attorney be to deliver Seisin upon Condition, and he delivers it without Condition, this is not good, but is he a Diffor. 11 H. 4. 3.

15. An Attorney cannot make Livery within the View; For his Warrant is intenderable in Law of an actual and express Livery, and not of a Livery in Law. Co. Litt. 52. 3. Cl. 2. resolved Tar-keyn’s Cafe.

16. If A. be díseased of black Acre and white Acre, and a Warrant of Attorney is made to enter into both and make Livery, and the Attorney enters into black Acre only, and makes Livery secundum Formam Chartae; these the Livery is void, because he does not pursue his Warrant; For the Estate of the Diffor in white Acre cannot be devolved without an Entry. Co. Litt. 52.

17. If a Man makes 29 several Deeds of Feoffment of one Acre of Land, so that they all accord in Substance, and delivers Seisin upon all, it is good. Held in Cam. Seanc. Br. Feoffment de terre, pl. 12. cites 7 H. 6. 44.

18. If a Man makes Letter of Attorney to make Livery to W. or to S, and he makes Livery to either of them, 'tis good. But if he makes Livery to both, 'tis void; for it is contrary to his Warrant. & hence it seems, that the Feoffment is good by the Livery, by the Letter of Attorney without Deed of the Feoffment. Br. Feoffment de terre. Pl. 83. cites 11 H. 7. 13.


(R. 2) Who may be Attorney to make Livery.

Mo. Fes. &c.

1. Few Persons are disabili to be private Attornies, to make Livery of Seisin. For Monks, Infants, Feme Coverters, Persons attainted, Excommu- 
cated, Vileins, Aliens, &c. may be; and a Feme may be Attorney to 
deliver Seisin to the Husband, and the Husband to the Wife, and he in Re- 

2. If a Man, seiz’d of Land in the Right of his Wife, Leave the same 

3. If a Letter of Attorney be made to Leafe to make Livery, and he makes it accordingly; yet this does not determine his Interest in the 

And. 222. S. C—Mo. 230. the 4th 

31 and 32. Eliz. C. B. Le. 192. Percey v. Trevi- 

(S) Feoffment
Feoffment. 191

(5) Feoffment by Attorney. At what time it may be made.

1. If a man makes a Deed of Feoffment with Letter of Attorney to J. S. to deliver Seisin after his Death, the Attorney cannot deliver Seisin during his Life, and if he dies he is a Director. 1 A. 38. Curia. (yet he cannot make Livery after his Death.)

If the Warrant of Attorney be to make Livery of Seisin after the Death of a Stranger, and he make Livery of Seisin in his Life time, this is a Director unto the Feoffor. Perk. 3. 188. cites 1 H. 4. 374. 40 A. 35.— Br. Feoffments, p. 34. 3. C. — * Tind. 8. P. per Brooke.

—Agreed to be Law. Holt's Rep. 403. 484. — * Co. Litt. 8. 68.

2. If a man makes a Deed of Lease for Lives rendering Rent payable at 4 Quarters of the Year with Letter of Attorney to J. S. to make Livery, J. S. may make Livery after 3 of the Quarters past well enough; for the Leitor in the mean time continuing in Possession has not any Prejudice. P. 10. 9a. 6. adjudged; between Walters, and the Dean and Chapter of Norwich.

3. If A. be deceased of Land, and after makes a Charter of Feoffment to B. with Letter of Attorney to make Livery, who both it accordingly; this is a good Feoffment, tho' he was out of Possession at the Time of the Charter made; for the Authority given by the Letter of Attorney was Executory, and nothing passed by Delivery of the Deed, till Livery made. Co. Litt. 48. b.

4. If Mayor and Commonalty generally, without naming the proper Name of the Mayor, make a Feoffment, and Letter of Attorney to make Livery, and the Mayor dies, and another Mayor is Elected, and the Attorney makes Livery, this is good enough, per Moor Justice. Br. Corporations, p. 34. cites 14. H. 8. 2. 29.

5. Lease for 21 Years, and a Covenant after in the same Deed, that after the expiring of the said 21 Years, the said Levies shall enjoy for Term of their Lives. To make this a Remainder for 3 Lives, the delivery of the Deed and the Livery of Seisin must be at the same Time; but if Leitor first delivers the Deed, and the Attorney delivers Seisin after, the Livery is void; for by this Livery it cannot pass as a Remainder. 2 Eliz. C. B. And. 8. Okeden v. Sendy. — Mo. 14. 8. C. Helier v. Okeden.

6. Feoffment on Condition to re-eroy Baron and Feoff and the Heirs of their Bodies. Feoffee makes Gift in Tail accordingly, and Letter of Attorney to make Livery; before Livery executed Baron dies; yet the Attorney may make Livery to the Widows, and shall take in Tail according to the Gift, per Periam J. Mich. 31 and 32 Eliz. C. B. Mo. 280. Battie v. Trevillion.

7. The Demise was to A. for Life; Habeat a die Indenture void, the Jury found that he demised the 10th June 44 Eliz. by Indenture of the same Date; 'tis a Demise at that time, and the Livery not being made by the Attorney till the 23 July was void, per 3 J. And per Popham Ch. J. if the Deed had been delivered after the Day of the Date, and then Livery had been made by Attorney, it had been well enough, and had been so adjudged. Cro. J. 153. Patch. 5 Jac. B. R. Hennings v. Paucharden. — Roll. 928. pl. 5. 6. S. C.

8. William Lord Dacres the Father made a Feoffment in Fee to his two Sons, upon Condition, that they should make a Feoffment over to Thomas Dacres.
Dacres and one Middleton with a Letter of Attorney; All the Deeds were ready to be delivered; but before the Father had delivered the Deed to his Sons, they had delivered their Deed of Feoffment to Thomas Dacres and Middleton, with a Letter of Attorney to B. G. to make Livery; afterwards the Father delivered his Deed, and then Livery was made by Virtue of the Letter of Attorney; adjudged that the Livery was void, because the Sons, at the Time, they made the Feoffment, had nothing to pass. Cited by Coke Ch. J. 2 Bull. 304. Hill. 12 Jac. in the Cafe of Butler v. Finch, as Lord Dacres Cafe.


per Prosham Cro. E 565.—The Difference is, where the Livery is made by the Leffor in Person, and where by Letter of Attorney, being in the same Charters, generally made; but if the Letter of Attorney be to make Livery after Mich. then in both Cases 'tis good enough; For there is no Intention, that the Livery should operate future, but that Livery shall be made, when it should operate, and the Estate should be good in Specie. Cro. J. 305. Hill. 17. Jac. B. R. Greenwood v. Tyler.—Dal. 111. Stileman v. Warren.— * 2 Bull. 526. S. C.

(See U. 3)—Estate (B) 

(T) Livery. How it may be made.

1. If diverse Parcels of Land are contained in a Deed of Feoffment, and the Feoffor delivers Seisin of one Parcel according to the Deed, tho' he both not lay in the Name of the whole, yet all the Parcels pass, because the Deed contains all the whole. Co. Litt. 48 a.

2. So if there are diverse Feoffees named in a Deed, and Feoffor makes Livery to one of the Feoffees according to the Deed, without laying in the Name of the whole; yet the Land shall pass to all.

3. If A. be to make a Feoffment to B. and C. without Deed, and he makes Livery to B. in the absence of C. in the Name of both, this is void as to C. because a Bar, who is absent, cannot take a Frankment by Livery, but by an Attorney, lawfully authorized to receive Livery by Deed. Co. Litt. 49 b.

4. But if a Charter of Feoffment be made to A. and B. and Livery is made * to A. in the Absence of B. in the Name of both, this is good; because it is by Deed. Co. Litt. 49 b.

5. The manner to deliver Seisin of Land by force of a Feoffment is to remove all Persons off the Land, and one being upon the Land, in the Presence of all the Persons that are there, to shew Cafe of their coming, and if the Feoffment be by Deed, to read the Deed in English, and the Deed being read, the Feoffor to enter on the Land and take a Clad of the same Land, and deliver the same, together with the Deed, unto the Feoffee, in the name of Seisin of the same Land, to have, hold and enjoy, according unto the Purport of the same Deed, &c. Perk. S. 299. cites 39 Aff. * 12.

6. So shall it be done, if Livery of Seisin is to be made by a Stranger, by force of a Warrant of Attorney, Mutatis mutandis, &c. Perk. S. 276.

7. If there are four Feoffees, and one makes Letter of Attorney to one R. to take Livery in the Name of the Feoffee and the Co-feoffees, according to the Deed, and to do all other Things for him and his Feoffees, which
which he might have done if he was Personally present, and the Feoffor makes Livery to the Attorney in Name of that Feoffee and the other Co-
feoffees to their Uses according to the Deed; this is good to all. 2 And. 196. in the Court of Wardes, Davy and Abbor. Nothing
palliates but only to him, who made the Letter of Attorney.

9. Feoffment to Corporation and another Person, there ought to be several Livery's, in respect of their several Capacities which makes them Ten-
nants in Common. Finch. 23 b.

10. Livery can't be made to operate in futuro. Raym. 207. Mich. 22

Car. 2. B. R.

(T. 2) Livery. At what Time to be made.

1. If a Man makes a Lease for Years to A. and B. Remainder to C. for Life; in this Case the Leilior ought to make Livery to A. and B. before their Entry; and by the Livery to A and B. C. shall take a present Estate for Life by way of Remainder, by force of the Livery made to the Lessees for Years. And with this agrees Littleton, lib. primo fo. 12 b. *Litt. S. 60 5 Rep. 94 b. *Trin. 39 Eliz. in Sacc, agreed in Barwick's Cafe.


3. Feoffment Habendum a Die datus; if the Seisin be not made at the last Infant of the Day, it is not good, per Roll. Ch. J. Stre. 189. Hill. 1649. in Cafe of Watts v. Dix.

(U) Livery. How it may be made, Secundum formam Charte, [as to the Name and Thing.]

1. If a Man makes a Charter by which he grants the Land in Fee See (U. 2) and delivers Seisin for Life, Secundum formam Charte, the Fee shall pass; for this shall be taken most strong against the Feoffor; for by the said words, Secundum formam Charte, are intended according to the Quantity and Quality of the effectual Estate in the Deed. Co. Litt. 48.

2. If a Man lead for Years by Deed, and delivers Seisin according to the Form and Effect of the Deed; yet he has but an Estate for Years, and the Livery is void. Co. Litt. 48 b.

3. If A. by Deed gives land to B. to have after the Death of A. to B. and his Heirs, this is void; because he cannot create a particular Estate in himself; and if Livery be made according to the Form and Effect of the Deed, this is void; because it refers to a Deed which is void in Law. Mich. 33 and 34 Eliz. B. R. adjudged between Hogg and Greys, cited Co. Litt. 48 b.

D d d 4. If
If a Man Covenants to make a Feoffment of the Value of 50 Marks Land to J. B. and after, makes Feoffment of Land of a far greater Value without assigning where the 50 Marks Land shall be. This is held, for the uncertainty, and no more shall pass than the Place, where the Libery was made. P. 13. Ja. B. R. per Cur. between Woodhouse and Futter.

3. So in the same Case the Feoffor cannot after the Livery assign 50 Marks of Land, to make so much to pass by the said Libery, in as much as it does not pass at first, P. 13 Ja. B. R. per Cur. between Woodhouse and Futter.

4. But otherwise it would be, if he had assigned where the 50 Marks Land should be, before the Livery made. P. 13 Ja. B. R. per Cur. between Woodhouse and Futter.

5. So it seems it would be, if he had assigned it upon the Livery made; For then the assignment is Uno Flato within the Libery, Contr. P. 13 Ja. B. R.

6. If a Man Covenants to make a Feoffment of all his Land, whereof 50 Marks Value shall be to such a Use, and the other to other Use, &c., and after makes the Feoffment of all accordingly, without assigning the 50 Marks Value, he cannot after assign it. P. 13 Ja. B. R. per Cur. between Woodhouse and Futter.

7. If a Man has a moveable Estate of Inheritance in 13 Acres Parcel of a Manor, they will pass by Name of the Manor. Co. Litt. 48. b.

8. If a Man has a moveable Estate of Inheritance in 13 Acres Parcel of a Meadow of 80 Acres, the Charter of Feoffment ought to be generally of 13 Acres lying within the Meadow of 80 Acres generally without bounding, or describing of it in Certainty and Liberty may be of the 13 Acres allotted to the Feoffor for a Year, Secundum summum Charite; and this is good Liberty to pass the Content of 13 Acres in what Place forever it lies. Co. Litt. 48. b.

9. If a Manor be separated, and divided between two, so that the one has one Part One Year, and the other Part the next Year, and to the other, and so they have moveable Francements; in this Case, Liberty ought to be made in the Manor. Co. Litt. 48. b.

10. But where two Manors are separated, and divided, alternis Viciis; then the Charter of Feoffment ought to be made in both, and Liberty in this Manor whereas he is listed in any one Year, Secundum summum Charite, and the next Year in the other, Secundum summum Charite; For there are two distinct Manors and several Estates in them. Co. Litt. 48. b.

11. If a Manor be separated, and divided between two, so that the one has one Part One Year, and the other Part the next Year, and to the other, and so they have moveable Francements; in this Case, Liberty ought to be made in the Manor. Co. Litt. 48. b.

12. But where two Manors are separated, and divided, alternis Viciis; then the Charter of Feoffment ought to be made in both, and Liberty in this Manor whereas he is listed in any one Year, Secundum summum Charite, and the next Year in the other, Secundum summum Charite; For there are two distinct Manors and several Estates in them. Co. Litt. 48. b.

13. If A, listed of 100 Acres of Land in Fee enfeoff B, of 18 of the said 100 Acres versut autrum, or versus Quindecim, and makes Liberty; this is good; For this is certain at the Time of the Feoffment. D. 1. 11 Ed. * 181. 19. 23 Ed. 372. 12.

14. But if A, listed of 100 Acres in Fee, enfeoff B, of 18 of the said 100 Acres, Habendum nisi & Haredatum his ad Electionem ipsum B. & Haredatum suoem quoscumque eiis placet, and makes Liberty accordingly, this is a void Feoffment for the uncertainity, where the 18 Acres shall be among the 100 Acres; For the Francement of the 18 Acres ought to pass aliquo aliquo temporis intervallis, from the Feoffor to the Feoffee; For a Liberty cannot Operate in futuro. D. 1. 11 Ed. * 218. 17. 18. 19. adjudged.

15. Deed of Feoffment is dated at Mob. next, and Liberty made now Secundum summum Charite. The Freehold is in the Feoffor presently. Mo. 43. 36. Parch. 7 Eliz. in Cafe of Bullock v. Burdet.


18. 'Tho' a Grant of Land to A. and B. Habendum one Moity to one, and the other to the other, makes a Tenancy in Common; yet they are distinct Conveyances, tho' it be really one Deed, and Livery to the one, Secundum formam Chartae, will not avail the other, per Holt Ch. j. 12 Mod. Mich. 301. 11. W. 3. in Case of Filler v. Wigg.

(U. 2) Secundum formam Chartae. Where the Deed contains more or less than Seisin is delivered of.

1. If a Man be enfeoffed by Deed of two Acres, to have and to hold three Acres, and Livery of Seisin is made to him, according to the Deed, in the two Acres; the third Acre, of which there was no Speech in the Premisses of the Deed, shall not pass by the Deed; but if Livery of Seisin be made in this Acre, then it shall pass by the Livery of Seisin, &c. Perk. S. 165.

2. If Livery be made to one of the Footles according to the Deed, it passes the Land to all, fo of the Seisin of one Parcel; but the best way is to lay in the Name of the whole, or of all the Footles. Co. Litt. 48. a.

3. If a Man makes a Charter in Fee, and makes Livery for Life, Secundum formam Chartae, it passes the whole Fee Simple. Co. Litt. 48. S. P. if it be for Life ex. prettily, and also according to the Deed; because in this Case being made Secundum formam Chartae, the Livery has a Reference to the Deed. But if Footlor delivers Seisin for Life in such Case, and not Secundum formam Chartae, the Footlor shall hold but for Life. Co. Litt. 222. b.

4. If a Deed contains no Condition, but Livery does, the Land passes not by the Deed. Litt. S. 359.

5. If the Livery be larger than the Agreement, some hold, that the Estrate shall be according to the Agreement. Co. Litt. 222. b.

(U. 3) Livery. Secundum formam Chartae, at what Time it may be.

1. Leafe for Lives to commence a Die Datus was resolved good; but where because Livery was executed after the Day of the Date. But if before, it should not. No. 637. Mellow v. May.—See 1 Roll. 828. 50. S. P. 21 Eliz. and the Livery was 25. Eliz. Secundum formam Chartae; the Livery so long after will not help the Leafe, which was Habend's a Die Datus. Cros. E. 873. Hill. 44. Eliz. C. B. Mellowes v. May.—So if the Attorney makes Livery the same Day, Secundum formam Chartae, 'tis void. Cros. Car. 385 Mich. 10. Car. B. R. Buill v. Wyat.—But first Livery must be made the next Day if it be to be made Secundum formam Chartae; for that is Forma Chartae, per Doderidge. J. 2 Buls. 506. Hill. 12. Jac. in Case of Butler v. Fincher.

(X) Livery. How it may be, where of Parcel in the Name of the Whole.

1. If a Man makes Feoffment of Land in diverse Places in the same County, and makes Livery in the Land in one Place in Name of ciezy H. 7. all, the whole shall pass. Perkins S. 225.
2. If a Man makes a Deed of Feoffment of Land in two Counties, and makes Livery of the Land in one County in the Name of the whole; yet the Land which is in the other County shall not pass by it. 22 H. 6. b. Doctor and Student 100. b. Perkins 227. Comt. 26 Art. 49.

3. If divers Parcels of Land be contained in a Deed of Feoffment, and the Feoffor delivers Sefin of one Parcel according to the Deed, tho' he does not say in the Name of the whole, yet all the Parcels pass, because the Deed contains all. Co. Litt. 49.

4. If a Man is seised of two Acres, the one in Fee and the other for Life, if he makes Feoffment of both Acres, and makes Livery in the Acre of Fee in Name of both the Acres, this is a good Livery, and both the Acres shall pass. Br. Feoffment de terre, pl. 42. cites 9 H. 7. 25.

5. But if he had two Acres, the one in Fee, and the other for Years, and makes Livery in the Fee Acre in the Name of both; the Acre for Years shall not pass. Ibid.

6. If a Man be seised of two Acres of Land in one County, and he enters into one of the Acres, claiming the said Acre only, and makes a Deed of Feoffment of both Acres unto a Stranger, and makes Livery of Seffin according to the Deed in the Acre into which he entered; it is said, that both Acres shall pass into the Feoffee, because this Claim is nothing to the Purpose; for he had Right of entry before, &c. and both Acres are in one County; so as his Entry into one Acre shall be entry into both Acres, notwithstanding the Claim, &c. against which it may be said, that the Acre, into which the Feoffor did not enter, shall not pass by the Feoffment; for when a Man is out of Possession of a Thing severable, he is at Liberty to continue his Possession in it, in which Part he will, and shall not be compelled to re-continue his Possession unto all in deñight of him. Perk. S. 232. cites f. P. 9. 7. 25.

Livery in the Acre, which he entered into, Secondum format Charite; yet the Acre in which he did not enter, the ld not pass by the Feoffment. Perk. S. 234—59 where one has Title to enter into two Acres for a Condition broken, &c. or for an Allotment in Mortmain, &c. Mutatis Mutandis. Ibid. S. 255.

7. A seised of 3 Acres, by several Feoffments, enfeoffed B. C. and D. of the said Acres, viz. each of them of one Acre to the Use of A. &c. A. before the Statue of 27 H. 8. by a Deed of Feoffment, and a Letter of Attorney enfeoffed J. S. of the said 3 Acres, and the Attorney entered into one of the said Acres, and delivered Seffin to J. S. in the Name of that and the 2 other Acres; and by this the 3 Acres passed by the Statue of 1 R. 3. as was adjudged in B. R. after Argument by the Court. But How it passed, viz. by Grant or Feoffment quare, &c. not the Statue. Patch. 25 H. 8. And. 28. pl. 66. Kellet's Cafe.

8. A Man hath two Leases for Years by several Leases of Lands in a Common, and made a Feoffment of all his Land within the same County, and made Livery upon the Land; one of the Tenants oulled him in Name of all; nothing of the other Lease passes by the Feoffment, inasmuch as the other Tenant hath an Interest, and remains upon the Land. But it is otherwise of a Tenant at will. For there both Lands shall pass, inasmuch as 'tis a Determination of his Will. D. 18. pl. 106. Trin. 28 H. 8. Anon.

9. But more by Knightley, that if I be seised of Land, and another is Tenant at Will to another Man of Land, to which I have a Right to enter; in this Case the' make Feoffment of all, and Livery of Seffin in that part of which I am seised in Name of all; nothing passes of my Land, of which the other is Tenant at Will to a Stranger; inasmuch as it is no Determination of the Will of the Stranger. So note a Diversity where he is my Leilfe at Will, and where he is Leilfe at Will of another. D. 18. b. pl. 106. Trin. 28 H. 8. Anon.

10. If a Man seised of one Acre of Land in Possession, and of another in Use, had made a Deed of Feoffment of both, and Livery in the Acre in Possession;
Feoffment.

Feoffment in the Name of both; the Land in Use should not pass. Contrary, if the Livery was in the Land in Use, by ReaSon of the Statute, &c. Br. Feoffments al Wes pl. 55. cites 37 H. 8.

(Y) In what Cases Feoffment may be without Deed.

Of what Thing.

1. Feoffment may be of an Advowson by Livery of the Door of the Church without Deed. 43 Eliz. 3. 1. b. (C) Pl. 2.

2. A Feoffment may be with Attornment of a Manor, without Deed, and the Services will pass by Letter of Attorney. 3 Rep. 29.

3. Letter of Attorney to deliver Possession, if there is no Deed of Feoffment, is void. Per Frowick Ch. J. Kelw. 51. Trin. 18. H. 7.

4. The Quetion of a Case drawn was, whether the Advowson in Question did pass by the Livery made in the View of the Church, without Deed or no, (the Church being full of an Incumbent,) and resolved by the Lord Ch. J. of the King's Bench, and Justice Manwood, to whom the same was referred, that the Advowson could not pass by that Livery. Cary's Rep. 74. cites 18 and 19. Eliz. Pannel v. Hedgdon, alias Hoddon. 5. The Father escheats the Son to the Use of the Father himself, for Term of his Life, and after his decease, then to the Use of the Son and his Heirs; and after the Father and Son, (upon Communication that the Father should re-have the Land in Fee) came together to the Land, and upon the Land by Parol, without any Deed, the Son delivered Seisin of the Land to the Father, Habendum ibi & hereditibus suis, &c. if this be a good Feoffment or not, Quare? it being found by special Verdict in Ejec. Firm. And by the Opinion of the Court 'tis a good Feoffment, and that in Law this Acceptance of Livery implies two Effeets, Viz. Frst, a Surrender, and after a Feoffment; as a Surrender to the Grantee of a Reversion amounts to an Attornment and Surrender. D. 358. pl. 48. Patch. 19 Eliz. Anon. ——- Ibid Marg. cites it as so held. M. 28. Eliz. in Leonard's Case.


7. Livery of Seisin (contrary to the Opinion of Coke Ch. J.) may be received without Deed, as a Stranger may take Livery to the Use of 7. 8. and after J. S. agrees to it 'tis good. 2 Sid. 61. per Glyn Ch. J. Hill 1657. B. R. in Case of Blunt and Clerk. 3. 29. Cert. 2. 3. Puts an end to all Feoffments, &c. without Deed, in writing and signed by the Parties, or their Agents, authorized by writing so as to have any greater Effect than as Effeets at Will.

(Z) By Letter of Attorney. Revocation.

What Act (*) or Thing shall be Revocation.

1. If a Man makes a Deed of Feoffment with Letter of Attorney, may not to make Livery, he may before Execution of the Livery revoke it. 8 H. 6. 14. Per Choke.

2. If a Man makes Charter of Feoffment with Letter of Attorney to deliver Seisin and before Livery made, by Malsady he becomes Parallelite, so that he is * mute at the Time, when Livery is made, but by all Signs, which a Man could perceive, he agreed to the delivery of the Seisin; this is a good Feoffment, and no Revocation of the Letter of Attorney. 25. Ant. 4. abjured. * Orig is

But if a Letter of Attorney to make Livery of Seisin is made of certain Land, by a Man of sound Memory, and the Charter of Feoffment of the same Land was made before, when be F. e e
Feoffment.

Feoffment and the Life of Seisin is made by Force of the Letter of Attorney, without other Affent of the Feoffor, and the Feoffor dies. Now his Heir may enter upon the Feoffment; but the Feoffor himself in his Life can’t enter. Perk. 10. 11. S. 23. cites 17. Aff. pl. 17. —— Perk S. 22.

3. If the Feoffor dies before Livery made by the Attorney, the Letter of Attorney is revoked in Law, because the Land is descended by his Death to his Heir. Co. Litt. 52. b.

[4] So if the Feoffor dies before Livery be made by the Attorney, the Letter of Attorney is revoked in Law, because Livery cannot be made to his * Heir, so then he shall take by Purchase, where he was named by Way of Limitation. Co. Litt. 52. b.

4. If a Corporation aggregate, as Mayor and Commonalty, Dean and Chapter, or such like, make a Charter of Feoffment, with Letter of Attorney to make Livery and before Livery made, the Mayor or Dean dies, yet the Letter of Attorney is not revoked because the Corporation never dies. Co. Litt. 52. b.

5. But otherwise it is of a sole Corporation, as a Bishop, Parson, &c. Co. Litt. 52. b.

6. If a Man makes a Deed of Feoffment of Land in two Villas, with Letter of Attorney to make Livery, and before Livery made by the Attorney, the Feoffor himself makes Livery of the Land in one Villa, this is a Countermand of the Letter of Attorney, so that the Attorney cannot make Livery in the other Vill. per Tankard 9. 8. Ia in the Exchequer, between Smith and Jemison.

7. If a Man makes Charter of Feoffment of two Acres, whereof the one is in Leafe for Years, and the other in Demesne, and makes Letter of Attorney to make Livery, and after the Feoffor himself makes Livery in the Acre in Demesne in Name of the Whole, tho’ the other Acre, which is in Leafe, cannot pass by it, yet the Letter of Attorney is revoked for this Acre; for it appears, that so was the Intent of the Feoffor. D. 8. Ia. in the Exchequer, per Cur. A Fine paid between the Grant and the Livery, is no Countermand.

Dal. 111. 16 Eliz. Stileman v. Warren.

9. Tho’ there be a Letter of Attorney to deliver Seisin, yet if before Seisin delivered by Virtue thereof, the Feoffor gives Authority, Ore tenus to the Attorney to make Livery, he may give Seisin by Virtue of the Authority Ore tenus, notwithstanding the Letter of Attorney; but then, (as in Case the Letter of Attorney was in any wise defective,) the Attorney must swear he did it by Virtue of the Authority Ore tenus, for if he did it by Virtue of the Letter of Attorney the other Authority will not avail the Delivery. Patch. 24. Car. B. R. Allen. 53. Bamfield v. Brown.——— ’Twas said he could not deliver it by Virtue of both Authorities; Quod Quaere. Ibid.

(A. a) Who may make Livery by Attorney.

If an Infant makes Livery by Attorney, ’tis void, contra if he makes Livery in proper Person; for there ’tis only voidable. Br. Feoffment de terre 1 Pl. 48. cites 15 El. 4. 27.

2. Vid. (Z) pl. 2. from which Cale Ld. Brooke concludes, that it seems, that a Man Dumb, who has Reason to perceive by Signs, may make Feoffment. Br. Feoffment. Pl. 26. [and in that Case the Livery was by Attorney.]

3. A Dissenter may make a Feoffment. But when he makes a Letter of Attorney to one to make Livery, where he himself has no Estates, it is not good; For he has neither Juris in Re, nor ad Rem. per Doderidge J. 5. Bull. 305. Hill. 12 Jac. in Case of Butler v. Fincher.
Feoffment.

he was out of Possession, at the Time of the Charter made, for the Authority given by the Letter of Attorney is Executory, and nothing passes by the delivery of the Deed, till Livery of Seisin be made. And in ancient Letters of Attorney, Power is given to others to take Possession for the Feoffor. Co. Lit. 48. b. 8.

4. Tenant for Life with Power to make Leases cannot make Livery by his Attorney; so where Executors have Power to sell, but where they have Interest they may. Arg. 2 Roll. R. 393. cites Rep. Combes’s Case.


S. C. and that it was held by all the Justices, that Cefly que Usi might make Livery by himself, but not by Attorney, for that the Statute is taken strictly. But Brooke makes a Quere, for he says, it is held otherwise at this Day.

(B. a) What passes by the Livery, by Relation.

1. ASSISE by R. F, where it was found that M. leased the Tenements to the Plaintiff for 11 Years, and in surety of it, made a Charter upon Condition, that if he was disturbed of his Term, that he should have the Tenements in Fee; which Charter was delivered to C, to keep and to deliver according to the Condition, and delivered Seisin upon this Charter, and that M. sold within the Term, and for the Disturbance, F. delivered the Charter to the Plaintiff, and Livery of Seisin was upon the one Charter and the other, Viz. upon the Sale also; as it seems, by which it was awarded, that the Plaintiff Recover; the Reason seems to be, that the Seisin was delivered upon the Charter to the Tenant; for otherwise the Condition had come too late, as appears in the Case of Pleffington 6 R. 2 Cit. Quid juris Clamat in Fitzh. 29. Br. Conditions. pl. 101. cites 10 Aff. 15.

2. A makes a Feoffment to B. of 17 Acres to be taken at the Election of B. or his Heirs, out of 1000 Acres as they please. By the Death of B. the Election determines. Quere If B. might have made Election? For if he might, then the 17 Acres pass by the Livery, which it seems they cannot, for ‘twas not then known, which were the Acres; but the Livery, being the Act of the Feoffor, shall have its Effect and Operation by the Election of the Feoffee, or else ‘tis good for nothing. Patch. 7. Eliz. And. 11. Bulloch v. Burdor.

3. If Infant make a Feoffment, or Lease for life, to commence in future, and at full Age makes Livery; this is a good Feoffment. Arg. 2 Roll. R. 109. feoms admitted; but the Reporter makes a Quere of Feme covert; For her Deed is void. Trin. 17 Jac. B. R.

(C. a) Who may take by the Livery.

1. If J. S. be enioy’d to have and to hold to J. S. and T. K. and Livery of Seisin is made unto J. S. according to the Deed, it is void unto T. K. Perk. S 164.

2. But if Livery of Seisin had been made unto T. K. according to the Deed; then he takes by the Livery of Seisin, and not by the Deed. Perk. S. 164.

3. Some may make Livery of Seisin, and take by the same Livery; but then they do not make Livery in their own Rights, or otherwise they do not take by the Livery of Seisin in their own Right, unless in special Cases, &c. Perk. S. 158.

4. Therefore
Therefore if Land be leased for Life unto J. S. the Remainder unto T. K. in fee. And a Letter of Attorney is made unto T. K. to make Livery of Seisin unto the Lessor accordingly; in this Case he takes by the same Livery of Seisin, which he himself made, but not of his own Grant; for he made the same as Servant to the Grantor. Perk. S. 198.

5. If a Man enfeoffs two by Deed, and makes a Letter of Attorney unto one of them to make Livery of Seisin, and he makes Livery of Seisin according to the Deed to his Companions, he himself, who makes the Livery of Seisin, shall take by the same Livery of Seisin, because he shall be in by the Feoffor, and not by himself, &c. Perk. S. 199.

6. If a Man makes a Deed of Feoffment of his own Land unto himself and unto a Stranger, and makes Livery of Seisin unto the Stranger according to the Deed, all shall pass unto the Stranger and nothing to himself; for that he cannot give unto himself, as this Case is, &c. Perk. S. 203.

7. If a Feoffment be made to a Monk professed, and to a Stranger, by Deed, and Livery of Seisin is made to the Stranger according to the Deed, all passeth to the Stranger. But if Livery and Seisin be made to the Monk according to the Deed, and not to the Stranger, nothing shall pass thereby. Perk. S. 204.

8. Unto divers Respect a Man may take by Livery of Seisin, which he made his own Right; but then he shall not take in his own Right, unless in special Cases. Perk. S. 205.

9. And therefore if Dean and Chapter are, and one of the Chapter is filed seised in Fee in his own Right of Lands, and thereof by Deed enfeoffs the Dean and Chapter, and makes Livery of Seisin according to the Deed; in this Case the Feoffor giveth and taketh by the same Gift in divers Respect, Perk. S. 205, cites 22 H. 6. 43.

10. And so shall it be of Mayor and Commonalty: if one of the Commonalty be seised of Land in his own Right, and thereof enfeoffs the Mayor and Commonalty. Perk. S. 204.

11. Such Perfoins as are in Possession of Land for Years or Life, &c. can't take Livery of Seisin of the same Land. Perk. S. 205.

12. In Feoffment to the Dean and Chapter they cannot take by Letter of Attorney under Seal, per Brook Justice, Br. Corporations. pl. 24. cites 14 H. 8. 2. 29.

13. A Lord of the Manor of D. by Indenture between him of the one Part, and J. S. his Copyhold Tenant in Fee, and R. S. Son and Heir Apparent of J. S. of the other Part, in Consideration of 100 l. paid by J. S. enfeoffed, released and confirmed, &c. to J. S. the said Land Habend to J. S. and R. S. and their Heirs, and covenant that all Assignments should be to the Use of J. S. and R. S. and Livery was made Secundum formam Charta; resolved, that J. S. only took, by the Livery, and R. S. took nothing thereby; but R. S. took, by the Limitation of the Use in the Habendum, as Jointenant with J. S. and by the Statute of Uses of 27 H. 8. was jointly seised of the Interests, and Possession with J. S. Ley. 13. Trin. 7 Jac. Staines's Cate.

(D.a) What Thing, or Estate shall be said to pass by the Livery.

1. If a Man makes Feoffment of his Manor, in which he hath a Warren, the Warren shall not pass. Br. Feoffment de terre, pl. 81.

2. If a Man makes a Deed of Feoffment of his own Land to himself and unto a Stranger, and makes Livery of Seisin unto the Stranger according to the Deed, all shall pass unto the Stranger, and nothing unto himself, as this Case is, &c. Perk. S. 203.

3. If two Jointants are in Fee, and one of them enfeoffs a Stranger of the Whole against the Will of his Companion being upon the Land; by this Feoffment nothing, but the Money, passeth. Cauta parce. Perk. S. 250.
Feoffment.

4. By Livery of Seilin in one County, the Lands and Tenements in another will not pass; yet if the Seilin be in the County of Essex, and Parcel of the same Manor doth extend into the County of Middlesex, and a Feoffment be made of the Manor of D. and Livery of Seilin is made of the Seilin of the Manor, which lies in the County of Essex; by this Livery of Seilin, the Parcel of the Manor, which lies in Middlesex shall pass, because 'tis Parcel of the Thing, viz. the Manor, of which the Feoffment was made, the which Manor is but as one thing to such Purposes, &c. Perk. S. 227.

this Feoffment nothing pass but that which is in Dale; because the Feoffment is not of that which is in Dale, and the Livery of Seilin is made in Dale, and not elsewhere, &c. Perk. S. 225. cites T. 9 E. 4. 17.

5. A seized of a House for Life made a Feoffment of it, and Letter of Attorney to deliver Seilin securandum Memin Charta; before Livery Tenant for life purchased the Fee, and after Livery was made, Per Car' all pass.

—But if the Feoffment had been of all his Lands in D. and the Letter of Attorney accordingly;—and before Livery the Feoffor had many Lands there.—If he purchased one Acre after; — the Livery should not be made, because his Acre was purchased by the other Acre. 3 Le. 73. pl. 112. Hill. 20. Eliz. C. B. Anon.

6. Feoffment was of a Manor, to which an Advowson was appendant, and Livery was made; tho' the Tenants did not attend, yet the Advowson passed as Appendant to the Demeñes. D. 70. b. pl. 41. Marg. says that it was so ruled 32. Eliz. in C. B. in Holmington's Case.—And says, that it was also agreed 30. Eliz. in the same Court. Ibid.

7. Doderidge J. cited a Case, where 'tis held, that if one make two several Deeds, one purporting an Ettate in Fee, and the other an Ettate Tail, and thefe are made to one and the same Person, and he brings both in his Hands upon the Land, and makes delivery of both Deeds with the Land; by both these Deeds shall take Effect, and by them Ettate Tail, and also Ettate in Fee Simple pass. Patch. 16. Jac. B. R. 2 Roll. R. 22. in Case of Thurman v. Cooper.

(D. a. 2) What Ettate shall be said to pass by the Livery; without the Words, Heirs, or Successors.

1. If Lands be given to a Mayor and Commonalty for their Lives, by intendment they have an Estate not determinable. So if a Feoffment be made of Lands unto a Dean and Chapter without Speech of their Successors. Perk. S. 240. cites T. 22 E. 4. 38.

2. If my Feoffee in Fee of an Acre of Land re-infeoffs me of the same Acrely Deed, reciting in the same Deed, that I have infefold him of an Acre of Land, to have and to hold to him and his Heirs; and faith farther in the same Deed, that as fully as I have given the Lands unto him, he doth give me them back again, and delivers to me the Deed as his Deed, and Seilin of the Land according to the Deed; in this Case it seems, that I have an Ettate of Inheritance in this Land, notwithstanding that it is not given unto me and my Heirs, because that my Ettate doth rely upon an Ettate of Inheritance, recited within the same Deed, tamen quare. Perk. S. 241. cites T. 11 H. 4. 84. & 39 All. p. 12.

But if Land be given unto me by Deed to have and to hold to me in Fee, without speaking of my Heirs, and Livery of Seilin be made unto me according to the Purposes; by this Feoffment I have an Ettate for the Term of my Life; &c. Perk. S. 243. cites T. 20 H 6. 46.
Feoffment.

(D. a. 3) Passes; what, by the Feoffment or Livery.


(E. a) Pleadings.

1. In Assise, where Deed of Feoffment is pleaded in Bar, Nient Comprise is no Plea, but shall say that Riens passa, &c. S. P. where a Thing of Record, as Fine, &c. is pleaded, there Nient Comprise is no Plea, but in Case of a Feoffment, he shall say that Riens passa, nevertheless after Persey attented to the Averment, quare. Br. Comprises, &c. pl. 12 cites 29 Alf. 56.

2. Formedon in Recéter, the Tenant said, that the Donor ensoff'ed the Donces in Fee, &c. Judgment Si Actio; and this is no Plea, per Cur', if he does not traverse the Gift in Titl. By which he said, that after the Gift, the Donor ensoff'ed the Donces in Fee; and no Plea, per Cur', without saying, that after the Gift the Donor was seis'd in Fee, and ensoff'ed the Donces in Fee; wherefore he said accordingly, and the Demannant imparled, and yet this is in Efect only in Confirmation. Br. Barre, pl. 4. cites 2 H. 6. 15.

3. In Ward, the Defendant pleaded a Feoffment by which the Tenant, Ancefor of the Heir ensoff'ed N. P. in Fee, whose Enfeoff be keth; and per tot Cur' this is no Plea without a Traverse, that he did not die bis Tenant, or that he did not die seis'd; nevertheless as it feems, he shall traverse, that he did not not die in his Homage. Br. Barre, pl. 37. cites 4 H. 6. 29.

4. And in Exchequer because his Tenant died seis'd without an Heir, 'tis no Plea, that the Tenant ensoff'ed N. whose Enfeoff be keth, without a Traverse that he did not die seis'd, per Martin, which the Court agreed. And so fce, that where the Plea is contrary to the Supposal of the Writ, 'tis no Plea without traversing the Point of the Writ, Quod nota. Br. Barre. pl. 37. cites 4 H. 6. 29.

5. And in Assise, the Tenant pleaded a Deed of Feoffment by the Plain- tiff to J. N. whose Enfeoff be keth; 'tis a good Plea; and yet if he pleads the Feoffment of the Plaintiff to him, this is no Plea, per Paton, which Martin agreed; and to free there, a Difference is taken between a Feoffment pleaded by Que Enfeoff, and a Feoffment made immediately to him who pleads it, note the Diversity. Br. Barre. pl. 37. cites 4 H. 6. 29.

6. In Precipe quod redat, if the Defendant pleads Feoffment of the Father of the Demannant, whose Heir be is, simply and without any Condition, it was held by Babb. and Paton, that these Words (without Condition) are void, and the Effect of the Plea is no more, but the Feoffment; and the Demannant shall allege the Condition of his Part to conferis and avoid it, and then the Tenant by Rejoinder shall answer to the Condition. Br. Pleadings. pl. 8. cites 9 H. 6. 59.

7. In Trefpafs, the Defendant said, that it was his Frankenemen, &c. the Plaintiff said, that before the Defendant had any Title, A. was seis'd in Fee, and ensoff'ed B. who ensoff'd C. who ensoff'd D. who ensoff'ed the Plaintiff, and the Defendant enter'd, upon whom the Plaintiff re-enter'd and brought the Action; and was compell'd by the Court to quit all the Feoffments, except the Feoffment of B. to him; For this is sufficient, and he may give the other in Evidence. Br. Pleadings. pl. 23 cites 19 H. 6. 30.

8. Where
Feoffment.

8. Where a Man pleads Feoffment, the other may say, that it was upon Condition, without Travesty; for it may be intended one and the same Feoffment. Br. Tracts, per. &c. pl. 582. cites 32. H. 6. 4. without Deed, and Returny is good, if the other Party confesses the Action. 5 Rep. 40. b. in

9. Entry in the Quihus, the Tenant said, that J. S. was feised in Fee, to whom J. D. releaved by his Deed all his Rights, &c. and J. S. enfeoff'd H. in Fee, whose Estate the Tenant has, and gave Colour. Billing prayed to be discharged of the Releafe, and that it be not entred; for Possession, nor Right is alleged in J. D. who releaved, and yet it was an Entry; for it may be that J. D. was feised in Fee, and releaved, and then this made Title to the Tenant; and per Prior the Releafe may make Title. Br. Pleadings pl. 54. cites 38. H. 6. 5.

10. If Feoffment be made by Livery by Letter of Attorney, it shall be pleaded generally; and he shall not say, that the Livery was by Attorney. Br. Licences. pl. 11. cites to E. 4. 4.

11. In Trefpass, 'tis no Plea in Avoidance of a Feoffment to say, that S.P. Br. Con- the Feoffor had nothing in the Land at the Time of the Feoffment; for it feffs by Livery; therefore be shall say that Ne enfeoff's pas. Br. Fe-

12. Feoffment by A. B. and C. to J. S. and J. S. pleads that B. and C. were feised and enfeoff'd him, &c. [It seems to be intended that A. was dead.] If this Feoffment be travelled, it shall be found against him. For the Feoffment is one joint A's by all three. * E. 4. 1. b. pl. the last, per Littleton.

then gave but his Part. Co. Litt. 186. a.—S.P. Br. Holt Ch. J. Williams's Rep. 1. cites S.C.—Br. Feoff-

13. But if J. S. make a Feoffment to A. B. and C. and B. and C. die, so that A. has the Whole by Survivorship, in such Case A. may plead the Feoffment to himself only. * E. 4. 1. b. per Littleton.

14. If a Man be bound to make a Feoffment of the Manor of D. and
pleads, that he made a Feoffment, he shall shew where the Manor is; for it cannot be done, but upon the Land. Br. Pleadings pl. 31. cites 15 E. 4. 14.

15. There is a Diversity between the Pleading of Void Feoffments, or such as are voidable only; as a Feoffment by one Jointenant to his Master of a Manor by Reason of the Power of Sale, or Monk is void, and the Party may say, Ne enfeoff's pas; But otherwise of a Feoffment by Infant, or one in Priory. 18 E. 4. 29. a. per Littleton.

16. In Affile, if the Tenant pleads Feoffment made to him of the said Land, and the Deed is all his Lands in B. which descend to the Feoffor of the Part of the Father, and does not aver, that these Lands were descend'd to him of the Part of the Father, yet it is good; because he said that he enfeoff'd him de Pratiditis terris in querela specificatis; by all the Justices and Servants. Br. Pleadings. pl. 66. cites 1 H. 7. 23.

17. So in Affile againe against J. S. and he pleads a Feoffment made to him by Deed and the Deed is J. N. and yet good; For he may be known by two Surnames, but the Pleading is the better, if he pleads per Nomen, &c. For where he pleads a Deed to J. S. and shews Deed made to H. S. [It is not good]; For he cannot be known by two proper Names; For all the Justices and Servants. Br. Pleadings. pl. 66. cites 1 H. 7. 28.

18. Where
18. Where a Man pleads, that a Stranger was seised and enfeoff'd him, he need not, in any Case whatsoever lay, that it was to his own Use; For Prima facie, it shall be so intended, till the contrary be shewn. 5 H. 7. 23. a. 22. 

19. In pleading of a Feoffment, Leafe, &c. by Cesty que Ufe, he need not "say," that he at the Time, &c. was of full Age, Sound and Memory, &c. but this shall come by the other Party. Br. Pleadings pl. 171. cites 16 H. 7. 2. 26. 

20. In Trespass, the Defendant saith, that A. and B. were seised in Fee to the Use of the Plaintiff, and that the Plaintiff sold the Land to him, &c. and admitted good, notwithstanding that he does not plead, who enfeoff'd A. and B. to the Use of the Plaintiff; quod nona bene inde. Br. Pleadings, pl. 43. cites 21 H. 7. 6. 27. 

21. In Dower; if the Tenant pleads Diffeision by the Baron, and the Feoff of Feoffment by J. N. to the Baron, who after enfeoff'd the Tenant, and after disfeoff'd him, the shall say that the Feoffment of J. and the Seisin of the Baron, were during the Coverture. Br. Pleadings, pl. 147. cites 26 H. 8. 28. 

22. Mention shall be made in the pleading, that the Land was within View. Br. Feoffment de terres. pl. 57. 29. 

23. If A. pleads a Feoffment in Fee, he must conclude, Virtute ejusque praedict. a. juris sitius, &c. and this holdeth not only in Case of Lese, which lie in Livery, but also of Rentes, Adnouns, Commons, &c. and other Things, that lie in Grant, whereof he hath an Estate for Life, or Inheritance. Co. Litt. 201. a. 30. 

24. When a Man pleads a Leafe for Life, or any higher Estate, which pertain by Livery, he is not to plead any Entry; for he is in actual Seisin by the Livery itself. Co. Litt. 201. a. 31. 

25. In pleading a Demife for Life after the Death of two former Lives, the Indenture was pleaded by a Testament only, viz. quod per quandam Indenturam, testator quod Demeserat, and no Livery of Seisin was given; and it was held Ill. D. 117. b. 118. Pach. 2. and 3. P. and M. Jones v. Weaver, alias Sentloe's Café. 32. 

Such Pleading of a Feoffment by Testament only is not good, but it should be alleged directly, quod Feoffavit. Arg. 2 Roll. R. 110. in Case of Buttotan v. Gollan cites 21 E. 4. 44. 22 E. 4. Brief. 860. 22 H. 6. 5. 24 E. 4. 5. 28 H. 6. 29. —But it was argued e contra, that it had been resolved, Mich. 51. and 52 Eliz. that where the Pleading the Feoffment was only by way of Indenture, it is good by Testament; as where the Action is only to recover Damages, as in Coagstrate, as the Principal Case was, and adjudg'd accordingly. 2 Roll. R. 110. Trin. 17. Jac. R. Buttotan v. Holman. 33. 

26. In Trespass for taking his Ox, the Defendant justified as Servant of A. and that he took it as a Heriot, by Reason of a Custom within the Manor to pay a Heriot on the Death of every Tenant dying feised of a Mesiage, and that J. N. enfeoff'd W. R. and W. S. of the Manor, to the Ufe of A. The Plaintiff demanded, because the Defendant entitled A. as a Purchasor, viz. by Feoffment, and shows not the Attornment of the deceased Tenant, whose Services are demanded, and that he cannot otherwise entitle him to the Services of that particular Tenant; and tho' a Feoffment of a Manor may be pleaded, and that by Force thereof he was feised of that Manor without shewing the Attornment of the Tenant, (for that is necessarily intended, as Livery without pleading it,) yet in this Case of a particular Tenant, he ought expressly to shew his Attornment. But the Court held that there was no difference, and the Attornment may be intended, and if he did not attorn, the other ought to have pleaded it. And all agreed, that by the Feoffment of the Manor the Services passed not without an express Attornment, but that may be well intended, if the contrary be not shewn. Cro. E. 450. Trin. 37. Eliz. R. Ferrers v. Wignall. 34. 

27. Executor brought a Debt for Arrears of Rents, as well Copyhold as free, belonging to the Manor of D. whereof his Testator died feised, and for Rents due at the Testator's Death, the Action was brought upon the
Feoffment. 205

the Stat. 52. H. 8. It was held, that it lies not for the Copy old Rents
within the Statutes; Nor for the free Rent, because the Plaintiff had
not declared that Defendant apponted to Feoffor; and this in pleading it is
sufficient to allege Feoffment of a Manor without pleading Livery, or
Attachment of the Tenants, yet when the Rent of any Freeholder comes in
Debate, it behoves both the Owner of the Manor, or his Executor, who
demands it, to convey Priority between the Tenant and the Lord, which
ought to be by Attachment; For the Rents and Services do not vest with-out
v. Doily.

28. A Man pleads * feoffavit, dedit, or dimittit, for Life. This implies *
When a Livery; for without Livery, it is no Feoffment, Gift, or Demife. Trin.
7. Jac. 8 Rep. 82. b in Vinoy's Cafe.

29. Upon a Demurrer in Debt for Rent, it was objected, that the
Plaintiff, being a Corporation, intitle themselves by Feoffment, and show
not Livery to be executed by Letter of Attorney; For that they may not
make the Livery, and Seifin thereof, because it is to be admitted. Hill. 7 Car. C. B. Cro. C. 101.
Mich. 6 Jac. B. R. Yelv. 135. in Cafe of Appleton v. Doily.—Livery shall be intended. Because
he who made the Livery shall be intended to be upon the Land, and to Execute it. Admitted. Arg.
Pl. C. 149. b.—Munton shall be made in the Pleading that the Land was within View. Br. Feoffment
de terres pl. 57.

30. It was pleaded that Sir Thomas Parret was Seised in Fee, and
enfeoff'd two Trustees to sue Ufes, Virtute cujus, they were seised; yet,
because 'twas said, sefettavit inde, it was adjudged ill, and Virtute cujus

31. If a Fene folo makes a Feoffment, and Livery within View, and
directs him to enter, and after marries the Feoffie before his actual Entry,
yet an Interest takes by such Livery, and the Marriage is no Counter-
mand, and when he enters it has a strong Retrospect to the Livery, and
shall be pleaded as a Feoffment when he was Sole. Vent. 186. Hill. 23 and

(E. a. 2) Pleadings, Traverfe.

1. N Avoyny, the Plaintiff pleaded Feoffment of twenty Acres by T. Lord S. P. Br A-
of the Manor, before the Statute, to hold by left Services by Deed, which
be prea'd, and the other said that R. was seised before this, and enfeoff'd'
W. to hold as in the Avoyny, abffe box, that T. ay Thing held in the Ma-
nor at the Time of the Feoffment made of the 20 Acres; this Traverfe is
as well, if he had said, Abffe box that T. enfeoff'd N. &c. Br. Traver-
fe per &c. pl. 106. cites 22 H. 6. 50.

(F. a) Livery presum'd at Law, or supply'd in Equity.

1. F A Man sell Lands in two Counties for Money, and makes Livery in
one only, he shall be compell'd in Confidence to perwife the Afflu-
ences by another Livery; For the Contract faileth in a Circumstance, or

2. Where one would have avoided a Conveyance for want of Livery,
the Grantee, on a Bill by him, was reliev'd. Toth. 104. cites Mich. or
Hill. 9 Jac. Conquest v. Newdigate.

3. The Perfon died before the Livery and Seifin, and before the Afflu-
ences peract'd; yet it was ordered to be peract'd. Toth. 237. cites
Pach. 7 Car. Higham v. Ladd.

4. After
4. After a Leafe for Life had beene twenty five Years in Possession, and Leifor would avoid the Leafe for want of Livery, Chancery precipitated Livery, and Decreed the Leafe should hold out during the Continuance of his Life; tho' after long Possession Courts at Law will premise Livery. Vern. 196. cit. 11 Car. 1. Biden v. Loveday.

5. It, at the Assises, a Deed of Feoffment be given in Evidence to be made forty Years past, but it cannot be proved, that Livery was made; yet if Possession has gone all the Time according to the Deed, 'tis good Evidence to the Jury, and I will direct them to find a Livery; for it shall be intended; but if the Jury find all this specially, we cannot adjudge this to be a good Feoffment without Livery; per Coke Ch. J. Roll. Rep. 132. Hill. 12. Car. B. R. in Case of Isaak v. Clerk. p. 149.

6. A Feoffment was made by Way of Mortgage, but no Livery and Seisin.—Bill was brought by Executors of Mortgagee to supply the Defect, and to be reliev'd against Judgments suffered by the Heir of the Mortgagor. And Decreed accordingly, and that the Judgments ought not to incumber the mortgaged Premises, 'till the Mortgage-Money be all paid, especially since the Mortgagor had covenanted with further Assurance, Mich. 25 Car. 2. Fin. R. 28. Burgh v. Francis and al.

7. A Tenant in Tail, by Settlement on Marriage of B. his Son with M. made a Feoffment to the Ufe of himself for Life, Remainder to B. for Life, Remainder to first, &c. Sons by M. This Deed was indorced generally (viz. Livery made to J. S. appointed by W. R. the Feoffee thereto) B. and M. had C. D. E. the Plaintiff, and F. the Defendant, and fix other Sons. A. levied a Fine to W. then his eldest Son, to the Ufe of A. and his Heirs; W. dies; A. conveys the Land to F. and dies; [C. and D. the two elder Sons died, as it seems, and without Issue] F. enters it, supposing that Livery was not well given. Ld Keeper decreed, 1. that the Letter of Attorney should be supplied, and Livery admitted; the it was objected, that this was in Effect to Decree a Dicontinuance, which is a wrong and unlawful Act, and that it was to affit a Remainder-Man in Tail in a third Remainder, (for he was the third Son) against a legal Fine of his Father Tenant in Tail, and whose Fine was a Bar to him in Law; and also against the Acceptance of the Fine by W. who join'd with A. who had Power by the Recovery to have barr'd the Estate of the Plaintiff. But to this lait the Ld Keeper said, the Grandfather might have the Conveyance, made by himself, in his own Hands: and it is apparently so; for he recites in that Deed, that he was Tenant in Tail, for he recites not the Feoffment made by himself. Mich. 26 Car. 2. 1 Chan. Cate. 240. Bokenham v. Bokenham.

8. Lands were conveyed by Feoffment, as a Marriage Settlement, on the Wife, but no Livery was made; the Husband died, and by his Will left to the Wife more, than the would have by the Settlement, and gave the Lands to A. and B. Decreed that A. and B. execute Conveyances to her for Life, and deliver the Possession to her. Fin. R. 388. Trin. 30 Car. 2. Marlow v. Maxie and al.

9. Where the Deed, under which the Plaintiff claimed, appeared to be fairly executed by the Defendant's Father, and that there was no Defect therein, fave only the Form of Livery and Seisin, and made on such Valuable Consideration as Marriage; Decreed the Defendant to execute Livery and Seisin in the said Deed, and make further Assurance of the said Premises to the Plaintiff and his Heirs, and the Plaintiff is decreed to enjoy the same against the Defendant. 33 Car. 2. 2 Ch. Rep. 218. Thompson v. Atfield.

Tha' generally a De- a Settleinent, at a Pooitfon for his Children, and for their Maintenance; such a Voluntary Conveyance shall be suppi^d and made good here, yet if a Man volun-
Feoffment. Feræ Natura.

10. A made a Feoffment in Fee, by way of Mortgage, of several Houses in London, for securing the Payment of 400£ and Interest; and being likewise indebted to several other Persons by Bonds, he died before the Money due on the Mortgage was paid. After his Death, the Bond-Creditors demanded their respective Debts of his Heir, who had nothing to pay them, but the Equity of Redemption of this Mortgage. The Creditors undertook to satisfy the Mortgage, which he did, in order to let himself into the Estate, and hold it, 'till his Bond-Debt was paid; but having discovered that there was no Livery and Seisin, endorsed on the Feoffment, he brought an Action of Debt against the Heir upon the Bond of his Ancestor, and got Judgment: But before Execution, the Seal was opened on purpose for a Subpoena, which was taken out, and a Bill filed, to help this defective Conveyance, which was supplied accordingly, and the Mortgagor had his Money. N. Ch. R. 183. cites the Case of Burgh v. Francis.

Decreed to convey a perfect Estate of Inheritance, subject to Redemption on payment of the Principal, and Interest due on the said defective Deed: and a perpetual Injunction for quiet Possession against the Heir, and all other Defendants; and to stay all Proceedings at Law. S. C. cited by Mr Vernon. Arg. Wms's Rep. 279, as first heard, by Lt. K. Bridgman, and decreed by him, and after affirmed by Ld Nottingham.

II. A Deed of Lands in two different Counties, by way of Feoffment and Livery and Seisin, was endorsed of the Lands in one County only, but nothing mentioned of any Livery of the Lands in the other County. But decreed that by Reason of the Possession and great Length of Time, (being upwards of 70 Years before) Equity will suppose and supply it. And said, that it would have been much stronger on the other Side, had the Livery been endorsed of the Lands in one County, in the Name of both; for that would have implied, that none was of the other, and that one was design'd for both. Sel. Ch. Cafes. 8th Mich. 1730. Jackson v. Jackson. In this Case it was affirmed, that, as to the Possession and Length of Time, the Intendment endeavoured to be made out from thence can have no Weight, because the same Persons, that enjoy'd the Lands under the Deed, were also Heirs at Law, and as such must have enjoy'd them otherwise, tho' there had been no such Deed; yet Lord Chancellor declared, that, was he to try this Matter (at Law), he should presume, and so direct, that Livery was executed as to all the Lands, according to the Deed, after this Length of Time; but however, that this Court would aid a Defect of this Kind. Gibb. 146. Mich. 4 Geo. 2. S. C.

(G) Equity. Mistakes.

1. WHERE more Lands pass'd in a Feoffment, than were intended, it was holpen in Equity, notwithstanding it was after a Verdict and Judgment at Law, supposing some Circumvention. Toch. 186. cites Eborall v. Hunt.

(A) Feræ Naturæ.

1. FOR Pidgeons, Fifth kill'd, nor other savage Beasts found in * their * Orig. (here
Range, a Man ought not to suffer Death, unless they were feriously slain out of a House, &c. Br. Corrose. pl. 92. cites 22. Afl. 92.
2. If a Man breaks a Pidgeon-Houle, and takes young Pidgeons feloniously, which can neither go nor fly, this is Felony; For the Property is in the Owner of the Pidgeon-Houle; because they cannot go nor fly, therefore
Ferae Nature. Ferry.

fore he may take them at his Pleasure. Contrary of taking of old Pidgeons; For a Man has not Property in them, for they are not amenable at Will. Br. Corone pl. 163. cites 18. E. 4. 8.

3. And taking of Fizo out of a Trunk in a Pond, is Felony; contrary if they are taken out of a River. Ibid.

4. So of young Gof-Hawks in my Park, which cannot go nor fly; this is Felony; contrary of old Gof-Hawks. Ibid.

5. Larceny cannot be committed of Things Ferae Nature, while at their natural Liberty; but if they are made fit for Food, and reduced to Tamenefs, and known by the Taker to be so, it may be Larceny to take them. And so he thinks, it may be of wild Pidgeons in a Dove-Houfe shut up, or Harcs, or Deer in a Houfe, or even in a Park inclosed in such a Manner, that the Owner may take them whenever, he pleaseth without the least Danger of their escaping. 1 Hawk. pl. C. 94. Cap. 33 S. 26.

(B) Pleadings in Trefpafs, for taking Things Ferae Nature.

1. Trefpafs quare Vi & Armis Damam suam cepit. &c. and because he did not say Damam suam Dominam, nor that the taking was in Park nor Warren, therefore the Writ was abated by Award. Br. Brief. pl. 63. cites 43. E. 3. 24.

2. Trefpafs, quare Clausum fregit, and four young Gof-Hawks in their Nets, being of the Price of 4l. ibidem cepit & Aportavit. Per Moyle, he shall say, they were reclaimed; as of four Deer, be shall say Domeffeck; otherwise there is no Property, and then an Action does not lie. But per Asce and Newton the Writ is good; and so it is, that his 4 Deer ibidem Inventas cepit, &c. And so of a Writ, quare Clausum fregit, and four Herons taken, &c. Br. Trefpafs, pl. 162. cites 22 H. 6. 59.

3. But if it be good talia cepit, &c. and does not say quod Clausum fregit, &c. cepit; then the Writ does not lie; quod Curia conceit: And so noce, that if it be in his Clofe, or in his Soil, or in his Park, or Warren, Writ lies, and not otherwise. Br. Trefpafs, pl. 162. cites 22 H. 6. 59.

(A) Ferry.

Ferry is in Respect of the Landing Place, and not of the Water; the Water may be to one, and the Ferry to another; as 'tis of Ferries on the Thames, where the Ferry in same Place belongs to the Arch Bihop of Canterbury, where the Mayor of London has the Interest in the Water; and in every Ferry the Land of both Sides of the Water ought to be to the Owner of the Ferry, or otherwife he cannot land on the other Part. 13 Apr. 23. Eliz. in Scacc. Savil. 11. Inhabitants of Ipswich v. Brown.

1. And every Ferry ought to have expert to have expert
every Ferry to have expert
able Ferryman, and to to have present
have presence
Payment for the Paffages, and reasonable Payment for the Paffages.

And it is requisite to have one, who has Property in the Ferry, and not to allow every Fisherman to carry, and收回 their Pleasure, for divers Inconveniences; and especially when a Place is between the Divisions of two Counties, any Felon may be convey'd from one County to another, secretly, without any Notice.

2. If Ferryman, if it be on Salt Water, ought to be privilèg'd from being press'd as a Soldier, or otherwise. Savil. 11 and 14. at sup.

Carth. 195.

3. Owner of a Ferry cannot suppress that, and put up a Bridge in its Place without Licence, and ad quod Damnum, per Holt Ch. J. Pach. 3.

Feudall Barony. Fictions.

4. If a Ferry be granted at this Day, he that accepts such Grant is bound to keep a Boat for the publick Good, per Holt Ch. J. Show. 257. in the Cafe of Pain v. Partridge.

5. Custom for the Inhabitants to be discharged of Toll, may have a reasonable Beginning by Agreement; as that the Inhabitants of the Town might be at the Charge of procuring the Grant, and in Consideration thereof, one Man to find the Boat, and take Toll; but the Inhabitants to pay none, per Holt Ch. J. Show. 257. ut sup.

6. A common Ferry was for all Passengers paying Toll, but the Inhabitants of A were Toll Free. An Inhabitant of A may bring an Action for taking Toll, but not for not keeping up the Ferry; Because the former is a private Right, but the latter a publick. 1 Salk. 12. Trin. 3. W. 3. Pain v. Partridge.

(A) Feudall Barony.

Feudal Barones were, when the King, in the Creation of Barones, gave Rents and Land to hold of him for the defence of the Realm, per Holt Ch. J. There is no Feudall Barony remaining at this Time, except Arundell. 1 Salk. 253. Ld Gerard v. Lady Gerard.

wherein there was a Castle, whereunto all the Inhabitants in Time of War resorted; and there were called the Capita Barone; and there was no Dower of them, because they were for Defence. No such have been granted since R. 2d's Time. Mich. 7. W. 3. B. R. 12 Mod. 54. Ld Gerard's Cafe.

(A) Fictions.

1. All Fictions of Law are to certain Respects and Purposes, and extend only to certain Persons; as the Law supposes the Vouchee to be Tenant of the Land, where in Rei Veritate he is not, but this is as to the Demandant himself, and to enable him to do Things as to the Demandant, and which the Demandant may do to him; and therefore a Fine levied by Vouchee to the Demandant, or Fine or Release from the Demandant to the Vouchee is good; but Fine levied by the Vouchee to a Stranger, or Leafe made to him by a Stranger is void, per Coke. Mich. 33 and 34. Eliz. B. R. 3 Rep. 29. b. in Butler and Baker's Cafe.

2. The King is not to be answer'd, bound, nor defeated by Fictions; and therefore he would not have been bound in his Reversion, or Remainder by a Reign'd Recompence upon a Common Recovery, or Warranty Collateral, without true and actual Affect, &c. Hob. 339. in Cafe of Sheldon, and Ratcliffe, cites 6. E. 5. 56. and 1 Rep. 43. Altonwood's Cafe.

3. Those Things are properly Fictions of Law, that have no real Effe ce in their own Body, but are so acknowledged and accepted in Law for some special Purposes. Hob. 222. cites Co. Litt. 265. b.

4. Fiction is never admitted where Truth may work; as where Cityque utc. and his Feoffee join in a Feoffment, it shall be the Feoffment of the Feoffee. Hill. 15 Jac. Hob. 311. in Cafe of Wright v. Gerard.

5. The
Fictions.


6. There are five sorts of Fictions in Law, Abeyance, Remitter, Relation, Presumption, and Representation, per Doderidge J. Jo. 73.


8. Fictions of Law must not be of a Thing imposible; For the Law imitates Nature, per Doderidge J. 2 Roll R. 502. in the Case of Radcliff v. Sheffield.


10. No Escape can amount to a Capital Offence, unless the Crime, for which the Party was committed, were actually such at the Time of the Escape; for it is not sufficient that it become such afterwards from the Beginning by a Fiction of Law; as where one is committed for having given a dangerous Wound, and escapes, after which the Party dies.


Figures.

1. In Assumpfit in an inferior Court, the Time of the Promise alleged was in Figures, and upon Error brought, Judgment was reversed for this Case. Sid. 40. Patch. 13. Car. B. R. Ducket v. Bland.

2. It was moved to quash an Indictment, because the Year of our Lord in the Caption was in Figures. But per Hale Ch. J. the Year of the King is enough. Mod. 78. pl. 40. Mich. 22. Car. 2. Anon.

3. In Debt for Rent, the Sum demanded was in Figures, and not in Words; upon a Writ of Error brought, the Court held it was a material Exception, and reversed the Judgment, unless Cause, &c. Hill. 23. Car. Stri. 88. Hobson v. Heywood.


5. In Indeb. Assump. pro opero & Laboro, it was excepted, because the Sum was in Figures, fed non Allocatur, for they were (XI) Latin Figures, which is well enough; otherwise, if they had been (12) English Figures; and it would have been otherwise, if they were in Figures in an inferior Court, and therefore it was adjudged for the Plaintiff. This was in a Writ of Enquiry. Skin. 409. Hill. 5. W. & M. B. R. Hebbert v. Corithorp.

6. 6 Geo. 2. 14. Allows the expressing Numbers by Figures in all Writs, &c. Pleasings, Rules, Orders and Indictments, &c. in Courts of Justice, as have been commonly used in the said Courts, notwithstanding any Thing in the 4 Geo. 2. 26.
File:

(A) Of putting upon the File, and taking off.

1. A Case was between Father and Son, and there having been great Heat, and indecent Reflections on both Sides, in Bill and Answer, and the Matter being ended this Vacation by Compromise; upon Motion this Day made in Court by Mr Porter, the Bill and Answer were taken off the File by Consent. Mich. 1683. Vern. 189. Tremaine v. Tremaine.

2. Information filed, without Recognizance entered into by the Party, is ill, but the Court cannot take it off the File; when once a Thing is on the File, it cannot be taken off without an Act of Parliament, no, not by Consent of Parties, as in the Case of Dr Widdrington on a Mandamus, the College made a very scandalous Return, and which he and the College agreed; and then they moved to take the Return off the File, but the Court refused, saying, it could not be done without an Act of Parliament; only they entered a Vacat to be entered thereupon; that in this Case, the Method may be, to enter the Irregularity on the Roll, with a Celler processus Superinde. Sed Cur. advifare vult. 12 Mod. 155. Mich. 9. W. 3. the King v. Lambert.

3. If a Bill against an Attorney be filed irregularly, it may be taken off the File. per Cur. 12 Mod. 164. Hill. 9. W. 3. in Cafe of Broadwaiete v. Blackerby and Perkins.

[See, Report. (A)]

Fine:

(A) The Antiquity of Fines.

1. A Fine is pleaded to be levied 2 E. 1. but not pleaded as a Fine, because he had no Chirograph of it. 25 P. 6. 3.

2. 7 E. 1. Rot. Clausuum Henibrana. 5 in Doxo a Fine levied between the King and Bigod Earl of Norfolk in such Form, as at this Day, &c. leg ex finalis Concupida, &c. 8. E. 1. Henibrana. 11. Fine upon Repet of an Advowson.

3. 18 E. 1. Libro Parliamentario, among the Reasons of the Judgment there given, it is laid, Nec in Regno ito provideatur, vel fit aliqua Securitas Major feu Solempnior, per quam aliquis vel aliqua statum certiorem habere possit, vel ad itum stum Verificandum aliquod Solennis Testimonium producere quam Finem in Curia Domini Regis levatum; quid uidem Finis nec Votum, et quo Finis & Consummatio omnia Plactorum ete deber, & haec de Causa providebatur.

4. It is certain, that Fines were frequent before the Conquest. 2 Inf. 511. Catlin cited some Fines before the Conquest, touching the Possessions of the Abbot of Crowland. Pl. C. 369.

(A. 2) The
(A. 2) The Original of Fines.

1. The Ancient manner of Conveyancing was of two Sorts, either by Fine or Feoffment. The Fine was in the Lord's Court, and by this they paid all Feudal Right, which was in Possession; and there are Insances as low as the Time of H. 2. and E. 2. of Fines in the Court of the Lord: and they were called Fines, because a Fine was paid to the Lord for such Agreement, for that it transferred the Feudal Right held of the Lord. G. Treat. Ten. 93. cites Madox 15.

2. But tho' in such Courts, they paid all the Right the Tenant had in Possession; yet the Right of Action could not be transferred, because that would encourage Maintenance; therefore, whatever such Grantee could seize paid by this Feudal Conveyance. But the Right of Distress and of Action did not pass without Attornment. G. Treat. Ten. 93.

3. The Feoffment conveyed the Feudal Possession, Coram paribus out of Court; for it was necessary to convey sometimes before the Court was held, and then the Possession was delivered over coram Paribus; but as there were two Conveyances of Copyhold, one in the Lords Court, and the other to the customary Tenants; so in Freehold, where the immediate Grant was to the Feoffee, and not to the Lord, as in the Copyhold; yet there were two Sorts of Conveyances, one by Fine in open Court, the other by Feoffment coram Paribus; the Right only paid by Fine, because the Possession being in the Grantee, they might well pay till the next Court to transfer the Right; but where the Possession was to be parted with, or Service to be done, or Money paid, there the Usual way was coram Paribus, that the Feoffee might not lose the Profits in the mean Time, or the Possession be delivered before the Contract could be completed. G. Treat. Ten. 93, 94.

4. Thus it stood till sometime after the Conquest; but the after Kings endeavouring to retrench the Privilege of the Great Lords, they first in Magna Charta, and after by the Statute of Quia emptores terrarum, began to admit of Alienations without Fine to the Lord; and the Acts of Court Baron were only esteemed to create Notoriety among the Tenants of the Manor. From hence Grants in the Lords Courts were omitted, and the Attornements in Fees were the only Notorieties of such Grants, no Fine being paid to the Lord; and the Kings Courts creating a Notoriety all over the Land, the usual Way was to make the Grant in the King's Court, in this Manner: They used to suppose that the Parties had Covenanted to Alien; and all Writs of Covenant, (as being an Action of publick Concern to the Justice of the Kingdom,) were usable only in the King's Court; and by Consequence this Covenant to Alien was usable there; and that Court being polliced of the Matter as an Adversary Cause, they were admitted to make all manner of Agreement, touching such Suit depending; and these Agreements being amicably made by way of Composition before the King's Court, it became the Justice of the King's Court to see them performed; and therefore a Scire facias illud to execute the Fine, and a Quid juris Clamat to the Tenant. G. Treat. Ten. 94, 95.

(A. 3) Fine. How and in what Manner to be levied.

1. 13 E. 1. Stat. 4. S. 1. Enaets that, when the Writ Original is delivered in the Presence of the Parties before Justice, a Minister shall for this: 

2. 2. And the Justice shall say to him, when faith Sir R. and shall Name one of the Parties. 

S. 3. That
S. 3. Then, when they be agreed of the Sum of Money that must be given to the King, the Justice shall say, Give the Peace.

S. 4. And after the Prayer shall say, Inasmuch as Peace is Licentium this unto you, W. S. and A. his Wife, that here be, do acknowledge the Mover of B. with the Apparitions contained in the Writ, to be the Right of our * Lord the King, which be hath of their Gift.

S. 5. To have and to hold to him and his Heirs, of the said W. and A. and the Heirs of A. as in Deemphes, Rents, Seignories, Courts, Pleas, Purchases, Wards, Marriages, Reliefs, Echeats, Wills, Advozations of Churches, and all other Franchesies and Free Cautions, to the said Minor belonging, paying yearly to R. and his Heirs, as chief Lords of the Fee, the Services and Cautions due for all Services.

S. 6. And it is to be Noted, that the Order of the Law will not suffer a final Accord to be levied in the King's Court without a * Writ Original, and that must be at the last before four Justices in the Bench, or in Eyre and not otherwise, and in Preference of the Parties Named in the Writ, which must be of full Age, and good Memory, and out of Prifon.

Error. 2 Inf. 515.—See (F) pl. 3, 4, 5, 6, 7. † The Number of Justices here mentioned are not requisite at this Day; but there must be above the Number of One. And therefore a Fine levied before the Time, or by the Brevices de Commune banco, was not good. 515.—A 7. 7. 24. Edw. 1, that it shall be sealed the levied in C. B. before, 2. Justices only there. † It was, Resolved, that a Fine may be levied of Lands in Ancient Demesne in the Court of Ancient Demesne, notwithstanding this Statute, that says, that Fines shall be levied in C. B. & non ali. For this Statute only takes away the Right of Fines levied in Borough Courts, or other Inferior Courts, which was the Mischief intended to be prevented by this Statute, and does not extend to Courts of Ancient Demesne; for it would be unreasonable, that they should be barred of levying Fines in C. B. (as they may be by Writ of Deciet) and yet not able to levy Fines in their Courts of Ancient Demesne. And it was Resolved, that such Fine levied in Ancient Demesne makes a Distinction, and has all the Effects of a Fine levied in C. B. except that it is no Bar, which is only Force of the Stat. of 4 H. 7. Lutw. 781. &ntr. v. Bourne, and al. —1 Saiz. 320. Hill. 1 Am. B. R. S. C.

S. 7. And if a Woman Covert be one of the Parties, then they must be * See (F) 71, first examined before four of the said Justices, † and if she doth not Affront thereunto, the Fine shall not be levied.

S. 8. And the Cause wherefore such Solemnity ought to be done in a Fine, is, because a Fine is so high a Bar, and of so great Force, and of so strong Nature in itself, that it concludes not only such as * Parties and † Privies thereto, and their Heirs, but all other People of the World, being of full Age, out of Prifon, of good Memory, and within the four Seas the Day of the Fine levied.

* Indeed and Recorded, the Feme, or her Heirs shall not be allowed to aye, that she was not examined nor examined.

Error. 2 Inf. 515.

S. 9. The Causes therefore wherefore such Solemnity was done in a Fine, is, because a Fine is so high a Bar, and of so great Force, and of so strong Nature in itself, that it concludes not only such as * Parties and † Privies thereto, and their Heirs, but all other People of the World, being of full Age, out of Prifon, of good Memory, and within the four Seas the Day of the Fine levied.

* And if a Woman Covert be one of the Parties, then they must be * See (F) 71, first examined before four of the said Justices, † and if she doth not Affront thereunto, the Fine shall not be levied.

S. 10. And the Cause wherefore such Solemnity ought to be done in a Fine, is, because a Fine is so high a Bar, and of so great Force, and of so strong Nature in itself, that it concludes not only such as * Parties and † Privies thereto, and their Heirs, but all other People of the World, being of full Age, out of Prifon, of good Memory, and within the four Seas the Day of the Fine levied.

* Indeed and Recorded, the Feme, or her Heirs shall not be allowed to aye, that she was not examined nor examined.

Error. 2 Inf. 515.
Father had levied it, it would have been otherwise. 5 Vol. R. S. L. 216, 216, cites Trin. 21 Jac. C. B. Godfrey's Case.—By the words Privies and Strangers in the Statute, if Tenant in Tail is party to the Fine, and his fine claims per terminam Dati, yet he is Privy; For he cannot convey himself as Heir to the Tail but as of the Body of his Father, which is Priority. Br. Fines, pl. 129.—So if Lands he given to Husband and Wife in socite Tail, the Remainder is the right of the Husband in Fine, and he alone brings a Fine with Proclamations of it, by this the life in Tail may be barred; For he cannot otherwise convey himself to the Tail and Defective, than as Heir of the Body of Father and Mother. 5 Vol. R. S. L. 216 cites * D. 5. 251. and Br. Fines 129.— * D. 5. b. pl. 6. Trin. 19 H. 8.

In the e words are included as well Tenant for Years, Tenant by Statute-Merchant and Staple, Copyholders and Custumary-holders, as Tenants of Freehold and Intestate, if they be out of England or Spain at the Time of the Fine levied; For a Fine levied by a Stranger cannot bar him, that is in Possession. And albeit, the Words of this Law are very general, yet do they not abrogate the Statute of W. 2. de Donis conditionals, 2 Inf. 47. — If Tenant in Tail levies a Fine, this Fine bars the Intail, and every other Person who has Rights, if he does not enter or claim within 5 Years after the Fine and Proclamations; unless such Person be aided by some of the Impleadments mentioned in the Statute. By all the Judges of England. Jenk. 192. pl. 97. cites 19 H. 8. 6.

If by this Act, if any Stranger was within Age, or in Prifon, or Non Compas, or beyond the Seas, at the Fine levied, he was totally and for ever excepted; so as after his full Age, coming out of Prifon, Sec. he or his Heirs need not make any Claim. 2 Inf. 516. — But this is altered by the 4 H. 7. 24. b, ibid. in Marg.

S. 9. * If they make not their Claim of their Action within a Year and a Day by the Country.

Tho' the Words are, if they put not in their Claim, yet in some Cases the Right of own, who might Claim, and also shall, shall be preferred. A. If Director be dissatisfied, and the second Director levy a Fine; in this Case, if the first Director enter within six Years, this shall prefer the Right of the Dissatisfied; because the first Director, by his Entry, voided the whole Estate given by the Fine, and yet the Dissatisfied might have entered himself. 21st. 518.

—See (5)

2. 27 E. 1. Cap. 1. S 3. Ensures that, the Justices shall see that such Notes and Fines, as heretofore shall be levied in our Court, be read openly and Solemnly, and that in the mean time all Pleas shall cease. And this must be at two certain Days in the Week according to the Direction of the Justices.

3. At Common Law, a Man might levy a Fine by Attorney, as well as confes an Action; and the Attorney himself might enter, and Record it, tho' the Party did not make Confinse, and of this great Mitchell followed, and oftentimes Ditherion; and therefore it was Ordained by the Statute de Fines & Attorn, that a Fine should not be levied, until the Parties went before the Justices in proper Person, so that the Justices might have Confiunse of their Age, and other Defaults; yet at this Day 2 Man may take Eatee by Fine by Attorney. Also, a Man may take a Grant and Render by Fine by Attorney, as in proper Person. Denn. R. of Fines 7.

4. And the Baron and Feme may take Eatee by Fine by Attorney made by the Baron; but this shall not bind the * Lord to Claim other Eatee after the Coverture disfolved. Denn. R. of Fines 7.

5. But Mayor and Comonalty, Dean and Chapter, relictus & jument can't levy any Fine, nor take any Eatee by Fine by Attorney. Denn. R. of Fines 7.


(A. 4) How Considered in Law.

1. A Fine is no more in Effect, than a Covenant made between the Parties before Justices, and entered of Record. Br. Fines, pl. 97. cites 21 E. 4. 4 per Temmale.

Tho' a Fine be a Feoffment of Record, yet it is but to be Feoffed.

2. A Fine for Cognizance de Droit come croe, &c. is a Fine executed, and is a Feoffment of Record, and so are the other Fines executed; as Fines, for Reliefs Confirmation, or Surrender. 2 Inf. 513.

3. Where one, who hath a Freehold in Possession, levies a Fine Come eto &c. this enters as a Feoffment with Liberty on Record; but where he hath but
but a Reservior or Remainder, it enures only as a Grant thereof, without Tort prefixed, or done to the Possession of a Stranger, who hath the Freehold. Arg. Mo. 629. in Sir Cha. Dauvers's Cafe.


5. The Court denied a Fine to be a Feoffment of Record, and said it was improperly so called, but that the meaning was, that it had the Effects of a Feoffment to some Purposes, if he that levied the Fine was seised of the Freehold at the Time of the Fine levied. 1 Salk. 340. Hill. 1 Annas B. R. in Cafe of Hunt v. Bourne.

6. While a Fine remains on Record, entire Credit must be given to it. per Cur. 10. Mod. 45. Mich. 10. Annas B. R. in Lord Say and Seal's Cafe.

(B) Plea of the Fine [Anciently.]

1. 11 H. 3. Plea Rolls at the Tower Rot. 7. in a Writ of Right by Galfrid de Cevlanda & Bartilidem versus Tollanum Nevul; the Tenant pleaded a Fine upon Releas acknowledged by the Ancestor of the Demandant in time of H. 2. & indeponit le super pedem Curiae qui eit in Thefauro, and the Plaintiffs deny the said Fine & indeponunt fe Super Recordum Curiae & pes Curiae inventus eit in Thefauro domini Regis & Curia avocat & warrantiatus et a Judicatarius & Ideo adjudged that the Plaintiff be barred, &c.

(C) Who [might, or] may take a Fine Ex officio. [Anciently and Now.]


4. Where a Vill prescribes to hold Pleas, and to make Præstiation, in Nature of whatsoever Writ they will, yet they cannot levy a Fine in a Writ of Right, and make Præstiation of a Covenant, &c. For the Action is Real and the Præstiation personal, per Knevet J. therefore if it be not expressed to levy a Fine, it is a great Question. Br. Fines, pl. 164. cites 50 Aff. 9.


6. The King may take Conuince of a Fine, and send it into Bank by Writ; and also the Lord Chancellor of England. Denbh. R. of Fines 2. See the Statute de Finibus.

7. Justices in Eyre may take Conuince of Fines, and so might Justices of the Common Bench, before that it was a certain Place; and now Justices of the Common Bench, may take Consquences of Fines, &c. Denbh. R. of Fines 2.

8. So Justices of Affize, of Tenements in Plain before them, and the Justices of Nisi Prius may take Conuince of Fines, and Darrein Prefentments in Quare impedit of Advowson, in the same County, where the Advowson
vowlon is; but *Justices of *Nisi Prius* in entring Pleas of *Lands cannot take Conulance of *Fines*.* Denlh. R. of *Fines* cit. 37 Att. 17.

9. At Common Law, the *Barons of the Exchequer* held common Pleas, and took Conulance of *Fines*; but now they are prohibited by the Statute called *Articlii pepur *Charter*, made Anno 28 Ed. 1. Denlh. R. of *Fines* 2.

10. A justice, or other Person being *Ogiste* in a Fine may not take Cognizance thereof himself; for if he do the Fine thereupon levied is void. 8 H. 6. 21. Weit Symb. S. 17.

Coke in his *Reports on Fines*, says, that if a Fine be levied before any by *Ded. Pot.* that is no *Judge, Knight or Serjeant*; it is Error, and may be Reverted in B R. by *Writ of Error*; but that it is fald in W. N. B. that a *Serjeant sworn to the King may take Cognizance of the same by *Ded. Pot.* and yet he is not named in the Statute.—Br. *Fines* pl. 120. S. P. but adds a *Quare if a Serjeant at Law* be not taken as *Justice* by the Equity of the Statute.—Trin. 5 Eliz. D. 223 b. pl. 51. *Quitter’s Cave*.

This is per *Confinatio non Regini*. Jenk. 227. pl. 90. *Co. *— Jenk. 169 pl. 58. *2 Inf. 112. Co. R. on *Fines*, Lect. 9. Pag. 10. S. P. at the Ch. J. of C. B. and says, that the *Chief Justice of England*, nor any other *Justice of the King* can take Conulance in the Country without *Writ of Ded. Potenl*. and this *forms to be by Custom and Usage*; For he says he does not find any such *Special Authority* given to the Ch. J. of C. B. by any Statute.—*Weit. S. 16. says, that the Chief *Justice of C. B. by the Privy Seal* and *Prerogative of his Place and Office may take Cognizance of Fines in any Place out of Court*, and certify the *Fame* without *Writ of Dedimus Potestatem*. cit. D. 224 pl. 51.

13. *Fines* may be acknowledged before the *Lord Ch. J. of C. B* or two of the *Justices in open Court*; this is called acknowledging a Fine at Bar, but the *Li Ch. J. may take Fines in any Place out of Court* without a Conulation, and certify the fame. *Justices of Affisse* may do it by the General Words of their Patents; but they do not *Use* to certify the fame before a special *Writ of Dedimus Potestatem* is Sued out. *Wood’s Init. 242*.

14. A Fine can’t be levied by any that have *Conulance of Pleas*, or Power to hold Pleas, it must be done only before the *Justitio of the Common Pleas*; For the King can’t grant Power to hold Plea for the Leving of a Fine. *Wood’s Init. 242, 243.* (cites 34 and 35 H. 8. 22. concerning Fines in *Towns Corporations*.)

[See Stat. 18 E. 1. S. 6. and the Notes thereon at (A. 3.)]

(C. 2)
(C. 2) At Common Law, and Now. Levied in what Places or Courts, other than C. B. and who may take Fines elsewhere.

1. In Affile, the Tenant said that the Usage of the Soke of Winchester is, and Time out of Mind hath been, that if any Baron and Feme make Alienation of the Land of the Right of the Feme by Charter, and the Baron and Feme come before the Bailiff of the Bishop of Winchester, Lord of the Soke, in the Court of the Soke, and the Feme is Confessed and Examined before the Bailiff in the same Court, and they acknowledge the same Deed; this shall bind as a Fine at Common Law; and this Matter was Plead in Bar of the Affile, and Hank and Knivet J. were clear, that they shall not Prescribe in such Custom, if it was not a City or Borough; and after the Affile was Awarded; quod Nota, and so no Bar. Br. Cутloms, pl. 39. cites 45 Aff. 48.

2. A Fine may be levied and acknowledged in B. R. when the Record is there by Error; but not upon Original to be Commenced there. Denih. R. of Fines 3.

of the Fine shall remain with the Chirographer; and this is the Reason, that a Fine can’t be levied in B. R. because there is no Chirographer. Co. R. on Fines 12.


4. Those who have Conuance of Pleas by Charter, after Conuance granted in such Licences, &c. may take Conuance of Fines in a Court of Law in the Writ; but they ought to have Power of levying Fines by special Words in their Charter, &c. and they ought to pray Conuance in this Case, before the Fine acknowledged, or they shall not have it. Denih. R. of Fines 2.

By Special

levied in Ancient Demesne, by any Cather, is deemed void. Weft. S. 18. cites 34 E. 3. 58. and that it is the same in other inferior Courts, cites 50 Aff. pl. 9.

5. And upon Conuance granted, a Fine may be levied before the Mayor of London of Lands in the Writ contained; and so it may in Writ of Right in London. Tamen quere. Denih. R. of Fines 2.

6. But a Man can’t Prescribe to levy Fines in his Court of Lands within his Manor; because Fine is a Record, which no Man shall have by Presumption; and the King upon every Concord is Donor, which a Man can’t be by Presumption. Denih. R. of Fines 3.


9. In Marches, Hundred, County, Leer, or Court Baron, Fines can’t be levied, because a Presume good vellid lies not there, nor a Writ of Consent; yet upon Writ of Right, the Suits in Court Baron shall hold Plea of Land, and shall be tried by Battle, and not by Grand Affile; yet none of these Justices, nor Courts, have Power of recording a Fine upon Proclamation, but only the Justices of the King in C. B. nor any of the Fines levied in the said Courts at this Day are of other Force, but as the Fines there levied, were before the Statute of 4 H. 7. 24. except the Fines Denvh. R. of Fines 3.
Fines.

Fines levied in C. B. with Proclamation; so that 'tis in the Election of every one to levy a Fine by the said Statute, or according to the Forme before Ufed. Denlth. R. of Fines 3. 4.


12. By 2 Ed. 6. 28. In the County Palatine of Chester.

13. By 5 Eliz. 27. In the County Palatine of Durham.

14. By 43 Eliz. 15. In the City of Chester.

But Fines in the Counties must be of Lands lying in those Counties. Wood's Inft. 243.—Fines may be levied within the County Palatine of Lancaster and Chester but that is (as Coke says he apprehends) by Force of divers Acts of Parliament and so it may be in any Cities or Towns Corporate, where they have ufed to levy Fines, if their Usages are confirmed by Act of Parliament. But such Fines shall not bar any Estate, Title, nor any Strangers, who have present, or Future Right. Co. R. on Fines 9.


(D) Fine of Land. What Persons in respect of Estate, [may levy Fines.]

S. P. per Tre- maille and yet no Original is between them. 21 E. 4. 5. pl. 8.

After he has entered into the Warranty he may levy a Fine to the Demandant, tho' in Fact neither of them is seised; For such Voucher is Tenant in Law, and may confess the Action; because of the Privyty between him and the Demandant. But a Fine by him is levied to a Stranger void. 8 H. 9. 5 H. 1. 29. Welt. Symb. S. 12.—Br. Fines pl. 34. cites 8 H. 4. 5. — 3 Rep. 29. b. in a Note of the Reporter's. In regard to the Demandant, Voucher is Tenant; but in Regard to a Stranger he is not. 1 Rep. 8; b. per Walmsley J. * Br. Fines pl. 159. cites S. L. and that it is void for want of Privyty.


† 12 H. 4. 21 b. pl. 15.

If Tenant for Years, Tenant by Statute-Merchant, or Staple, or Guardian in Chivalry, or Tenant at Will cannot levy a Fine; and if they do, 'tis void, tho' it be with Proclamation. Denlth. R. of Fines 11.

without just making a PEffment, the Fine is void, as to the making of any Title by way of Non-claim, by reason of the Imbecillity of the Eftate. Wms's Rep. 519. cites it as held by Holt Ch. J. in delivering the Resolution of the Court in the Cafe of Hunt v. Burnt. Which Lt. Chancellor agreed, and thence it was inferred, that if in Cafe of Leicester for Years, as before, the Fine might be void, because Parties fins Nihil habentur; a Portion, it might be so laid in Cafe of Tenant at will, But Lt Chancellor held it otherwise, where a Fine was levied by one, who had a defeasible Rife, and such Lease joint with him, as in the Principal Cafe there. Mich. 1718. Wms's Rep. 519, 520. in Cafe of Carter v. Barnardiston.—(alias Lodddington v. Kine. Vid.)

5. Cophay que Use in Fee Simple may levy a Fine, and this shall bind his Feoffees. Denlth. R. on Fines 12.

6. Executors, that have Power to re-enter by Will, cannot levy a Fine. Denlth. R. of Fines 12.

7. A Fine levied to a Corporation, that is aggregate, is good enough. For a Man may receive a Fine by Attorney, but not levy a Fine by Attorney, by the express Words of the Statute, Anno 15 E. 2. made at Carlyle, by which 'tis Provided, that Parties finis personatuer variant coram judicartiis, ut coram etas, facultas, feu alii defectus per eos judicandi poffint; Co. R. on Fines 9.

8. A devised to f. S. in Fee Lands held by Knight's Service, J. S granted a Leafe for Years of the whole, and the Leice occupied under this Leafe
Leafe for 3 Years; afterwards the *Heir at Law* levied a Fine: Resolved, that this Entry and Leafe by J. S. did not gain Poelisiction but of 2 Parts, and the Heir was never out of Poelisiction, and so his Fine is good. Mich. 40 Eliz. B. R. Cro. E. 641. Hempiley v. Price.

9. Albeit every Fine be good to bind the Parties, yet for the Validity of the Fine it is Convenient, that either the Cognizor, or the Cognizor be seised of the Lands alienated, 41 Ed. 3. 14 22 H. 6. 13. For the Fine is void, if neither of the Parties be seised at the levying thereof. Well's Symb. S. 13 cites. 41 Ed. 3. 14. 33 H. 6. 18. 3 H. 6. 27. 27 H. 8. 4. and 25. 37 H. 6. 34. 13 All. p. 8. 3 H. 7. 9. 5 Ed. 3. 22 H. 6. 57.

10. The King levy'd Fines by Grant and Render of Lands deforced to him from the E. of G. a Subject, his Ancellor, by Advice of Popham and Coke. After the Render made, they advis'd it necessary to have Letters Patents granting to the Conulsee by express Words, that he might enter into the Land; For otherwise the Fine being Executory, upon Grant and Render, it might be doubted, if the Conulsee without any such Grant might enter on the King. 7 Rep. 32. b. Mich. 2 Jac. Café of Fine levied by the King, Tenant in Tail.

11. Tenant in Fee-Jimple, in Tail General or Special, or Tenant in Remainder or Reversion, may levy a Fine; Tenant for Life may levy a Fine of Lands, &c. which he holds for Life, to hold to the Cognizee for Life of the Tenant for Life. If he Grants a greater Estate, it is a Forfeit. So 'tis of Tenant in Tail after possibility of Illie extinct, Tenant in Devisor, Tenant by Curtesy. A Tenant for Years cannot levy a Fine of his Term, nor Tenant by Copy of Court-Roll of his Estate. A Tenant in Common, Jointtenant, or a Coparecor, may levy a Fine of their Parts. Wood's Infl. 234.

12. Note, That the Cognizor or Cognizee must be seised of a Freehold, be it by Right or Wrong. Wood's Infl. 242.

13. A Man by his Will devises his Lands to Trustees for 99 Years for the Payment of his Debts and Legacies; and afterwards in Case they should not *Act*, and take up upon them the Trust within six Months after his Death, then he devised the said Lands to another, and his Heirs in Trust to pay his Debts and Legacies; and afterwards to A. in Tail; Remainder in Tail to B. A. levies a Fine, and dies without Issue; Five Years pass'd and Non Claim. The Ld Keeper was of Opinion, that this Fine by *Cfby que* Trust in Tail, and Non Claim, should bar the Remainder Man in Tail.

For equitable Rights are as well to be bound by Fines, as Actions and Titles at Law; and cited the Café of Freeman and Barnes, where a Fine by Celny que Trust was adjudged a good Fine and Bar; and he was of Opinion, that it would bind at Law. Hill. 1683. Vern. 226. Basket v. Peirce.

but that here the Celny que Trust had but an Estate Tail only, which was spent, and there were other Reminders over; And it being insisted in this Case, that the Remainder Man was not barr'd by Non Claim; For that all the Debts and Legacies were not paid, and so his Title was not commenced; and that the Term for 99 Years did expire, and was not expired; and further, that the entire Estate at Law, being in the Trustee, he ought to have entered, and it was against Equity, to suffer the Celny que Trust to be barr'd by Non Claim for the Laches of his Trustee. Whereupon the Ld Keeper decreed, that the Trustee should give Leave to the Plaintiff to bring in Action in his Name to try his Title; and said, it being a *Title at Law*, he could not determine it himself; tho' his Opinion was, that the Plaintiff was barr'd. Vern. 226, 227. Hill. 1683. Basket v. Peirce. — S. C. cited Patch. 11 Geor. 9. Mod. 144.

in Café of Webber v. Earl of Montrath.

14. A devised Land to B. for Payment of his Debts, and when his Debts are paid then to B. for Life, with Power to make Leaves for 99 Years, if three Lives so long live; Remainder to the Heirs Male of his Body, Remainder over. This Estate to B. tho' Executory, and expressly limited to A. for Life is yet an Estate Tail, and barrable by Fine and Recovery. Wms's. Rep. 142. Patch. 1711. per Ld Harcourt, and thereby revers'd a Decree of Ld Cowper's. Bale v. Coleman.
(D 2) By whom: Tenant in Tail; or by Persons not feised of the Estate Tail.

* Tenant for 1.

A. Tenant for Life, Remainder to B. in Tail, Remainder to the right Heirs of B. If B. Bargains and sells all his Estate, * or levies a Fine with Proclamations of it to D. Nothing passes to the Grantee, as to the Remainder in Tail, but during the Life of B. 3 Le. 60. Hill. 18. Eliz. C. B. Owen v. Saldler.


3. Grand-father, Father and Son. Grandfather was Tenant in Tail. Father in life of Grandfather, levies a Fine to a Stranger, who has nothing of the Land—Grandfather dies—Father dies—The Son is barred of the Land by the Fine of the Father.—But if the Grandfather had survived the Father, the Son should not be barred. Hill. 27 Eliz. per J. Peryam. No. 252. Vid. Jo. 33. cites Archer's Case, that the Father died, living the Grandfather, and yet the Son barred because of the Lineal Defect, 1 Rep. 66. b.——Jo. 41 Trin. 21 Jac. B. contra.

For the the Son should claim as Heir in Tail to the Grandfather, as last feised by the Intill, yet be unjust claim at Heir in Edue by the Father; and so falls plainly within the Words, as Heir of him that levies the Fine, and claiming only by an Enroll made to the Ancestor of him that levied the Fine. Trin. 15 Jac. Hob. 258. in Case of Duncomb v. Wingfield.—D. 3. pl. 3. Patch. 19 H. 8.—4 Mod. 5.


4. So if the Father has two Sons, and the Eldest Son levies Fine of the State Tail to the Father, and the Father and Son dies without issue, the Youngest is barred by the Fine of the Eldest. yet he claims as Heir of the Body of the Father; But because the Tail was descinded in Right upon Eldest Son, his Fine is a Bar to all claiming the same Tail. But if he had died without issue in the Life of the Father; The youngest Son should not be barred by the Fine; Because the eldest, who levied it, never was in Possession, nor in Right had the Estate Tail. Hill. 27 Eliz. No. 252. Zouch v. Bampfield.


5. A Devilled Land to his Wife, the Remainder to his Son and his Heirs; and if he dye before his Age of twenty-one Years, that then it shall remain to 7. S. in Fee.—The Son levies a Fine, and dies before twenty-one Years—J. S. shall have the Land after the Death of the Wife; For its a plain Limitation. Trin. 31 Eliz. C. B. Cro. E. 142. Mills v. Snowball.

6. Devile of Land in Tail General to A. To have &c. at his Age of twenty-five Years, after twenty-one and before twenty-five, A. levies Fine with Proclamations, and after A. attains to twenty-five, and has Issue, e. t. the Conmor had only a possibility at Time of the Fine, yet the Estate Tail was Barred. 10 Rep. 30. Grant's Case cited in Lanthrop's Case, as adjudged. Hill. 29 Eliz.—The Bar in the Case above is by 7 H. 8. 36. for by 4 H. 7. 'twas not barred. Raym. 149. 150. cites S. C.

Eliz. C. B. pl. 304. Anon ——— The Devile in Grant's Case, was to the Devile's Wife in the 1st, and when A. comes to 25, he to have in Tail, &c. A. died before 25, leaving issue, and the Wife still living.

7. If Tenant in Tail has Issue three Sons, and the second Son leave a Fine with Proclamations in the Life of his Father, who dies; this shall not bar the elder Brother: But if the elder die without Issue in the Life of the Heirs among them, he shall bar the Father, the Second shall be barred: And if the Elder die without Issue after the Death of the Father, so as the Heir had the Whole Tail, yet if the Second or his Issue survive, and then die, it shall bar the Younger, (for he is plainly within the Words) as well as the Second, that levied their Title. The Words of the Stat. of 32 H. 8. are, that a Fine levied of Lands in any way, if not wife entail'd to the Couifer. or any of his Ancestors, shall be a Bar against the Person and his Heirs claiming only by Force of such Entail, any Deeds; &c. per Hobart Ch. J. Trin. 15 Jac. Hob. 258. In Cafe of Duncomb v. Wingfield.

In Fines against Coheir levied, Issue, Issue, and Issue, without limitation within the Life of the Earliest, it shall not be a Bar to the Subsequent Coheir. but shall stand as a Bar to the First Entailed Coheir. So if the Three have Entailed their Rights, there is no more Power to bar the Intestate Coheir.

The Words of the Stat. before cited are, that a Fine levied of Land, if not by the Wife, but by such Entailing Party, not by a Coheir, but by the Husband or Wife, shall be a Bar to all the Heirs of the Entailing Party. Any Person having a Fine levied in such a Way, shall have a Bar against the Heirs of the Coheir, if he be an Extinct Lineal Heir, and not by Widower or Survivor, in Case of Survivor, or not survivor of either Party. Whereof the Reason is, that if after the Fine of the Second Brother, the Heir had died without Issue, and the Father had died, the whole Tail had been bound against all the Heirs in the same Manner as it were upon a Fine, against the Brethren in Fee Simple. Hob 353. Mich. 19 Jac. in Mackwilliams's Cafe. —(Quere, if the Younger Brother is not intended dead?)

8. Baron and Feue. Tenants in Tail, have a Son and a Daughter; the Baron dies, the Son leaves a Fine in the Life of the Mother, and dies; per 3 J. Juvv. the Daughter, being a Coheir, shall not be bound; but per 3 Juvv. such Fine shall bar a Lineal Heir; but by one J. such Fine shall bar neither Coheir nor Lineal Heir; but per 1 J. Juvv. such Fine shall bar both Lineal and Coheir. Trin. 21 Jac. Jo. 4, Godfry v. Wade.—Adjudged no Bar to the Daughter after the Death of the Mother. Beecaufe the Son had only a poibility to inherit the Tail, which was only in his Mother after the Death of his Father, and the Mother surviving both her Husband and Son, the Land to entail'd shall defend to her Daughter immediately on her Death. Mich. 19 Jac. Hob 352. * Mackwilliams's Cafe.


9. Tenant for Life the Reversion to an Ideot—Uncle Heir apparent to the Ideot levied a Fine and died—Tenant for Life died.—The Ideot died.—The Issue of the Uncle is not barred.—Becauze he claims in the Coheir, and not in the Right Line; and is not by Way of Title, but Pedigree. Mar. 94. Patch. 15 Car. B. R. contrary to Edwards v. Rogers.—Jo. 456. S. C. per 3 J. against Jones. —Cro Car. 524. 543. S. C. per 2 J. against Jones.

L11 their
their Father (the Uncle) but from the Idiet, and is in Effect a Stranger to the Fines of their Father (the Uncle) and may aver **Quod Partes** etc., per Hale Ch. J. Vent. 418 cites Cro. C. and says, it was to Ruled in Case of Edwards v. Rogers. — The Idiet died without Issue. Cro. C. 524. S. C. — Jones J. who was the Judge, that held the Fine a Bar to the Heir of the Uncle, Reports, that Judgment was given, that it was no Bar. Jo. 462. S. C.

10. A. made a Feoffment to the Use of himself for Life, and after the Death of him and M. his Wife, to the Use of B. (eldest Son of A.) for his Life, and after the Death of A. M. and B. to the Use of B. and the Heirs Male of his Body, and for Default of such Issue to the Use of the Heirs of B. — B. had Issue, a Daughter, and then, by Fine and Indenture, granted to G. for 500 Years. B. dies. M. dies. A. still living. Upon a Reference out of Chancery to the Ld Ch. J. Hale, and after hearing the Arguments of Counsel, his Lordship was of Opinion, that the Estate as above limited to B. was a Contingent Remainder; that the Fine of B. did Operate at the Beginning by Conclusion, and passed no Interest, yet that this Effoppel shall bind his Heir, and he shall be in the same Case with his Ancestor; that if the Fine had been levied by B. in Fee, this would have barred the Estate of the Heir, destroy'd the contingent Use, and have Operated to the Benefit of the Possession, as the Fine of a Difficile to a Stranger; but being only for Years, the Fee is vested, and the Term is good, it being drawn out of the Fee. January 23, 1672. Pollex. 55, 65, and 66. Weale v. Lower.

11. Lands devised to A. and B. for 99 Years, in Trust for Payment of Debts, and Legacies, and after to C. in Tail the Remainder to D. in Tail. — C. before the Payment of, &c. levied a Fine and died without Issue, and 5 Years passed without Claim; — was urged for D. that C's Title was not commenced, and the Term for 99 Years was still subsisting, and that the Trustees ought to have entered, and that Cinny que Trust should not be barred by Non-claim for the Laches of the Trustees, but North. K. was of Opinion the Trustee should give leave to the Plaintiff, to bring an Action in his Name to try the Title, and said that it being a Title at Law, he would not determine it himself; tho' his Opinion was, that the Plaintiff was barred. Hill. 1683. Vern.R. 227. Basket v. Peirce. — S. C. cited per Cur. Pach. 11 Geo. 9 Mod. 144. and that the Court was of Opinion, that the Plaintiff was barred.

(D 3) By Tenant in Tail after a Conveyance.

1. A. **Tenant in Tail** conveys to the Use of himself for Life, Remainder to B. his Heir Apparent; A. levies a Fine, B. enters for the Conveyance, before Proclamation passed; A. dies. B. is not remitted to the first Enroll, altho' afterwards Proclamations passed in the Life of A. For notwithstanding that the Issue in Tail, by that Entry, hath defeated the Possession which passed by the Fine, and so be entered Quodammodo in Affurance of the Fine; * as if Tenant in Tail discontinues and diffuses the Discontinue, and levies a Fine with Proclamation, and the Discontinue enters within the 5 Years; Now tho' the Fine, as to the Discontinue, be avoided, so as the Possession, which passed by the Fine, is defeaced, yet the Right of the Enroll continues bound. Arg. Mich. 25 and 26 Eliz. B R. Lc. 7. Stonely v. Bracebridge.

2. A. **Tenant in Tail** discontinues, and then diffuses his Discontinue, and levies a Fine, the Discontinue before the Proclamation re-enters, and then the Proclamations are made, A re-enters and dies feiz'd, his Issue shall not be remitted against this Fine, per Anderlon Ch. J. Hill. 27 Eliz. Lc. 85 in Case of * Zouch v. Bampfield — Le. 67, Mich.rog and 30 Eliz. C. B. Stonely v. Bracebridge. — The Eateate Tail is barred, and the Discontinue shall go to the Benefit of him that has most Right to the F Possession, and that is the Discontinue. Owen 76. Hunt v. King. — Mo.

3. Tenant
Fines. 223

Fine, was utterly avoided before the Proclamations passed. By which it appears, that tho' the Estate, which passed by the Fine, be utterly defeated before the Proclamations; yet after the Proclamations passed, the Estate Tail shall be barred. —Mo. 114. pl. 236. S. P. —152. S. P. —And, 43. pl. 199. Anon, but seems to be S. C. —Blund. 122. pl. 156. Anon. seems to be S. C. —S. C. cited And. 172 and 2. And. 173. in pl. 99. |Jenk. 235. pl. 96.—| If Discontinuance before Tenant in Tail, the Inheritance is involved in the Possession. Vide. Jenk. 236. pl. 41.

3. Tenant in Tail d. —Tenant in Tail was disenfranchised, and afterwards levied a Fine to C. —The Fine bound the Estate Tail. 3 Le. 211, cites it as the Case of Lord Zouch. —Mo. 252. 253. —Jo. 36. —Cro. E. 610. Hunt v. King. S. P. —Jenk. 275. pl. 96.—Ow. 75. Hunt v. King, no barred. It barred the Intail.

4. Tenant in Tail Covenanted with his Son to stand seised to the Use of himself for Life, and afterwards to the Use of his Son in Tail, the Remainder to the right Heirs of the Father, the Father levied a Fine with Proclamations and died. It was moved by Fenny, if any Estate passed to the Son by the Covenant, for it is not a Discontinuance, and so nothing passed but during his Life, and all the Estates which are to begin after his Death are void. Anderdon said, The Estate passeth until, &c. Le. 110. pl. 150. Patch. 30 Eliz. Anon.

5. And he cited the Case of one Pitts, where it was adjudged, that if Tenant in Tail of an Avercasy in Gros grant the same in Fee, and an Ancestor Collateral releaseth with Warrant, and dieth, the same is a good Bar for ever. Le. 111. Anon. pl. 150. ut sup.

6. If Tenant in Tail grants Tenure Vatum, and after levies a Fine thereof with Proclamations Come cee, &c. the Iuise is barred. —Seccus, where the Fine is on a Release, &c. per Wray. Trin. 33 Eliz. B. R. le. 260. in Case of Manning v. Andrews.

7. Remainder Man in Tail disenfranchised Tenant for Life, and levied a Fine, Tenant for Life enters before Proclamation passed, so as he defeated the Fine, and after the Proclamations were passed. —Tho' neither the Freehold, nor Inheritance in Fee were bound by this Fine, yet adjudged that the Intail was bound by it. Cited per Popham as Lord Stornton's Case. And said, so it shall be in all Cases, where the Fine is levied by one, to whom the Lands are entailed, or who may claim as Heir in Tail. Patch. 39 Eliz. B. R. Cro. E. 610. in Case of Hunt v. King.

8. A Tenant in Tail, Remainder in Tail to B. Reversion to the Right Heirs of A. —A * Bargains and sells to J. S. in Fee, and then levies a Fine. This being levied after the Bargain and Sale, was no discontinuance, as it would have been, if levied before the Bargain and Sale; but operated only upon, and corroborated the Estate paid by the Bargain and Sale, which is an Estate in Fee, but determinable on the Entry of Issue in Tail, and on Failure of Issue of A, then subject to the Remainder to B, and a Fee expectant on the Determination of the Remainder to B. 10 Rep. 95. b. Mich. 10 Jac. 1 Seymor's Case. —Jenk. 51. S. C. —Built. 162.

A Tenant in Tail, Bargains and sells to B. and his Heirs, and after levies a Fine to C. and his Heirs to the Use of C and his Heirs. B. has an Estate now to him and his Heirs during the Continuance of the Estate Tail, per Holt, Ch. J. Parr. 19. in Case of Machil v. Clerk. —A. paffed all his Estate by the Bargain and Sale, and had nothing more to pafs, but to extinguish the Estate Tail, by Way of Release, and to leave the Remainder untouched. Jenk. 51. pl. 97. S. C. —The Fine is void, because the Bargain changed the Use, and so the Contraor had nothing in Use, or Poffeflion, at the Time of the Fine. —Holt. 1. Feoffment al. Utes. pl. 7, cites 27. H. R. 27. —It was by Deed Inended and Inrolled. See the first Resolution, 10 Rep. 96. S. C. —Holt Ch. J. Hold this Case to be good Law. 2. Salk. 619.

9. A Fine levied by Tenant in Tail after a Bargain and Sale in Fee works no Discontinuance or Wrong. But the Law, to avoid a Tort, doth suspend it to Operate upon the Said Fee, that was formerly granted, which wrought no Discontinuance; as is adjudged, 10 Rep. 98. in Sir Edward Seymor's Case. And yet if the Fine had been levied before the Bargain and Sale, there it had been a Discontinuance; for then the Law had no
10. Tenant in Tail Covenants to stand seised to the Use of himself for
Ninety-nine Years, if he shall so long live, Remainder to his first Son in
Tail, Remainder over, and afterwards levies a Fine. — Whether this
Fine shall enure to the Conufee, or to make good the Estate Tail levied
by the Covenant was the Doubt? For per Hale, the 'Tenant in Tail does
not limit the Estate to himself for Life, but for Years; so 'tis not like to
Ditchman's Cafe. Cro. E. 279. Nor to Broughton's 895. Where the
first Estate, being to himself for Life, is all, that he had Power to dis-
pone of. But here he disposes, by the first Limitation to himself, only an
Estate for Years; and the Remainder to his Son may well arise out of the
Residue of his Estate Tail, which he had Power to dispose of for his
Life; and fo a Remainder executed in the Son, corroborated by the Fine; as
D.wincomb and Wingfield's Cafe. Hob. 254. where Tenant in Tail
Bargains and sells, and then levies a Fine; this corroborates the Estate of
the Bargaineer. — But the Deed being found forged, the Cause dropped.
2 Lev. 84. Pash. 25 Car. 2. B. R. Whatley v. Greenfield.

(D. 4) By Feoffee, &c. of Tenant in Tail.

1. Tenant in Tail disconimines; the Discontinue levies a Fine with
Proclamations; five Years pass without Claim in the Life-time of Tenant in
Tail. In this Cafe the Ilue shall have a Formedom, and shall not be
barred; for his Father could not claim. 'Tis otherwise where he is
disseised, and the * Disseisor levies such Fine; for in such Cafe the Tenant
in Tail may claim, &c. Jenk. 192. pl. 97.

2. Feoffment by Tenant in Tail, and then a Fine is levied by Conufee,
[Feoffee] the Tenant in Tail has no Right remaining in him, and the
Ilue in Tail is the first, that has Right to impeach it. Cro. C. 430. Mich.

(D. 5) Where it is levied by a Remainder Man, and a
Conveyance is after made by Tenant in Tail in Pos-
fession.

1. Husband and Wife were Tenants in Tail, Remainder to the Husband in
Fee, he died, and after his Death, the Son and Heir of the Husband and
Wife levied a Fine, &c. to the Use of him and his Heirs; and afterwards
the Wife made a 'Leafe of the Lands' for 21 Years, and died; the Son de-
vised the said Lands to G. D. and died, and the Question being whether
this Leaf shall be good against the Devisee; it was adjudged, that the
Ilue in Tail himself was barred by this Fine to avoid the Leafe; and
that tho' the Estate Tail was barred, yet 'tis not quite extinguished; but
shall have a Being to support the Leaf, so long as any of the Ilue in
Tail are living. Bridg. 28. Crocker v. Kelby.

2. If Tenant in Tail, after Fine levied by the Ilue, makes Feoffment,
and dies, the Feoffee shall hold the Land against the Ilue and his Conu-
fee; For if the Ilue brings Formedom, the Feoffee may plead his Fine
against him; and the Ilue shall be concluded to avoid the Fine, by say-
ing, *Pattes Finis nihil habuerunt;* and the Conufee cannot have a Forme-
don,
den, or any other Action or Entry to recover the Land; and so the Feoffee shall hold as long as there is any Issue, and then Remainder Man, or Receiver, shall have Formedon to recover the Land, per Jones J. and not denied by any. Hill. 22 Jac. B. R. Jo. 61. in Cae of Crocker v. Kellet.

1. A has Issue 2 Sons B. and C. — B. in the Life of A. levies Fine with Proclamations; now A. may convey, and pays this Land, to whom he pleaseth, by Virtue of the Fine by his Son; and the Vendee may plead against the Conveyee, Quod Parties nil habuerunt; and against the Heir in Tail, he may plead the Fine of his Father. Jenk. 275. pl. 96.

(D. 6) Where there is a Difféline.

1. A Difféline encoffs B, on Condition; B, levies Fine with Proclamations; 5 Years pass; the Condition is broken; the Difféline re-enters; the Difféline is bound; For by the Fine and Nonclaim the Right of every Stranger is barred; and when A, enters for the Condition broken, the Fine is not annoyed, but rather affirmed; and former Rights shall not be revived. Le. 84. Mich. 29 and 30 Eliz. C. B. in Cae of Zouch v. Bampfield.

2. Tenant in Tail encoff his Son of full Age, and after difféled him, and levies a Fine with Proclamations; and before the left Proclamation the Son enters, and makes Feoffment. Now the Proclamations expire, and the Father and Son die.—Feoffee makes Leaf to a Stranger and dies leafed. —It seemed to the Court, that the Entail was bound by the Fine with Proclamations. Mo. 391. Hill. 37 Eliz. King v. Hunt.

reversed a Judgment to the contrary given in C. B. Hunt v. King.

3. If Tenant in Tail be difféled, and Difféline levies a Fine, and Tenant in Tail suffers 5 Years to pass without Claim; that shall bind the Issue. For Tenant in Tail had a Right at the Time of the Fine levied, and therefore the Issue is not within the Saving. Cro. E. 896. Trin. 44 Eliz. in the Court of Wards, in the Cae of Peniston v. Lyter.

Catlin, for the Right was present to the Tenant in Tail at the Time of the Fine levied, and he cannot claim but by the same Title, which his Father had, which was barred in his Life Time. Well's Symb. 8. 183. cites Dy. 5. pl. 6. 19 H. 8. 5.

The like it is of the Laches of him in the Remainder or Reversion, for it barreth him and his Heirs. Well's Symb. 8. 185. cites Dy. 3. pl. 6.

4. A Difféline makes a Leaf for Life, and afterwards levies a Fine with Proclamations to a Stranger; altbo' he had only a Reversion, yet this Fine and Nonclaim shall bar the Difféline. Jenk. 254. pl. 45.

(D. 7) By Tenant in Tail Difféline.

1. Tenant in Tail is difféled, and during Difféline levies a Fine to a Stranger, Sur Conunance de Droit come ceo, &c. The Heir in Tail is barred. He cannot aver, Quod Parties nil habuerunt, &c. by Force of 27 E. 1. of Fines. But before the Statute 4 H. 7. he might have had Formedon. At this Day the Difféline shall have Advantage of this Fine; and shall plead the Fine to the Stranger, whose Estate he has; and the Heir in Tail must answer to the Fine, and shall not be received to traverse the Fine Entail. Jenk. 274. pl. 96.

2. Tenant in Tail difféled accepts a Fine Sur Conunance de Droit come ceo, &c. of a Stranger, and renders the same Land to the Stranger.
This being with Proclamations, bars the Intail by the 4 H. 7. and 32 H. 8. In this Case, the Fine, being a Fine by Conclution, shall bar the Heir in Tail; for he is privy to the Eftate. Jenk. 275. pl. 96.

3. If he that is feized of Land, to which an Advozfon is Appendant, be diffeled, and the Diffelee levies a Fine to a Stranger of the Land, to which the Appendency is; the Difelefor shall keep the Land, and by Confequence the Advozfon for ever; For the Diffelee against his own Fine cannot claim, and the Contuee cannot enter; the Right which the Diffelee had, being extint by the Fine. Wars. Comp. Inc. fol. 443. 444. cites 2 Rep. * 56. and Terms of Law, Verbo Diffeleor; but lays that † 1 Cro. 494. feems contra.


1. If one, who has but a Condition, levies a Fine; and after levying the Fine, enters for Condition broken, his Issue is barred by the Fine. See 3 Le. 227. pl. 324. Anon.

2. A. devised his Lands to Trustees for 99 Years, for Payment of his Debts; and if they did not act, he devised them to T. S. and his Heirs, in Ture, to pay his Debts, and afterwards to B. in Tail, Remainder to C.—B. levied a Fine, and died without Issue; and 5 Years paft with None claim. Decreed that C. the Remainder Man in Tail was bound, tho' twas infifted that the Title of C. was not yet commenced, because the Debts were not paid, and the Term of 99 Years was expiring, and that the entire Eftate at Law being in the Trustees, they should have entered; yet twas decreed to be barred P. 11 Geo. 9 Mod. 144. in Cafe of Webber v. E. of Montrath.—cited per Cur. as the Cafe of Basket v. Pierce.

3. A. by Fine conveyed the Minors of K. and N. to B. viz. K. to the Use of B. his Heirs and Assigns, and N. to the Use of M. the Wife of C. for her Life, and after to the Use of the Heirs of C. until M. should with B. his Heirs, Assigns, &c. of the Manor of K. or any part thereof; and after to the Use of B. his Heirs and Assigns, till satisfied by the Profits. B. by Fine, conveyed the Manor of K. to D. in Fee. C. died, and M. recovered Dower againft D. of Parcel of K. and entred. D. entred into N. Resolved that D. could not enter as Assignee, but that by the Words, Heirs and Assigns, which are Words of Limitation, the Use on Eviction ought first to vest in B. and his Heirs; and that before the Eviction, D. had no Title of Entry as Assignee, it not being an Intereit affignable over before the Eviction. Hill. 9 Car. Cro. C. 358. E. of Kent v. Steward and Scott.

(D. 9) Who may be Cognizees.

1. All Perfons, that may be Grantees, or that might take by Contraft, may be Cognizees, or take by Fine; as Infants Persons of full Age, Feme Coverts, Idiots, Lunatics, Corporations Spiritual, or Temporal; Men attainted of Felony, or Treason, Men outlawed in personal Actions, Bawds, Clerks cowit. Villains, *Aliens, &c. but not thole that are civilly dead, as Menks, &c. Wett. Symb. S. 15.

* A Fine shall not be levied to an Alien; for after Office the King shall have the Land. Denh. R. of Fines 13.

2. An Abbot, Dean and Chapter, Mayor and Commonalty, and such like Corporations, may be Cognizees in Fines: but before the imposimg of the Fines to such a Corporation, a Writ ought to be directed to the Justices of the Common Pleas, Quod pertinentum Finem illum levaverit, 5 H. 7. 25. 19 H. 6. 15. A Prior may be a Cognisee, 22 Ed. 4. 15 Ed. 4. 22. Wett. Symb. S. 15.

3. The Queen at this Day, and at Common Law, may levy a Fine; and a Fine may be levied to her. Denh. R. on Fines 12. cites 13 H. 4.

(D. 10)
What Persons may levy a Fine. Idiots, Infants, and at what Time such Fines may be reversed, &c.

1. 18 E. 1. Stat. 4. § 6. Entails that the Parties be of full Age, found Memory, and out of Prison.

2. If an Idiot levies a Fine, and after it be found by Office, that he is Idiot from his Nativity, *yet the Fine is good; but if it be found by Office, that one is an Idiot, and after he levies a Fine, this Fine will bind him and his Heirs; yet the King hath the Freehold during the Life of the Idiot. Quære, if it will bind the Heir as to the Reversion, in as much as the Title of the King was to the Freehold, during the Life of the Idiot. Denl. R. of Fines 12. cites 12 E. 1.

3. Fine by Idiot stol'n from his Guardian, and who was after found an Idiot, by which the King had Possession. After the Death of the Idiot, *twas decreed in Chancery, that the Remainder Man should give the Conouee 601. and he should make a Reconveyance. Arg.ROLL. R. 115. in Cae of Dey v. Hanurg—atites Rulhly's Cafe.

4. Idiots and Infants, if they are admitted, are barred as Parties. Wood's Inst. 243.—See Co. R. on Fines. 9.

5. Error shall be brought to reverse a Fine levied by an Infant within Age, by the same Infant during his Nonage; so that he may be adjudged by Injunction, whether he be within Age or not. Br. Fines. pl. 79. cited 27 All. 53.

and Render to her or him in Tail, or for Life, and the Husband dies; the Widow shall not have a Writ of Error, because she is Tenant of the Land; and she cannot have Error against herself, and so is without Remedy, per Catlin. Owen 73. Mills 45. Eliz. Anon.—But it seemeth it should be Trin. 6 Eliz. as in Mo. 74. pl. 22. * S. P. per Catlin, that the Infant shall not have a Writ of Error to destroy the Fine, because he himself is foil'd of the Land, and so he is without Remedy. Trin. 6 Eliz. in the Star Chamber. Mo. 74. pl. 202. Anon.—If the Fine of an Infant is not avoided during his Minority, it shall bind him. Co. R. on Fines 8. says it has been so adjudged, contrary to Catlin's Opinion in Sowle's Case. S. Wood's Inst. 243, because his Infancy must be tried by Injunction of the Judges. But if he dies in his Infancy, his Heir is not limited to any Time.—As, in a Writ of Error brought by an Infant upon a Fine levied; the Plaintiff sued a Steire facias against the Conouee, for whom a Protection was made; and the Court examined the Age of the Plaintiff, and by Injunction adjusted him within Age, and recorded on it, and then allowed the Protection; and this can be no Mitigation to the Plaintiff; whereupon it follows, that albeit the Plaintiff dies afterwards before the Fine be reversed, yet after his Age adjudged and recorded, his Heir shall in that Case reverse the Fine, for the Nonage of his Ancestor. And so it was resolved in the Case of Rutherforth, in a Writ of Error brought by him, by the Opinion of the whole Court of B. R. otherwise it is if the Plaintiff dies before his Age inspected. Co. Litt. 131. 2. — Br. Error pl. 62. cites 21 E. 3. 22. and that the Infant was first examined, and then his Godfathers and Godmothers, and that they put the Plea file Die, saving to the Defendant his Answer at the new Garmishment, and all this was upon the Transcript of the Note, but the Judgment shall be upon the Note inreel.


7. Fines levied by Infants, vacated upon Complaint of Remainder Man in Fee, expectant upon Estate Tail, and on bringing the Infants into Court; and Information ordered against Commissioners that took the Conualluce. 3 Lev. 36. Mich. 33 Cat. 2. C. B. Hutchinffon's Cafe.
Fine.

See (A. 1.) Stat. 18 E. 1. S. 7. and the Notes thereon. — Writ of Error was brought to render a Fine levied by a Feme Covert during her Nonage, and at the Sachs und Audiumendi Errorres the Defendant cost Petition, and yet the Justices tried the Age of the Infant by Inspection, and did not stay it till the Expiration of the Protection. Co. R. on Fines 11. Marg. Error was brought by both of a Fine so levied, the being yet within Age, and per Cavendish, if they render the Fine for Nonage of the Feme, yet no Execution shall be awarded during her Life, Quod non negatur. Br. Fines. pl. 29. cites 50 E. 3. 5. 6. pl. 12. is that Execution cannot be till after the Death of the Baron.

Denh. R. on Fines. 11, 12.

9. Persons blind, deaf, or dumb accidentally, may make Cognizance if they can express their Meaning by Writing. Welt. Symb. 2. b. S. 5.

10. Lord Ch. J. Bridgman acquainted the Court of C. B. that a Woman, born Deaf and Dumb, came before him to levy a Fine. She and her 3 Sistors have an House and Land. An Uncle hath maintained her, and taken great Care of her, and he is to buy the House and Land of them; and he agrees to maintain her, if the will pass her Land for Security. As for her Intelligence, the Sistors say, the knows and understands the meaning of all this. He demanded, what Sign she would make for paying away her Lands; and, as it was interpreted to him, she put her Hands that Way, where the Lands lay, and spread out her Hands. It being a Buffoons of this Nature, and for her own good, he thought fit to communicate it to them; and the Fine was taken by the Confect of the other Justices. Cart. 53. Trin. 18 Carter. 2. Elliot (Martha's) Cafe.

11. Monks, Friars, Nuns, &c. ought not to be received; yet if they are admitted, their Fines are good and unavoidable. Wood's Inst. 241.

12. If the Heir being in Ward of any other, levies a Fine; this will bind the Heir for ever, if it be not reversed by Error within Age; and if he be of full Age, in Ward of the King, it never shall be avoided. But where the Heir in Ward of the King at his full Age, intrudes upon the Possession of the King, and levies a Fine; this is void as to the Title of the King, Quia nullum accretat ei liberum Tenementum, s.i ingrediatur, antequam Homagium & Seisinam ceperit de Rege. But it seems good against the Party and his Heirs. Denh. R. on Fines. 12. cites 1 H. 7. 26.

13. But where the King is seized of Land, as in Name of Disfrees, as for Alienation without Licence, &c. and he, who hath Right, enters, and levies a Fine; tis good, and will bind him and his Heirs for ever. Denh. R. on Fines 12.


15. An Alien who hath purchased Land in England, can't levy a Fine, if the Court perceive it; but if the Fine be levied, it seems that 'tis good, and shall never be reversed. Denh. R. on Fines. 13.


[See (D. 11).]
(D. ii) Vacated.

1. **Fine Infants**, Tenant in Tail, levies a Fine with her Baron. The Fine was vacated, tho' the King's Silver was paid; and the Exemplification was brought into Court, and delivered up, and the Commissioners ordered to be prosecuted. But the Vacat was **Quoted the Fine only**, and not as to the Baron. 3 Lev. 36. Nich. 23 Car. 2. C. B. Hutchinson's Café.

2. But the Feme dying before any thing was stirred as to the Fine, it was agreed per tot. Cur. that they could not meddle with the Fine. But if she had been alive, and died under Age, they might bring her in by Herbeas Corpus, and inspect her, and let the Fine abide upon Motion. 2 Vent. 50. Patch. 29 Car. 2. C. B. Herbert Perrot's Café.

3. In the Common Pleas, they will set aside a Fine levied by an Infant (during his Life and Infancy) upon Motion, as null and void, and without any Writ of Error; as they will do a Judgment irregularly obtained by Trick or Surprise; and punish the Commissioners besides, it taken by De- dimus; and they will do this by Inspection and Examination of Writuflcs in Court; but if he be affirmed to be of Age, they will order a **Trial by a Jailed Action**, if Infant or no? But the Complaint must be before he comes of Age, and then it matters not if after the Motion, (and so if after a Writ of Error) he arrives at Age, this will not prejudice him. So if the next Heir, or any Relation come and inform the Court, that the Party was a Fine Covert, and levied a Fine without her Husband, they will set it aside as void. 2 Show. 281. Hill. 34 and 35 Car. 2. B. R. Café of vacating Fines in C. B.

4. Several Precedents were produced of Fines, Recoveries and Declarations of Uses thereupon, being vacated on Motions, because of their being by Femes Covert under Age; and one of the Rules produced was, that the Feme should not be admitted to levy any more Fines, till the came of Age. And another, that the Counsel, who had advised it, should be fined 14/; because no Writ of Error could lie. And another, that the Husband be fined too. And in the Cases of *Sir Robert Barham*, a Clerk procured his Wife under Age to levy a Fine; and being sent for into Court, he was fail to deliver the Fine and the Deed of Uses to be cancelled in Court. And per Powell, if the Commissioners, before whom the Fine was taken, knew the Feme to be under Age, they are finable: But there are no Precedents of Vacats of this Kind ancient than *1 Jac. 1.* But the true ancient Way was to bring a Writ of Error; but because the Husband would not join in the Writ of Error, &c. this Way was introduced: And some Books say, that if Feme Covert be outlawed without her Husband, there is no Remedy for her; but now in such Café the Court will discharge her upon Motion. But in this Café, there appears that there is a Purchaser; and therefore we ought to be well advised. But in regard the Fine is to be of Age in 2 or 3 Days Time, let us be more esteems her Age by Affidavits and Inspection; and that was done, and the Inspections entered on Record; and the Rule was to see Precedents, and to give Notice to the Purchaser. Hill. 12 W. 3. C. B. 12 Mod. 444.

Sarah Griffith's Café.

5. A having inveigled his Wife to levy a Fine of her Land to him, when she lay on her Death-Bed; pretending as was suggested, he was to have it only for his Life; and a De damus was sent into the Country to take the Fine, and the Caption was taken about 100 Miles from London, the very Day she died; and because the Fine would not have stood, the Party being dead before the King's Silver was paid, the Writ of Covenant was raised in the Toffs, and made to bear Date 10 Days backwards; and all

**Fine.**

S. C. cited

Lev. 36. as of Trin. 34 Car. 2. and cited Skin. 24. as of Mich. 33 Car. 2. be- tween Boyer and Hur- chenston, Hill. 4 Jac. 1. Rot. 70.

Purpofes France cited in

Lev. 36. in Hutchinson's Café, and in Skin. 34. in Ser- jeant Buck- by's Café.

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**Fine.**

S. C. by Name of Sergeant Backby's Café. — And Tr. 34 Car. 2. another Fine was vacated for the same Café. 3. Lev. 56. cites it as Sir Robert Madam's Café.
other Parts of the Fine were razed likewise, and made to correspond with it; and the King's Silver was paid, and so all appeared on the Record to have been done before the Death of the Woman; on a Bill brought to have the Fine set aside, or to have a Reconveyance, it was held by the Court, that tho' Chancery has a Power to relieve, as much again a Fine, obtained by Fraud or Practice, as any other Kind of Conveyance; yet that such Relief was not by decreeing a Vacate of the Fine, but by ordering a Reconveyance; but that for any Error in the Fine, or Irregularity, or ill Practice in the Commissioners, it was a Matter properly cognizable in that Court where the Fine was levied, and for which that Court may vacate the Fine; and there being no Proof of Fraud or Practice in this Cafe, the Bill was dismissed. Hill. 1700. Abr. Eq. Cases. 259. St. John v. Turner.

[See (E. b. 2)]


1. Land was given by A. and others to B. for his Life, Remainder to C, (who was Heir apparent) to B. et * Primogenito Filio & Hered. Malef. of the said C. to be begotten, & sic de Primogenito Filio & Herede Malefico iphisis C. de Corpore suo procreand' in Primogenium Filium et Hered. Malef. de Corpore suo procreand. et pro Defeiti talis Exitus remanere inde to D. the 2d Son of the aforesaid A. & Primogenito Filio iphisis D. with Remainders over in like manner as are limited to C. &c and then limits a Remainder to the Heirs Males of the Body of the said D. and A. the Father, to be begotten. 'Twas agreed per Cur. that D had ESTATE Tail in Remainder, after the Death of his Father, in the one Moiety, and the Father had Estate Tail in the other Moiety; and that a Fine with Proclamations might bar his Moiety, and adjudged accordingly; and the Court held that the Words Primogenito Filio in Primogeniuni Filium, &c. were void Words. And. 264. Smye v. Chown, alias Cotton's Cafe.

(D. 13) By whom Fines may be levied. Persons under legal Disabilities by Crimes.

S P. Wood's Inft. 241.

1. Persons attainted or waived in Personal Affairs may alien by Fine or otherwise; for their Estates remain in them still, tho' they thereby forfeit the Profits of their Lands. 9 H. 6. 20. 21 H. 7. 7. Weit. Symb. S. 13.


2. Persons attainted of Felony and Treason may nor be Cognizors, by Reason that by their Offences their Estates are forfeited: * But if they do, their Fines are goods against all Persons but the King and the Lord, of whom the Lands are helden, for their Times. 8 Alf. pl. 25. For their Estates remain in them during their Lives. Weit. Symb. S. 13.

[See (D. 10)—Uttlawry.]

(E) To whom it may be levied; [or who may take by it, in Respect of Estate.]

* Org. is (2. 1.) A Fine Sur Release may be levied to the * 2d Tenant by his Warranty. 18 El. 3. 12. b.

This Case seems obscure, and therefore have taken it from the Year-Book and Fitzh. which are as follows, viz.

Note, that in Writ of Dower brought by the Baron and Feme, where the 2d Tenant by his Warranty was Party; a Fine Sur Release was levied between him and the Demandants, viz: that the Demandants should
Fine.

should release to the Tenant all, which they had of the Right of the Feme by his Warrant, [Per
an Garment.] Patch. 18 E. 3. 12. b. pl. 3.

1. Dower the 2d Tenant by his Warrant entered into the Warranty, and a Fine was levied between the Demandent and him, by which the Demandent released and unclaimed all the Right, &c. which was admitted, and yet none of them had any thing in &c. Patch. 18 E. 3. 12. (See D. 9. S. P.)

(F) Fine of Land, upon what Writ. In what Cases being levied by a Feme Covert, she shall be ex-

1. If Baron and Feme grant by Fine, the Feme shall be examined 33 H. 6. 31. per Prior.

Statute 18 E. 1. S. 7. and the Notes thereon, and (M) per totum.

2. But upon a Grant and Render to a Feme Covert the shall not be examined: For she is at no Prejudice, but shall be in her Remitter. (See the Remitter.) 33 H. 6. 31.

shall not be examined. 2 Infr. 215 ————Br. Eftoppel. pl. 92. cites 15 E. 4. 39

( F. 2 ) Without Writ.


4. The Order of the Law, will not suffer a final Award to be levied in the King's Court, without a Writ Original. The Ignorance, or Error of some Judges, was the Cause of the declaring the Law herein. 2 Infr. 415.——The Writ is the very Basis, Ground and Foundation of the Fine, whereby the Parties have Day in Court to levy the fine, and construe the Persons and Things to be passed certainly. Well's Suma 35.———Co. R. on Fines. 3.


5. But now a Fine cannot be levied without a Writ. 12 H. 4. 12. Nor can it be levied upon an Original determined. As where the Plaintiff entered a Retraction, by which it was awarded, that the Defendant was void; the Parties can not come and have a Composition between them, in Nature of a Fine; for the Original is determined, and they have no Day in Court. Br. Fines. p. 32. cites 51. 1st. 17. ——Co. R. on Fines 10.

6. But if such Fine be levied at this Day without Original, it is not void, but a good till it be reversed. 21 E. 4. 92. Com. Count 4 Leifrance. 394. b.

7. But it is Erroneous. 21 E. 4. 60. b. Com. 394. b.

(F. 3)
Fine.

In Affid, the Plaintiff appeared, and after made Retract, and then the Justices of Affid recorded an Agreement between them in Nature of a Fine, and by the said Opinion it is void, and Coram non Jus, and shall not be executed, by Reason that no Original was pending, but was determined before by the Retract; and to see, that Judgment, where there is no Original, is void by this Opinion. Br. Judgment pl. 114. cites 15, Aff. 17, and see 26 H. 6. where it was held, that it was Error, and not void. But otherwise it is; For without Original they have no Commissiion to hold Plea, and then they are not Judges of this Cause; and of this Opinion was Bruntley. Ch. J. H. 2. M. 1. Ibid. For they are Judges of this Cause, and therefore Nulli. Record of Writ of Covenant, upon which such Fine was levied is no Plea. Ibid. pl. 150. cites 26 H. 6.

[ (F. 3) Upon what Writ. ]

They are now thought to be against the Height and Force of a Fine. 2 Inf. 514. — * Orig. (Personal.)

9. But at this Day such Fines are not good; but only such Fines as are levied upon Writ of Covenant or upon Actions in Right or Reality. 18 C. 4. 22. per Litt.

10. A Fine may be levied of an Annuity upon Writ of Annuity. 18 C. 4. 22. 11 H. 4. 68. b. 20 H. 6. 3. Contra admitted 44 C. 3. 37. 38.


In ancient Time, in Quare Impedit. A Fine has been levied in a Quare Impedit. 18 C. 4. 22. 19 C. 4. 8. b. of the Abbavation.

13. A Fine has been levied in a Quare Impedit. 18 C. 4. 22. 19 C. 4. 8. b. of the Abbavation.

Quare impedit, a Fine might have been levied of an Advowson; but at this Day, such Fine is not receivable, because it is only a personal Action, but in the Time of K. Henry 3. Fines were often levied in such Personal Actions. Co. R. on Fines 10. — 2 Inf. 514.

In Times past Fines were as usually levied upon a Writ of Warrantia Charta, as now they are upon a Writ of Covenant. Co. R. on Fines 10. — Well's Symb. 3. 25. cites 18 E. 4. 22. — * And so it seems it should be here.

In a Writ of a Warrantia Charta. 19 C. 4. 4. b. 29 C. 3. 3. b. Rentable, but divisible, if a Piscary, or other Thing be allotted by the Dividers to one of the Parties; in Consideration thereof the said Piscary may levy a Fine of an Annual Rent to the other for the said Piscary, and this Fine is good enough, and receivable. Co. R. on Fines 10. cites 20 H. 6. 3. a. but the Book seems misprinted.


16. So in a Rationabilia divisibles. 19 C. 4. 4. b. 29 C. 3. 3. b.

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2 Inf. 514. — Co. R. on Fines 11.

17. In a Franchise upon a Writ of Right Patent by Protestation in Nature of a Covenant, a Fine cannot be levied; for the Protestation cannot change the Plea Real into the Personalty. The same Law is of such Fines in Ancient Demesne. 44 C. 3. 38.


[21] 22. A Fine may be levied in a Quid Juris clamatur. As the Defendant may grant, that he holds of the County, and Render his Estflate to the Grantor. 12 E. 3. 60.

22. In a Writ of Mefine, Warrantia Chartae, Quem redditum redditat, Per eam servitut, Quid juris clamatur, a Fine may be levied of Lands comprised within the Writ; and yet no Land is demanded, or shall be recovered in them. But as Statham saith, in all Writs where Land is demanded, or upon other Writ, that charges Land, a Fine may be levied of the Land comprised within the Writ. Co. R. on Fines 15.

18 E. 4. 22. 2 b. 19 E. 4. 21 E. 4. 4 b. 32 E. 5. 3e. fectus. 100.—4 But in all Actions, where Land is not demanded, nor to be charged, a Fine cannot be levied. But in personal Actions a Fine may be levied. Co. R. on Fines 10.

23. A Fine may be levied, and acknowledged in B. R. when the Record is there by Error, but not upon Original to be commenced there, Denkh. R. of Fines 3.

24. A Fine shall be levied in the Court of Ancient Demise upon a petty Writ of Right-close; but not upon Plant; and because 'tis no Court of Record. Denkh. R. of Fines 3.


27. A Fine may be levied on a Writ of Right-close, or in any Real Action, but not in an Original or Personal Action; and a common Writ of Covenant, on which a Fine is levied, is not a Personal, but a Real Action; for tho' it is to have Damages for a Breach of Covenant, as in personal Actions, yet it is to have an Execution and Performance of the Covenants. 1 Salk. 340. Hill. 1 Anne B. R. in Cause of Hunt v. Bourne.

(F. 4) Levied by whom, and to whom. Strangers to the Writ. Take by it, who.

1. Where a Fine is levied between A. and B. by which A. acknowledges to B. and B. renders to A. to hold to him and E. his Wife, and the Heirs of their Bodies, &c. there E. has not any Estate; for she is only in the Holdendum, and is no Party to the Writ of Covenant. Br. Fine pl. 61. cites 24 E. 3. 28.

2. So a Writ of Covenant was between A. and B. and after A. acknowledged the Tenements to be the Right of B. and then B. granted, and rendered to A. for Life, Remainder to M. his Wife for Life, the Remainder to A. and his Heirs. This is not good, because the Wome was not named in the Writ. See Br. Fines. pl. 108 and 114. cites 36 H. 8. and 7 E. 3. 64. and Fitzh. Tit. Sci. Fa. 136.

3. Fine fur Conufance de Droit Come cee, &c. can't be levied to any Person that is not Party to the Writ of Covenant, neither can the Grant and Render of the Land, &c. be immediately, in Primo gradu, to any that is not Party to the Writ, but mediatly or in 2do Gradu, &c. it may. For Example, if a Writ of Covenant be brought by A. against B. of the Manor of D. and B. levies a Fine to A. Come cee. A. may grant and render the same to B. for Life, or in Tail, the Remainder to F. in Fee; For albeit the Writ of Covenant be inter A. queren' and B. before, so F. is a meer Stranger to the Writ, yet seeing he takes it by Way of Remainder, depending upon an Estate warranted by the Fine, it hath been allowed in our Books, and hath been compared to a Deed Indented between A. and B. whereby A. doth give Lands to B. To have and to hold. O o o to
Fine.

...to R. for Life, or in Tail, the Remainder to C. (who is a Stranger to the Deed) in Fee. 2 Inst. 514.

4. Where the 19 E. 1. De modo levandi Fines, says, that the Order of Law does not suffer that the final Accord be levied in the King's Court, without Writ Original, &c. It does not say, without Writ Original between the Parties, but generally; and therefore a Fine may be levied by a

Precept be brought aga

against a Ten

nant for Life, and upon his

Default, he in Reversion is receiv'd; he in Reversion may levy a Fine to the Demandant of this Reversion, and yet no Writ is pending between them. Co. R. on Fines 11. cites 18 E. 2. 82. 21 E. 4, 5.—The Words being in the Affirmative do not restrain them. 2 Inst. 515.

(F. 5) Take. Who shall take by the Limitations.

1. In Scire Facias, These Words Proceravit vel Haeredibus procerretis, shall serve as well before, which shall be born after the Gift, as those which were at the Time of the Fine. Br. Fines. pl. 61 cites 24 E. 3. 28.

(G) Covenant.

1. A Fine may be levied of an Annuity upon Writ of Covenant.

2. A Fine cannot be levied upon a Bill of Covenant.

3. A Fine may be levied in Writ of Covenant.

4. A Fine Sur Concellit was levied of Lands in Ancient Demesne in the Court of Ancient Demesne. In Ejecution it was found by Verdict, that upon Writs of Right-clove, Fines have been Time out of Mind levied, and leviable in the same Court; and upon setting forth the Fine, it appeared to be levied in Placito Conventionis secundum Consecutudinem Maneri
cionem eo que it ad de for Done, with Warranty. It was resolved, that the Fine found in this Cause is good, notwithstanding that the Covenanter is found to levy Fines founded upon Writ of Right-clove, and that the Fine levied is in Placito Conventionis inter eos, &c. For it is found to be secundum Consecutudinem Car and there is no Incongruity between Writ of Right-clove and this Action of Covenant; For the Action of Covenant is not Personal in this Cause, but Real, quod Tenet Conventionem, &c. and not for Damages for Breach of Covenant. Nutw. 781. Hunt v. Bourch and al.

(H) How it shall be [express'd in the Writ of Covenant.]

1. If it be of a Rent-lease, Charge, or Service, it ought to be put in the Writ of Covenant, who is Tenant of the Land. 19 E. 4. 3. Because otherwise it cannot be known against whom to bring the Quod Juris Clamant, or Quem Reconditum.

2. If it be of Rent Service the Writ shall be, so much of Rent, with the Appurtenances in D. and of Rent-Charge to as much of Rentissuing out of the Land in D. 21 E. 4. 61. b.

3. If a Man grants by Fine a Reversion, the Writ shall be Quod

teneat Conventionem of the Land, &c. 19 E. 4. 9.

4. Where the Fine is levied of Rent and other Services, as Homage and Fealty, the Covenant mentions only the Rent. 19 E. 4. 8.
Fine. 235

(I) Render. [How the Writ shall be.]

1. Where the Convenance is of Land, and a Render of Common out of it the Writ shall be good, except Conventionem of the Land, &c. 19 E. 4. 9.

(K) Fine at Common Law. What Person may levy a Fine.

1. If an Infant levies a Fine, he may reverse it during his Nonage. 17 E. 3. 53. 79. 17 Att. 17.

2. But if he does not reverse it during his Nonage, this shall bind him perpetually; because he ought to be try'd by Inspection, which cannot be now, being of full Age. 17 E. 3. 53. 79. 17 Att. 17.

But where the Commissioners knew that the Convenance was within Age, the Commissioners were fined, but the Fine stood. 12 Rep. 122. cites it as the Case of Cavendish v. Worley, and Lander and al.—Roll. R. 115. 12 Rep. 121. Ann. Husge's Case.

3. Note, that every one who have Power to implead, and to be impleaded, may levy a Fine. He, against whom Precipite good reddat lies, may levy a Fine, and every one that may levy a Fine at common Law, may levy a Fine by this Statute. Denbh. R. 11. upon 4 H. 7. 24. cites it 8 E. 2.

4. The King, and all Persons, who may lawfully Grant by Deed, may be Cogitators, or levy a Fine. Wood's Init. 241.


was levied by the King, viz. K. James the first, and was held to be good. [See (D. 10)]

5. Civil Corporations, as Mayor and Commonalty, may levy a Fine of Land belonging to their Body: But Bishops, Deans and Chapters, Prebendaries, Parsons, Vicars, Heads and Fellows of Colleges, are restrained by Statutes from levying of Fines of their Inheritances to bind their Successors. Wood's Init. 241.

(L) Of what Thing it may be levied. Of what Thing a Man may levy the Fine upon the Writ, [and of what a Render may be].

1. If the Deforciante acknowledges all his Right to be to the Plaintiff, for which Convenance he grants and renders 20s. Rent, De Novo; this is a good Grant, 19 E. 4. 2. b. For it is comprehended by Implication in the Covenant. 16 E. 3. 19 E. 2. abbe 13. per Chap. 2 R. 3. 5. 49. E. 4. 8. b. 21. E. 4. 4. b. 60. b. 19 E. 4. 8. admon. b.

2. So, if he, for such Convenance, grants and renders to the Defendant the Land for Life, it is good. 19 E. 4. 2. b.

3. So he may render a Common out of the Land. 19 E. 4. 9. 21. E. 4. 61. b. Or to many Load of Wood, to take upon the same Land. For this, which is comprehended within the Covenant, expressly, or by Implication, will pass by the Fine. 19 E. 4. 2. b. 21. E. 4. 61. b.

4. In Writ of Culonis and Servitues, if the Lord releaseth all his Right by Fine, and the Tenant grants to him 20s. Rent, it is good. Fol. 16.

5. If the Writ and Convenance be of the Manor of D. and the other renders the Manor to S. this is void; because it is not comprehended within the Original. 21. E. 4. 4. b.

6. In Affidavit of Darrein Prefentment, Plaintiff acknowledges the Right of
of the Patronage to the Patron, Patson, and Dignary, who render an Annuity out of the same Church to the Plaintiff; this is good. For the Patron is not charged, but the Land. 21. C. 4. 61. 2 R. 3. 5. b.

7. In a Rationabilibus Divinis, a Renter may be of a Free-Fishery, in his Several Fishery 21. C. 4. 4. b.

8. So, in this Writ, a Renter of an Annuity is good. 21. C. 4. 62 b.

9. So in the said Writ of Fishery, Defendant renders an Annuity to the Plaintiff. 2. C. 4. 62 b. 2 R. 3. 5.

10. If the Fine be of a Manor, Defendant may render to find Capitolam Divina Celebrantem in another Manor. 2 R. 3. 5. b. (Quere).

11. If Contra acknowledges the third Part of a Manor to be the Right of the Contra, he cannot render all the Manor. Contra 42 C. 3. 12.

12. An Acquittal may be acknowledged by Fine in Writ of Moine. 46. C. 3. 31. 49. C. 3. 8. b.

A may grant and render to B. a Rent out of the same Manor, contained in the Fine, but not out of any other Land; neither can the Grant and Render be of any thing Collateral to the Land, &c. contained in the Writ, of or of another Nature, and neither lifting out of, nor incident to the Land, &c. contained in the Original. 2. Inst. 514.

13. If the Writ be of certain Land, yet a Renter may be of a Rent out of this and other Land. Time of E. 2. 75 b. admitted, and

Note.

14. If the Writ be of Tenements in D. and the Fine is levied of Tenements in S. this is void. For the Writ does not warrant it. 19. C. 4. 9. 7. b. 3.

15. So if it be levied of Land in D. where I have nothing there, the Fine is void. 19. C. 4. 4.

16. So, if it be of Meadow, where I have not any, it is void. 19. C. 4. 4. It seems nothing can be granted immediately by Fine, unless it be upon a Render which is not immediate if it was not in Effe, at the Time of the Writ of Covenant lied. Dubitat 19. C. 4. 7. b. 17. A Rent de Novo cannot be granted by Fine. Dubitat 19 C. 4. 7. b. (Quere) if it may, how the Covenant shall be; For if the Covenant may be of the Land, it seems that [a Han] may levy a Fine of any Thing out of the Land. It is a bare Courte, first to grant the Rent, and after to levy the Fine of it. 19. C. 4. 3. Contra 21 C. 3. 44. b. It seems in the other Case, if the Writ be brought of a Rent, where there is not any thing, and he acknowledges it by Fine, it will beoppel against him, and all claiming under him.

As concerning the Thing, whereof the Fine is levied, it is to be known, that in Case of a Fine, Sir Grant and Renter, which contains a double Fine; there is a great Diversity between the Fine Sir Cajus de Dext Come, &c. for that must be levied of the Land, &c. in the Original; but the Grant and Render may be of another Thing, than is expressed in the Original. As A. brings a Writ of Covenant against B. for the Manor of D.—B. can't levy a Fine to A. of a Rent to be lifting out of the Manor of D. but he must levy the Fine of the Manor of D. according to the Writ, and his Covenant therein expressed. 2. Inst. 514.

* As to 20. the Party shall be discharged. 21 E. 4. 61. a. by Pigot.

18. If the Writ be of 20 Acres, and the Fine of 40 Acres, it is not good of * 20. 21 E. 4. 4. 61. For it is not in the Writ. 20, if the Writ be of Land, and the Confinement of Pature, Meadow or Wood; it is not good, nor contra; For it is of other Nature, and not contained in the Writ. 21 E. 4. 61. b.

19. If the Covenant be of Land, he may grant the Reversion by the Fine. 21 E. 4. 62.

22. If the Covenant be of Rent, yet the Fine may be levied of the other Services, as Homage and Fecality. 19 E. 4. 8.

Title than is contained in the Writ of Covenant, and not of a foreign Thing, if it be not concomitant; in a Writ of Land; Rent, Covenant, &c. may be rendered lifting out of it. 18 Ed. 4. 32. Welt's Synb. S. 30.
In what Case a Feme Covert shall be examined.

1. If a Fine or Conuance de Droit be levied to a Baron, and Feme rendering Rent; the Feme shall be examined, because she is to be charg'd with the Rent. 46 C. 3. 15. b.

2. If A. acknowledges to B. and B. grants and renders to A. and his Feme for Life, to hold of * A. by the Services of 10 s. per Annuity, and doing for him to the chief Lord, the Services due, &c. tho' the Feme shall be charg'd of the Services, yet she shall not be examined. 1 C. 3. 5.

(M) In what Case a Feme Covert shall be examined.

Fol. 17.

1. If a Fine for Conuance de Droit be levied to a Baron, and Feme rendering Rent; the Feme shall be examined, because she is to be charg'd with the Rent. 46 C. 3. 15. b.

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Fine.

10. 18 E. 1. Stat. 4, S. 7. A Feme covert must be examined by four of the Justices of C. B. and if the contents not, the Fine cannot be levied.

11. In every case, where the Fine shall make any estate by the Fine, or departure from any interest, the shall be examined. Denlh. R. of Fines 13.

12. The Court have no Authority to examine the Feme, but where the Fine is named in the Writ, upon which the Fine is to be levied. And in ancient Books, the Court would not examine the Feme, but of such things, which were contained within the Writ. Denlh. R. on Fines 13.

13. A Fine was levied Sur Confinence de Droit to the Baron and Feme, and to the Heirs of the Baron to hold of the Chief Lord; and the Feme was examined upon this Render, and to bound, Denlh. R. on Fines. 14 cites 11 E. 3.

14. Where she is not examined, the shall not be stopped from claiming a greater estate. Br. Fines, pl. 7. cites 9 H. 6. 42.

[M. 2) Grant and Render, upon what Fine.

1. The Fine Sur Grant and Render cannot be levied upon a Fine executed, as a Fine Sur Confinence de Droit tantum to J. S. he cannot Grant and Render the Lands back to the Coninor, because the Connofce has nothing in the Lands till Execution is, and a Man can't Grant that which he both not. Co. R. on Fines 8.

2. One would have drawn a Fine Sur Confinence de Droit tantum, and that the Connofce should Grant and Render a Robe annually for Life to the Coninor, with Clause of Diftrdft; and such Render was not received, because the Connofce cannot charge that which he both not. Co. R. on Fines, 8. cites Hill. 7. 3. Fol. 14.

Sur Release or a Fine Sur Surrender, Grant and Render may be made; for those Fines are immediately executed, and therefore the Connofce may well Grant and Render. Co. R. on Fines, 8. cites 24 E. 5. Fol. 36.

3. Quere, if one may Render upon a Fine Sur Release, which shall entire by Way of Extinguishment; for the Connofce takes nothing. Co. R. on Fines, 8. Marg. cites 2 H. 5. 2.

(N) Who may Grant and Render.

1. If a brings Writ of Covenant against B. 73. without any Confinence by A. may Grant and Render the Land to A. 8 D. 4. 8. admitted good, and 11. to hold. (But it seems that B. ought to be Tenant of the Land, otherwise it is not good,) But No. 12. per Dred 84. it is said, that it is not necessary.

(N. 2) Render to whom and how, Strangers, &c.

Note, that per Dicr a Render cannot be but only to him that is named in the Fine. But a Remainder may be limited to one, by the Fine, tho' he be not named in the Precept. Welth's Symb. S. 445.

2. 59
Fines.

2. So if the Baron and Feme acknowledge by Fine, the Conuife may Grant and Render Parcel to the Baron only, and the other Parcel to him and to his Feme. Co. R. on Fines 8. cites 17 E. 3. 31. 12 E. 3. 33. Tit. Fines 61.

3. A. and M. his Wife levied a Fine to J. S. and J. N. of the Manor of D. &c. Come ceo &c. and they Grant and Render to A. and M. for their Lives, the Remainder of one 3d Part to the eldest Daughter of A. and M. in Tail, Remainder to the Right Heirs of A.; the Remainder of another 3d Part to the second Daughter of A. in Tail, Remainder as above; Remainder of another 3d Part Residue, to the 3d Daughter in Tail, the Remainder in Fee as above. Quod Noto. Br. Fines. pl. 111. cites 18 H. 7. and Brooke says, that he saw and read the said Fine.

4. In a Fine Sur Grant and Render none can take the first Estate upon the Render, but some of the Cognifiers; but Reversions or Remainders any Stranger may take: For if A. acknowledges a Fine to B. and B. renders to the said A. habendum fiati &c. &c. and the Heirs of their Bodies. &c. by this Fine E. can have no Estate, because he is not named in the Writ. Wol's Symb. S. 30. cites 24 E. 3. 27. 30 H. 8. Br. Fines 108. 7 Ed. 3. 63.

5. A. levied a Fine to B. and C. and to the Heirs of B. who Grant and Render to A. and M. his Wife. Tho' M. was neither Party to the Writ nor to the Conuision, and tho' by the same Record, that she was a Stranger and not Party, yet the Grant and Render to her was not void, but voidable by Error. 3 Rep. 5. cited there by the Reporter as adjudged. Trin. 27 Eliz. in C. B. in Cafe of Owen v. Morgan. [See (F. 4.)]

(O) How being it may be received.

1. BARON and Feme map Grant and Release without Warranty in the Fine. 44 E. 3. 36. b.

2. If Baron and Feme join in a Fine Sur Grant and Release, and the Feme only obliget her and her Heirs to Warranty, it is good. 44 E. 3. 21. b.

3. If Baron and Feme levy Fine (of Land whereof they are seised in Right of the Feme) Come ceo, &c. this shall not be received with Warranty by them and the Heirs of the Baron; but shall be received, being warranted by them and the Heirs of the Feme. 42 E. 3. 14. It seems the Reason is, because it is the Inheritance of the Feme. Baron and Feme map levy a Fine, Sur Conuision de Droit Come ceo, &c. to A. and A. may Render &c. to the Baron in Fee, and this shall be received. 42 E. 3. 34.

4. Baron and Feme cannot acknowledge certain Land to be the Right of A. as that which he has of his Gift, and also release all their Right.
Right to the Conusfee; For they cannot do both in one Fine. 28 E.

Denth. R. of Fines 6. cites 3. 91.
27. E. 5. contra, that a Fine Sur Conuance de Droit & Sur Releve may be in one and the same Fine, to one and the same Person, and of one and the same Land; and may be of Part Sur Conuance de Droit come cre, &c. and of Part Sur Releve.

And there may be in one Fine Sur Conuance &c. some &c. Grant and Sur Releve; and the Conusfee by the same Fine, may render to the Conusfee. So at this Day, two or three * sorts of Fines are in one.

Denth. R. of Fines 6 — * Orig. (Partes Fines.)

Br. Fines. pl. 19. S. C.

5. Fine levied of a Manor, except 4 Acres, and of the 4 Acres also when certain Monies are levied, for which the lames are now in Extent, was receiv'd. 44 E. 3. 21. b.

6. A Ban may acknowledge the Tenements contained in the Writ to be to the Conusfee to have in Taile, and shall not acknowledge the Right. 1 E. 3. 6. b.

7. In a Fine, a Ban cannot acknowledge the Right of a Conusfee, and after Grant it to him in Taile. For the Conuscanse is of a Fee, and not in moe of the Conusfees. Contra 17 E. 3. 9. b.

Co. R. on Fines 9. Yet if received to two and their Heirs, it shall stand. 5 Rep. 38. b. Tey's Case.—And in Case of a Fine levied by the King, the Justices will not refuse a Fine to several, and their Heirs, for the Benefit of the King.

Co. R. on Fines 9. c. 55 H. 6. 52. 7 H. 4. i.

But if received it shall 22. 5 Rep. 38. b. Tey's Case.

* Rand. 2.


A Fine was levied of Land in Taile, upon Condition to carry the Standard of the Conusfee, and for Default thereof Remainder to W. N. And per Fitzh. J. the Remainder is good, and is in the Grantee presently before the Condition broken or never; for if the Remainder be not good at first, it never shall be good.

And per Montague Serj. contra and Fitzh. after doubted. Br. Donc &c. pl. 3. c. 27; H. 8. 24.


I. Covenant to levy a Fine, the Writ was Quod tenet Conventionem of 120 and 10 Acres of Land; and Herle would not accept the Fine upon such Form of Writ. But per Shad. the Writ shall not abate without Challenge of the Party. But per Herle we will not abate the Writ, but we will filier the Writ to lie in Peace. Br. Office del &c. pl. 22. cites 7 E. 3. 39. and Fitzh. Office de Court. 27.

II. Banen and Fine tendered to Grant the Reversion by Fine for their Lives, which Reversion they had in Taile, and because 'twas notified to the Court, therefore the Justices refused to accept the Fine. Br. Fines. pl. 80. cites 29 Alb. 34.

III. In Quare impedit, a Fine was levied of the Advowson by 7. N. to the Abbot of B. who Granted to the said 7. N. that he and his Heirs at every Avoidance should name a Clerk to the Abbot and his Successors, and that he should present him to the Bishop; and 'twas admitted a good Fine. Quod Noa, the Form of this ancient Fine, and was Tempore H. 3. Br. Fines. pl. 42. cites 14 H. 4. 10.

IV. A Fine Sur Grant and Render is executory; and therefore the Law prefuppofes, that he who renders is feised; yet if the other, at the Time of the Fine levied, be seised, the Fine is good and executely so; and therefore the Court will receive this Conuance de Droit only, and that the Conusfee by the same Fine renders to the Conusfee the same Land, that he who surrendered by the Conuscanse shall have nothing in the Land, nor can the Conusfee in this Case grant Rent to the Conusfee by the same Fine. &c. Denth. R. of Fines 6.
V. And a Fine sur Constance de Droit, Conso, &c. the Consoe by the same Fine, renders to the Consoe for the same Land, and this is commonly used. Denth. R. of Fines. 6. cites S. 3.

VI. Note, a Fine for the Matter and the Same College in Oxon, of the Foundation T. White Milfris, Civis & Alderman' London, of certain Land to be annexed to the said College, was refused to be ingrossed pro Defensio brevis inde Directa] justitiae, de Banco to pass such Fine; but it was Anno 19 H. 8. pro hujusmodi Fine pro College Cardinallis Woffley in Oxon' in Banco praedito levand'; Item pro Colledge Regine in Cantabria, finit finis finit rejetit hoc Termino, ex causa Prad'. D. 183. pl. 9. Mich. 2. and 3 Eliz. St. John's College's Caf (Oxon)

VII. In Warrantia Cause quod Warrant, vacat Acrem, the Defendant may acknowledge all his Right which he hath in this Acre to the Plaintiff; and the Ene is well enough receivable. Co. R. on Fines 10.

VIII. So if at this Day the Defendant will levy a Fine of the same Acre, and of one other Acre, the Fine is not good for the other Acre; for tis not comprised within the Original. Co. R. on Fines 10. cites 20 H. 6. 3. a. [See (P).]

[(O. 2) Reserved what.]

10. If Tenant for Life renders his Estate, he may reserve a Rent. 29 But it seems to me in the Cafe afore-said, if the Reserves is the Life be granted for Life, that the Tenant for Life may grant the Land by Fine to the Grantee for Life, the Grantee rendering Rent, because tis not an absolute Surrender; For if the Grantee dies, the Tenant for Life shall have the Land again, as our Books say. Co. R. on Fines 3. cites H. 6. 13 R. 2. 29 Aff. Brook. tit. Estates 69.

11. But if Fine be levied on Land in Fee in Taille, he may reserve several Rents at several Times. 44 E. 3. 22. to receive. 17 E. 3. 48. b.

12. A Fine sur Constance de Droit, which reserves a Rent, may be received. 46 E. 3. 15. 49 E. 3. 10. Contra 17 E. 3. 24. b.

13. But otherwise it is of a Grant and Render reserving Rent; Because this Fine is executory. 45 E. 3. 15. (Surely the Reason.) 27. cites 46 Contra 4 E. 3. 8. b. 50 E. 3. 9. b. Contra 17 E. 3. 48. b. 29 E. 3. 7. b.

14. Upon a Fine sur Constance, &c. Come ceo, &c. A Rent cannot be reserved, because it is executory. 50 E. 3. 9. b. This Reserve is void because the Fine is executed; For no Reservation can be put on a Fine executory, as Sur Render. Well's Symb. 8. 30. cites 50 E. 3. 9. 24 E. 3. 26. 29 E. 3. 1. But it may be reserved on such Fine. Br. Fines pl. 27. cites 45 E. 3. 15. per Finch.

15. A Distress for a Rent may be reserved by Fine. 44 E. 3. 22. 46 E. 3. 15. 29 E. 3. 7. b.

I. In Allife, the Tenant held by finding certain * Maffes, &c. and rendering * Orig. 6 Marks Rent per Annum, and the Lord brought Writ of Causions and Ser- (Mules.) since against the Tenant, in which he released the Services, referring the 6 Marks, and a Mark more; and awarded a good Reservation, which Brooke says seems not to be Law. Br. Fines. pl. 78. cites 26 Aff. 37.

II. A Man made a Lease for Life; and after granted the Reserves for Life, the Remainder in Tail by Fine; the Grantee for Life brought Quid Juris clamat against Tenant for Life, who would have surrendered by Fine to the Grantee, with Reserves of Rent during the Life of him that surrendered; and this Fine was rejected; and the reason of the Refusal, as I apprehend was, because the Estate of him who surrendered was extinct and merged in the Estate of him in the Remainder for Life; and then if be in the Remainder dies, during the Life of him who surrendered, and Q. Q. Q.; he
he in the Remainder in Tail enters, he shall hold it discharged. Co. R. on Fines 5.

[(O. 3) Rended, whatmay be.]

16. In a Fite upon Release by Baron and Feme, and Warranty against the Feme, a Rent may be Rended to them for Life of the Feme, by the Conufee, with Diftrefs, and this shall be received. 17 E. 3. 57.

22. C. 3. 36. b. 28 E. 3. 95.

17. A Rent may be granted and rendered with Clause of Diftrefs.


M. Fines pl. 2. cites 44 29 E. 3. 40. b.

As, Baron and Feme Granted, Released and Quit-claimed all their Right, which they had in the Tenements, &c. viz. the Franklifement, for Life of the Feme, to D. and G. and for this Grant D. and G. granted to the Baron and Feme, for Life of the Feme, a Rent of 70 Quarters of Barley per Annum, &c. and if the Rent be Jurer, that they shall diftrife; &c. and per Wilby and Car. the Right shall not be acknowledged to two in Common, but to one alone, and therefore it was made accordingly. Br. Fines pl. 64. cites 24 E. 3. 64.

See (P) pl. 5.

And be- cause it was not received they granted and released all which they had for their Lives to the Conufee and his Heirs, and so it was received. Quere. Br. Fines pl. 21. cites 44 E. 3. 56.

18. Baron and Feme grant and render whatfoever they have in the Lands in the Weit for Term of their Lives to the Conufee and his Heirs, and not received. But if they grant and release &c. as aforefaid, it shall be received. 44 E. 3. 36. b.

19. Baron and Feme feized for Life of the Feme; he in Reversion levies a Fine, and grants, that after the Deceafe of the Feme it shall remain to the Baron for his Life rending Rent. 44 E. 3. 45. b.

20. Baron and Feme acknowledge the Tenements to be the Right of T. and they release and quit Claim for them, and the Heirs of the Feme, to him and his Heirs for ever, to hold of the chief Lord, &c. the Baron and Feme, and the Heirs of the Feme Warrant, &c. and for their acknowledging, Released, quit Claim and Warranty T. granted 45 s. Rent to the Baron and Feme for Life, to take of the fame Tenements with Claim of Diftrefs, &c. and his received. Br. Fines. pl. 60. cites 24 E. 3. 26.

21. The Baron and Feme Granted a Mefuage to J. &c. which they held for Life of the Feme, rendering to them 45 s. Rent with Claim of Diftrefs, and 'twas refufed; and after they granted and rendered as above, for which Grant, J. grants back 45 s. of Rent out of the Mefuage, &c. and 'twas refufed, Quere Caufam; and after they granted and rendered to J. and released and quit-claim'd to him and his Heirs for Term of the Life of the Feme, for which J. grants 45 s. &c. cum Claufula Diftriffionis, and it was accepted. Br. Fines. pl. 68. cites 39 E. 3. 1.

22. A Fine was levied with a Render, and the Render was with Warranty, and the Officers of the Fine related to take it, by reason of the Warranty annexed, which had not been known before Time; but all the Justices conceived it was good; for altho' it was not usual, that he, which renders, should warrant the Land, because he takes no Benefit; yet if he will warrant it, it is not to be doubted, but it is good enough, and the Officers were commanded to receive the Fine. Cro. E. 17. pl. 9. Pach. 25 Eliz. C. B. Anon.

(O. 4) Done. What Things may be done by Fine, and How.

See Manor. 1. A Manor may be divided by Fine. Br. Fines. pl. 17. cites 43 E. 3. 11.

2. If a Man will, he may make a Jointure by Fine; thus: J. viz. levies a Fine.
Fine.


3. A Leave for Years may be made by a Fine in this Form: The Lease must acknowledge the Tenements to be the Right of the Leffer, &c. and then the Leffer must grant the Lands back again to the Leffer, for 60 many Years as are agreed upon, referring a Rent with a Clause of Diftrefs: But this Fine will not bind the Issue in Tail, because he taketh by the Fine, but giveth nothing thereby. Welt's Symb. S. 30. cites Br. Fines 106. tempore H. 8. 36. H. 8. Br. Fines 118. Plov. 455. 14 Eliz.

4. Or a Leaf for Years, may be made by Fine, to limit the Tenant in Tail thus: The Tenant in Tail, and the Leffer to acknowledge the Tenements to be the Right of a Stranger, as thai, &c. and the Cognosce to grant and render the Tenements to the Leffer for certain Years, yielding a Rent with a Clause of Diftrefs, and then grant the Reversion to the Tenant in Tail. Welt's Symb. S. 30. cites 39 H. 8. Br. Fines 118.

5. If a Stranger, who has nothing in the Lands, leaves a Fine to him in the Remainder in Tail dependent on Estate for Life, Sur Cognizance de Droit Come ceo that if ad de fon done &c. and the Cognosce by the same Fine, renders to the Cognosce for Years, to commence at Mich. ensuing, and dies, and all the Proclamations are made after his Death. The Tenant for Life, after such time as the said Leave is limited to begin, dies; it is adjudged a good Leave, to bar the Issue in Tail for the Term. Welt's Symb. S. 30. cites 14 Eliz. Plov. 437. b. Smith v. Stapleton—which seems contrary to the Opinion before. Br. Fines 106. 118. Welt's Symb. S. 30.

6. A particular Tenant, as for Life, &c. cannot surrender his Term to him in the Reversion, or Remainder, by Fine; But he may grant and release it to him by Fine. Welt's Symb. S. 30. cites 44 Ed. 3. 36.

(O. 5) How being, it may be received; want of Certainty, &c.

1. Note, that it is against the Nature and Credit of a Fine to omit any thing, in which Certainty is not rested, or in which the Thing cannot take Effect and Continuance, according to the Purpose of the Fine. Co. R. on Fines. S. cites 19 E. 3. [Quære, for there is no such Year.]

[End Concord, and rejects certainly all Incertainty; for Certainty (as it is said) begets Relo, and Incertainty, Contention; and it is against the Credit of a Fine, because Credit always attends and accompanies with Certainty; and of the contrary Part, Incertainty and Fallacy begets Trouble and Difcredit. Co. R. on Fines. S. cites 2 H. 5. 15 H. 6. 45 E. 3. 18 H. 7. 24 E. 3. 54. 21 E. 3. Therefore Fine cannot be levied, de Tenements; because Tenementum is of uncertain Signification. A Fine upon Condition is not good; because such Fine, Fines hibus non impone. See Br. Fines pl. 5. cites 25 [2]. H. 8. 24— But the Year Book is that if it be so taken, it is good.]

2. And therefore in our Books, a Grant and Render was drawn by Fine to A. for the Life of B. Remainder to C. in Fee; and there Chard laid, that the Fine ought to be certain, and to limit in what Purposes the Land should remain; and because it was uncertain, who should have the Land, if the Tenant for Life died, living only que Vic. Upon this Thorp drew the Fine to A. and his Heirs for the Life of B. Remainder to C. and yet Stone doubted; because, as I apprehend, some lay the Limitation to one and his Heirs during the Life of J. S. is void; and notwithstanding this, there shall be an Occupant, because a Fee Simple cannot depend upon the Life of a Man. But I hold the Law contra as to this; and so is Litt. 168. 19 Eliz.] Acconipt. 56. 33 All. p. 17. 22 All. p. 51. and 11 H. 4. 43. But I agree that this shall not be laid in Fee Simple, but that the Heir shall take it as a special Occupant named in the Deed. Co. R. on Fines 5.

3. 9.
Fine.

3. So, if a Fine be drawn, that J. S. acknowledges the Land to be the Right of J. D. and J. G. and to their Heirs: such Fine the Juftices ought not to receive, because the Fee Simple shall not be certainly reposed in any certain Person; for it may be that J. D. shall Survive, and then he shall have the Fee; or it may be that J. G. shall Survive, and then he shall have the Fee; the which (as I have said) shall be against the Nature and Credit of a Fine. Co. R. on Fines. 5.

4. A Fine was levied of a Manor, unto which an Advowson was appen-dant, wherein a 3d Part was rendered back to A. for Life, with divers Remainders over, and so of the other 2 Parts, with the Advowson of every 3d Part as aforesaid; if they cannot agree to present, a Lapfe shall inure. They are all Tenants in common, and being first named, or last named, is of no Privilege or Prejudice. For being by one Deed, it shall be Uno Flata. Arg. Godb. 128. cites 45 E. 3.

and Advowson, &c. and that the first Tenant for Life, shall have the first Presentment, or he in Remain-der, if it falls not in the Life of the Tenant for Life, or his Heirs, &c. and the other, in the other 3d Part of the Manor, the 2d Presentment, &c. and also the other, to whom the 3d Part was granted &c. the 3d Presentment, &c. &c. &c. to the Tenant, &c. &c. &c. where this Manor shall fall for the Presentments.

[ See (O) pl. 9. (P) pl. 2. (Z. 3) (Z. 4) (Z. 5). ]

(O. 6) Uncertainty in Fines. Made good or explained by the Intent.

1. A Fine was levied Sur Conuance de Droit come cee. &c. to J. N. and he rendered to the Conuor and W. as Son, and to their Heirs, where there were 2 W's elder and younger; and the Contention came between W. the younger, and the Heir of W. the elder, and the life was joined, whether the Fine was levied (to give the Inheritance) to W. the elder, or W. the younger: and so lee life taken upon the Intent. Br. Fines. pl. cites 47 E. 3. 16.

And if they had no Com-communication, then it shall pass the Man- nor, which the Conuor intende. Br. Fines. pl. 58. cites 12 H. 7. 6. Per Vavilor and Davers, and denied by none; and that the same was agreed. 27 E. 3.

Graundes shall be given in Evidence to prove what Manor they intende. And Phrases of Speech declare the Intent of Persons. Per Montague Ch. J. pl. 2. 83. in Case of Partridge v. Strange and Crocker.

[ See (J. b. 2). ]

(O. 7) Received or not. In Respect of the Grant.

1. Fine was drawn, by which A. granted a certain Rent in the Writ to B. to have and receive of J. N. and his Heirs Tenant of a House, with the Apparances in E. & 3d named fugis B. imperpetuum cum Vavilone, and this Fine was accepted; and B. prayed a Writ to put him in Possession; and it was granted. Br. Fines. pl. 49 cites 21 E. 3. 44.

2. A brought a Writ of Covenant against B. who was seized of a Man- nor, to which an Advowson was appen-dant; and he levied a Fine Sur Conuance de Droit taintum; and thereby granted, that the Conuor should have the next Presentment, and himself the 2d, and Conuor the 3d, and be the 4th, and so they and their Heirs to present by Terms for ever. D. 259. b. pl. 20. Parch. 9 Eliz. cites 43. E. 3 35.
(P) How the Fine being, shall be received. [Being with Render, or not.]

1. A Fine shall not be received, being with Warranty to four and their Heirs, unless they are Coparceners. Contra 17 E. 3. 9. B. But being received, shall stand. 5 Rep. 58. b. Tay's Cale.

2. A Fine shall not be received, being with Render to A and B, and to the Heirs of the one for the Life of A, the Remainder to the other, for the Uncertainty of the Estate. Contra 17 E. 3. 48. b.

3. A Grant and Render by 2 Barons and their Femes, of as much as they have for the Lives of the Femes to another and his Heirs with Warranty, for the Lives of the Femes shall not be received. 17 E. 3. 66. b. Because no Right is lived in the Renderor, nor granted over by Render as ought to be. But a Fine upon Release, in such manner shall be received. 17 E. 3. 66. b.

4. A Fine by Grant and Render of a Reversion to 2, shall not be received, but it ought to be to one in certain. 21 E. 3. 13. (Fol. 19.)

5. The same Law of Land in Possession. 21 E. 3. 27. b.

6. But otherwise it is if the Render be to two, and to the Heirs of one. 21 E. 3. 13.

7. The same Law of Land in Possession. 21 E. 3. 27. b.

8. A Grant ought not to acknowledge the Right to two, but to one of them, as that which the two have of the Gift, &c. For otherwise the Fine shall not be [received]. 27 E. 3. 84. Where the Land was Gavelkind, the Render by 3 Conuences, and Warranty for them and their Heirs, was received. Br. Fines. pl. 65. cites 24 E. 3. 66.—Co. R. on Fines 5.—Br. Fines. pl. 48. cites S. C.

10. But if the Warranty be for them, and the Heirs of one, it shall be received. 21 E. 3. 27. b.

11. A Warranty cannot be limited to two, and their Heirs, by Fine. 5 Rep. 38. b. For this shall not be received.

12. But it may be limited to two, and the Heirs of one. 21 E. 3. 27. b.

13. If Baron and Feme by Fine, Grant, Release and Confirm to two, * Orig. (ove) all that * which they have of the Tenements of the Feme, which they hold for the Life of the Feme of the Heritage of the said two. This Fine shall not be received; Because the Inheritance is not granted to one. 24 E. 3. 36. b.

14. A Fine may be levied of Land in seven Counties together. 1 E. 3. 4. b.

15. Rent of 20 l. per Annum was granted by Fine to J. N. and his Heirs upon such Condition, that if after the Death of J. N. his Heir, or any of his Heirs, be within Age, that during the Nonage he shall be quit of the Payment of the Rent, & it was received, and disputed after if the Fine be well accepted, or not; quod mirum; For at this Day they will not suffer a Condition, because Finis Fines Littibus imponere debet. Br. Fines. pl. 62. cites 24 E. 3. 61.

16. If Covenant be brought by two, the Defendant may acknowledge the one Moietv to the one, and the other Moietv to the other, or the one Part in Severalty to the one and other Part in Severalty to the other. Co. R. on Fines 8.

17. But it seems if 2 bring Writ of Covenant, the Fine shall not be levied to 2 only. Co. R. on Fines 8. cites 7 E. 3. 25.
18. But in Writ of Covenant by two, the Defendant may levy a Fine to one, the Remainder to the other, or levy a Fine to one rendering Rent, and by the Fine Firm grant the Reversion to the other. Co. R. on Fines 8. cites * 16 E. 3. Br. tit. Fines f 5. 7. 36 H. 8.

19. The Minors and Tenements contained in the Writ may be divided: As if a Fine be levied between R. and M. of 2 Minors, and M. acknowledgeth all his Right of the said 2 Minors to be the Right of the said R. as that which &c. for which R. granteth and rendeth the one Manor to M. for Life, with 2 Parts of the other Manor, which N. holdseth in Dower; to have the one Manor, and two Parts of the other Manor, to M. for Life, the Remainder after her Death to R. in Tail, and that after the Death of A. the third Part shall remain to another. Wel's Symb. S. 30. cites 43 E. 3 11. 45 E. 3. 12.

20. Fine levied to Baron Come coe &c. and they grant and render to the Conun the Land, to hold for Term of the Lives of Baron and Feme, and after their Decease the Remainder to the Heirs of the Baron. The Fine was not received; For a Man cannot entail a Remainder to his Heirs living himself, unless he commences first with himself; and this because of the Reversion saved. Patch. 7 Eliz. D. 237. b. pl. 32. Vide.

21. A Fine was levied with a Reader, and the Reader was with Warranty—tis good tho' unusual, and that be, that renders, takes no Benefit. Cro. E. 17. Patch. 25 Eliz. C. B. Anon.

22. Reader with Warranty was commanded to be received. Cro. E. 17. pl. 9. Anon. ut supra.

23. Exception was taken, that the Writ of Covenant, and the Caption was De Manorio & Tenementis, and 3 s. Rent; and the Fine engrossed was De Manorio & Tenementis; But 'twas agreed, that the Courte of Fines is, that if the Rent be under 5l. they use not to mention it in the Fine engrossed. Cro. E. 275. Hill. 34 Eliz. C. B. Argenten v. Welfover and Lucas.—Cro. J. 11. Patch. 1 Jac. B. R. Arundel v. Arundel. S. P.

(P. 2) Certified. How Fine acknowledged shall be certified, and when, and by whom.

1. By 15 E. 2. Stat. of Carlile. The Commissioners, that take the Cognition, shall make a Certificate thereof to the Justices, to the End the Fine may be lawfully levied according to the former Ordinance. 2. If two Justices have Deimus Potestates to take the Conunence of a Fine, the one alone cannot take it, but if it be taken by both, the one may certify it alone, after the Death of the other. Denl. R. on Fines. 9.

3. 23 El. 3. Endtts, that the Day and Year of the Acknowledgment of a Fine, and the Warrant of Attorney for the Suffering a Recovery, shall be certified together with the Conun or Warrant, and none shall be enforced so to certify, but within one Year after such Acknowledgement made, or Warrant given.

No Officer shall receive any Writ or Entry without the Day so certified in Pains of 5l.

4. Tho' Justices of Affise, by the general Words of their Patents may take and certify Cognizances of Fines without any special Ded. Pot. yet such Justices are not now to certify them without a special Writ of Ded. Pot.
Fine.

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Pet. sued forth of the Chancery directed to them, and giving them thereby Power to take and certify such Cognizances as they have already taken.

Weatl. S. 16, cites D. 224, pl. 51. [but it should be pl. 51.]

5. If a Judge takes the Cognizance, and dies, a Certiorari shall be awarded to his Executors to certify the Cognizance. Co. R. on Fines 10 cites Fitzh. 147.

charged before he be certified; he may certify it by Writ, but not otherwise; notwithstanding that he be reinstalled. Br. Fines. pl. 54. cites S H. 4. 5— Weatl. Synb. S 116 cites S.C. and H. 7. 9.


6. A Writ of Covenant is prosecuted Jan. 23, returnable Off. Purificat. The Dedimus Potestatem is left 23 Jan. the Judge certified the Concord taken Feb. 14, which is 2 Days after the Term, at which Time the Writ of Covenant is not depending, the Fine is, Hanc eff. finalis Covenant frauditer in Off. purif. And after it is recorded in 15 Parch. and yet adjudged a good Fine. Hutt. 135. Sir Richard Champion's Cafe.

(P. 3) Executed. How; and in what Cases necessary.

1. Wetzm. 2. 13 E. 1. 45. Enlists that for all Things recorded before the King's Judges, or contained in Fines, (whether Certificates, Covenants, Obligations, Services for Civils acknowledged, or any other Things involved) a Writ of Execution shall be within the Year, but after the Year a Scire facias, whereby, upon satisfaction not made, or good Cause shewed, the Sheriff shall be commanded to do Execution.

not executed, that the Party should not have Brief de Fine Frauds, in the which the Plaintiff will recover only Damages; but under Correction, before the said Statute of W. 2. the Cause might have entered upon the Contra, and his Heirs. For the said Statute does not give Entry to the Contraec or his Heirs. Co. R. on Fines 12.

2. A Fine may be executed by Writ of Habere facias Sezinnam, and if Resoons be made, the Sheriff may take the Poff Comitatus, and make Execution. Br. Fines pl. 112. cites 19 E. 2. Fitzh. tit. Execution. 247.

Habere facias Sezinnam to the Sheriff, and the Sheriff returned, that he cannot make Execution for Responis, and was adjudged that his Return was not good; and the Sheriff was amerced 20 Marks. Co. R. on Fines 12.

3. Scire facias upon a Fine between T. and H. by which T. acknowledged the Land to be the Right of H. &c. and H. granted and render'd to T. Hendo' to him and E. his Fene, and to the Heirs which T. should beget on the Body of E. so if that they died without such Heirs, that then it should revert to the said H. for his Life, the Remainder to C. and S. his Fene in Tail, &c. T. died without Heirs of the Body of E; and the Tenant said that after the Death of H. and S. &c. who was the Mother of the Plaintiff, G. the Father of the Plaintiff entered and was seised; and so the Fine executed &c. Judgment, &c. and the Opinion was, that because it was once executed, it should not be executed again by Scire facias of the same Estate which was executed; But the Heir is put to his Formerdon for the Mischiefs of Warranty; for tho' the Tenant in the Scire facias may have Writ of Warranty of Charters, yet his Feoldor shall lose his Warranty Paramount, which he may have by way of Voucher in a Formendon, which he lost in Writ of Warranty of Charters, &c adjournatur. Br. Sci. fa. pl. 125. cites 24 E. 3. 57.

4. Land was given to J. N. by Fine in Tail, the Remainder to P. in Tail, the Remainder to the right Heirs of J. N. the first Donee; and A. as right Heir of the first Donee sued Execution, because the others were dead without Issue, and it well lay; For the Fee was not executed during the first Estate. Br. Sci. fa. pl. 89. cites 39 E. 3. 17.

5. Scire
5. Scire facias to execute a Fine was sued by the Heir of S. because the Fine was levied to A. for Life, the Remainder to J. in Tail, the Remainder to S. in Fee; and that all are dead, and J. [died] without Issue; and the Tenant said, that A. surrendered his Estate to J. and after S. died, and J. [died] without Issue; and that A. entered as Brother and Heir to S. whose Estate he has, Judgment if Execution. And the other said, that A. by his Entry after the Death of S. had only his first Estate for Life; which is a great Error; For it is a Surrender; and then after the Death of J. and S. A. was in of Fee, and then the Fine executed in the Fee, and never shall be executed again; and per Finch, became the Estate for the Life of A. merged in the Seisin of J. and he is in in Tail, and not for the Life of A. the Wife of J. shall be endowed. Br. Sci. la. pl. 21. cites 42 E. 3. 9.

6. Estate by Fine is made to two, and to the Heirs of one; and he who had the Fee died, and after the Tenant for Life died, and J. N. abated; the Heir of him who had the Fee, may have an Affile of Mordances, or a Writ of Right, or a Scire facias, per Kirton, to which Finch agreed; quod mirum, that it shall be executed to some Actions, and to some not. Br. Sci. la. pl. 21. cites 42 E. 3. 9.

7. Fine levied by him in Reversion, without express mention of the Reversion, is not executory; nor shall the Party have Execution where it is levied Sur Comitance de Droit, or Sur Grant and Render. 43 E. 3. 15. but such Fine was executed the same Year, fol. 22, and there 's said clearly that the Right patres, tho' the Conufor had nothing but Reversion in Tail; but it seems clearly, that by Fine for Comitance de Droit come ceo, E. Reversion puffes. Br. Sci. la. pl. 23. cites 43 E. 3. 22. per Thorp.

8. Scire facias. The Case was, that Land was entailed for Life by Fine, the Remainder to Baron and Feme in Tails; the Baron died, and after the Tenant for Life died; the Feme entered and died; and the Son brought Scire facias as Heir to his Father and Mother of their Bodies; and by Award it is a good Execution by the Entry of the Feme after the Death of her Husband, as well as if the Baron and Feme had been seised; quod nota. Br. Sci. la. pl. 31. cites 49 E. 3. 22.

9. A Fine is levied to J. N. in Tail, Remainder to the right Heirs; the Heir innum shall not have Execution; For this is executed of the Tail; but the Heir collaterall, after the Tail determined, shall have Execution of the Fee Simple in the Remainder. Br. Fines pl. 32. cites 7 H. 4. 16.

10. If a Fine be levied to the Husband and Wife in special Tails, the Remainder to the Heirs of the Body of the Husband, and the Wife dies without Issue; the Remainder is executed in Poffession in the Husband; For the Estate Tail meets with the Freehold, and drowns it. Wet. Symb. S. 176. cites 7 H. 4. 23.

11. Some Fines are to be executed by Entry only, some by Scire facias, or Entry; as long as the Entry of the Conufor is lawful. But in Common Law, our Books say fay the Conufor has no Remedy, if the Fine be not executed, but only Writ of Fine Fraud, which (as it seems to me), is to be intended, when the Entry of the Conufor was taken away. For by the Order of the Common Law, the Conufor might have entred; but the Scire facias is given by the Statute of Westm. 2. Can. de his qui recordantur finis, &c. Co. R. on Fines 3. cites 21 E. 4. 44. 45 E. 3.

12. A Fine Sur Comitance de Droit come ceo, &c. is executed; Because it supposeth a Gift precedent, but tho' it be executed between the Parties, yet, as to all Strangers, the Conufor remains seised of the Land. But if such Fine be levied of a Rent, Common, Advowson, Liberties, or such like; the Conufor has a Freehold in Law in him, before any Poffession or actual Seifin had. Co. R. on Fines 4.

If Conufor is in Poffefion, the Fine is executed, so that he may have Forme- don or other Action; and if the Conufor be in Poffefion, he may enter upon him or upon his Heirs; but if the Land be recovered or aliened, so that his Entry be taken away, the Fine is void. Br. Fines. pl. la. cites 41 E. 3. 14.
(P. 4) Execution barred, by what. Difficult, &c.

1. If a Man seized in Fee leases a Fine to another for Conuance de Droit Come, &c. and, before Entry made by the Conuisee, a Stranger enters, and dies seized, neither Conuisee nor Conuitor has any Remedy. *E. 4.* 14. b. per Finch. But if, after the Fine levied, the Conuitor continues Possession, and dies in Possession, the Conuisee may enter upon the Heir, and if he enters after the Decent, he shall avoid the Ward. *H. 4. 16.* per Thirning. Co. R. on Fines 4.

2. But if a Fine (as it seems to me) be levied of a Reversion expected upon the Estate for Life, or in Tail; in such Case, after the Death of the Leetee, or the Estate determined, the Conuisee shall have Scire Facias; and therefore if the Leetee be diffeited, and a Decent, and after the Leetee dies, the Conuisee is not without Remedy, as I think. Co. R. on Fines 4.

3. *Tis said in the 1 E. 4. 6. that if a Fine was levied before Time of Memory, a Man shall not have Scire Facias at this Day to have Execution of it. Co. R. on Fines 12.

[See (N. b. 5)]

(P. 5) Abatement. By Death of the King.

1. If a Jurytice takes a Conuance, and after, the King dies before any Writ of Covenant, or Ded. Petition, upon the Conuance, 'tis utterly void. So it should be (as it seems to me) at Common Law, if the Writ of Covenant or Ded. Petition had been sued, and Conuance taken, and after the King dies, that such Conuance shall not be received: But now at this Day, 'tis otherwise: For now a Writ shall not abate by the Death of the King. Co. R. on Fines 10.

2. *Anne. 8. 9. 5. Enacts that no Original Writ, Process, or Proceedings whatsoever, shall abate or discontinue by the Death of any King or Queen of his Realm.

(P. 6) Execution, by Entry, at what Time it may be, and in what Cases tolled by Decent, Alienation, Recovery, &c.

1. If a Man levy a Fine to another, for Conuance de Droit Come, &c. the Conuisee may enter upon the Conuitor, or his Heir, quod nota. But if Recovery or Alienation be, io that his Entry is toll'd, he is without Remedy, nota; and so it seems, that he cannot enter upon the Alienation, quare inde. Br. Entro Cong. pl. 7. cites 41 E. 3. 14.

2. In Ward, 'twas agreed, that where a Man levied a Fine, Sur Conuance de Droit to another, and yet continued Possession, and deed seized, and 41. S.C. his Heir entered; yet the Entry of the Conuisee is good and lawful upon the Heir, per Thir. clearly, which none denied. Br. Entro Cong. pl. 23. cites 12 H. 4. 16.

(P. 7) Execution of Fines. What amounts to it, or what Fines need it.

1. Sci. h. was brought to execute a Fine, because the Fine was levied to A. B. and C. and to the Heirs of the Body of B. the Remainder to the right Heirs of C.; and because all were dead, and B without Issue, the Plaintiff, as Right Heir of B. brought Writ to execute the Fine. The De-
fine.

Fental said that A. died, and B. also, without issue, living C. and so the fine simple executed in his life, and therefore Scd. fa. does not lie; for it now is as if an estate for life had been granted to C. the remainder to his right heirs, in which case he has fee simple. Br. Scire facias, pl. 16. cites 40. E. 3. 20.

2. But where a fine was levied to Baron and Feme and C. and the heirs of C. and C. died, and then the Baron and Feme died, and the heir of C. brought Scd. fa. It was agreed that the fine was executed for a moiety in the life of C. Quod nota. Br. Scire facias, pl. 16. cites 40. E. 3. 20. But Brooke says it is contra in the case above; for B. had estate tail, and therefore the fee simple in that case could not be executed for any part. Note the difference.

3. If at the levying of executory fines, the party, unto whom the estate is limited, be in possession of the lands failed, he needeth no writ of execution for the same; for though fines do entitle by way of restitution of right, but alter not the estate nor possession of the cognizance, but perchance better it. Wel's symb. 6. S. 20. cites 7. H. 7. 12 and 22. Ed. 3. 6. 21 Ed. 3. 44. 8. H. 4. 8. 41 Ed. 3. 14. 7. H. 4. 23.

4. Note that a fine is either executed by writ of habere facias sejinator, which is a writ to the sheriff to put the cognizance or his heirs in possession; and this must be sued forth within a year after the fine was levied, or after judgment upon a scire facias. Or else he must have a writ of scire facias. That is to be sued forth after a year and day after the fine is levied; and thereby the sheriff is to warn the tenant to appear and show cause, if he can, why the cognizance or his heirs should not have execution: At the return, whereof, if the tenant appear, and can show cause to the contrary, the plaintiff shall have an habere facias sejinator to the sheriff, to put him or his heirs in possession; or the cognizance, where the fine is for cognizance de droit comme cve, qu'il ad de fom done, may obtain the actual possession of the land contained in the fine, by an entry: For in this case of a fine executed, if the cognizor be still in possession of the land, whereas the fine is levied, the cognizor may, without any writ of habere facias sejinator, enter upon him, and so get the seisin and possession of the land. Brown of fines 167.

5. And note, that if a fine be levied to a husband and wife in special tail, the remainder to the heirs of the body of the husband, and the wife dieth without issue, the remainder is executed in possession in the husband; for the estate tail meeteth with the fee simple, and is drowned. Brown of fines 167. cites 41. Ed. 3. 14. 14 Ed. 3. 5. 7. H. 4. 23.

(Q.) What shall be good cause to stay a fine.

1. If Baron and Feme levy a fine, and the connisance is taken six days before Easter Term 7 June, and the writ of covenant is returned 15 Puchas, which was the 3d of May; and the Baron dies the 9th of May, the King's silver not being entered; yet if upon examination it appears, that the clerk had entered the King's silver in paper before any entry taken to it; and that now he had entered the King's silver upon the back of the writ of covenant as it ought to be, the fine shall not be stayed. 3d. 9. B. Botch's case per cur. per cur. per cur. For when this is conceded, it has relation to the return of the writ of covenant.

2. If J. S. with the Feme of another levies a fine (by the name of J. S. and Jane his wife) of the inheritance of the Feme and he who is yet true Baron comes into court, and (the) Matter, and pays to stay the fine, yet the court will not stay it. For the court will not determine the legality of matrimony, and if the truth be that he is not the wife of J. S. this will not hurt the right Baron. 3d. 7. 3. 6. as per cur. between Ecoscoholicate and Wade.
Fine.

3. If a Man owes a Fine, and before the King's Silver is entered, there is shown to the Court an Office, by which it is found that the Land is held in Capite, and a Licence of Alienation before granted of the same Land, the Court may say the Fine till he has purchased a Licence of Alienation, and a Writ of Quod permittat comes to them. 1. 25 t.

11. A. B. per Court. Ed Aundel's Cate.

4. If a Fine be fore by Dedimus Poteciatum acknowledges a Fine, and before the Return thereof is entered; this Fine may be certified, and ingrossed, as of a Fine fore, because the taking of her Husband, after the Fine acknowledged, is her own voluntary Act, and such Fine shall bar her and her Heirs for ever; and the taking the Baron was after the Tethe of the Writ of Covenant; and it was held, that a Release of the Baron to the Conunee of all his Right made all clear. D. 246. pl. 68. Mich. 7 and 8. Eliz. Anon.

[See (H. b.)]

(Q 2) Stay'd, by Death of any of the Parties.

1. A Fine was ready to be ingrossed, and Laicon came and showed that the Conunor had before levied other Fine to another, and prayed that it be not ingrossed. & non Allocatur; For the first Conunee may have his Remedy by Assise, yet alter, upon the first Fine. But if the Court be after-tained, that the Conunor is dead, the Fine shall not be ingrossed, per Prior; wherefore Licence was shown upon the first Fine, and that the Land was held of the King, upon which they stayed the Ingrossing; and by him no Fine shall be suffered upon Condition, nor to divers Persons, and their Heirs, but such as are held of the King; and by him, notwithstanding the Licence, the Fine shall not be ingrossed without Writ out of Canc. of Quod permittat. Quere of this Writ. Br. Fines pl. 16. cites 33 H. 6. 52.

2. A. Tenant for Life, and B. Remainder Man in Fee, acknowledge a Note of a Fine; A. dies; per Hobart, the Conunee might proceed with the Fine, as against B. only, and take his Writ of Covenant accordingly: Hob. 329. Ersheld's Case.

3. A Feme Covert one of the Cognizors died after the Caption, and after the Tethe, but before the Return of the Writ of Covenant; and a Covenant being entered, it was intimated that the King's Silver was not paid before the Wife's Death; and therefore the Fine ought not to pafs. But it was answered, that Fines are common Affurances, and that the Acknowledgment makes the Fine compleat, and that the King's Silver is the Fine, pro Licentia Alieniandi, which is the Prah-fine paid at the Alienation Office, and for which a Receipt was indorsed on the Writ of Covenant and is not Part of the Post-Fine, which is never collected till after the Fine is compleated; and the Court after Consideration was of that Opinion, and ordered the Fine to pafs. Barnes's Notes of Cases in C. B. 141. Mich. 6 Geo. 2. Harneis v. Micklethwaite.

4. A Year having lapsed since the Caption of a Fine, it was stopped at the King's Silver Office, for Want of an Affidavit, that the Parties were living; and one of the Conunors being dead, Application was made in the Treasury, to the Judges, to strike him out, and that the Fine might pafs as to the other, which they denied, but made a Rule, that the surviving Conunor should pafs, why the Fine should not pass generally, as to all Parties; and upon Affidavit of Service, the Rule was made absolute. Barnes's Notes of Cases in C. B. 142. Cotton & Tyrrel, Birc v. Baylie & Ryder.

5. In a like Case of Want of Affidavit, the Court, upon inspecting the Writ of Covenant and Consuence, made a Rule upon the Clerk of the King's Silver Office to show Cases, why the Fine should not pass, and upon hearing Counsel for the Conunee, and the Clerk of the Office, and it appearing that all the Parties were living at the Time, when the King's Silver
was paid: the Fine was ordered to pass. And the Court said, that such Affidavit was all which the Office ought to require. Barnes's Notes of Cakes in C. B. 142. Mich. 7 Geo. 2. Gregory v. Croucher.

6. A Fine acknowledged in South Carolina, known to before the Chief Justice there to be duly acknowledged, was attested by a Publick Notary. But it was held by the Judges in the Treasury, that it cannot pass without Oath before one of the Justices of C. B. of the due Acknowledgment. Barnes's Notes of Cakes in C. B. 143. Pasch. 8 Geo. 2. Dean v. Tidemarsh.

(R) 1 In what Cases the Fine being received, shall be good. [* Lieu Cons. *]

1. * If a Fine be levied of a Common of Pasture in A, this is good, tho' A be no Vill, Hamlet, or Lieu Consus out of the Vill, &c. but only the Name of the Pasture, where the Common is to be taken, and this within a Vill. * B. 17. 74. R. R. Rot. Pet Cur. the' Judgment given of the other Part for other Case.

2. * If a Fine be levied of Land in Eaton, and there is a Farm called Eaton in the Parish of B. and there is not any Lieu Consus, by Name of Eaton out of the Vill; yet this is a good Fine, being received by Consent of the Parties, without Exception to the Writ, and it being also a common Affirmation. * B. 8 Car. B. R. adjudged pet Cur. upon a special Verdict, between Edwall and Eaton. Intratitull. B. Rot. 1075.

For the Fine is drawn according to the Writ of Convenant, which is guided by the Inheritance and Agreement of the Parties, &c. What they agree to pass by such Names, and it ought not to vary, and if it arises from the Deced, the other is not bound to levy the Fine. * Cro. C. 269, 276. Faveley (alias Staveley) v. Eaton.—Jo. 591. Mich. S. Car. B. R. S. C.

3. * Scire Facias upon a Fine of a House, three Acres of Land, and of the Manor of U. and because he did not pass in what Vill the Tenements are, the Writ was abated, by Reason of the Value; For in the Writ of Convenant there was a Vill, and this Writ shall not be brought out of the Vill, Quod nota. And yet Thorpe said, that he had seen a Fine levied in a Hamlet, and the Writ brought in the Vill where the Hamlet sits, and was not abated for the Variance. * Br. Brief, pl. 141. cites 38. 13. 20.

4. * If a Fine be to two and their Heirs, or if the Convenance do Deft be to two, or if Fine be on Condition, yet being received, such and like Fines shall stand. 5 Rep. 38. Tey's Cafe.

5. * If a Fine Covert is of full Age, and joins with her Husband to levy a Fine of her Lands, she must be privately examined, whether she parts with the Right in her Land freely, or by Compulsion. But tho' she is not examined, if the Fine is received and recorded, it is good. Wood's Infi. 241.

[ See (O) (E. a). ]

(R. 2) Bound by the Fine. Who? Persons that must mention the Confor in conveying their Title.

1. If the Son disseises the Father, and levies a Fine, and afterwards the Father dies, and then the Son dies, the Land shall not descend to the 2d. Son; but if the eldest had died in the Life of his Father, it had been otherwise. * Arg. Lat. 66. cites 8 H. 5. 7.

2. Grandfather
2. Grandfather Father and Son are, and the Father devise the Grandfather, and leaves a Fine, and then the Father dies, the Son is bared because he must make his Conveyance from his Father. Arg. Lat. 72. cites 19 H. 8. D. 3.

it shall not baze me, because my Uncle is not mention'd in the Conveyance to the Land. But if the Father dies, and the Uncle after leaves a Fine, the Son shall be barred. Arg. Lat. 73. cites D. 3.

3. A. Tenant for Life, Reversion to B. an Intent in Fee, C. (who was B's Uncle) [and Heir apparent, as Mar. 95, S. C. calls him] leaves a Fine Come coo, &c. with Proclamations to J. S. and afterwards C. died; then A. died; and then B. died without Issue. C. left Issue D. his Son and Heir. D. entered as Son and Heir of C. who was Heir of B. It was held by Crook and Barkley J. that the Entry of D. was lawful, and that the Fine of C. his Father was no Bar. For this there was a Necessity of naming the Uncle in deriving the Defect of the Inheritance to D. his Son, as C. the Uncle (Father of D.) was Heir to B. the Ideot, who was last leisled of the Inheritance; yet the naming him here, is not by Way of Title, but Pedigree only: But Jones J. Contra. Cro. C. 524, 543: Adjournal. Hill. 14 Car. B. R. Edwards v. Rogers.

Cafe (which was the very Point) said, that this Cafe was adjudged no Barr. Mar. 95. S C. See (D. 2)

(S) Who shall be bound by the Fine. Party.

1. If a Man by Fine acknowledge all his Right of certain Land to me, and I render to him again in Fee, where none of us had any Thing in the Land, and after I purchase the Land; this Fine will bind me, for it is executory upon me. 17 E. 3. 53. h. 776.

2. If a Son devise his Father, and leaves a Fine with Proclamation to a Stranger, upon whom the Father enters and dies: The Son may re-enter against his own Fine. Patch. 4 Car. C. B. Het. 97. Itham v. Lawne.


1. A Stranger leaves a Fine to Tenant in Tail in Remainder expostant on two Estates for Life, and he renders to the Conuue for 54 Years, and dies before the Proclamations are any of them made; afterwards the Proclamations are made, and the Tenants for Life (after the Time in which the Years are limited to commence) dye. Adjudged that the Term was good against the Issue in Tail. Pl. C. 437. b. Patch. 15 Eliz. Smith v. Stapleton.

2. A. Tenant in Tail, Remainder in Fee to B. A. makes a Leaf to Life, according to the Statute, and dies without Issue; afterwards B. grants his Remainder by Fine before any Entry; the Conuue cannot now enter on Tenant for Life, and avoid his Leaf: For by the Livery to Tenant for Life a Freehold paties, which cannot be avoided without an Entry; and then, when B. grants his Remainder, the Grantor shall have it but as a Remainder, and so the Estate of Tenant for Life, which before was voidable, is now made good; per Fenner and Windham J. but per Mead and Dyer, by the Death of Tenant in Tail, the Leaf for Life is become void, the Estate out of which &c. being determined by the dying without Issue. 4 Le. 118. 23 Eliz. C. B. Annon.

3. A. feited in Tail of the Manor of S. leafes W. Acre, Parcel thereof, to W. for 40 Years, and after to G. G. for 70 Years. G. G. alligned to C. and M. the Wife of A. A. afterwards by Indenture gave the said Manor to the said G. G. by the words (Deed, Conceli, Bargainizavi & Vendidi)
Fine.

Verdict) upon Condition, that G. G. pay to A. within 15 Days 100£., and on failure, then after the 15 Days, G. G. should be setted of a Tenement Parcel of the said Manor of the yearly Value of 60£. until he had levied 500£. for Payment of the said A.'s Leases, &c. and after to the Use of B. the eldest Son of A. in Tail; and of the Reidue of the said Manor, to the Use of the said A. and M. for their Lives, &c. A. made Livery to G. G. in a Place, Parcel of the said Manor, which was in his own Occupation, in name of the whole Manor; the 100£. is not paid at the Time; the Indenture is Issolved; W. Atronnes; M. dyed; A. grants the Lands to R. by Fine, and before Proclamation B. (the Defendant) enters for Possession; Proclamations are made; A. dies; the 40 Years Leafe expires; C. enters and leads to the Plaintiff. Adjudged that the Mote of M. the Wife of A. and Alience with C. by G. G. was extant by the Livery; and as to the Mote of C. it is in being; For here is no Remitter to B. For if any Remitter had been in the Cafe, it should be after the Use raised, which is not as yet arisen; for the Land ought to remain in G. G. till the 500£. be levied, and that is not found by the Verdict; and therefore for the said Mote, the Plaintiff had Judgment. Mich. 25 and 26 Eliz. B. R. Le. 7. Stonely v. Bracebridge.

4. Tenant in Tail makes a Leafe for Years not warranted by the Statute, and dies, the Issue alien to the Land by Fine; before Affirmance or Disaffirmance by Acceptance or Entry, the Countee cannot avoid this Lease; For the Liberty is not transferred; per Gawdy J. Mich. 29 and 30 Eliz. B. R. 3. Le. 154.—Jo. 61. in Cafe of Crocker v. Kellev.

5. Husband and Wife are setted of Land in the Right of the Wife; Husband alone makes a Leafe for Years by Word; afterwards the Husband and Wife levy a Fine, and both dyed; per toto. Cur. the Countee shall avoid the Leafe. Mich. 30 and 31 Eliz. B. R. Le. 245.—Harvy v. Thomas.—Because it was merely void by the Death of the Husband; 2. Le. 141. S. C. cited.—4. Le. 15. per Wray Ch. J. the Leafe is void; but Gawdy, 52. Centra, S. C.—Because all paid from the Feeme. Arg. S. C. cited Roll. R. 422.—Arg. Bridgm. 45. S. C. cited.—Cro. E. 216. S. C. Land for 100 Years, the Wife may avoid it after his Death; but if after they both live a Fine, the Leafe shall be good for ever. Arg. Goldsb. 15. Patch. 28 Eliz.—S. P. agreed Arg. ibid. 14.

6. A. Tenant for Life, Remainder to B. in Tail, join in a Leafe to J. N. for Life, Remainder to J. S. for Life Rendring Rent; A. dies; B. accepts the Rent and dies; the Issue of B. accepts the Rent of J. S. and after enters and makes a Feoffment, and levies a Fine to W. R. Afterwards J. N. re-enters and dies; J. S. as in his Remainder enters. Adjudged that the Estate of J. S. in Remainder, was good, and could not be avoided by a Purchaser. Cro. E. 252, Mich. 33 and 34 Eliz. B. R. Jeffry v. Cowre.


8. A. Leaflee for Life, Remainder to B. in Tail; B. leaves to C. for Years to commence after A.'s Death; B. suffers a common Recovery to D. and dies; the Leafe for Years is good against D. Dyer 51. B. Marg. pl. 17. cites Mi. 41 and 42. Eliz.

9. A. conveyed Land to the Use of himself and his Wife in Tail, Remainder to his Right Heirs; and had Issue a Son and a Daughter, and dyed; and the Son leaved for Years to begin after the Death of his Mother, and dyed without Issue; the Daughter levied a Fine; the Wife who was Tenant in Tail, dyed. The Question was, if this Leafe for Years issued out of the Estate Tail by way of Eliopple; For then the Conuley shall not avoid it. It was adjudged, that this Leafe was drawn out of the Reversion in Fee; and the Conuley of the Daughter shall avoid it. Arg. Winch. 44. cites
Fine.


levied a Fine to the King, he shall not avoid the Lease; because he came in in the Reviver. But if Tenant in Tail was Attainted of Treason, the King should avoid the Lease. Arg. Godbs. 324. cites 2 Man. Justin's Cafe, cited in Wallingham's Cafe.

13. Baron and Feme [Tenants in special Tail], by a Conveyance made by the Baron during Coverture. Cro. J. 688. S. C.]—Remainder to the Heirs of the Baron, had Issue a Son; the Baron dies; the Son levies a Fine with Proclamations to the Use of himself and his Heirs; the Feme makes a Lease for 21 Years, rending Rent; the Son having devised the Land, the Feme dies; adjudged that the Lease continues. Hill. 22 Jac. B. R. 2 Roll. R. 490. 499. Crocker v. Kelley. — Jo. 69. S. C.—but when the Issue are all Dead, then the Conuee having the Revension shall avoid the Lease; but till then the Estate Tail continues in Right as to a Stranger. Jo. 62. S. C. affirmed in Error. Ibid.

—Hutt 84. S. C. Bridgm. 28. S. C.—S. P. Sid. 62. Mich. 13. Car. 2. B. R. Custmore v. Britton, in which the Lease was made for 100 Years. — Bridg. 29. S. C.—S. C. cited Sid. 62. in Cafe of Custmore v. Britton. — 9 Roll. Edin. (1, 2) S. C. pl. 7. Reports the Lease to be for 50 Years. — The Estate Tail in the Feme, was by the Provision of the Baron during Coverture; and the Lease made by the Feme, was for 21 Years without referring to the Ancient Rent, and then the died; the Son devised the Land and died leaving a Daughter: This was adjudged a good Lease to bind the Devisee. Cro. J. 688. Trin. 21. Jac. Crocker v. Kelley.

The Judges said, that the Resolution of Crocker and Kelley's Cafe went very far, and perhaps, if to be adjudged at this Day, it would be Contrary. Skin. 31. Hill. 53 and 54. Car. 2. B. R. in Cafe of Britton v. Elwes.

14. If there are Father (Tenant in Tail) and Son, and the Son levies a Fine, and the Father afterwards makes a Leaf for Years and dies; the Conuee shall not avoid it; For such Lease was good at Common Law against the Issue, and the Statute of W. 2. shall aid none but the Issue in Tail; and when the Issue are extinct, shall aid only the Reveritioner. Jo. 61. Hill. 22 Jac. B. R. in Cafe of Crocker v. Kelley. — And in all the said Cafes, when the Estate Tail is spent by Death of all the Issues, the Reveritioner shall avoid the Leases. Ibid.

15. Baron and Feme, Tenants in Tail, and to the Heirs of the Baron; they have Issue two Daughters; the two Daughters levy a Fine to a Stranger and his Heirs; the Baron dies; the Feme makes a Lease for 100 Years and dies, under which Lease the Plaintiff in this Ejectment claimed, there being Issue in Tail alive, and if this is a good Lease against the Conuee of the Fine, was the folo Question. And tho' for the Plaintiff cited the Cafe of Crocker and Kelley. 2 Cro. 688. for Authority in Point, that the Lease was good as long as there shall be any Issue in Tail alive; which Cafe is more largely reported in Bridgman's Rep. 27. And they also cited Mackwilliams's Cafe. And this Cafe not being within the Stat. 11 H. 5, the Feme may, without doubt, have and dispose of all the Estate as long as there
there shall be Iliifie in Tail. And of this Opinion was all the Court in the Principal Case; but they offered to the Counsel of the Defendant to have Special Verdict if they thought necessary; but they knowing the Authority before to be against them in Point, and perceiving the Opinion of the Court, would not pray special Verdict; wherefore the Court directed the Jury to find for the Plaintiff. And they gave their Verdict accordingly.


16. If Converse of a Fine by Tenant in Tail shall avoid a voidable Lease, made by the Tenant in Tail, as the Iliifie in Tail might have done? Per 2. J. that he may, Twifden J. Contra. Lev. 167. Trin. 18. Car. 2. B. R. Opv. v. Thomaliius.———Adjudged, that he cannot. Hill. 2 W. and M. 2. R. 4. Mod. 4. *Simmonds v. Cudmore.———In the Case of *Opp and *Cudmore, the Lease was a Lease in Future, made by the Father Tenant in Tail, and the Fine was levied by the Son, before a former Lease determined; and therefore the Court thought the Iliifie not bound by it; otherwise, had it been a Lease in present. 4 Mod. 6. ibid.

17. A. Tenant for Life, Remainder in Tail to B. B. makes a Lease to commence after A’s Death; A. suffers a common Recovery with Voucher of B. and dies. Held that the Iliifie is not destroyed, and that such Iliifie might well Falsily such Recovery, both at Common Law and by the Statute 21 H. 8. 15. Arg. Pach. 4 W. and M. Show. 381. cites Cro. E. 7 18. Pledger v. Lake.

18. A. Tenant for Life, with Power to make a Lease for 3 Lives, executes his Power, and dies; and after B. being seized in Tail of the Reversion (after the Determination of the Term, for which the 3 Lives was granted) and also of the Remainder to him in Fee, makes a Reverjionary Lease for 2 Lives, and dies, (the other 3 Lives being still in Being); upon B’s Death the Iliifie Tail and Remainder in Fee descended to C. and afterwards C. levied a Fine with Proclamations to J. S. and R. S. to the Use of F. and his Heirs. It was adjudged that this Reverjionary Iliifie issued out of both the Estates of B. (viz.) as well out of the the Remainder in Fee as out of the Eftate Tail; and that the Eftate Tail being extinguished by the Fine, the Reverjionary Iliifie (issuing out of the Remainder in Fee, which B. had at the Time of the Iliifie made) was good and unavoidable. Hill. 4 W. and M. B. R. Carth. 257. Simmonds and Cudmore.

19. But per 3 J. Contra Holt Ch. J. if B. had been only Tenant in Tail, without having the Remainder in Fee at the Time of the Iliifie made by him, the Iliifie should not avoid the Iliifie; because the Power of avoiding such Charges was annexed to the Eftate Tail, and reis in Privvity thereon, being given to the Iliifie by the Statute De Dues, and is not transmissible by the Iliifie to the Cognizee, or any Stranger, but is as a Power of Revocation, which is determined by changing or destroying the Eftate, to which it is annexed; nor is such future Iliifie merely void by Death of Tenant in Tail Lejor before the Commencement. But that after his Death it is voidable only by some Act of Iliifie in Tail. But per Holt Ch. J. even in such Cafe the Iliifie, or Feezief of the Iliifie in Tail, might avoid this Iliifie; For he held, that by the Death of the Tenant in Tail before the Future Interest could commence, the same would become ipso fiat void as to the Lejor; For Lejor, Tenant in Tail, dying before the Iliifie is to begin, the Iliifie in Reason, as where Tenant in Tail makes a Iliifie to commence after his Death, which is admitted to be void ab Initio; For upon the Death of Tenant in Tail the Eftate descends to the Iliifie, and he is in Paramount the future Interest, and the Lejor, in that Cafe, has only a Right or Possibility of an Eftate, which, by the Death of Tenant in Tail before that Right is to vest as an Eftate, is extinct and gone. Carth. 259. in Case of Simmonds v. Cudmore.

(T) Fine.
Fine. 257

(T) Fine of Land. What Person might, and may be bound by it at Common Law. [Baron and Feme, or Feme without her Baron.]

1. If Feme Covert levies a Fine as Feme sole; if the Baron does not defeat it, it shall bind the Feme and her Heirs for Ever. 7 H. 4. 23. 17 Aff. 17. Dubitatur. 17 C. 3. 52. b. 79.

If a Feme Covert, as a Feme sole, levies a Fine Exeuctive, and after Execution is assailed against her and her Baron, the Baron makes Default, and the Feme is received, she shall defeat her own Fine, for the Benefit of the Baron: as in one Book is adjudged, and yet she appears in manner as a Feme sole. Co. R. on Fines 9. cites 17 Aff 17.—But if she, without her Husband, levies a Fine by the Name of A. the Wife of J. S. (her Husband) the Fine is merely void; because it appears by the Record that she is Covert, per Bridgman Ch. J. Sid. 122.—Hob. 225; 7 Rep. S. 10 Rep. 45. Perk. & 20.

2. If Feme Covert take second Baron, and they levy a Fine, this shall not bind the Feme and her Heirs for Ever. 7 H. 4. 24. 9 H. 6. 33. b. bind; for the is Named by the Name of the second Baron, and not of the first, and so it is not good. Br. Fines, pl. 33. cites 7 H. 4. 22. per Garfoigne.—Br. Ellopenk, pl. 55. cites S. C. but adds a Quere.—Br. Scire facias pl. 62. cites S. C.—Wett's Symb. 2. b. S. S. cites 7 H. 4. 22. 25. that it shall not bind her, because she is mis-named.—For if the with her right Husband, by a wrong Christian Name, levy a Fine, she is exoffed during her Life. Ibid. cites 1 Aff. 11. Br. Fines 17.

3. But in those Cases the Baron may defeat it. 7 H. 4. 23. 9 H. 6. But if the first Baron dies before Party by him, this shall bind her and her Heirs for ever. Co. R. on Fines 9. and yet he cites a Book to the Contrary. 52 H. 6. 27.—Br. Entre Cong. pl. 129. cites S. C.—Kelw. 205 b. pl. 7.—Dal. 50. pl. 16.

4. And if the Baron avoids the Fine, it shall avoid the Fine against the Feme and her Heirs for Ever. * 17 Aff. 17.

He may Enter and Defeat it, as to the Franktenement, which he claims for his Life in June Usuris to be Tenant by the Curtesy. Br. Fines pl. 72. cites 7 H. 4. 22. per R. Hull and Halls—Kelw. 205. b. pl. 7. Dyer Ch. J. doubted, but he cites that Fines were of Opinion that the Fine was avoided in toto. —Dal. 50. pl. 16. * Br. Fines pl. 75. cites S. C. and 17 E. 3. 52. and 78.

5. If Baron and Feme levy a Fine, and after they are Divorced, Caufa Praconstruétus, yet the Fine Remains good. 9 H. 6. 34. b.

6. And this remains good as well against the Heirs of the Feme as against the Feme herself. Contra. 18 H. 6. 34. b.

7. If a Fine be levied by Baron and Feme during the Nonage of the Feme, the Revertal must be during the Nonage of the Feme, but Ceffet Executio during the Life of the Baron; For he has Authority thereof given for his Life. Br. Error, pl. 28. cites 30 E. 3. 5. 6.

8. In Scire facias, the Cafe was, that a Feme had two Barons together, and the second Baron levied a Fine and died, and the first Baron survived and died, and the Feme was always seized, and no Party to the Fine, and after died, and the Heir of the Feme entred, and Scire facias was brought against him to execute the Fine, and held that the Fine does not bind; and the Tenant pleads that M. his Mother was before the Fine, at the time of the Fine, and always after, and was the Feme of Rich. and never the Feme of Rob. who levied the Fine; and by some, he shall say, that thos, who were Parties to the Fine had nothing, but M. whole Estate he hath, &c. and per Finch, the Issue shall be, whether M. Feme of Rob. who was Party to the Fine, had anything? quære, quia non adjudicatur. Br. Fines, pl. 16. cites 42 E. 3. 20.

9. If a Feme Covert only without her Baron levies a Fine executory, tho' the Baron continues in Possession during his Life, and after dies, yet this shall conclude the Feme and her Heirs; but if Execution had been sued, and
and after the Baron had died, this had avoided the Fine for ever. Co. R. on Fines 17.

10. If the Wife alone, without her Husband, levy a Fine of her own Lands, wherein the hath Fee Simple, it will be a Star against her and her Heirs, unless the Husband avoid it during her Life, or after her Death, if he is Tenant by the Curtesy. • Wood's Inst. 243.

11. Husband and Wife levied a Fine of the 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 the 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. Golds. 181. Sir Henry Jones's Cafe.

(U) Bound. Corporation.

1. If, upon a Writ of Annuity against a Prior presentable, who has a Consent and Common Seal, the Prior levies a Fine; this shall bind the Successors; because the Annuity was before, and this is but as a Judgment. 12 P. 4. 21. b.

2. If an Abbott levies a Fine for Confinement de Droit of Land of the Right of his house, this shall not bind the Successor, but he shall recover it again. 20 P. 6. 46.

3. If they be such civil Bodies or Corporations, as have in themselves absolute Estate and Authority of their Possessions, so as they may maintain a Writ of Right thereof, as Mayor and Commonality, Dean and Chapter, Colleges, Societies Corporates, and such like, and their Successors; they are barred by Fines presently. Welt's Symb. S. 181. cites Pl. C. * 338. a. Trin. 20 Eliz.

4. But Deans, Bishops, Priors, Abbots, Masters of Hospitals, Parfons, Vicars, Prebendaries, Chauntre Priests, and such like, which may not have a Writ of Right, but either a Juris Utrum, F. N. B. fol. 43. (R) or fine Accies capituli F. N. B. fol. 185. (I) are not barred by such Fines if the Patron andOrdinary join not with them. Welt's Symb. S. 181. cites Pl. C. 338. a. 20 Eliz. 375. b. 11 Eliz.

5. If a Dean be seized of certain Lands, as of his distinct Possessions, the Dean may make Confinence; but if he be seized jointly with his Chapter, he and the Chapter can't levy a Fine; so 'tis of a Mayor and Commonality, and all of other Joint Corporations, they cannot make any Confinence, But otherwife, 'tis of all Sole Corporations; and the Reason is, Because none can make Confinence by Attorney; and Corporations aggregate of several cannot appear in proper Perfon. Co. R. on Fines 8.

6. A
Fine:

6. A * Corporation, that has absolute Estate and Authority of itSelf, is bound by 4 H. 7. 24; of Fines. But Bishops, Deans and Chapter, that cannot bind their Pleffion without Affent of others, and so Parfon, Vicar are not. But by some of the Judges tho' every Bishop's Successor, &c. shall have 5 Years to claim, or enter, yet every one that suffers the 5 Years to pass shall be bound during his Time; but tho' he is bound, his Successor shall have other 5 Years by the Saving and Provifo in the Act; fo of Officers for Life, as Parker, Forester, Gaoler, &c. Pl. C. 358. b. Trin. 20 Eliz. Crott v. Howell.

7. Devise was to a Corporation upon Limitation, that they shall pay so much to a Charitable Use; a Stranger enters into the Land, and levies Fine with Proclamations and 5 Years paths; and Tota Curia agreed, that this shall bar the Corporation, tho' they have no Notice of the Devise. Hill. 15. Car. 2. 1. Jo. 452. the Mayor and Commonalty of London v. Allord.

(W) Statute 27 E. 1. Cap. i.

1. 27 E. 1. Cap. 1. § 1. Enacts, that forefuminus as Fines levied in the Age our Court ought and do make an End of all Matters, and therefore called chief before this Statute was, that when the Conscience de
drft, &c. was made to him that had never any Thing before, and the Consent granted, and rendered the same back again, at the same Instance to the Confor for Life, or in Trust, with Renaderer ever to one, who always was levied, and in Possession of the Land; Privies (by Colour that there was no Transfert then of Possession) were, against Law, permitted to avoid Fines by the Averment afofoared. 2 Inf. 274.— Co. R. on Fines, 15.

So, where Tenant in Fee had accepted an Estate by Fine from him, that had Nothing for Life, or in Trust, so that the Law the Confor and his Heirs are concluded, and Elbopped for ever to claim other Estate; yet before the making of this Statute, the said Averment was necesary in Avoidance of such Fines, and for those two Causes, and in Affirmance of the Ancient Common Law of England, this Statute was made. Co. R. on Fines, 14.

But it seems to me, that the first of the said two Errors, or Misprisions of the Law, remitted and suffered before this Statute was made, was very adrift, and manifestly contrary in itself; For the Heir of the Confor endeavoured, by such Averment, to avoid the particular Estate re-taken by his Ancestor by the Render; because he, that rendered, had Nothing, but, as I think, in Endeavour to gain the Fee Simple, he left not only the Fee Simple, but also the Estate for Life, or other particular Estate, which also was rendered. For tho' the Render was void, as then Minus juife was allowed, yet the Fine Sur Compane de droit come ceo, &c. was good, and then the said Fine being good (for the imperfect or insufficient Render cannot impeach it) and the Render being void, the Recognize shall retain the Land, and the Heir of the Recognize is utterly barred for ever; and therefore the Words of this Statute are true, viz. that such Averments were contra leges & consuetudines Regni nostri antiquitatem et usum, (as I think) the Caufes of this Statute. Co. R. on Fines 15.

§ 2. And now by a certain Time passed as well in the Time King Henry the Second, Famous Memory, our Grandfather as in one Time, the Parties of such Fines and their * Heirs contrary to the Laws of our Realm of Ancient Time used, were admitted to adrift and defeat such Fines alledging, that before the Fine levied, and at the levying thereof, and since, the Demandants, or Prieffants, or their Ancestors, were always leased of the Lands contained in the Fine, or of some Parcel thereof, and so Fines, if carelessly levied, were many times unjustly defeated and admitted by Juurses of the Country Faithly and Mischiefly procured.

was Ufed by the Maintenance of the Grandees, that Parties and PRIVIES might avoid Fines by such Averments, which Averments in the Reign of Ed. 1. were continued until the making of this Act. * In this Act Province Parties Hereditums, is to set underhand of such Heir, who claimed the Inheritance of that Ancestor who levied the Fine. Arg. 4 Rep. 45. in the Case of Fines.

Tho' this Statute faith, that the Parties to the Fines and their Heirs shall not have Averment against Fines levied, &c. viz. that they, or their Ancestors were eldest, &c. yet our Books are adjudged, that against a Fine levied by my Father, I shall say, that before the Fine, and at the Time of the Fine and after, if my self was eldest, and so avoid the Fine; For as I have faid before in this Case, I can not Heir to my Father; For Heares dictost ab hereditate, and I do not claim this Land by inheritance. Co. R. on Fines 15—— This is not intended of an Heir in Blood only, but of the Heir of the Land of which the Fine was levied, and not of Land which he has otherwise than as Heir. See 2 Inf. 523.

This
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Fine.

This Statute is intended of Effates in Two Simple only, where the Heir claims only by the same Ancestor; but, upon an Effate Tail, he claims by the Gift, per Brooke. Br. Fines in pl. 55.

A Fine may be said to be Rite Levatus, the Parts Fines nihil habuerunt; For Rite Levatus is, within the Meaning of this Act, the time as Duly levied, that is, in due Form of Law, and a Fine may be said to be levied in due Form of Law, tho' it be only by way of Condemnation. Arg. 3 Rep. 89 in the Case of Fines—These Words Rite Levatus, as to the external Form of a Fine, are to be taken at as a Fine levied exarn Edmondo, Anderson (viz. the Name of the Chief Justice) Et Seis fines, where all the Justices ought to be named; per Windham J. and so it seemed to Perinam and Anderson. Mich. 29 and 30 Eliz. Lc 5, in the Case of Zouch v. Bamfield.

§. 5. We therefore intending to provide a Remedy in the Premisses in our Parliament at Westminster, have Ordained that such Exceptions, Answers or Inquisitions of the Country, shall from henceforth in no wise be admitted contrary to such Recognizances or Fines. And further, we Will, that this Statute shall as well extend to Fines herebefore levied, as to them that shall be levied hereafter.

(W. 2) Statute 24 E. 3. 16.

Before this Statute, there was no Bar hereafter.

Strangers having present Right ought to make Claim, and their Claim availed for all in Remainder, or Reversion.

For all had but one Year by the Common Law after the Fine levied, and this Michelwas a great Reason of making this Statute. Arg. Pl. C. 519.—The Statute 4 H. 7. only intended to Remedy the Michel which this Statute 24 E. 3. 16. introduced. Jenk. 192. p. 97.

This Statute oues Nonclaim only to Fines levied, and extends not to a Judgment in a Writ of Right at this Day, and therefore the Common Law in that Case remains to this Day, viz., that Claim must be made within a Year and a Day after Judgment. If a Fine be levied without Proclamations, or without so many as the Law requires, then this Statute extends to such a Fine. A Fine Covert had no Privilege of Nonclaim, as some have said; For the had a Husband, that might make Claim for her. Also, the in Remainder expecting upon any Estate of Frinkeld were barred by the Common Law, and yet they could make no Claim; For it belonged to the particular Tenant and not to them; because their Entry was not lawful, which was one of the principal Causes of making this Statute, but their Cales of Covert and of them in Remainder or Reversion are now holpen, and their Rights and Titles saved by Statute 4 H. 7. 24. as by the said Act appears. Co. Litt. 262. a b

(W. 3) Statute 1 R. 3. 7.

1. 1 R. 3. 7. Enacted, that Fines shall be Proclaimed 4 times, 4 several Terms, and at the Assizes, &c.

And that a Fine so Proclaimed shall conclude all Persons, both Priests and Strangers (except Women Covert, other than such Women as are Parties to the Fine, Persons under Age, in Prison, out of the Realm, or not of Full Mind) if they pursue not their Right, Title, Claim, or Interest, by way of Action, or lawful Entry, within 5 Years after the Proclamation so made and Certified as aforesaid.

The Right of Strangers which happens to come unto them after the Fine is Ingratled, is saved, so that they lawfully pursue their Right or Title within 5 Years after it comes to them: and here an Action against the Possessor of the Profits is maintainable.

If the Parties, to whom such Right or Title comes, be Covert, under Age, in Prison, out of the Land, or not of free Memory, they or their Heirs have time to pursue their Right or Title within 5 Years after such Interfusions removed; so also, have they in Case they had Right of Title at the Time of the Fine levied.


1. 4 H. 7. Cap. 24. Enacted, that after Ingratling of every Fine, to be levied after the Rest of Easter, that shall be in the Year of Our Lord 1490 in the King's Court after his Justices of the Common Peace of any Land,
Teumen, or any other Herediments, the same Fine be openly and solemnly
Read and Proclaimed in the same Court, the same Term, and in 3 Terms.

* then next following the same ingrossed, in the same Court, at four several
Days in every Term, and in the same time that it is so Read and Proclaimed,
all Pleas to cease.

of this Act, that Fines ought to be of the greatest Strength to avoid Strifes and Delates, &c. and therefore this Statute does not extend to any Fines levied by Cabin. See 3 Rep. 77. b. Former's Cafe.

This Statute extends only to Fines, and not to Nonclaim on a Judgment in an Act of Right. Co. Lit. 262. So it extends not to Land in Ancient Tenure; for the Lord may avoid such Fine by Writ of Deem. Pl. C. 570. b.

And it does not extend to Lancaster. Arg. 1 Roll. R. 305 Holland v. Lee.

The Lord Keeper's Opinion was, that howsoever 4 H. 7. was, at the making thereof, as to Barring, or not barring an Estate Tail, yet when 32 H. 8. comes, and declares upon 4 H. 7. now all Fines are good to bar Estates Tail. Skin. 97. Hill. 57. Car. 2. in the E. of Derby's Cafe.

This Statute enures and operates by way of Due to the Right, which authors Saul and Clerk's Cafe. Jo. 710. 211. 2 Salk. 452. Hill. 1. Amor. B. R. in Cafe. Hunt v. Bourne, see words (Term adjudged.)

§. 3. And the said Proclamations so had and made, the Fine to be a * final by the end, and conclude as well Privies as Strangers to the same, except Women words it Conr, or than being Parties to the said Fine, and every Person then being within Age of 21 Years in Prisons, or out of this Realm, or not of whole Mind, at the time of the said Fine levied, not Parties to such Fine.

Car. 2. B. R. in E. of Derby's Cafe.

Per all the Judges but 3, the Ilific of Tenant in Tail was barred by a Fine levied by his Ancestor, by Virtue of the Stat. 4 H. 7. before the Statute of 32 H. 8. Hill. 51 and 32 Car. 2. in Sacc. Raym. 350. Murray v. Eyton, &c. &c.

The Fines levied according to this Statute are, ab initio, as strong against Entails, as 32 H. 8. Hob. 332. Mackwilliams's Cafe.—And therefore if a Woman be Tenant in Tail, having Aff a Son and a Daughter, and the Son (being the first Ilific of the Entail) leaves a Fine, living the Mother, and dies, and the survices him, this shall not bar the Daughter, to whom the Land Entailed descends immediately after the Mother, adjudged by 3 Judges against 1. Hob. 332. Mich. 19 Jac. Mackwilliams's Cafe.—Per in Cafe of Collector's Ilific it is otherwise.—Ibid. 375. 8. C. —Jo. 72. S. C.

Tenant in Tail, having Ilific, levies a Fine, and dies before all the Proclamations are made, and afterwards (the Ilific being beyond sea) the Proclamations are all made, and then the Ilific Claims; and it was resolved by all the Judges, that tho' a Right descended to the Ilific, because the Father died before all the Proclamations, and a Fine without Proclamations, or Proclamations without a Fine, will not bar the Ilific in Tail, and the there was no Fine with Proclamations levied after the Death of the Father, yet, as he Claims as Heir by Force of the Estate Tail, he is barred by the Words of the Statute. 3 Rep. 84. Pech. 44 Eliz. the Cafe of Fines.

Neither this Statute, nor the 18 E. 1. of Fines, says, in express words, that Fines with Proclamations shall bar the Entail; these Statutes only say, that Fines with Proclamations shall be Bar to all Parties and Privies and all Strangers, that is, every Stranger doth not by his Action, or make his Claim within 5 Years after such Fines levied with Proclamations; and the true Intention of the 4 H. 7. was to take away the Statute of Nonclaim enacted the 54 Ed. 3. ch. 16. and not to Bar the Estate Tail any more than 18 Ed. 1. had done; as appears by the Statute of 32 H. 8. 56. which ordains Fines levied, at unp. & Nonclaim ut sap. Bar to the Tail, Jenk. 87. pl. 68.

As the Saving is general to all Parties and their Heirs, notwithstanding Nonage, Infancy, &c. so is the Condition, general to all Heirs whatsoever they are, the words being, so that they possess their Title, Claim, &c. within 5 Years after Proclamations; for otherwise the Saving shall be for all Heirs, and the (she) shall be of all Heirs within Age, and then the (she) is not so large as the the Saving; and so the Heir within Age is bound to the Condition of the first Saving, as well as he was saved in the same. Pl. C. 570. b.

Heir in Tail and Heir in Fee are one, by this Statute; 1 Le. 227. pl. 504. Anon. M. 31 El. C. B.

Tenant in Tail levies a Fine with Proclamations, and the 5 Years pass in his Life time, and he dies; and per 4 Judges against 1, his Ilific shall be barred by this Fine. D. 5. pl. 5. cit. 3 Rep. 84. in the Cafe of Fines—S. P. Br. Tail & Dones, &c. pl. 2. cites 19 H. 8. 6. that by the butt Opinion, the Ilific shall be bound by the Statute of 4 H. 7. c. 24. Brook says, and do see that this Statute, and the New Statute of 32 H. 8. 56. are of one and the same Effect, except that the one is an Explanation of the other, and by the one and the other, Privies shall be bound immediately after Proclamations which may be finished in 5 Terms good nota, and the 5 Years is for Strangers.

§. 4. And saving to every Person or Persons, and to their * Heirs, other * Robert Ch. then the Parties in the said Fine, such Right, Claim and Interests as they * said. And have to, or in the said Lands, Tenements, or other Herediments at the Time of the said Fine ingrossed; so that they prejudice their Title, Claim or Interest by Cafe of God's way rep. v.
way ofAction, or lawful Entry within 5 Years next after the said Proclama-
tions had made.

Section 4. If the Fine of the Youngest Son may not
be the Eldest; and yet, within the words, the Eldest is Heir to him; but he said that this word (Heir) shall be expounded as (his Heir) and that to us they use to expound this Statute which binds Parties and Privies, and that in such Case the Eldest is not Ertius to the Youngest; For he Chasius before him. Writhe 127. Hill. 22. Jac. C. 6. in Cases of Hilliard v. Sanders,—2 Roll. R. 301, 571.

Such Right, Claim, and Interest, &c. It was Reolved, that these words extend to the Interest of a Lease for Years, Tenant by Statute Merchant, Statute Staple, Elegit, Guardian by Chancery, Executors bearing Lands till Debts and Legacies paid, and every such other Interest. Patch 5. Jac. C. 3. Rep. 124. Saify's Case—cites Pl. C. 374. a.


A Fine with Proclamations and 5 Years bars all Corporations, which have absolute Elegate in their own Right, and their Successors, for ever, (by Equity of this Statute theo' it speaks only, of Men and their Heirs) as Mayor and Commonalty, Dean and Chapter, &c. but his 'otherwise of Corporations which have not absolute Elegate, without others, as Bishop, Dean, Parson, &c. but these shall be barred by Nonclaim by 5 Years, and every Successor, shall have a New 5 Years. Pl. C. 538. Trin. 20. Eliz. Coot v. Howell.

So an Officer having Land pertaining to his Office, as a Parker, &c. shall be barred by a Fine levied by his Disfactor and 5 Years passed; but not his Successor, unless 5 Years pass in his Time. Ibid.

It was Reolved, that this Act shall bar a Woman of her Dower by a Fine levied by her husband with Proclamations, if the deed be made to the Heiress of Dower within 5 Years after the Death of her Husband. Rep. 25. Ch. 96. 111. cites Hill. 4. H. 3. Rot. 344. C. B. S. 35 El. D. 225.—Pl. C. 573. b. Roll. R. 206. Arg. cites 14 El. D. Graven's Cafe.

If the 5 Years Commence in the Life of the Asses, the Heir, tho' within Age, must Claim within those 5 Years, or he shall be barred; adjudged. Trin. 20. Eliz. Pl. C. 356. Snowill v. Zouch.

A. Lease for Life, Remainder in Fee to B.—A. leases a Fine, B. shall have 5 Years for the Title, and the Fortuiture, and after the Death of A. he shall have other 5 Years for the Title to him accrued by the Death, and Determination of the Elegate of A. D. 3. b. Marg. pl. 5. cites 12 Elie Davies's Cafe.

Tenant for 59 Years, if he lives so long, leaves a Fine, and dies; and it was Reolved, per Cur. that he in Reverion shall have 5 Years after the Death of the Tenant to avoid the Fine, and per Hale Ch. I. there can be no Difference between a Fine levied by Tenant for Life and for Years, the Reason being the same in both Cases; and said that Lord Coke's Opinion, 9 Rep. Pogler's Case was made to be a Question. Trin. 22. Car. 2. B. R. 4. 2 Lev. 55. Whaley v. Tankard.—Raym. 319. S. C. sec.—2 Vent. 251. S. C. 3. Rec. 58. C. S. —2 Vent. 254. in Cafe of Mighan v. Cattullit, Ventris J. in his Argument cites both the Case of Pogler, and this Case of Cattyh v. Cattullit, and says, that tho' he admits this Case to be good Law, yet he observes that it is a Revolution carried beyond the words of the Statute; For the Right is not purveyed within 5 Years after it first came, and says, it is only a Contradiction by Equity, and that he should not have gone to far, if not led by Authority.

§ 5. And also, facing to all Persons such Action, Right, Title, Claim and Interest in, or to the said Lands, Tenements, or other Hereditaments, as first shall grow, remain, or descend, or come to them, after the said Fine expired, and Proclamation made by Force of any Gift in the Title, or by any other Cause or Matter, had and made before the said Fine levied: so that they take their Action, or pursue their said Right and Title, according to the Law, within 5 Years next after such Action, Right, Claim, Title or Interest to them accrued, descended, fallen, or come.

§ 6. And that the said Persons and their Heirs may have their said Action against the Owner of the Profits of the said Lands, Tenements, and other Hereditaments, at the Time of the said Action to be taken.

But if Stranger to the Fine who is of good Memory, becomes not good, or is Imprecised in the 50. Year after the Proclamations made, and continues till the 5 Years are expired, and after be

Recovery of his Memory, or is out of Prison, he shall not be barred; For, Laches cannot be inferred in such Case. But it in the 50. Year the Stranger to the Fine goes beyond Sea, or takes Barony, and so continues till the 5 Years are past they shall be bound; For these are Voluntary Acts, which the other are not; per Browne and Saunders J. Pl. C. 366. a. in Cafe of Snowill v. Zouch.

Thur
Tho' the Fine in Tail be beyond Sea, yet imiuch as: he is prity and out of the Savings of the 4 H. 7. he is bound notwithstanding. As if the Fine in Tail be within Sea, or under Creture, or Son Corp: or in Prerl, Reolved by all the J. 3 Rep. 97. the said Resolution in the Case of Fine— And the Reporter infers, that if Infrance, Governors, Nonpartic Memorie, or Iniplication of the Heir in Tail, should give him Power, in such Case, no Man might be affured of the Land conveyed to him by any Fine, and denies what is said by the Counsel Pl. C. 430 in Smith and Staplton's Case. 3 Rep. 91. b. Patch, 44 Eliz. in the Case of Fine.

But if the Distress dies, the Fine extant within Son, and the Distress lives in Fine; and after the Son is born, then the Laws is not excepted by the Letter of the Act; for the Act excepts no Infant but such who at the time the Fine levied was within the Age of 21 Years; and none is within the Age of 21 Years but only such who is in retum natura, and the Son in this Case was not born; nor in return Naturæ at such time, nor could be faid, that he was within the Age of 21 Years at the time of the Fine levied; For his Age is accounted from the time of his Birth. And he was not born at this time, and so he is out of the latter, but yet is within the latter, and shall be asid by the Exception. Pl. C. 396 a. 396, b. Stowell v. Lord Zouch.

A Tenant for Life, Remainder in Tail to B.—l. being beyond Sea, and leaving a Son within Age in England, A. Levies a Fine; B. never returned, but duc, immediately after the Fine, abroad; and it was agreed by the whole Court, that the Son was not barred; for the the Condition of the Saving is that the Party pursue his Right within 5 Years after his Return, and this Condition was never performed, because he never returned, yet there was no Default in him to exclude him from the Saving, and then the Son is made by the other Saving which relates to Infants. Trin. 52. Eliz. Sav. 128. Sir Robert Cotton's Case. —Le. 211. S. C. —And 264.

§ 8. And also, it is Ordained by the Authority aforesaid, that all such * So that a Perfon as be Covert de Baron, not party to the Fine, and every Perfon being within Age of 21 Years, in Priron, or out of this Land, or not of the whole Mind at the Time of the said Fines levied and ingrossed, and by this said Act aforesaid, * having any Right, or Title, or Cause of Action, to any of the said Lands, and other Hereditaments, that they or their Heirs, the Land and binds not such Inheritable to the same, take their said Actions, or Lawsfull Entry, according to their Right and Title within 5 Years next after they come and be of Age of 21 Common, Eft, Years, out of Priron, uncover within this, and of whole Mind, and iever, they the same Actions sue, or their lawful Entry take and pursuie according to the Law.

not be concluded of their Rent, Common, Eftovers, Wey, or the like, tho' they Claim not within the 5 Years. For the Statute speaks only of binding the Lands, and says nothing of the Prerl aper- ender out of the Land. Br. Fines, pl. 125.

§ 8. Of an Authority to sell Land, he, who has such Authority, may fell after the 5 Years after Proclamation: For he has no Interest in the Land, but has Power only to sell it. Br. Fines pl. 125.

§ 9. And if they do not take their Actions and Entries as aforesaid, that they and every of them and their Heirs, and the Heirs of every of them be concluded by the said Fines for ever, in form as they be that be Prerls by Proclamation or Parties to the said Fines.


§ 10. Saving to every Perfon or Perfon, not Party nor Privity to the said This Statute Fine, their Exception to void the same Fine by that that those which were says, that im- Particles to the Fine, nor any of them, nor no peron or Perfons to their Use, nor to the Use of any of them had Nothing in the Lands and Tenements comprized in the said Fine, at the Time of the said Fine levied.

judged the Corners and their Heirs are barred; yet if the Fatherargar his Son, and levy a Fine, and Pro- clamation pat, and the Father dies within the 5 Years, the Son is not barred; For he is not Heir to his Father, as this Land; For Heirs ducket ob. H. prostat. Co. B. on Fines 15.

§ 11. And it is Ordained by the said Authority, that every Fine, that here- after shall be levied, in any of the King's Courts, of any Mansions, Lands, Tenements, and other Possessions, after the manner, Use, and Form, that Fines have been seized before the making of this Act be of like Forme, Effect, and Authority, as Forces, so levied, be or were after the making of this Act, this Act, or any other Act in this said Parliament made, or to be made after, in any.

§ 12. And
This Statute is not properly a Statute, nor do Fines receive any Strength or Virtue by it; but it is only a Confrontation of tails, and against all other Fines claiming the same Fines, or to the of 4 H. 7. of Life of any Heir of the Bodies of them, whereas this

Statute confers 4 H. 6. to extend to Fines levied by Tenant in Tail, the Estate Tail shall be adjudged in Law, to be bound by 4 H. 7. and not by the Statute, which is rather a Judgment upon 4 H. 7. than any new Statute. Per Periam J. Lc. 76. Mich. 29 and 50 Eliz. C. B. in the Cafe of Zouch v. Bamfield.

Whereas the defective Lords to J. when he should come to the Age of 25 Years; J. after 21, and before 25 Years, levied in Fee in Proclamation, and then attains to the said Fines, and died; and the Question was, whether the Estate Tail in favor, and Contiguity, at the Time of the Fine levied, was barred or not; and it was resolved that it was, and yet the Conouer had but a mere Possibility, to have the Estate Tail, at the Time of the Fine levied, and tho' he was not settled by Force of the Tail, at that Time, yet by Force of the Words, (before the Fine levied in any wise entered,) Estate Tail entered in the Crown; but that no Judgment was entered. Per Warburton J. R. 10 Rep. 50 84. App. Cafe., cites Hill 29. El. Rot. 814. Gram's Cafe. Ramb. 153. S. C. cited. — Poffession of the Conouer is not requisite to the Title of being a Barr of an Estate Tail. See Fines (D. 2.) — By the Words of the Statute, a Fine doth barr the Entail in many Cases, where the Conouer cannot give the Land, because he has it not. Per Hobart Ch. J. H. 256. Mich. 16 Jacc. in the Cafe of Duncombe v. Wingfield.

Tenant in Tail dissents and Disputes the Discontents, and beholts a Fine with Proclamation to A. Sur Connulace de Droit come eo, &c. and takes back an Estate in Fee by Residu, in the same Fine. The Discontents, before all the Proclamations are made, claims, and after the Proclamations pass, and entailed in a Year after he claims; and after, Tenant in Tail dies seized; and by all the Judgments of C. B. the Heir is not remitted to the said Lands; and this was by Virtue of this Statute, which bars Tenant in Tail and his Heirs by the said Fine. Kelw. 216. b. pl. 17. Trin. 4. Eliz. Anno 24. Before this Statute gave Lands in Tail, Remainder to the King in Fee; Tenant in Tail had Ilidie 3 Daughters; one of the Daughters, in 2. Eliz.'s Time, levies a Fine of her Part with Proclamation, and they are had during her Life, and doe die without Fine; and it was adjudged, that this Fine, by Force of this Statute barred the Daughters and their Heirs, and yet it did not make any Dicountenonce. Mich. 15 and 16 Eliz. Bendl. 223. pl. 254. — Tenant in Tail, Remainder to the King, levied a Fine, had Ilidie, and died; and it was adjudged, that the Ilidie was barred, and yet the Remainder, which was in the King, was not discontinued; for by that Fine, an Estate in Fee Simple, determinable upon the Estate Tail, passed unto the Conouer. Per H. 6. Eliz. C. 3. P. 57. Jackson v. Darby. The Statute 23 H. 8. 2a. has a Proviso generally, that no Act done by Tenant in Tail shall prejudice the Ilidie; but this shall be intended where the King is Donor, and not otherwise, as appears by the Preamble of that Statute; and therefore the General Words in that Act cannot retract the General Law, made by 23 H. 8. and this Statute says nothing of Reversioners, but only of Remainders. Mo. 150. — And. 46. pl. 118. S. P. and seems to be S.C.

It was resolved by all the Judges of C. B. that this Statute extends to Fines levied by Conouer, and shall bind the Estate Tail, the Parties Fins vitellorum. 5 Rep. 962. in the Cafe of Fines, cites Pach. 25. El. Rot. 15. Zouch v. Bamfield. — Le. 84. S. C. Tenant in Tail to him and his Heirs Male, the Receiver being in the King, shallers a Common Recovery, or levies a Fine, and by the Opinion of the Judges, the Heir is barred, tho' it be no Dicountenonce of the Tail, nor against the King, of the Receiver; and Englefield said, that he had known this Cafe, and the Cafe was held by good Advice to be a Barr; but Shelley doubted. D. 32 a. pl. 1. — It was resolved that if Tenant in Tail, of the Gift of the King, levies a Fine, and suffers a Recovery of the Estate Tail, this no Barr; For 23 H. 8. sexes it; but otherwise if the King for Money grants in Tail, per Coventry, Hide and Richardon. Ibid. in Marg. cites Hill 5 Car. in Case. E. of Nottingham v. Ld Munford. Pach. 28 2 H. 8. Fine levied by Tenant in Tail, the Receiver in the Crown, bound the Ilidie by 4 H. 7. and 52 H. 8. provides, that the same statute shall not extend to Fines levied by Tenant in Tail, the Receiver in the Crown, and that the same shall be of like Force, as they should have been, if that Act had not been made, which amended not their Cafe. Whereupon in Stafford's Cafe, the Judges decided to help that Slip, by a very oblique and indirect Strain, upon the Statute of 24 H. 8 23. Whereby it was provided that no Common Recovery in that Cafe should bind the Ilidie, but that he might enter after the Death of Tenant in Tail, the said Recovery, or any Thing done or suffered by or against such Tenant in Tail, to the contrary notwithstanding 8 Rep. 44. Stafford's Cafe 4 and Norley's Cafe. — Per H. 8. Hobart. 812. 332. 532. Mich. 10. Jacc. in Macwilliams Cafe. — 4 Sav. 196.

A Point intended for a Special Verdict was, whether a Non-Claim for five Years after the Fine, should
should bars the Issue that united to claim, to bind him for his Life, tho' it would be no bar to his Issue. But the Jury found a Claim by him, and so the Point came not in Question. See 811. 166. Lord v. Pollard.—and 1 Keb. 620. S.C.—and cites Cro. E. 592, where is the Opinion of some of the Judges, that such Issue so levied by Diffidier, &c. shall bar the Tail; and that it is Caused Outfants out of the Statute, and according to this Case it cited 1 H. 7. 372. 2. but seems that 'tis not Law; And so held Levins in the Case of the C. of Derby, in the Exchequer Chamber. Sid. 166. Mich. 15. Car. 2. B. R. in Case of Lord v. Pollard.

A woman Tenant for Life, Remainder to B. in Tail. A. married, and then she and her Husband levied a Fine to B. the Remainderman, and took back, by Render, a Rent-charger; A. and B. die, and the Fine in Tail enters; and by the Opinion of the Judges, the Grant and Render by the said Fine is out of this Statute, and shall not bind the Fine in Tail. But the Parties agreed, Keb. 210. Parker v. Paynet.—The Lord Keeper's Opinion was, that however 4 H. 7. was, at the making thereof, as to barring or not barring an Estate Tail; yet when 52 H. 8. comes, and declares upon a H. 7. now all Fines are good from 4 H. 7.; to bar Estates Tail. Skin 92. Hill 35. Car. 2. B. R. in the Earl of Derby's Case.

§. 2. Provided that this Act shall not bar any Persons by Reason of any Fine levied by any Woman after the Death of her Husband contrary to the Statute 11 H. 7. cap. 20. of Lands of the Inheritance or Purchase of the Husband, or his Aereelors, assigned to any such Woman in Dower, for Term of Life or in Tail.

§. 3.Provided also, that this Act do not extend to any Fine levied of Lands, the Owners whereof, by any express Words in any Act of Parliament made since the 4 H. 7. are restrained from making any Alienations.

§. 4. Provided, That this Act shall not extend to any Fine to be levied by any Person of any Lands, before the levying of the same Fine, given to the Persons so levying the same, or to their Aereelors, in the Tail, by Letters Patent, or by Acts of Parliament, the Reversion whereof, at the Time of the Fines levied, being in our Sovereign Lord, his Heirs or Successors.


See more Matter, as to the Statutes relating to Fines, under the proper Divisions of this Head of Fines.

(X) What may be given by a Fine.

1. A Man cannot give a Right by a Fine, unless to him, who has the Possession. Arg. Gödb. 304. cites 27 H. 8. 20. per Montaguc.


1. If my Uncle disfisfe my Father, and levies a Fine with Proclamations, and my Father dies, and then my Uncle dies within the 5 Years; I am not barred to claim, tho' I am Heir to him that levied the Fine. For my Title is not as Heir to him, but as Heir to my Father. Arg. Lat. 66. cites 19 H. 8. D. 3.

2. Land is given to the eldest Son of J. S. in Tail, Remainder to J. S. in Fee, or in Tail. If the eldest Son levies a Fine, and dies without Issue, and the Father dies; this is no Barr to the 2d. Son. Arg. Lat. 66. cites 2 Eliz. Dal.

[See (D. a)]]


1. If a Man levies a Fine Sur Confinence de Droit Come co. &c. and does not limit to the Confen, and to his Heirs; yet the Confen his Fe Simple. Co. R. on Fines 4.
2. But, if he levy such Fine with express Limitation to the Conuee, and his Heirs of his Body ; this Limitation is a Qualification of the general Intendment. Co. R. on Fines 4.

3. A Fine of itself is sufficient to pass an Estate without the Affirmance of any other Conveyance ; and so it appears by the Pleading of a Fine, which is Quodam ; fins is lecwent and since the Statute of Uses it ews imme-
mediately; if no Consideration, then to the Ufe of the Conuor; but if a Consideration, then to the Ufe of the Conuee, per Pemberton Ch. J. Skin. 184. Trin. 36 Car. 2. C. B. in Cafe of Herring v. Brown.

(X. 4) Pass. How much passes by the Fine.

So where it
extends into A
B. and C. and
the Fine is le-
vied of the
Manor in A.
and B. No
more passes
than what
lies in A. and
B. Br. Fines pl. 89. cites 5 E. 4. 103.

1. If a Fine be levied of the Manor of D, in D. and the Manor extends into other Villis; nothing passes but that which is in D. only. The same Law
seems of a Leaf, and such like; Contra if it had been of the Manor of
D. there all passes. And if Feevall be made of all his Tenements in D.
and there is a Manor, which extends into D. and S. nothing passes in S.
and so fee that a Manor may pass by the Word Tenementum. Br.
Fines pl. 66. cites 9 E. 4. 6.

2. The Tenant levies a Fine to the Lord of his Chief Rent, he shall Ren-

3. A. and his Wife were feited of certain Lands in S. in the County of W. called Kirkian, in Tail General, of the Gift of the Father of the said Wife in 11 H. 8. Afterwards in 25 H. 8. R. S. the Son and Heir of J. S.
the Donor, levied a Fine Su Conuance de Droit Come coe, &c. with
Proclamation to A. of the Manor of Dowman, and 100 Acres of Land,
300 of Meadow, 300 of Paffure, and 1000 Acres of Furze and Hayth in
D. S. and T. and several other Towns named in the Fine; and A. rendered
the fame back to R. S. in Tail with diverse Remainers over. After which
the Poffeilion continued with A. and his Heirs according to the first En-
tail; And the Manor of Dowman, and the Remainder of the Lands in
thofe Towns, which were [limited] to A. and his Heirs by the Rendar,
[continued in the Poffeilion of A.] until about 9 Years past, when, by
Niji Prius in the Country, upon the Opinion of Manwood late Ch B.
the Land called Kirkian wasreceiver'd against the Heir of the said A. by Ver-
sue of the said Fine and Rendar, because all the Land, which the said R. S.
and the said A. also had in all thefe Towns named in the Fine, were not sufficient to supply the Contents of Acres consigned in the said Fine; and what the Law was in this Cafe, was referred to the Chief Justices, the Master of the Rolls, Egerton, and the now Ch. B. out of the Chancery, who all
agreed, upon all this Matter appearing, that * nothing shall be faid to be rendered, but that which indeed was given by the Fine, and Kirkian does
not pass to the said A. by the Fine; For as to that, the Fine is but as a Re-
leaf of R. S. to him, and therefore shall not be faid to be rendered to the
said R. S. by the Fine, where no Matter appeareth, whereby it may be
known, that it was the Intent of the Parties, that this fhall be rendered; and
it was decreed in Chancery accordingly. Poph. 104. Kellie's Cafe.

* More Acres
of Land do
not pass by a
Fine, than
the Fine men-
tions, aitlth
the Tenement
that leads the
Uses of it
mentions more,
than are in the Fine; For the Fine is the Foundation of the Estate, and the Estate ought to rise out of it. Jenk. 254. pl. 45.

4. And therefore, if a Man be to pass his Manor of D. to another by
Fine Executive, and he levy the Fine to him, by the Name of the Manor of
D. and of so many Acres of Land in D. and S. (being the Towns in which
the Manor lies) after which the Conuor purchased other Lands in thefe
Towns; the Fine, before the Statute of Uses, should not be executed of
these Lands purchased after the Conuance; and the Fine should work to
those,
choke, which he had Power and Intent to pass, and no further, per Popham, Ch. J. Poph. 105. in Kellie's Café.

3. And therefore, suppose I have 100 Acres of Land, in a Close in D. and J. S. both another 100 Acres in the same Close and Town, and J. S. hath 100 Acres of Land in the same Town, not in this Close; and my Intent is to levy a Fine to J. S. of the whole Close, by the Name of 200 Acres of Land, with a Render, as before, and I levy it accordingly; shall the Render enure to the Land which J. S. had in the same Town? It is clear, that it shall not, (altho' it be without Deed; why then shall the Fine here be taken to work rather to the Land called Kirkian, than to any other Lands, which any other had in the same Towns, when it appeared plainly, that it never was the Intent of the Parties, that the Fine should extend to those Lands called Kirkian; (and it was decreed in Chancery accordingly.) per Popham Ch. J. Poph. 105. in Kellie's Café.

Fine.

Dun v. Burrell. Mich. 16. Jac. 1. cites this Case also to be adjudged; but that, upon a like Case Verbatim between Kellie and Dougham, Hill 38. Eliz. referred out of Chancery to the two Chief Justices and Chief Baron and the Matter of the Rolls; and by them resolved, that the Land, which the Conunee himself had in this Vill, shall not pass to supply the small Number of Acres, of which the Conunee was made; For this Render is a Release to the Conunor, and no Intent appears to pass the Land of the Conunee himself.

(X. 5) Passes. How much. Where the Things lie in several Counties; and where there must be one only, or several Fines and Recoveries.

1. A Fine may be levied of Shares in the New River Water, and wherever a Fine and Recovery are necessary for cutting off the Entail and Remainder of such Shares, one Fine or Recovery only, is not sufficient, in regard the New River Water runs thru 3 Counties viz. Hartford, Middlesex and London, there must be 3 several Fines and Recoveries pass'd as to any of those Shares (viz.) a Fine and Recovery in each County. This is a Note in 2 Wms's Rep. 128. in the Case of Dry-butter v. Bartholomew.

(Y) Barred, what. Copyhold.

1. If I ouff a Copyholder, it is a Difficult to the Lord, and if I levy a Fine of such Lands, and 5 Years pass, not only the Lord is bound, as to his Freehold and Inheritance, but also the Copyholder for his Possession Arg. per Popham. Att. Gen. Le. 99. Mich 30. Eliz. in Secce. in Cafe of Sullard v. Everard.

 Fine.

not have 5 Years after the Death of the Copyholder for Life. per Coke, in a Note, Patch. to Jac in Podger's Cafe.———The Right of the Copyholder does not pass by the Fine, but is barred by the Fine. Cart. 24. Patch. 17 Car. 2. C. B. in the Case of Taylor v. Shaw.

2. So, If a Copyholder makes a Feoffment in Fee, and the Feoffee levies a Fine with Proclamation, and 5 Years pass, the Lord is barred. But if a Copyholder levies a Fine, and 5 Years pass, the Lord is not barred; For the Fine levied (the Copyholder having no Franktenement) is utterly void. Coke's Cop. S. 55.

3. Copyhold was granted to A. B. and C. to hold successively for their Lives; Brown. the Lord grants the Freehold to A.—A. levies a Fine, and 5 Years pass; 134. Mich. 9. it seems no Bar to the Remainders. See Brownl. 181. Trin. 9 Jac. 8. C. Bicknell v. Tucker.

4. But, if a Copyholder for Years be put out of Possession, and a Fine levied, and no Entry by him, he is barred by the Statute (but in the Case above,
above, the Remaindermen were not out of Possession). Brownl. 181.


S. C. cited


Trin. 22 Car.

in the Case of 

where Twidwell said, that he wholly rejected that Authority; For it was but an Abridgment of Cases by Serjeant Sizew, who, when he was a Student, borrowed No's Reports, and abridged them for his own Use.

[ See Copyhold. ]

(Y. 2) Barred, what. Entry.

Because the Tenant in Tail in Remainder had nothing at the Time of V. Matthew alias Walthew.

and the Conusce; yet the Heir has given his Right to the Entail, and concluded himself, that he cannot enter; and the Conusce cannot enter, because he has nothing, but by Estoppel, and no Reversion. — But in Sir G. Bicknal's Case, where the Heir in Tail had a Reversion in Fee expectant, and by his Fine gave that Reversion to the Conusce; he had the Reversion of the Conusce's Entail, and might well enter in regard of the Prejudice. Cro. J. 175. Ward v. Walthew. — Yelv. 101 S. C. & P.

2. Feoffment to A. and his Heirs Quasique such Sums be paid, and on Failure, the Feoffees to enter, &c. There is a Failure; Feeor levies a Fine, and 5 Years Pass; Feoffees enter not; the Fine barns. Cart. 82. Trin. 18 Car. 2. C. B. Thomalin v. Mackworth. — Before the Fine levied, A. makes a Lease and Release, then A. levies a Fine, and 5 Years Pass; per Bridgman Ch. J. by the Lease and Release the Estate is now turned to a Right. For after Failure, A. is but Tenant at Sufferance, and his making a Lease is a Diffidin, and fo the Estate turned to a Right; and also by the Release which was a medling with the Land; and being so turned to a Right, Fine and Non-Claim barns. Ibid.

3. Feeor upon Condition is dissised, and a Fine levied, and 5 Years Pass; then the Condition is broken; the Feeor may enter; For the Difidin held the Estate subject to the Condition, and so did the Conusce; Because he cannot be in of a better Estate than the Conusce was himself. Mod. 4. Mich. 21 Cur. 2. B. R. Medlycott v. Joyner.


1. 23 Eliz. 3. This Aff shall not hear any from a Writ of Error upon any Fine or Recovery heretofore had, and pursued within 5 Years after this Parliament, or which, before the first of June 1582. was exempted under the Great Seal, nor a Fine Covert Entail, Non Camos Memins, Non Campos Mentis, or beyond Sea, so as they or their Heirs pursue such Writ within 7 Years after such Imperfection, Rainless, and Ailence removed, and if any of them happen to die bringing the Suit, their Heir may undertake it within one Year after the 7 Years; and if the Heir be under Age, then within one Year after his full Age.

2. A. Tenant in Tail had Ifiue two Sons B. and C. and dies. B. levies two Fines of the Land, and dies without Issue. C. brings two Writs of Error on these Fines. Defendant, to the first Fine, pleaded the second Fine not reversed; and to the second, he pleads the first not reversed. Per Cur. you may plead that the said Fine pleaded 'in Bar, is also erroneous, and so aid yourself. Cro. E. 151. 31 & 32 Eliz. B. R. Molton's Case.

An Errorous Recovery shall for a Writ of Er-

2 Le. 211. S.
C. — 3. Le.
232 S. C.

3. Tenant in Tail levied an erroneous Fine, and afterwards suffered a Common Recovery, in which he came in as Vouchee, and vouch'd over, &c. This

4. A second Fine rightly levied is a Bar to a Writ of Error upon the first Fine: Mo. 366. Barton v. Lever and Brownloe.


6. Infant levied a Fine, and before reverie came to full Age; if he levies a second Fine of that Land to another, 'tis an *Extinguishment of his Title of Error, per Popham, but Gawdy, contra, (but the other Judges seemed to agree with Popham) Nov. 59. Hart v. Ameredith.

7. A Fine with Proclamation and 5 Years past doth but the Lord in ancient *Demise of his *Writ of Error; and likewise a *Writ of Error is thereby barred. 2 Inf. 518. C—- 2 Rolls. 444. S.C. by Name of Bartholomew v. Belfield.

8. A Fine upon a Grant and Render was levied in the Time of E. 4. upon which afterwards a Seire Facias was brought, and Judgment given, and a Writ of Seisin awarded, but not executed. Afterwards a Fine Sur Conuance de Droit Come coe, &c. with Proclamations was levied, and 5 Years passed, and now another Seire Facias is brought to execute the first Fine, to which the Fine Sur Conuance de Droit Come coe is pleaded; so as the only Question is, whether the Fine with Proclamations shall bar the Seire Facias, or not? And it was laid by the Judges, that here is no avoiding of the Fine, but it shall stand in Force; but yet, notwithstanding, it may be barred; and they all said, that he, who hath Judgment upon the Seire Facias upon the first Fine, might have entered; and they strongly inclined, that the Seire Facias is barred by the Fine, and doth not differ from the Case of a *Writ of Error; but they delivered no Opinion. Mar. 194. Patch 18 Car. Apfly v. Boys.

9. Countor Tenant in Tail after Conuance by Dedimus Potestatem, and before Return of the Writ of Covenant, dies without Issue. Proclamations are made, and 5 Years past, after Death of the Conuor, yet *be in Remain-der may he Writ to reverse this Fine. 2 Jo. 181. Mich. 33 Car. B. R. Cockman v. Carer.


(Y. 4) Barred what. Infant and Trust.

1. Fine, supposed to be levied by an Infant, was examined in Chancery after it had been allowed by Examination of the Justices of the Common Pleas; but whether these and such other may seem rather to examine the Manner, than the very Matter and Substance of the Thing adjudged, it is worthy of Consideration. Cary's Rep. 5. cites Ann. 3 and 13. Eliz. D. 221 and 301.

2. Fine
2. Fine of a Lease made to the Conufor’s Use is sufficient to bind the
Suffolk.

3. An Estate is made to Friends in Trust, to the Use of the Women, to
commence after her Husband’s Death; she joins in a Fine with her Hu-
band of the Land lefted in Trust; this Fine shall cut off the Trust.

4. The Fine or Recovery of a Ceify que Trust shall bar and transfer
the Trust, as it shall an Estate in Law, if it were upon a Confideration:
But otherwise, Windham J. doubted of it; for he look’d upon the Court
of Chancery as remedial to those, that come in upon a Confideration.

5. A Fine with Proclamation and Non-
claim will bar a Trust,
per Lekeeper, who sold
it was so re-
olved in the
Exchequer.

6. Fine and Non-claim bars all Trust and Equity, per Finch C. who
said, it was so resolved, by all the Judges, in the Cafe of
Rich, where the Equity was of a Practice in gaining a Conveyance of
Lands, and since resolved in the Exchequer, where a Trust was barred;
the no Man could know, when he was sure of an Inheritance. But this is
on two Differences—1. Where the Equity charges the Land, as in the
aresaid Cafes, there the Fine bars; but where it charges the Person in
Repose of the Lands, it does not bar, as in the Ld Knowls’s Cafe.

2. If the Equity or Trust be created by the Fine, that Fine shall never bar
the Equity, which it created. Tr. 28 Car. 2. Chan. Cafes 278. Salisbury
v. Baggot.

7. A seised in Fee devised Portions to several of his Children or
Friends payable at several Times by 50l. per Ann. with which Sums he
charged his Lands to be thereout paid and died;—50l. one Payment in-
curred due, and then the Lands were aliened by Fine with Proclamations;
—5 Years paffed—Device fued in Chancery for the whole—Deemed
for the Plaintiff for what grew due after the Fine was barred by the
Fine, but not the 50l. due before. For a Trust is barred by Fine, &c.

8. The Ld Keeper put the following Cafe. A seised in Fee, in Trust
for B. for full Confideration conveys to C. the Purchavar having Notice
of the Trust; and afterwards C. to strengthen his own Estate, levies a Fine;
and the Council were all of Opinion, that the Ceify que Trust was not
bound to enter within 5 Years; For that here C. having purchafed with
Notice, notwithstanding any Confideration paid by him, is but a Trustee for
B. and to the Estate not being displaced, the Fine cannot bar. Hill. 1682.
Vern. 149. in Cafe of Bovey v. Smith.

9. Fine and Non-claim bars a Term in Trust for securing Childrens

The Truftees of a Term. in Trust, are barred by a Fine, by the Leffor
or Purchaver, and can never afterwards claim any thing; But yet the Term is not so barred, but that
the Inhabitants may be let in upon the Purchaver; For a Fine shall bar no Estates, but those which
were intended by the Parties to be barred. Per Holt Ch. J. Cath. 125. Mich. 1. W. & M. B. R. in Cafe
of Smith v. Peare.

10. A.
271.

A. desirous Lands to Trustees till Debts paid, and then to J. S. an Infant, and his Heirs; Defendant entered on the Estate, and levied a Fine and Non-claim palled. J. S. when of Age, brought Ejectment, but was Non-suited by the Fine and Non-claim, the Trustees (in whom the legal Estate was) not entering as they should have done; yet being then an Infant, and having as soon as of Age made his Entry, and brought Ejectment, and also his Bill, before 5 Years incurred after his full Age, the Court decreed him the Possession, and an Account of the Profits, declaring the Fine and Non-claim should not run upon the Fruit in the Infant's Minority, and he shall not suffer for the Laches of his Trustees. Mich. 1699. 2 Vern. 368. Allen v. Sayer.

(Y. 5) Barred what. Leave.

1. Where one is Lessor for Years, and assigns over his Lease in Trust for benefic, and then purchases the Inheritance, and occupies the Land, and then levies a Fine with Proclamations, and the Trustee does not claim his Lease within 5 Years, the Trustee is barred; For the Conunor has the Possession, by reason of the Trust, and this Trust is included in the Fine, and the Trustee's Interest is barred by his Nonclaim. Cro. C. 110. Patch. 4 Car. C. B. Ilham v. Morris.

2. A Sleeping Lease which the Lessor never knew or accepted of, and of which he never was in Possession, is bound by Fine and Nonclaim. 5 Car. 1. Chan. Rep. 66. Harding v. Countes of Suffolk.

*P)erie v. Smith. Mich. 1 W. and M. that where there are Acts done, and a Possession continued against a Tenant, a Fine may bar; but where another Person continued the Possession for 5 Years, it may be a Quare, ut ante. — * S. C. argu. Carth. 100.


4. A. leased for Years to B., but yet A. continued the Possession; and afterwards A. levied a Fine with Proclamations, &c. It was said by Warburton, Winch and Hutton, that it is no Bar to the Lessor for his Term, but only as a Grant of the Reversion by A. But otherwise of a Lease in Possession. Mich. 15. Jac. Nov. 23. Archbold v. Cook. This Case was denied by Twiften J. who said that this Report of Nay; was but an Abridgement by Serjeant Site, who when a Student borrowed Nay's Reports, and abridged them for his own Use; and that this is directly against the Resolution in Saffin's Case, and relied on the Case of Cro. C. 169, 110. Archam v. Morris, and adjudged accordingly, tho' the Case there was much stronger. Vent. 81. Trin. 22 Cat. 2. B. R. Freeman v. Barns.

5. 9 H. 7 of Fines, extends to bind a Right of a Term, if the Lessor were or might have been ever in Possession, before the Fine, per Anderfon. Goldsb. 171. Cookes v. Ackinson. * Vent. 90. S.C. — Cart. 161. 191. C. in C. 8. Cro. C. 189, 110. Archam v. Morris, and adjudged accordingly, tho' the Case there was much stronger. Vent. 55. 20

6. Lease for 100 Years in Trust for him in Reversion, (* to attend the Inheritance. Lessor enters; then he in Reversion enters and leads to W. for 5 Years, and at the end of the 5 Years, he) makes a Lease for 50 Years to another, and levies a Fine to corroborate; and 5 Years pass; Resolved, The first Lease is deceas'd by making the 94, but at the Elision of him in Reversion 5; S. C.
Revers'd; and that the Leafe for 500 Years is barred by the Fine, be-
cause this was turned to a Right, by making the Leafe for 50 Years be-
tore the Fine, and 5 Years Nonclaim; and the Chief Justice said, and it
was not denied, that "Incomes kept on Fee by Purchasers, shall not be bar-
red by Fines; nor where Mortgagor retains Possession, and pays the
Interest, a Fine by Mortgagor, so holding the Possession, shall not bar Mortgagee.
1 Lev. 270. Trin. 22 Car. 2. B. R. Freeman v. Barnes.—And to Judgment in C. B. was affirmed. Ibid.

7. Devise a Term for Payment of Debts, Remainder in Tail; He in Re-
mainder enters with content of Trustees, and levies a Fine, and Settles the
Land on his Wife for Life, and dies; The Wife Survives, the Debts un-
paid; Quere whether this Term is barr'd by Fine and Nonclaim? 3.
Mod. 195. Pach. 4 Jac. 2. B. R. Smith v. Pearce.

8. In an Ejecutone Firmae for Lands in Wakes, the Caufe upon a Special
Verdict was, that a Man feized in Fee of Lands, for the Contumacy of them
in his Name, and for the Maintenance of his Brother makes a Leafe for
500 Years, in Truth, that himself should receive the Profits during his Life,
and that afterwards his Brother should enjoy them, with some other Trusts
And afterwords being in Possession according to the Truth, be covenanted
with other Persons (not with the Leeffes) to hand feized of the said Lands
upon the same Confederation, as was mentioned in the Leafe, to be of
himself for Life with Remainders over, according to the Trusts, and fur-
ther, that the said Leafe and all Estates made, or to be made by himself,
should be, and aure to the same Usages, and levies a Fine, and 5 Years past,
the Leafe being in Possession according to the Truth, and enjoying the Prof-
tsits during his Life; afterwards the Leeff dies, and one of the Leeffes en-
ters into Part of the Lands in one County, which was not comprized in the
Fine, claiming all the Lands in the other County. Hale Ch. B. held, that
nothing had been done here to displace the Estate of the Leefe; For the
Leffor continued in Possession by the Leeffe's Leave and Permission, as
must be presumed, and so is a Tenant at Will, as Littleton says. Hard. 

9. So if Leeffe for Years be, the Remainder over for Life; and
Leeff for Years levies a Fine, and 5 Years past; the Leffor is not barred
by any Nonclaim, because the Fine operates nothing, & Parties ad Finem
nihil habuerunt may be pleaded to it; alterwise it is where Tenant for Life
levies a Fine; for he has a Freehold; and his Fine displaces the Remainders,
and therefore an Entry is requisite within 5 Years after the Death of the
Tenant for Life; for which reason when a Leeff for Years or at Will is to
levy a Fine, 'tis usual for the Leeffe to make a Feeinition first, to displace
the other Estates. But here the Leafe for Years is antecedent to the Estate
of the Leffor, who levies the Fine, and he has a Freehold expectant upon
the Leafe, and not precedent to it, per Hale Ch. B. Hard. 401, 402.
Focus v. Salisbury.

10. And a Fine with 5 Years Nonclaim must bar an Estate precedent
to the Fine, not subsequent to it. And there is here a Privity betwixt the
Leffor and the Leeffe, and therefore the Fine shall not bar; as in Caufe of
a Mortgage, where the Mortgagor continuing in Possession, levies a Fine,
per Hale Ch. B. Hard. 402. Focus v. Salisbury.

11. And this very Case was adjudged in Terminis for 2 Reasons, 1st
By Reason of the Privity betwixt the Perfons, 2dly, Because the Leffor
was in the Nature of a Tenant at Will, and there was a mutual Confidence
betwixt the Parties, per Hale Ch. B. Hard. 402. cited it as the Dutchees
of Richmond's Case.

(Y. 6) Barred what. Legacies and Devises.

1. A devis'd Land to B, an Infant 3 Years old in Fee, and dies. The
Heir of A enters and levies a Fine with Proclamations. B dies within
Age,
(Z) What Things are barred by Fine.

1. If False Recovery be had against Tenant in Tail, and the Recoverer levies a Fine, the Issue shall not reverse this after five Years. D. 3 Marg. 3 pl. 2. cites 34 Eliz. B. R. Holme v. Gee.

2. Baron had a Power to declare that his Feme should have an Estate for Life in certain Land; but, before any such Declaration was made, the Baron and Feme levied a Fine come coe, &c. This Possibility of the Feme was included in the Fine. 7 May. 41 Eliz. in Canc. Mo. 554. Poole v. Veere.

3. Peocifment by A. to the Use of himself for Life, Remainder to juch, as Feoffor should name at his Death, in Fee. A. and the Feoffees levy a Fine for good Consideration to a Stranger, and afterwards A. names and dies. The Party named shall have the Land, notwithstanding the Fine. Arg. 3 Le. 253. cites it as adjudged. in B. R. in Ld Pagers Cafe.

4. Attending Term, by Fine and Nonclaim by him that has the Inheritance, and is in Possession of the Land, is barred. Cro. C. 110. Patch.

5. Coverture is not barred by a Fine and Nonclaim, because the Title is pure to the Fine. Arg. Roll. R. 306.

6. Collateral Uses, not depending on the other Estates, may be destroyed by Fine, if they are contingent Remainders. But if there be a collateral Clayfe, by which a Use is limited, as Provise, if 100 l. be not paid, it shall be to such Use; that contingent Remainder is not destroyed by Fine. Arg. Her. 98. cites 1 Rep. 150. 134. Chadleigh's Cafe.

7. A Thing, that will not pass by a Fine, may be barred by a Fine; as a Right to a Copyhold; and so of a Rent Charge, by levying a Fine of the Land, as is Commons' Cafe. And so of a Trust, as Feme covert has a Trust, the cannot transfer it; but if she and her Husband levy a Fine of the Land, as the Rent is gone by way of Ditcharge, so the Trust is gone by way of Discharge; per Bridgman. Ch. J. Cart. 24. Patch. 17 Cart. 2. C. B. in Cafe of Taylor v. Shaw.


8. Fine and Nonclaim shall not bar an Estate, that is not * turned to a Right. Cart. 82. 18 Cart. 2. C. B. Thomain v. Mackworth.

But a Right to an Estate by Extent will be barred by a Fine and Nonclaim. per Ventr. J. 2 Vent. 329. cites 1 Rep. 123. Saffin's Cafe—If one, that has Interest Termins, enters after the Term commences, and is affixed, then it is not any Interest in him, but a Right. Cro. J. 61. Hill. 2 Jac. B. R. in Saffin's Cafe v. Adams.

* The Law constructs such Acts to amount to a devesting or not devesting, as is most agreeable to the Intention of the Parties, and the Right of the Thing, per the Chief Justice. Vent. 81. in Cafe of Freeman v. Barnes.——Vern. 149. Hill. 1682. Borey v. Smith.

9. Those that have neither present, nor future Right, nor Possibility of Right to the Lands, &c. in the Fine at the Time of levying it, but a

\[
\text{A a a a Right}
\]
Right to something infusing out of the same, as Rent, Common, a Way, &c. are not bound at all. For the Fine extends only to secure the Right or Title of the Estate, but does not bind the Profits to be taken out of the Estate. Wood's Inf. 246.

10. Fine with Proclamation according to the 4 H. 7. by Devisee on Condition of Non-payment of Money to her, (and the Condition not being performed) will bar an Equitable Power of Redemption, as well as a Right of Action; per Hale. Hard. 512. Trin. 21 Car. 2. In Scarce. Sir N. Woolston v. Alton.

Welden v. Duke of York — Fine levied on the mortgaging the Estate, and to strengthen the Mortgagee's Security, is no Bar to the Equity of Redemption. For the very Estate which then paid by the Fine was a redeemable Estate, per Lord Hutchins. Mich. 1690. 2 Vern. 192. Lingard v. Griffin.

So of a Fine levied by Mortgagee. Std. 460. it was for Law, in Cafe of Freeman v. Barnes.

12. Lands extended upon Elegit are bound by Fine and Nonclaim within 5 Years; otherwise, if the Land had not been actually extended, in Debt, on which he may have an Elegit, and after Judgment the Defendant aliens the Land by Fine with Proclamations, and 5 Years past, the Plaintiff may have Scire facias & Elegit, per Lord Keeper. Ch. Cales 263. Mich. 27 Car. 2. in Cafe of Clifford v. Ashley.

13. If an Inquisition upon an Elegit be found, the Party before Entry has the Possession, and a Fine with Nonclaim shall bar his Right; for before actual Entry, he may have Ejectment FIrms or Treffals, and so not like an Intereffe Termini. Ch. Cales 268. in Cafe of Clifford v. Ashley.

But Wood's Inf. 44. says The King v. Ld Purbeck. that a Baronet by Decent levied a Fine of his Honour to another who enjoyed it, and took Place in Seniority from the Date of the Patent, as if his Ancestors had been Baronets. [But see the Cafe above Contra.]


15. A Fine shall bar no Estates, but those which were intended by the Parties to be barred, per Holt Ch. J. Carth. 103. Mich. 1. W. and M. B. R. in Cafe of Smith v. Pierce.


17. A Reversion may be barred by Fine and Nonclaim. Arg. Show.

But afterwards the Reversal was reversed in the House of Lords Ch. Prec. 166. S C. after Parl. Cales 43. S C.

42. cites Pl. C. 374.

18. One Coparcener in Consideration of 4000 l. paid to her by C. who was about to marry B, her Sister, joined with B. in a Conveyance to B. and C. for their Lives, Remainder to the Issue of the Marriage, Remainder to the Heirs of C. Provided if no Issue be living at the Death of the Survivor of B. and C. and that the Heirs of B. within 12 Months after the Decade of B. and C. shall pay 4000 l. to the Heirs or Assigns of C. then the Remainder to C. to cease, and the Premisses to remain to the right Heirs of B. for ever. B. and C. levied a Fine to extinguish this Provisto, and declared the Ufe to C. and his Heirs and directed the Trustees to convey accordingly. B. and C. died without Issue; a Bill was brought by the Heir of B. to have a Conveyance on paying the 4000 l. but was disimified by the Matter of the Rolls, but was afterwards reversed. Palch. 1697. Ch. Prec. 72. Sir Evan Loyd v. Carew.

(Z. 2)
(Z. 2) Bar. In what Cases in General.

1. When an Estate is put to a Right, and then comes a Fine and Non-claim; it is a perpetual Bar. Cart. 82. in Cafe of Thomalin v. Mackworth.—But where the Estate is not turned, a Right, it is no Bar. Cart. 164. Arg. cites Affinis Cafe, and 9 Rep. 166. Marg. Proctor's Cafe, and 8 Rep. Symmes's Cafe, and Pl. C. Stowell v. Zouch.

(Z. 3) Good. In Respect of the Form.

1. Fines levied in C. B. without showing in the Fine the Names of the Justices, is good. Denlh. R. on Fines. 4.

2. And Note, that the Form in C. B. and the form in other Courts, where Fines may be levied, is all one, and no other Words in the one, than was and is in the other; but the one part of the Fine shall be fent into the Treasury, and the other deliver'd to the Parties, and shall be indors'd Deliberatim per procer. &c. and a Record of this is put in Bank. Denlh. R. of Fines 4.

3. And if it be levied before J. D and others who are Justices, it is void; but if it be before the Justices, and others who are * Justices: it is good; and the Names of others void. Denlh. R. of Fines 4.

4. And if the Fine be levied to one of the Justices, he shall be named in the Coram &c. and among the Justices by the Constance now used; yet albeit he be n. named, (as to me seems) the Fine is good. Denlh. R. of Fines 45.


(Z. 4) Good. In Respect of the Description.

1. In Affile against A. of the 4th part of a Mill, Defendant saide, Affisa non; For such a Day and Year before Herle, Fine was levied between A. B. Plaintiff, and C. F. Delormean of the Manor of G. with the Appurtenances, of which the Mill was Parcel; by which A. acknowledged the Manor to be the Right of C. come etc. &c. and C. granted and rendered the Manor to A. and the Heirs of his Body; the Remainder of the fourth Part of the Manor, against the Weil, to Alice the now Tenant and her Heirs; and another fourth Part of the Manor against the East, to J. the Plaintiff; and another fourth Part against the South to remain to Richard in the fame Manner; and the Remainder of the fourth Part against the North, to remain to W. and her Heirs; and that after, A. diuided after the Ille of his Body, by which Alice entered into the fourth Part against the Weil, as in her Remainder in which the Mill is; and the Plaintiff entered into the 4th Part against the East, as in his Remainder; and the Plaintiff, supposing that the Mill was in his Part, entered, and the Tenant re-enter'd, Judgment in Affile. And the Plaintiff saide, that after this, Partition was made, and the Mill allotted to the Plaintiff, who was left thereof, till divided by the Defendant; and the other saide, that at the Time of the Partition, she was Covert Baron, and her Part was too little; and the Affile was awarded. Br. Fines pl. 83. cites 44 Aff. 11. Br. Partition pl. 23. cites S. C. and per Bellis, it saile be intend, that every one shall have one fourth Part in equal Parte. &c. and not according to the Quantity; for one 4th Part may be in Value of 4 other Parts; and Tunk, this is true, where it is limited by Measure. 3 Parts or 4. Parts without other Determination, but when it is said, the Part against the East to one, and the Part against the Weil to another, &c. it shall be divided according to its Quantity, and not according to the Value. Brocket 135, Squire, for the Affile was awarded.

2. Where a Fine and Recovery is of so many Acres in D, the Parties interested shall have their Election, in what part of the Estate it shall operate. MS. Rep. saide to be Ld Harcourt's cites 27 March 1723. Ld Blane v. Mahon.
(Z. 5) Limitations in Fines. What good or allowable.

1. Two acknowledged a fine of four acres to be the Right of W. and granted that the Tenements aforesaid, which N. held for his Life, and which, after his Death, ought to revert to them, to remain to P. and his Heirs; and the Court would not accept it without limiting the Fee in one of the Conforms certain; by which they acknowledged the Tenements to be the Right of W. and granted, that the same Tenements, which N. held for his Life, and which after his Death ought to revert to them and to the Heirs of one of them, should remain to P. and his Heirs; and this fine was accepted. Br. Fines. pl. 46. cites 21 E. 3. 13.

2. In Dower, Rent was granted by Fine, with Condition, that when any Heir is within Age, that the Rent should cease during the Nonage; and the Femme recovered Dower during the Nonage, & cefser Executio till the full Age of the Heir. Nota. Br. Judgment pl. 41. cites 24 E. 3. 61.

3. A Man acknowledged the Tenements in the Writ, to be the Right of one A. come eco, &c. except four acres of the Land, and granted that the four acres (which J. S. held by Recognizance, till 10 l. was levied) after they should revert to him, should remain to the said A. and his Heirs for ever; and the Fine was received. Br. Fines. pl. 19. cites 44 E. 3. 21.

4. A Man cannot by Fine, by Way of Remainder, reserve a left Estate to himself, than Fee. And therefore if A. acknowledge a Fine to B. in Fee, and he render to A. in Tail, the Remainder to himself for Life, this Remainder is void; For A. had Fee Simple before. Welts Symb. S. 30. cites * 24 E. 3. 28. 14 H. 4. 31.

If A. levy a Fine, Remainder in Tail to himself, Remainder to B. in Fee; this Remainder in Tail is void; For he cannot give to himself. Br. Fines. pl. 113. cites 14 H. 4. 21, and 42 E. 5. 5. where he says it is not adjudged; yet he says it seems to be a void Remainder.—* Br. Fines. pl. 61. cites S. C. Br. Estates. pl. 53. cites S. C.—* Br. Estates. pl. 66. S. C.

5. 'Tho' a Fine be acknowledged to several, yet the Right shall be limited to one of them only, and the Heirs of one, and not to the Heirs of all. Br. Fines. pl. 7. cites 9 H. 6. 42.

6. A. B. C. and D. were Sitars and Coheirs of J. S. and A. B. and C. and their Husbands brought Writ of Covenant to levy a Fine against D. and her Husband. And thereby D. and her Husband acknowledged the Tenements to be the Right of A. as thefe which her Husband, and She, and the other two Husbands and their Wives, had of the Gift of D. and her Husband, and further releafed accordingly. A. B. and C. rendered to D. in Tail, to hold of the Chief Lord by Services due et fì contigerit ipsam ebe fine Herede de Corpore &c. tine poß decrefum ejus præd. Tenen·

ta inteegra remanerent præd. A. B. & C. & Heredibus de Corporebus eorum legitime Proceratis tenendo, &c. remanere ulterius rellis Heredibus † S. defunti. D. died without Issue, and A. B. and C. and their Husbands brought a Siure facias to execute the said Remainder in Tail to them as above; and the Writ was offenfus &c. quare Tenementa præd. poß Mortem præd. prefatis A. B. & C. and their Husbands, as the Right of their Wives, remanere non debent justa Formam Fins præd. Fo quod præd. D. Mortua eft fine Herede de Corpore fio exeunte, &c. Patch. 29 H. 8. D. 69. a. b. pl. 32. 33.

7. A Fine Sit Conformance de Droit come ceo that il ad de fon done generally implies a Fee Simple; but it is only by Imagination, and therefore there is no Repugnancy to limit an Estate for Life to the Contee; for the precedent Donation or feomiment, which is supposed, might be for Life only, or * in Tail, and the general Intendment of the Confans, may be qualified by an express Limitation. 1 Salk. 343. Hill. 3 Anns. B. K. Hunt v. Bourne.—cites 41 Ed. 3. 14. Co. Litt. 9. b.
(A. a) Extinguished. What.

1. A Seized of divers Manors in the Counties of B. and C. by Indenteure enrolled in Chancery for 200 l. did demise, grant, and to farm let to D. and his Heirs his said Manors, rendering thereon annually to the said A. and his Heirs a Rent, with Disposal and Re-entry for Non-payment, and covenanted to do all Acts, which should be devised, or Affirmance of the said Manors, to the Intents and Uses aforesaid; after which, by other Indenture between them, it was covenanted that the said A. should levy a Fine to the said D. of the said Manors, and that the said Fine and all other Affurances to be made of the said Manors, by the said A. to the said D. should be to the Uses or Intents contained in the first Indenture, and to no other Uses or Intents; after which the said A. infeoff’d the said D. to the Uses and Conditions in the said first Indenture mentioned; and after the said A. at Request of the said D. and to the Uses in the said first Indenture, levied a Fine to the said D. of the Manors in the County of C. and upon all this matter found by Office in the Court of Wards it was, by the Opinion of the Justices, ruled that the Rent remained not extinguished by the Fine, and yet the Fine is only of Part, viz. in the County of C. and not purgant to the Indenture; For that is, that the Fine should be of Manors in the said Counties, &c. No note, a strange Cafe, but it seems that this is Law by Branch of 27 H. 8. which fee. 2, 3. P. M. Cur. Ward. Pattenham’s Cafe.

2. A seized of a Manor, made a Lease for Years rendering Rent, with Clause of Re-entry; and afterwards levied a Fine Sur Conuniance de Droit to the Use of himself and his Heirs. The Rent, being demanded, is behind. Per Dyers Ch. J. A. cannot re-enter; For tho’ in Right the Rent pass’d without Attornement, yet he is without Remedy. For it is without Attornement, and it would be hard without Attornement to re-enter.—Per Manwood J. tho’ the Conuoy himself could not, yet the Conueror being Ceifty que Use, who is in by the Act of Law, shall avow, and shall re-enter without Attornement; For the Conueror is in by the 27 H. 8.—Per Harper J. The Heir of the Conuoy shall avow and re-enter before Attornement. 3 Le. 193. pl. 152. Pach. 26 Eliz. C. B. Anon.

3. A Fine by one Jointuoy to his Companion enures by way of Releafe. Mich. 21 Jac. B. R. 2 Roll. R. 398. 444. 472. 485. Ulfatce v. Scoven. 4. If I have Land covered with Water, and another has Liberam Piscarium in it to him and his Heirs; clearly if he joins in a Fine with me of the Land, this extinguishes the Fishery, per Hobart. 2 Roll. R. 500. Hill. 22 Jac. B. R. in Case of Foliot al. Heliar v. Sanders. 5. Where a Fine is levied by him who hath the Fee and Freehold in him, whatever Right, Estate, or Interest, there is in him besides, pass’d inclusively in the Fine, not by way of transferring the Interest, but (as it were) consolidating with the Fee, so as to determine and extinguish such Interest, per Ventris J. 2 Vent. 332. in Case of Dighton v. Greenwell.

6. A Term was vested in Trustees for raising 1000 l. payable to J. &c. who afterward levies a Fine of the Land, or fails a Recovery of it; this is an Extinguishment of the Charge. 2 Wms’s Rep. 605. Trin. 1731. in Case of D. of Chandois v. Talbot.

(A. a. 2) Relation of Fines to what Time, to avoid Messe Incumbrances, &c.

1. It is no Plea to plead a Fine in Bar and the Estate of the Plaintiff Messu between the Conuance of it, and the Execution; For it shall not have Relation
Relation before the Execution; quod Nota. Br. Relation. pl. 27. cites 21 H. 6. 17. 8 E. 3.
2. A. covenants with B. to levy a Fine, Off. Mich. 1 Car. A. acknowledges a Statute to C. 8 Off. the same Year; the Fine is levied according to the Covenant, and the Confinement taken the 12th Off. aforesaid. This Co- nunit shall avoid the said Statute, by Relation to the Day of the Effloin, which was before the said 8th Day of October. Mich. Term now begins the 23rd October by an Act made 16 Car. 1. Then the Effloin was 7th October, and the first Day of full Term the 9th. Jenk. 250. in pl. 40.

(B. a) Of what a Fine may be levied.

1. FINES have been levied heretofore of a Bailiouny of Salt, and by fuch Name the Profit of the Franktenement patented. Br. Afflise. pl. 31. cites 11 Aff. 12.
2. Fine has been levied of a Common, and of a Corody; & Sci. fa. lies of it and Execution accordingly. Br. Common pl. 45. cites 25 E. 1. 4. 1. 2.
3. 32 H. 8. 7. S. 7. Direct Writs of Covenant, and other Writs for Fines to be levied, and other Alliances to be had and made of Parsonages, Vicarages, and other Profits called Spiritual, to be devised and granted in Chancery, as have been used for Fines and Alliances of other Lands.
4. A Fine may be of a Rent-chargue de novo, which had no Being before. 21 Ed. 3. 44. Or of a Chief Rent, or other Rent in Being. 18 Ed. 4. 22. Or of a Seigniory. 48 Ed. 3. 23. Or of an Acquittal. 50 Ed. 3. 23.
5. But Fines may not be levied of Lands in Ancient Demesne; For if any Fine be levied of such Lands, it may be reverted by a Writ of Deceit brought by the Lord of Ancient Demesne, and thereby he shall be restored to his Seigniory; and it seemeth to be void between the Parties, because it is not a Right to be taken by another; and the Party is thereby exposed to a Fine, viz. to the value of the Fine. 25th. 11. 4. 44. Bro. Fines 101. which feemeth not to be Law. But if such Fines be of Lands in Ancient Demesne, and of Lands at the Common Law, it shall be void for the Lands at the Common Law. Weil. Symb. S. 25. cites 7 H. 4. 44.
6. Regularly a Fine may be levied of any Thing, wherever a Precipe quod reddat or faciat lies, as the Writ of Customs and Services; or whereof a Precipe quod pennettat, as to have Common a Way, &c. or to be short, where Precipe quod tenant doth lie, as the Writ of Covenant to levy a Fine and the like. 2 Inf. 513.

7. But in ancient Times Fines were levied of other Things, then will be at this Day allowed; and yet those Fines shall be held now as available, as they were taken to be, when they were levied. 2 Inf. 513.
8. Tenant in Tail of a Rent or Common levies a Fine with Proclamation; it is very clear that the Illues shall be barred thereby; per Walmley J. 2 Le. 158. 21 Eliz. C. B. in the Case of Segar v. Bainton.

9. Of
9. Of a Lease for Years, the Fine is void as to any Strangers; for a
Freehold must be in the Cognizor or Cognizee; however it may be good
between the Parties by Way of Eitoppel, to as to conclude them. Wood's
Inf. 242.

10. A Fine cannot be levied of Money agreed to be paid out in a Pur-
chase of Land to be settled in Title. But a Decree can bind such Money;
equally as a Fine alone could bind the Land in this Case, if bought and


11. Of an Annuality to a Man and his Heirs, no Fine can be levied. Par-
liament Cafes 1. Arg.—because it is a Thing personal. Arg. 3. in Cafe of the
Lord v. Ld Purbeck.

12. A Fine may be, and usually is, levied of Shares in the New River.

13. Fines may be levied of all Things in being which are inheritable,
whether Ecclesiastical and made Temporal, or Temporal; as of an Ad-
visor, Refrey, Portion of Tithes, &c. of an Honour, Manor, Barrow,
Lost, Miseing, Dove-House, Garden, Orchard, Land, Meadow, Pasture,
Rent, Common, a Hundred, &c. And a. as Fines may be levied of Things in
Possession, so may they be levied of a Remainder or Reversion, or of
a Right in Future, or of a Possibility. Wood's Inf. 242.

Of all Things wheresof a Precept quod redditur ibi. Weit. Symb. 25.—Co. R. on Fines 11. 8. 2. and
of some Things whereof no Precept ibi, as of Paffure for any Oven. Co. R. on Fines 11. cites 24 3. 2.
A Quod permitter. Ibid. cites 2 E. 13.—So of a Rent newly created. Ibid. cites 22 E. 4.—So of Ecclesi.
So of a Title from Writship or Wardship of a Fire. Ibid.—So of any Post Apprentice, which is certain,
but not where it is uncertain, as Common San's Number, &c. Such Things cannot be granted by Fine,
because Fines Finem litibus imposit, and that cannot be where the Thing is not certain. Ibid.—It must be
of so many Lots of Bales in Fec, or for Life, to be taken annually in each a Wood. But then this must
be in off, and one of the Parties poffeffed thereof before the Fine. Ibid.—Weft. Symb. 25.

(B. a. 2) Of what Estate a Fine may be levied, in Respect
of its having been in Possifion of the King.

1. Where the King is intitled by a Diffeitor or other, who has a defeasible
Title, and the Hands of the King are amov'd by due means, and after a Fine
is levied, and then the Land is refted; yet the Fine is good. Br. Fines
pl. 102. cites 24 E. 3. 65.

2. But where the King amoves his Hands by undue means, and after a
Fine is levied, and after the King for Caufe re-féfies; this shall avoid the

(C. a) Of what a Fine may be. By what Name.

1. A Manor may pass by the Name of a Tenement. Br. Fines. pl. 66.
cites 9 E. 4. 6.

2. The Thing of which a Fine is to be levied, ought to be in effe at
the Time of the Fine, and express'd in the Fine directly, or by Implication.
Br. Fines. pl. 97. cites 18 E. 4. 22.

3. As where the Writ is Quod tenet Conventiorum de tali Terrain; there is
upon Conuance of Right of the Land by him to another, the other may
grant and render a Rent, Common, &c. For it is implied; because it is if
filing out of the fame Land as is in the Writ. Br. Fines. pl. 97. cites 15
E. 4. 22.

And where it is of Land in D. Fine cannot be levied of Land in S. Br. Fines. pl. 97. cites 18 E. 4. 22.
An "Houour may pass by the Name of a Manor, or by its proper Name, as de Honor of ickhill, or de Manerio de Tickhill. Wetts. Symb. S. 26.

5. It sufficeth also to demand a Manor by its proper Name, without naming the Town wherein it lies; for it may be out of any Town, or extend into several Towns and Counties, as de Manerio de D. cum Pertinentiis, yet it seems best to express all the several Towns, into which it extendeth, as de Manerio de S. cum Pertinentiis in D. & E. Wetts. Symb. S. 26. cites 19 E. 4. fo. 9. a. 43 E. 3. fo. 9. a. Bract. Lib. 4. c. 31. § 3. 9 Ed. 4. fo. 61. 9. a. 16. a. 17. b. 11 H. 7. fo. 22. b. 49.

6. A Castle or an Hundred may be Parcel of a Manor, and pass by the Name of the Manor, wherein they are Parcel, 26 Aff. 54. And one Manor may be Parcel of another, 2 Ed. 3. fo. 36. And a Castle may be demanded by his proper Name, as de Castello de B. cum Pertinentiis, 1 E. 3. fo. 4. and an Hundred may be demanded by itself, as de Hundredo de S. 27 H. 6. fo. 2. Wetts. Symb. S. 26.

7. A Chapel or an Hospital must be demanded by the Name of a Measure. Wetts. Symb. § 26. cites 13 Aff. 2.

8. Molendinum is good, without adding Ventricium or Aquaticum; albeit the latter be more usual. Wetts. Symb. § 26. cites 44 E. 3. 13.

9. Of a Reversion by the Name of the Land, or otherwise. Wetts. Symb. § 26. cites 43 Ed. 3. 22.

In Sci. fa. it was agreed, that a Fine is good to pass a Reversion in Tail, without expressing the Reversion; for it was levied by him in Reversion in Tail Sur Comunio de Droit to two, and they rendered again to the Comune in Tail, the Remainder to the Plain-tiff in the Sci. fa. and he sued Execution & habuit; good Nota; and yet Thorp divided pro Lege coden Anne. fo. 19, that where a Fine is levied Sur Comunio de Droit, or by Grant and Render, by him, who hath nothing but the Reversion, the Comune shall not have Action thereof, where there be no mention of the Reversion; sc. it is not so in the same, but it seems clearly that by Fine levied Sur Comunio de Droit comme, &c. it's good to pass the Reversion. Br. Fines. pl. 18. cites 47 E. 3. 22. pl. 39. cites 27 H. 6. 3. — Br. Fines. pl. 97. cites 18 E. 4. 22. — The larger Edition of brook in Fino, is (c Onora), the smaller, in Fino is (Exie);

the 40th Edition is (Exie)."

10. Land is to be demanded by the certain Measure of the superficial Quantity thereof, Hida, Caracata, Botata, Virgata, Acre, Roda Terra. And in like manner, Bolus, Subboles, Bruera, Mora, Juncaria, Marius & Alnetum, & Rulcaria, may be demanded by the Number of Acres thereof. 16 Aff. 9. Wetts. Symb. § 26.

11. Turbarie may be demanded by the Name of Moore. Wetts. Symb. § 26.


13. Parsonages, Rectories, Advowsons, Vicarages, or Tythes impertinent, as not by the Name de Advocacione Ecclesiae, but de Rectoria Ecclesiae de S. cum Pertinentiis. But when it is only of a Presentation, it must be de Advocacione Ecclesiae de S. and not cum Pertinentiis. Wetts. Symb. § 26. And of all Vicarages endow'd the Writ must be de Advo- catione Vicaria Ecclesiae de S. and not cum Pertinentiis. And where no Vicarage is endow'd, it passes under these Words de Advocacione Ecclesiae de S. & &c. Wetts. Symb. S. 26.

14. If an entire Manor, Measage, or other entire Thing be divided or parted, and after a Fine is to be levied of some of the Parts of the Thing so fevered, then must not the Fine be de Mediate, or quarta Parte, or other part of the Manor, Measage, or other Thing; but each Part must be demanded by the name of the whole Thing. Wetts. Symb. S. 26.

15. So if a Measage and 20 Acres of Land be parted into two Parts, the Fine of the one Part must be de uno Measagio & decem Acris Terre, &c. and not de Mediate unius Measagii, & 20 Acrum Terra; For the
Things now divided from the rest, are now become whole Things by themselves, tho' let in quantity than the whole was before Divided thereof made. If a Thing be twice named in a Writ of Covenant, it hurteth not, as a Manor and a Hundred, Parcel of the same Manor. Wetl. Symb. § 20. cites 27 H. 8. 2.

16. A Fine was levied de duabus Tenementis, and for that reason was re-verified; For the Word Tenement does not comprehend any Certainty; For it takes in Measuring, Land, Meadow, Pasture, &c. and whatsoever lies in Tenure; and it will pass Rent or Common. Le. 188. Trin. 31 Eliz. B. R. Steed v. Courtenays.

17. A Manor in Reputatio, is not a Manor in Truth, does not pass by the name of a Manor in a Fine or Recovery; For they are grounded on original Writs, which ought to be certain, and not to be taken by Intendment; but otherwise of a Grant, or Prodiment; For there the Intent of the Parties shall help it. Noy 7. Johnson v. Heydon.

18. A Fine of Land will not be a Bar of* Rent; as Lestice for Life, Rent is mainder for Life of Rent; the first Lestice purchaseth the Land, and leaveth a collateral Thing, and the Fine is not levied of it. See Cro. J. 60.

The fame of Common. Ibid. But where the Rent was granted in Tail, and illusing out of a Manor, a Fine of the Manor, with an Agreement, that the Agreement gives to bars the Rent, per Hobert Ch. J. and Harvey J. v. Hutton J. is a Bar of the Rent, Cro. J. 699. Hill. 22 Jac. B. R. Heliar v. Sanders—Dod. of Adv. 8. See Presidents (B).—S. P. Savil. 112. Patch. 29 Eliz. Theford's Case.—

* S. C. adjudged accordingly. Vent. 51.—And Sid. 190. Patch. 16 Car. 2. B.R.

19. If Tenant in Tail of any Office levies a Fine of Land belonging to the Office, this shall bind his Issue; yet the Land was not entailed, but pass by the Office; per Hobart Ch. J. 2 Roll. R. 500. Hill. 22 Jac. in Cafe of Foliot v. Sanders.


(D. a) Who shall be barred by the Fine.

1. If one hath a Remainder, or a Reversion, depending upon an Estate for Years, or by Statute Steple, Statute Merchant, or Elegit, and the Tenant be discharged, and a Fine levied, &c. and 5 Years pass; they be all barred thereby; for that these Termors might presently have entered, and be in the Reversion or Remainder, for such Difficulties might have had an Affidavit. So the Stat. 4 H. 7. 24. feems to bar the Termors thro' Negligence, by this Word Interced, which comprehends a Term. Well's Symb. S. 183. cites Pl. C. 374. a.

2. If an Infant Heir of one beyond Sea dying there, makes not his Will within 5 Years after the Death of his Father, being of full Age, and without any Impediment, &c. he shall be barred; per Anderson, Ch. J. Le. 215. Mich. 32 and 33 Eliz. C. B. in Cotton's Case.

G e c c

3. Droit
3. devises is buried by fine, tho' levied before his entry. cro. c. 201.

4. fine and non-claim bars not a man in ireland; but not because ireland is not a member of england, but because of absence, as in case of imprisonment. arg. cart. 187.

5. if there be tenant by ejector of land, and a fine be levied of that land, and 5 years with non-claim pafs; the interest of the tenant by ejector is bound, according to atte_sales's case. 5 rep. 124. otherwise if the land had not been actually extended; and if an inquisition upon an ejector be found, the party before entry has the possession, and a fine with non-claim shall bar his right; for before actual entry, he may have ejectment or trepass, and to not like to an interlocut termini. mod. 217. trin. 28 car. 2. c. b. ogner v. ld. arlington & al.

6. a fine and 5 years non-claim will bar the interest of tenant by statute staple, after liberate, before entry. see 2 vent. 321, &c. dightor v. greenvill. skine. 260. knight v. greenvill. s. c.

7. a fine by mortgagor to a second mortgagee will not bar the first mortgagee, tho' more than 5 years pafs; the mortgagor being all that time in possession, and paying the interest, and so was tenant at will to the first mortgagee. carth. 414. trin. 9 w. 3. b'r. hulm. v. hatton.

(d. a. 2) barded. who. issue in tail. where tenant in tail is cognizee.

1. a. by fine gives an estate tail to b. remainder in tail to c. afterwards a. the donor, by another fine limits; (see verse) viz. to c. in tail, remainder to b. in tail; yet the first intail stands unaltered. for the fine being levied to the tenants in tail, the words were all the words of a. and not of b. and c. and tho' b. and c. could be effopp'd, yet their issue should be remitted. br. fines. pl. 73. cites 8 all. 33.

2. where a fine for life is levied to tenant in tail on grant and render, his estate by this is changed. but brook makes a quare, and says, that it seems the best opinion is contra, unless it be a fine executed; but a fine for grant and render, &c. which are not executed, is no discontinuance nor conclusion to the heir in tail; nor does the statute de finibus of averments hold place, but of fee simple, and where he claims as heir; but the heir in tail claims by the donor, therefore it seems, his entry is lawful. br. etoppel. pl. 60. cites 8 h. 4. 7.

3. no fine levied by tenant in tail barreth his issue immediately, but where the tenant in tail is cognizee. well's symb. s. 180.

4. as it tenant in tail bring a writ of covenant against a stranger, and he recognize the land to be the right of the tenant in tail, as that which he hath of his gift, &c. and the tenant in tail grant and render the land to the cognizee for years, yielding rent, &c. and dies; this fine is void against the issue in tail. well's symb. s. 180. cites m. 10 and 11 eliz. dy. 279. pl. 7. 26 h. 8. br. fines. 118.

5. a. and m. his wife were seized for life of the wife, as in her right, the remainder to e. in tail, the remainder to the said e. in fee. a. and m. his wife levied a fine for confance de droit, come ev., &c. to the said e. with proclamations, who granted and rendered rent of 27 l. 13s. to the cognizees for term of their lives, with clause of ditref; and after e. dies, and the land descended to h. c. her son and heir in tail, who leaves the land to one p. for years, and after m. dies; a. ditrein

s. p. and items to be s. c. d. 213. b. pl. 41. patch. 2 eliz. by the best opinion but says, that the case was ne-
distrained for the Rent, and he brought Replyvin; and in this Case the Points were resolved and adjudged. 1. That, against such Fine accepted by Tenant in Tail, the fine may ever continue of the Seilin by Force of the Tail, and the Ilue in Tail is not stopped by the Admittance and Acceptance of his Ancestor. 2. That the Grant and Render of the Rent was not within the Act of 4 H. 7. or 35 H. 8. because the Fine was not levied of the Land itself, that was intailed, but of the Rent newly created out of the Land. 3 Rep. 89. b. 90. a. cites it as adjudged in M. 3 and 4 Eliz. C. B. Rot. 1493. Comisby's Cafe.

Thornton.—S. P. Jenk. 2:5. pl. 96.

6. Grandfather, Father and Son; the Grandfather by Indenture makes Footment in Fee, rendering Rent to him and his Heirs, and dies. the Father accepts the Rent; the Feoffee levies a Fine with Proclamation; 5 Years' Next, and then the Father dies. The Point was, whether the Acceptance of the Rent by the Father had extinguished his Right to the Intail, or whether 'tis an Eftoppel only? For if he is only eftopped, then he having a Right at the Time the Fine was levied, and the 5 Years incurring in his Time, the Son was barred; but if he had extinguished his Interest, then the Son, being the first to whom the Right came after the Fine was levied, is not barred by the 5 Years incurred in the Life of the Father. "Twas adjudged per Walmley and Clench, J. at Lancaster Assizes, that the Ilue was barred. But the Court here thought that he is not barred. Because the Acceptance is a Concessio only, and does not extinguish the Right. Mo. 301. Patc. 33 Eliz. Hulme v. Jee, alias Jee.

7. If a Fine be levied to Tenant in Tail, and he grants and renders the Land to him and his Heirs, and dies before Execution, this is no Discontinuance; otherwife it is, it it had been executed in the Life of the Tenant in Tail. Co.Litt. 333. b.

8. If Tenant in Tail accepts a Fine, with Render to another for Years, this shall bar him, because it works a Discontinuance; otherwise where it is for Life; per Hutton. J. Winch. 123. Hill. 22 Jac. B. R. in Cafe of Hillard v. Sanders.

9. Tenant in Tail accepts a Fine for Contenue de Droit come coe, and then suitors a Recovery; this makes no Alteration of his Estait. Vent. 237. Patc. 26 Car. 2. B. R. Anon.—Per Hale Ch. J. Mod. 117. Green v. Proud. S. C.

(E. a) Of Lands, &c. in Lieu Comes.

1. ASSISE of Tenements in W., the Defendant pleaded Eftoppel by Fine levied of the same Tenements by the Ancestor of the Plaintiff in O. Judgment, if the Plaintiff shall say that they are in W., and the Plaintiff saith, that O. is a Hamlet of W., and a good Plea; by which they pleaded over. Br. Brief. pl. 292. cites 28 All. 5. 6.


3. And yet in Scire facias to execute a Fine levied of Lands in D. the Tenant shall not say, that there is no such Vill. Co. R. on Fines 12. cites 18 B. 4. 51.

4. A Fine may be levied of a Castle, or of a Manor, without expressing in what Vill, or Hamlet. Co. R. on Fines 12.

5. A Fine is good in a * Hamlet. 38 Ed. 3. fo. 19. 18 Ed. 4. fo. 6. Co. R. on Fines 12. and 7 Ed. 6. Br. Fines 44. and 91. or in a Town decay'd, 7 Ed. 6. Br. Fines 91. Nevertheless it is also good to name the Town wherein the Hamlet is, as it feemeth; and that with Addition for Diffinition, if there be divers Towns of the same Name in the same County, Wett's Symb. S. 27.
be received, but if it is received, then it is good.—— Hale laid in 1 H. 8. 9. a. That if a Fine be levied in A. B. and C. and none of them is a Vill, nor Hamlet, but certain Manor(s), or Manors, if it be accepted 'tis good. Co. R. on Fines 12.

A Seine Factur lies on a Fine levied in a Hamlet which proves such Fine to be good. Br. Fines. pl. 95. cites 8 E. 4. 6. * Co. R. on Fines 12. cites † 59 H. 5. 22. per Thorpe, and 8 E. 4. 6. — † This should be 53 E. 5. 20. a. in Principe.

6. If a Manor extend into divers Towns as A. B. C. it is good to express all or none: as de minero de 8. in A. B. C. for if any of the Towns be omitted none of the Manor in that Town faileth. Yet a Fine of a Manor, cum pertinentius would have carried the whole Manor. 9 Ed. 4. 6. Well's Symb. S. 27.

7. An Aëtion of Covenant was brought upon an Indenture of Feoffment by Defendant's Wife before Marriage of Lands lying in Hton in the Parish of Martham, whereby the Covenanted to affaire, &c. the Plaintiff assigns a Breach, that he tender'd a Note of a Fine to the Defendants, before certain Commissioners, of Lands in the Parish of Martham, and requested the Defendants to acknowledge the Fine, but that the Defendants refused. To this Defendants plead, that they were seised of other Lands, in the Parish of Martham, no Part whereof were contained in the Deed, and because those Lands not contained in the Deed, were contained in the Note of the Fine, therefore they refused to acknowledge it. To this the Plaintiff demurred. But after Argument, the Court were of Opinion for the Defendants; for tho' a Man is not obliged in a Fine, to set out the Parcels exactly agreeable to the Deed, and it is usual to put in rather more, least, in Case of a Mistake, he may lose Part of the Land; yet here the Covenant was, to levy a Fine of Lands in Hton, in the Parish of Martham, and the Note tender'd is of Lands in the Parish of Martham. Now a Fine may be levied of Lands lying in a Vill; and therefore those, not being Lands in the Vill, of which Defendant Covenanted to levy the Fine, it seems a good Exculpe. And thereupon Judgment was given for the Defendants, unless Caufe, &c. before the End of the Term. Patch. 12 Geo. 2. C. B. Dunby v. Gregg and Ux.

(Ea 2) Of Lands in several Vills, &c.

1. A Fine was levied of Lands in Blandford Forum. Resolved that this shall not pass Lands in a Hamlet in that Town, there being Confable dislinct in Blandford Forum from others that were in the Hamlet; So that they were as 2 Vills. Vent. 143. Trin. 23 Car. 2. B. R. Anon.

But if a Manor have divers Manor(s) of the Name; as Synb. S. and North S. it is good, in a Writ of one of the same Manors, to express certainly which of them is intended to be passed, 45 Ed. 5. 12 H. 7. 6. Albeit it is thought good enough by the Name of the Manor of S. without Addition; For Certainty is always best. Well's Symb. 2. 27.

But where in the Hamlet there was only a Tything Man and the Confable of the Vill exceeded Authority in the Hamlet, (which proves it to be but as a Hamlet) it was resolved that the Fine conveyed the Lands in the Hamlet. A Parish may contain Ten Vills, and if a Fine be levied of Lands in the Parish, this carries whatsoever is in any of the Vills. So where there are divers Vills, if the Confables were of one * got over all the reef, that is the Superior or Mother Vill, and the Land, which is in the other, shall pass per Nomen of all the Land in that. But if found that they had distinct Confables, and could not interfere in their Authority, it would be otherwise. Vent. 170. Mich. 2. Car. 2. B. R. Waldron v. Rufcarr.—— Mod. 7. S. C. C. * In such Case they may go for several Vills, or one Vill. per Hale, Ch. J. Mod. 117. in Case of Green v. Pondike.

If the Parish of B. contains to Vills, and a Fine or Recovery is had of Land in B: this does not extend to the Lands in the other Vills out of the Vill of D. Trin. 4. Jac. B. R. Cr. J. 120. Stork v. Fox—— S. C. cited and agreed. Sid. 10. in Case of Welfon v. Carter.

If there be a Vill called, A. within the Parish of R. and a Recovery is suffered of Lands in R, and says not in the Parish of R. but in the Deed, to make the Tenant to the Precinct, and in which he covenant to suffer the Recovery, the Lands were mentioned to be in the Parish of R. The Lands in the Parish of R. do pass; For the Indenture and Recovery make but one Convenant; and it was found by Verdick, that the Intention of the Parties was to pass both. And as to this Purpose, the Court was all of Opinion, that there was no difference between a Fine and a Recovery. 2 Mod. 233. Trin. 29 Car. 2. C. B. Addisson v. Otway.
Claim, or Entry to avoid a Fine. Made How.
Entry into Part of the Land, &c.

1. If a Dileffeor of 2 Acres levies a Fine of both, the Dileffeor may enter into one Acre only, and this shall not be an Entry in both, tho' they are in the Seisin of one and the same Person, and of one and the same Title.

2. But if the Dileffeor leveth for 20 Years Part of the Land, whereas the Dileffeor was committed, and the Dileffeor afterwards entereth into the Land, which continueth in the Possession of the Dileffeor, in the Name of the Whole, the same Entry shall not extend to the Land leafted; for here the Leasor is in by Title. Le. 51. Pach. 29. Eliz. C. B. Potter v. Steedall.

3. But if Tenant for Life, of Land, lease Parcel thereof to hold at Will, and being in Possession of the Residue, leveth a Fine of the Whole; the Leaflor enters into the Land, which was his at Will, in Point of Possession in the Name of the Whole; it was held, that the same is a good Entry for the Whole; for in this Case he is not in by Title; because when Tenant for Life leaseth it at Will, and afterwards leveth a Fine, the same is a Determination of the Will. Le. 51, 52. Pach. 29. Eliz. C. B. Potter v. Steedall.

4. If Dileffeor, &c. make several Leases of several Parcels, viz. of the Several Houlcs, for Years to several Persons, the Entry into one, in the Name of all, is good for all. But otherwise it is, if the Leases were for Lives. D. 337. b. Marg. pl. 37. cites M. 42, and 43 Eliz. B. R. Goodman v. Gerners.

Entry upon one Parcel, in the Name of all, is good for the Whole. D. 337. b. Marg. pl. 37. cites M. 42 and 43 Eliz. B. R. Dalton v. Hammond.

In the Case of Leases for Years (as above) of Lands in the same County, it was held good by Jones, Doderidge and Crew, because the Feudald is in One and the same County. D. 357. b. Marg. pl. 37. cites Hill. 22 Jan. B. F. Rot 153. Argoll (Lady) v. Chayney ———- Le. 71. S. C. Palm. 422. S. C.

Claim or Entry to avoid a Fine. How, into Part. In Respect of the Place where.

1. In an Ejecttione firme for Lands in Wales, the Cafe upon a Special Verdict was, that a Man seised in Fee of Lands, for Continuance of them in his Name, and for the Maintenance of his Brother, makes a Lease for 500 Years in Trust, that himself should receive the Profits during his Life, and that afterwards, his Brother should enjoy them; with some other Trusts. And afterwards being in Possession according to the Trust, he Cozened with other Persons, (not with the Leasors) to stand seised of the said Lands, upon the same Condivisions as were mentioned in the Lease, to the Use of himself for Life, with Remainders over, according to the Trusts; and that, the said Lease and all Illates made, or to be made by himself, should be enuere to the same Uses; and leveth a Fine, and 5 Years poiffs, the Leafer being in Possession according to the Trust, and enjoying the Profits during his Life; afterwards the Leafer dies, and one of the Leasors enters into part of the Lands in one County (which was not comprized in the Fine) claiming all the Lands in the other County. It was insisted among other Things, that this Claim was not well made, being in another County. And Hale, Ch. B. said, that if a Claim had been requisite in this Cafe, 

D d d

(which)
(F. a) Claim to avoid Fines.  

When to be made.  

And in what Cases it may be made at any Time:

1. 1 R. 3. 7. Confines, the Claim of all Persons, both Privey and Strangers; (except Women Covert not Parties to the Fine, Persons under Age, in Prison, out of the Realm, or not of sound Mind) to 5 Years after Proclamation.  

Strangers, to whom a Right comes after the Fine engrafted, must claim within 5 Years after such Right accrues.  

Fines Covert, &c. or their Heirs must claim within 5 Years after such Impositions removed.  

2. 3. The Year and Day, in which a Stranger was to make his Claim at Common Law, was to be computed from the Time of the Fine levied, and not from the Execution sued. Co. R. on Fines 13.  

3. For that Persons out of the Realm, at the Time of the Fine levied, amongst others bearing a present Right are excepted out of the Body of the Act, (which worketh the Bar,) therefore, where he is, that is beyond Sea at the Time of the Fine levied, and never returns, is within the Exception, of the Act, he and his Heirs may enter or take his Action at any Time; but in Case he doth return, he and his Heirs must enter, or take his Action within 5 Years after his Return. 2 Inst. 519:

4. So 'tis of an Infant being Party to the Fine, and having a present Right; if he dies during his Infancy, he or his Heirs may enter or take his Action at any Time. 2 Inst. 519.  

So 'tis of a Person that is Non compus mensis, which is by the Act of God, if he die while he is Non compus mensis. 2 Inst. 519.  

Or a Man in Prison, which is by Act in Law, if he die in Prison. 2 Inst. 519.  

Or a Person Covert, (which is by her own Act) if the du while she is Covert, being no Party to the Fine; For all these are within the Realm of the Cafe adjudged of him that is out of the Realm (which going out of the Realm was his own Act) and never returned. 2 Inst. 519, 520.  

5. Welton J said, that upon the Word (Accrue) in the Stat. 4 H. 7, if the Father die 'tis, and his Eblef Son be in Religion, and the Youngest Son enters and is delivered, and then a Fine is levied with Proclamations, and 5 Years pas, and after the 5 Years the Eblef is deriv'd, he shall be aided by the 2d Saving. Pl. C. 373.  

6. If the Tenant cease one Year, part whereof was before the Fine, and Proclamations passe, and another Year ended after the Proclaimations: Now those 2 Years are but one Cause or Matter which gives the Cestavat, and not two Matters, and therefore the Lord shall have his Cessavit 20 Years after, and shall not be bound to 5 Years. For the Perview was not against him, he having no Right at the Time of the Fine, nor was this Title in Effet at the Time, tho' the Cessor commenced before the Fine, but the Title accrued all after, viz. at the End of the 2 Years. Pl. C. 373. a. b. a. Nota of the Reporter.  

7. Those that have neither present nor future Right, but only a Possibility at the Time of levying the Fine, or wholly Right grosseth either entirely after the Proclaimations, or partly before and partly after, may Enter and Claim when they please. As if the Husband doth levy a Fine of his Lands, whereof his Wife is Dowable, and dies, and then 5 Years pass, &c. Yet the
the Wife is not bart'd of her Divor. For before his Death the Wife had only a Possibility of Divorcing, and not a Title to it. Wood's Inst. 246.

10. A Man seized in Fee of Lands, makes a Lease for 500 Years in Trust; that himself should receive the Profits during his Life, with Remainders over, and afterwards being in Possession, according to the Truth, be Conveyed with other Persons, (not the Leases) to stand seized of the said Lands, upon the same Consideration, as was mentioned in the said Lease, to the Use of himself for Life, with Remainders over, according to the said Truths, and further, that the said Lease, and all Estates made, or to be made by himself should be, and chure to the same Use, and leased a Fine, and 5 Years past, the Lease being in Possession according to the Truths, and enjoying the Profits during his Life; afterwards the Lessee dies, and one of the Leases enters into Part of the Lands in one County, not comprized in the Fine, claiming all the Lands in the other County. It was inquired among other Things, that this Claim was not well made, after the Death of the Lessee, and Halse Ch. B. said that if a Claim had been requisite in this Cafe, (which he thought it was not) there was no Colour whereby to make this Claim good. Hard. 450, 491. Pacli. 17 Car. 2. In the Exchequer. Focus v. Salisbury.

11. A devised Lands to B. for Life, and if B. leave Issue Male, then to such Issue Male and his Heirs for ever, and if B. have no Issue Male, then to C. in Fee, Remainder over. B. suffered a Recovery to the Use of him and his and died. Ld C. Parker held, that upon this Recovery by B. being but Tenant for Life, and the Heir of A. having the Reversion defend'd to him, he had a Right of Entry commenced on B's suffering the Recovery, but had no new Right of Entry on B's Death; and that this was not like the common Cafe of Tenant for Life with Reversion in Fee to J. S. where Reversioner may stay 'till the Death of Tenant for Life; but that here, the only Title, which the Heir could possibully have, must be by the Forfeiture of B. For if there was no Forfeiture, the Remainder must go, upon B's Death, either to B's Issue, if any, or if none, then, to the Remainder Man. Wms's Rep. 505, 526, 520. Mich. 1718. Carter v. Barnardifon.

(F. a. 2) Claim or Entry to avoid a Fine. By whom to be made.

1. Ceas'd one Use in Tail, Remainder over in Tail, after the Statute of 27 H. 8. levied a Fine with Proclamations, and had Issue and died within 3 Years after the Fine levied. And the Issue after dies without Issue, before any Entry made by the Proclamors; and after within 5 Years a Stranger, (Friend to the Remainder Man,) without any Warrant, Request or Commandment of the Proclamors, or any of them, entered pro * [et in] Noniam of the Survivor, or the Heir of the Survivor of the Proclamors, to the Intent to revive the Use of the Remainder Man, without naming the Survivor in certain, who he was. This was found fo by Special Verdict. And the Question was, if Good or not? See D. 312. Trin. 12 Eliz. pl. 87. Anon.

2. It was agreed by the Ch. Justices, that if the Differeor levy a Fine with Proclamations according to the Stat. 4 H. 7. and a Stranger within 5 Years after the Proclamations entered in the Right of the Differeor, without the Privicy or Consent of the Differeor, that this shall not avoid the Bar of the Fine, unless that be effeect to it within the 5 Years; for the Words of the Statute are so, that they purport their Title, Claim, or Interest, by way of Action, or lawful Entry within 5 Years, &c. And that, which is done by
another without their Assent, is not a pursu-ing by them according to the
Intent of the Statute; for otherwise, by such Means against the Will of
the Diffliefer, every Stranger may avoid such a Fine, which is not the

3. Tenant for Life is difflieferd, a Collateral Anceifor of him in Reversion
released to the Diffliefer with Warranty, he in Reversion came to the Land,
and there he claimed his Reversion to avoid the Warranty; this Claim

4. 36 (as it seems) if Lefl-e for Years be oufted, and he in the Reversion
difflieferd, the Leflor cannot make continual Claim; because every con-
tinual Claim ought to counteract in Law an Entry; and because his Entry
is not lawful, his Claim is not good. Tamen quere. Co. R. on Fines 14.

(F. a. 3) Claim or Entry by one. In what Cases it will
serve for another, so as to revive it after a Lapse.

3. If a Diffliefer be difflieferd, and the second Diffliefer leaves a Fine, in this
Cafe if the first Diffliefer enter within the Year, this shall preffure the
Right of the Diffliefer; because the first Diffliefer by his Entry avoided
the whole Estate given by the Fine, and yet the Diffliefer might have
entered himself (& fie de similibus;) but it must not have been an
empiy Fine that should have barred the Right of a Stranger, but a Fine
compleat, as hath been faid. 2 Intr. 518.

1. Two Tenants for Life are difflieferd by A. and B. if one of the Tenants
for Life relea-s to A. and the other Tenant for Life re-enters, he has the
Meitory in Common with A. and he has reveted the entire Reversion
in him in whom the Reversion was before. Le. 264 per Manwood J. pl.

If one enters
lawfully, or
Recover by
Action
within the
Year and
the Day after
the Fine le-
vied, the
Fine is thereby defeated, not only against him that enters lawfully and recovers, but also against all
those who laid more ardent Right than he who entered or recovered. per Saunders Pl. C. 538. a. in
Cafe of Stowell v. Touch- 
And Diver accorded and faid, that if Lord by Diffliefer ac fans a Fine
at common Law, he has refored the Right to him who levied the Fine, and to has whole
Entry was lawful, difflieferd, by his Entry, the Fine, and fet at large the former Right of others,
which otherwise without Claim or Action within the Year and Day would be bound. Ibid. 358. b.
Which tit Continual Claim.
3. If a Defeissor had made Feevment in Fee upon Condition, and the Feev-
fee levys a Fine, the Year and Day past, now the Defeissor is barr'd.
But if the Feevve enter for the Condition broken, now the Defeissor may
enter upon him, Co. R. on Fines 13. cites Pl. C. Scowell's Cafe.

4. Baron seised in Fee levied a Fine, and afterwards was oustled for Trea-
The Converse conveyed the Land to the Crown, and afterwards the
Daughters and Heirs Rendered the Outlawry. And 5 Years after the
Outlawry and Death of the Baron, but within 5 Years after the Out-
lawry reversed, the Feme fouled to the Queen for Dower. Resolved that
the is not barred by the 5 Years after the Fine or Death of the Baron,
because then the Outlawry of her Baron was a Bar to her, but that the
might have 5 Years after the Outlawry reversed. Mo. 639. 27 Eliz. in
Chancery. Menville's Cafe.

(F. a. 4) Claim or Entry, at what Time to be made
where there are several future Rights, by several dif-
tinct Titles.

1. If A. has Estate for the Life of B. the Remainder to A. for the
Life of C. the Remainder to A. for the Life of D. and A. is dissised, and
Defeissor leaves a Fine with Proclamations, Now for the present Right
he has 5 Years by the first Saving; and if after 5 Years B. dies, A. shall
have other 5 Years for the next Remainder, by the second Saving, which
gives them to other Persons who have future Right; and if after the 5
Years C. dies, he shall have other 5 Years for the second Remainder; per 
Walch, and Brown, J. allented to it, and cited the Rule, Qua do duo Jura con-
current in una Persona, equum est ac sit effent in Dvoent, (or Droves) 
And fo of three several Rights, &c. and so said the others of this side.

2. Baron, seised of Land in Right of his Wife, makes Feevment upon
Condition, and the Condition is broken, and after the Feevve leaves a Fine
with Proclamations, and the Baron dies, in the fourth Year after the Pro-
clammations, leaving Iliue by the Feme, and after the Feme dies, and the
5 Years past, the Heir is barred to enter for the Condition broken, as
Heir of the Part of his Mother for her Right. per Bendloes. Pl. C.
3967. b. in Cafe of Stowell v. Zouch.

(F. a. 5) Claim, &c. at what Time. Where there are se-
veral Impediments or Defects.

1. If a Feme who had present Right, or when the future Right hap-
pended, was Covert, and within Age, and of Non Same Memory, and impris-
one at the Time of levying the Fine. Now if 1 or 2 or 3 of these De-
fects or Impediments be removed; as if the Baron died, and the comes
to her full Age, and is set out of Prifon, yet the 5 Years shall not con-
verse till the last Impediment is removed; and when it is void of all Im-
pediments, then the 5 Years shall commence. Pl. C. 375. a.

2. But if these Impediments are all once removed, and any of them hap-
pended again within a Month after such Removal, (as if the be again im-
prisoned, or become Non Same Memory, and so continue all the rest
of the 5 Years, or if at the End of the Month the dies, her Heir within
Age,) the 5 Years once commenced shall proceed, and the Non-claim

E e e within
within 5 Years shall bind the Party and her Heirs, as well as if she had been void of all Defects or Impediments during all the 5 Years. Pl. C. 375.

3. And the the Perfons comprised in the Exception of the Act, as Non Sane Memorias, &c. were not under such Impediments at the Time of the Fine levied, but became so, against their Will, after the Fine, and before the last Proclamation, and so continued at the last Proclamation, they are not bound to the 5 Years next after the last Proclamation, but shall have 5 Years next after the Impediments or Impediments removed. Affirmed by several Justices, and denied by none. Pl. C. 375. in Case of Stowell v. Ld Zouch.

(G. a) What shall be said, a Claim or Entry to avoid a Fine.

1. To avoid Fines by the common Law, were 4 Claims; viz. 2 by Record and 2 by Acts in Pairs: viz. By Record, [One was] a real Adition brought within the Year, according to the Truth of the Case; and the other was an Entry of the Claim in the Record at the Foot of the Fine; By Pairs, [One was] a lawful Entry into the Land, by him who had Right (and Expulsion of the Cognissee, or Tenant) the other was Continued Claim. Pl. C. 359. Mich. 4 and 5 Eliz. in Case of Stowell v. Zouch.

2. Claim to avoid a Fine by Bill in Chancery is not sufficient, but ought to be by Adition, per Catlin. Dal. 116. pl. 9. 16 Eliz. Anon.

3. But if an Adition to recover Lands, of which a Fine was levied, be brought and discontinued by the Demandant, this will not amount to a Claim. Vent. 43. Mich. 21 Car. 2. B. R.

4. Note. It was agreed by all the Justices, and by the Prothonotaries, that if the Dilleifor levies a Fine, and the Dilleifor in Prefervation of his Right against such Fine, enters his Claim in the Record on the Foot of the Fine, that the same is not any such Claim as shall avoid the Statute of 4 H. 7. 2 Lc. 53. Mich. 29 Eliz. C. B. Bratier's Cafe.

5. Bringing a Writ of Dower, within the 5 Years after the Death of the Husband, is not sufficient to avoid the Fine, unless it be known, that the Writ was returned by the Sheriff; and delivering the Writ to him only, is not a Purifing, &c. within the Statute. Hill. 30 Eliz. C. B. 3 Le 221. Fitzleigh's Cafe.

6. If a Dilleifor make several Leafes for Life, or Feoffments in Fee of divers Parcels, and the Dilleifor enters upon the Dilleifor in Name of all, or upon one Leafee or Feoffee in Name of all, this shall not dvest the Frank-tenement, which is in the other Person; tho' it is all of one and the same Title. Co. R. on Fines 13.

7. If 2 Men dilleif me of 2 several Acres, severally, now the Entry upon one cannot be the Entry upon the other. Co. R. on Fines 14.

8. But if I enfeoff one upon Condition of one Acre, and after I enfeoff him of another Acre upon Condition, and after both the Conditions are broken
broken, if the Feoffor enters upon one Acre, in the Name of both, this 17. Lit t shall not vest both in him; For by one Title the Feoffor could not have an Action, and always an Entry ought to pursue his Action. Co. R. on Fines 14.

9. If I be seised of 2 Acres, which lie severally, and in several Places, or Villas, and I enter generally into one Acre, 'tis not an Entry into both. Co. R. on Fines 15.

10. So in all Cases, when the Frank-tenement is out of a Person, if the Diffelee enters generally into one Parcel, this shall not re-continue both; For it may be, that the Diffelee, or the Feoffee both Warrant, and therefore the general Entry into one Parcel shall not defeat both. Co. R. on Fines 14.

11. But if a Man be seised of 1000 Acres in Fec, and dies seised, leaving Ifue a Son and a Daughter by one Venter, and a Son by another Venter, and the Eldest Son enters into one Acre generally, this shall cause Possesse fratri in all; For the whole Frank-tenement in Law was in him before, and no Frank-tenement vests out of any Person in prejudice of him, by his Warranty, or otherwise. Co. R. on Fines 14 cites 21 H. 7. 33.

12. Continual Claim made out of the Land, when the Party may enter without fear of Death, or Battery, is void. Co. R. on Fines 14.

13. So Continual Claim shall not avail the Party, when his Entry is not hasty, if it be not in Special Cases. Co. R. on Fines 14.

14. As if the Diffelee dare not enter without fear of Death, or Battery, and he comes within the View of the Land, and claims the Land, the Claim is void; and yet Livery may be of the Land within the View, but nothing shall pass, 'till the Feoffee enters. Co. R. on Fines 14.

15. 'Tis said in our Books, that if the Diffelee dare not enter into the Land for fear of Death or Battery, yet he ought to come within the View of the same Land, or otherwise his Claim shall not avail him; and Ifue hath been taken in such Case if he was within the View, or not. Yet Littleton said, that he ought to go as near to the Land as be dare. 38 Afl. pl. 23. is that if the Diffelee dare not enter, Claim made among bis Neighbours is good enough. Co. R. on Fines 14.

16. A Writ of Dover was brought by A. against the Tenant of the Land, and he pleaded a Fine with Proclamations levied by her Husband, 14 jet. in which Year the Husband died, and the Wife had not claimed within the Stat. of the 4 H. 7. 24. the Demandant replied, that 15 jet. she brought a Writ of Dover against the now Tenants, and against two others, and that the Writ abated by the Death of the two others, and that she brought a Writ by Journey's Accounts, the Tenant replied, that the others were not Tenants, but one B. and it was moved that this Rejoinder was evil, for they confessed that they themselves are Tenants, by which the Writ is good against them at least; per Hobert, if she brought a Writ of Dover against one who is not Tenant, that is not any Claim within the Statute; but if the be brought a Dover against four, who are Tenants, and two die, and she bring a Writ against the others by Journey's Accounts, this is a good Claim within the Statute, tho' the second Writ was after the Time limited; but quere here, if the two who died were not Tenants. Winch. 66. Pasch. 21 Jac. C. B. Summer's (Anne) Cafe.

17. Entry in Ejectinent is not sufficient to avoid a Fine. Mich. 21 Car. Arg. 8. C. cited Show. 93.—S. C.


18. Claim of an Equity to avoid a Fine can be made no other Way if it be of a but by Suppensa, in Cases of lawful Entry or Action, Equity makes not Torfe or Take an Entry lawful. Trin. 28 Car. 2. 1Ch. Cases. 278. Salisbury v. Baggo in Equity, it cannot be is by Fine, but must be by Suppensa. Per Finch C. 2. Chan. Cases. 126. Mich. 43 Car. 2. Bovy v. Smith and Bovy. — S. P. per Lt Keeper, Mich. 27; Car. 3. 1 Chan. Cases. 268. Clifford v. Albby.
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Fine.

It must be by

19. Entry of Remainder Man, within 5 Years after a Fine levied by

Tenants in Tail, will not have his Right; for the Fine being a Discon-
tinuance, he ought to make his Claim by Action; per North. R. Hill

v. Bagot.

If a Man has Title by Will at the Common Law, and his Entry not Justly an Entry is not good to save the

20. A. was Liffie for 99 Years, Remainder to B. for Life, Remainder to C. in Fee; B. levied a Fine, and levied B. the Lease determined; on a Trial at Bar, it was ruled that C. might enter, notwithstanding the five Years
for A. continued the Poffession, which amounted to a Continental Claim by

C. Arg. Skin. 262. in Case of Knight v. Greenvil.

21. Lands devoted to Trustees till Debts paid, and then to an Infant and his Heirs, a Stranger enters and levies a Fine, and Non-claim paid; At
Fall Age, he brought Ejectment and was barred, because the Trustees
should have entered. Within 5 Years after Age he brought his Bill in

Equity, and the Court decreed him the Poffession, and an Account of the
Profits, declaring the Fine and Non-claim should not run upon the Trust;


22. 4 and 5 Anne 16. S. 16. Enactts, That no Claim or Entry shall avoid a
Fine with Proclamations within the Statute. 21 Jac. 1. of Limitations makes an
Alien he brought within one Year after the making thereof, and prosecuted with Effcct.

23. A Special Verdict was found in Ejectment, that the Lessor of the
Plaintiff, some Time after the Entry in order to demnify to the Plaintiff,
had entered to avoid a Fine levied by the Defendant; and because this
last Entry ought to have been previous to the Former, in order to main-
tain the Demife of the Lessor of the Plaintiff, it was debated, whether
the first Entry in Ejectment was not of itself Sufficient to avoid the Fine.
But resolved off the Case that it was not. For there must be an actual
Entry, made * animo clamandi, which, in Case of an Ejectment, there is
not, but only a fictitious or supposed Entry for the Purpofe of making a De-
mife, and to the Word Entry in the Statute has been always expounded, and
extends not to an Ejectment; for the statute meant thereby only real Ac-
tions; whereas an Ejectment is brought to recover a Term only, and no
the Lessor of the Plaintiff is considered to some Purposes, as the
Plaintiff himself, yet that is only by a Fiction of Law, and extends
not to the present Case. Berrington on the Demife of Donner v. Park-
hurt & al. Hill. 11 Geo. 2. B. R. which Judgment was afterwards
amended in the H of Lords, with the Advice of the Judges.

(G. a. 2) Barr immediate. In what Cases the Fine shall
be a present Barr.

1. By the Statutes, 1 Ric. 3. 7 & 4 H. 7. 24. Privies in Blood, as Heirs
of the Cognizants, claiming by the same Title, that their Ancetor had that
levied the Fine, be barred presently thereby, whether they be void of
Impediments or no. Well's Symb. S. 182.

2. As if Land of Soccage Tenure be given to Baron and Feme, in Special
Tail, the Remainder to the right Heirs of the Baron in Fee, and the
Baron alone leaseeth a Fine with Proclamations to his own Ufe in Fee, and
after devilis the same Lands to A. in Fee, and hath Issue, and then the
Baron and Feme die; the Issue in Tail is barred, becaufe he cannot
otherwise convey himself to the Title and Defcent in Tail, than as the
Heir of the Body both of his Father and Mother. Well's Symb S. 182.

3. If
(H. a) How the Five Years Non-claim and Entry to be Accounted.

1. A Tenant in Tail, Remainder to B. in Fee, A. levies a Fine with Proclamations, B. dies, his Heir within Age, &c. of the Age of 5 Years; A. dies without Issue, so that the Infant may bring his For- 

medin Remainder, but fullers 5 Years more to pass after the Title accrued; yet he may have his Action after, within Age; notwithstanding the 4 H. 7. 24. which saves and refers the Action or Claim of the Infant 'till his full Age, and that then he shall have 5 Years. Mich. 3 and 4 P. and M. Dy. 133. pl. 2. Buller's Café.

2. A. Differs to B. the Differs, and they have Issue; C. differs A. If Tenant in 

and levies a Fine with Proclamations, and A. dies in the fourth Year after the Proclamations, leaving Issue of full Age; afterwards B. dies; the 5 Years pass. The Issue is bound as Heir to A. his Father; For in that Respect he and his Father had shall have 5 Years from the Death of his Father; For clamonations, tho' 'tis the same Land, yet he has several Rights; one as Heir to his 

Father, which is the last, and another, (which is first) as Heir to his 

Mother; and so has several Times, per Wallis J. Mich. 4 and 5 Eliz. P. C. 367. b. in Café of Sowell v. Zouch.

For after the Fine levied, the Tenant in Tail himself had Right, so that the Issue was not the first to when the Right accrued and descended after the Fine levied. 3 Rep. 87. b. Patch. 44 Eliz. The Café of Fine.

3. Two Jointtenants are differs, whereof one is within Age; the 

Dinier levies a Fine with Proclamations; 4 Years passes after the Proclamations; and after the Jointtenants, being of full Age, dies before the 5 Years passes, the other within Age; the Infant Survivor shall have 5 Years after his 

full Age, as well for the Moiety, which was in his joint Companion, who was of full Age, as for the other Moiety; For the Right of this Moiety, which was in his Companion of full Age, first accrued to him after the Proclamations made, by Force of the Caufe or Matter, viz. by the Jointure made before; And so 'tis within the Words and the Intent of 
of the Branch, notwithstanding that the Moiety was in his Companion

* It should be 16 Eliz. Dy. 334. pl. 5.

* It should be (pl. 2.)
before; for 'tis in him now in other Form. per Bendloe. Serj. Pl. C. 367.

Pl. C. 575.

1. A Difficult, or a Feoffee of a Difficult, levies a Fine with Proclamations, 4 Years past in the Life of the Difficult; the Difficult dies, his Heir being within Age; he has only one Year to claim in; for such Fine with Proclamations, without any Claim in 5 Years, is as a Condition annexed to the Estate; and altho' such Condition descends upon an Infant, yet he is liable to the Breach of it, as well as an Heir of full Age. Exp. Replinaduce in Jn juris litem. By all the Judges of England. Jenk. 266. pl. 74. cites 5 Eliz.

5. If a Man has many Impediments, he is not compellable to make his Claim before all the Impediments are removed; so if the Ancestor has one of the said Impediments, and dies before it is removed, and his Heir within Age, or hath other Impediment, he is not bound to make his Claim till 5 Years after his Impediment is removed. per Anderson Ch. J. Le. 215. Mich. 32 and 33 Eliz. C. B. Cotton's Cafe.

6. Tenant for Life and J. S. joined in a Fine Sur Cogniscance de Droit come ecc, &c. to a Stranger, who rendered to J. S. for 80 Years, Remainder to the Tenant for Life in Fee. Proclamations passed, and the 5 Years passed without Entry by him in the Reversion. Tenant for Life died; the Question was, if he in Reversion should have other 5 Years, and it was adjudged he should, and so it was adjudged in Sanses Cafe. 7 Eliz. Cro. E. 254. Trin. 33 and 34 Eliz. B. R. Laund v. Tucker.

7. Grandfather, Father and Son, the Grandfather is seised for Life, the Remainder to the * Son in Tail, Remainder to the right Heirs of the Grandfather. The Grandfather covenants by Indenture to make Assurance to J. S. and that it should be to the Use of him and his Heirs; and after he sueth a common Recovery against him, and levies a Fine to the said J. S. come ecc, &c. and Proclamations upon it, and after the Statute of 27 H. 8. is made, and the Grandfather makes Procument to the Son and dies. It was held, that the Entry of the Father upon the Son is lawful, and shall not be stopped upon the Warranty of the Grandfather; for this is gone by the re-taking of the Estate; For when the Statute says as high a Paleassion in him, as he had when he attended, the Warranty is extint; for the Statute of 27 H. 8. does not waive the Warranty. And there Dyer said, that tho' the 5 Years are passed in the Life of the Grandfather, so that the Entry which was given by Cause of Forfeiture is taken away, yet when the Grandfather died, now he shall have other 5 Years to make his Claim or Entry, for Cause of the Title coming to him by Remainder in Tail; and this by the Statute of 4 H. 7. Mo. 71. pl. 192.


* S. C. cited Arg. Godb. 301, that tho' 5 Years pass in the Life of Tenant in Tail, yet the Ifue shall have other 5 Years. For he is the first to whom the Right does accurn after the Fine levied. For Tenant in Tail himself after his Fine with Proclamations hath not any Right. But if Difficult of Tenant in Tail levy Fine with Proclamations, and 5 Years pass, and afterwards Tenant in Tail dies, the Ifue is barred; because after the Fine, the Tenant in Tail had Right, and so the Ifue was not the first to whom the Right accurn after the Fine.— 4 Rep. 8. a. b. Cafe of Fine— Resolved accordingly Trin. 45 Eliz. C. B. Cro. E. 596. Peniston v. Lyfard.

9. If a Lunatic, or Non compos, levy a Fine of Lands, the 5 Years begin at his recovering his Senes, and he must bring his Action within 5 Years after; and in Pleading he shall shew, that at the Time of the Fine, he was Non compos, and all the special Matter; but if he die without recovering his Senes, his Heir shall have his Action, or make his Entry when he will; for he is excepted out of the Act, and is bound to no Time. So of being over Sen. 4 Rep. 125. b. Pafch. 1 Jac. B. R. Beverley's Cafe.
Fine.

10. A. having an Interesse Terminii died. The first Term expired. Let
for enters and levies a Fine with Proclamations, before any Administra-
tion committed, and after 5 Years Administration is bad. Resolved that
the Administrator shall have 5 Years; for none had Title of Entry
before. Cro. J. 61. Hill 2 Jac. B. R. cites it as the true State of the Cafe
of Sanders v. Stanford.

11. Infant in Venture se mere has 5 Years after he comes to full Age.

12. A. Tenant in Tail Male, Remainder to B. in Fee, makes a Lease for
three Lives, with Warranty against all Persons, which was not Warranted by
the Statute 32 H. 8. 28. and afterwards levies a Fine with Warranty
against all Persons, and with Proclamations, and dies without Issue Male,
leaving M. a Daughter. About 2 Years after the Fine levied, the Lease
for Lives expired; and about 12 Years after, B. died without Issue, M
being Heir at Law to him as well as to A. Adjudged that M. was barred,
and that B's Claim must have been within 5 Years after A's Death,
and not after the Determination of the Lives, at which Time B. had no
other Title than he had before. For his Title was by A's Death, with-
out Issue Male, and then he might have brought his Formedon. Cro. C.
136. Pack. 4 Car. B. R. Salvin v. Clerk.—This differs from Sey-
mour's Cafe. For there the Reversion was not displaced, nor a Fee gained,
as in this Cafe it was by the Lease having in it a Warranty against all
Persons, and so not warranted by the Statute. Ibid. cites 15. Rep. 95.
96. Seymour's Cafe.

J. said that this Cafe is all false and mis-reported; and that, 1. because it says that the Lease for Lives
was a Discontinuance of the Reversion, and thereby a new Fee gained to Tenant in Tail, which he pulled
away by the Fine with Warranty, which (he said) could not be; for that it appears in the Cafe, that
the Lease was warranted by the Stat. 32 H. 8. 28. and so could make no Discontinuance, nor
a new Fee of a Reversion could be gained, and then no Estate to which the Warranty was annexed, and
that for it was revoked 49 Eliz. Rex. b. Coke; and 40ly, that Opinion was Extrajudicial, it being
concerning a Point not in the Cafe, but flippofed; as flippofing there had no Proclamations been made,
and no Non-claim; and 30ly, It was revoked upon the Point of Non-claim, and not upon
the Warranty which was not a Point in the Cafe. Vaughan. 383. Mitch. 25 Car. 2. in Cafe of Bolton v. Horton.—
The Statute of 34 H. 5. operates by way of Bar to the Right which answers Saul and Clerk's Cafe. Jo.
210. 211. 2 Salk. 422. in Cafe of Hunt v. Bourne.

13. A. deceased Land to J. S. an Infant in Fee. The Heir at Law of A.
Leaves a Fine and the Infant dies, leaving M. his Sister married to W. R.,
who lets 5 Years past without Claim. Tho' W. R. and all claiming
under him are bound, and the Wife herself during the Covertage; yet
the shall have a new 5 Years after her Baron's Death. Cro. C. 286. Mitch.

14. A. seized in Fee, acknowledged a Statute Merchant to B. and
after a Reconnaissance in the Nature of a Statute Staple to C. and
then another Reconnaissance of the same Nature to D. and E.—D. and F.
extend and had a Liberty; and after B. extends and has a Liberty;
and then C. extends and has a Liberty; B. and C. aijn to F. — A.
being in Possession, levied a Fine with Proclamations to 7. S. who
being feigned in Fee deceased the Lands in Quoestion to F. (who had Poss-
ession of the Lands by Virtue of the Affignment of B. and C.) and to his
Heirs Male, Remainder to the Daughters of A.—And F. being so feigned levied a
Fine with Proclamations, and died without Issue Male; and L. and
M. are the Daughters and Heirs of A. and also Heirs to F.—5 Years
past; and after the Wife of the Defendant, being Exequtrix of the Sur-
vivor of E. and D. took Administration de Bono non to C. and acknowledged
Satisfaction upon Record, to the Statute made to C. and upon this the De-
fendant entered, upon whom the Plaintiffis (having married one the L.
and the other M. the Daughters and Heirs of A. and Heirs of F.) brought
their Ejecutaments, &c. &c. It was argued, that B's Statute was extint,
and C's Extent was of a Reversion, and
and capable of a Surrender, and for this cited D. 280. Corbett's Case, and that when the second Statute is extended it is of a Reversion, and being after in the same Hand, is an Extinction of the first, and for this cites Cro. J. 244. Farrington v. Carpenter, and 4 Rep. 66, and further that B's Statute is drowned, and C's is not, but the intermediate Estate of D. and E. prevents it, and it this is in effe, then after Satisfaction acknowledged a new 5 Years accrued; For acknowledgment of Satisfaction is a natural Way to determine a Statute. And Judgment was given for the Defendant. Skin. 260 to 264. Hill. 2 and 3 Jac. 2. B. R. Knight v. Greenvil.

15. A. was Leftee for 99 Years, Remainder to B. for Life, Remainder to C. in Fee; B. levied a Fine, and bring B. the Leftee determined, was ruled on a Trial at Bar, that C. might enter notwithstanding the 5 Years; For A. continued the Possession, which amounted to a Contingent Claim by C. Arg. Skin. 262. in Case of Knight v. Greenvil.

16. If Tenant for Life levies a Fine, and he in Reversion does not enter or claim within 5 Years, he cannot enter for that Forfeiture; but must pay till a new Right of Entry accrues to him by Death of the Tenant for Life. Arg. Show. 43. cites Pl. C. 573.

17. Leftee for Life is dissipated, and a Fine is levied, and 5 Years pass, the Leftee is barred, and the Remainder-man has 5 Years after the Death of Leftee for Life. But can the Remainder-man have 5 Years, if Leftee for Life surrenders, or can he surrender after his Estate is barred? per Pollexfen, Ch. J. Show. 46. Trin. 1 W. and M. in Case of Dighton v. Greenvil.

18. If an Heir in Tail brings a Forfeited within 5 Years after Fine levied by a Discontinuer, and pending the Forsemen, and after the 5 Years, the Leftee dies; Holt, Ch. J. thought it reasonable that the next Heir in Tail should have Benefit of this Forsemen, by bringing a new one in convenient Time; But he said that this has not been determined. And that it is plain that Journey's Accounts will not lie; for that must be between the Parties to the first Write; and the new Writ must be the same as the former; and the Write, which lay for the Ancestor, is not the same, which lies for the Leftee, but is of another Nature. 12 Mod. 572. per Holt Ch. J. Mich. 13 Will. 3.

19. He that has a Right of Reversion, or Remainder express in an Estate Tail, or for Life, shall have 5 Years after their Title come unto them, as appears by the 4th H. 7. 2 Int. 518.

20. Thole that have no present, but a future Right upon a precedent Confé, and whose Right and Title comes to them after the Proclamations, such Strangers to Taxes, being void of Impediments, have 5 Years after the coming of such Rights to enter and make their Claim. (Vid. 1 Ric. 3. 7. 4 H. 7. 24.) As in the Cases of a * Remainder or Reversion. But if there have Impediments, they shall have 5 Years too after the Impediments removed, before their Laches shall be prejudicial to them. Therefore if a Wife does surcease her Time, and 5 Years pass, after the Death of the Husband; upon a Fine levied of her Inheritance or Freehold, the is barred of her Right, and cannot enter by Force of the Statute of the 32 H. 8. 23. Wood's Int. 246.

21. And if Tenant for Life makes a Forfeited in Fee, (to one who has a Land in the same Vill.) 3 Rep. 79. in Fermor's Café.) and the Feoffee levies a Fine with Proclamations, it shall not bind the Leftee; but he shall have 5 Years after the Death of the Tenant for Life. Wood's Int. 247.
1. It was agreed, that Feoffment or Fine Sur Conuissance de Droit come coe, que il ad de fon done, are disconlomiences ; for these are executed in themselves, and are a Transmission of Possession, contrary of Fine Sur Conuissance de Droit tenant, or Fine of Grant and Render. Br. Diccon' de Pottyelion. pl. 2. cites 8 H. 4. 7.

2. Tenant in Tail, the Remainder in Tail; the Tenant in Tail Bargains and sells the Land to a, and afterwards levies a Fine to a. Sur Connaissance de Droit come coe with Warranty; this Warranty was made by the Collateral Ancestor of him in Remainder, whose Heir he is, and therefore shall not bar him; for his Remainder was not dissolved: It had been otherwise if the Fine had been levied by the Tenant in Tail before the Bargain and Sale; for then it had been a Discontinuance; but by the Bargain and Sale, made as above, the Bargainee had a Fee determinable upon the Entry of the Fine, and he in the Remainder has his Remainder open upon default of Illuc of Tenant in Tail, who in this Case has passed all his Estate by the Bargain and sale, and has nothing more to pass, but to extinguish the Estate Tail, by Way of Release, and to leave the Remainder untouched. Jenk. pl. 97. cites 10 Rep. 95. b. Mich. to Jac. 1 Seymour's Cafe.

Estate, whereof his Wife was dowable, and that by the bare Bargain and Sale; and tho' there was a Fine after, which barred the Illuc, yet that only excluded the Fine in Tail, but not enlarged the Estate of the Bargainee. For if he had not a Fee before, the Fine could not have given it to him; for it did not work by | Way of Enlargement of an Estate. Farr. 24. In Cafe of Machall v. Clerk.— Holt Ch. J. held this Case to be good Law. 2 Salk. 619.— | Bulls. 162. Trin. 9 Jac. B. R. S. C. by the Name of Heywood v. Smith.

3. Tenant for Life, Remainder in Tail; he in Remainder levies a Fine Sur Conuissance de Droit come coe; Tenant for Life dies; he in Remainder dies; his Heir claims or brings a Formedon after the Proclamations and 5 Years pass: This Fine bars the Estate Tail. If the Proclama' tions had not been made, there would have been no Discontinuance in this Case; For he in Remainder was not satisfied by Force of the Initial. if he had been satisfied by Force of the Initial, such Fine without Proclamations, had been a Discontinuance. By all the Judges of England. Jenk. 274. pl. 96.

4. If Land is devised to A. and before the Entry of Devisee, the Heir at Law levies a Fine, and 5 Years pass without Claim, yet this is no bar; For Devisee not having entered the Estate was not turned into a Right. 5o. C. 200. Mich. 6 Car. B. B. Hulm v. Heylock.

5. Feoffment to A. and his Heirs, Quærique such Sums be paid; and on failure, the Feoffees to enter; &c. there is a Failure; Feoffor levies a Fine, and 5 Years pass; Feoffees enter not; the Fine bars. Cart. 82. 18 Car. 2 C. B. Thomain v. Mackworth.

Before the Fine levied, it makes a Loss and Re' lease, then A. levies
6. The Law confines such Acts to amount to a Devesting, or not Devesting as is most agreeable to the Intention of the Parties, and the Right of the Thing, per the Ch. Justice. Trin. 22. Car. 2. B. R. Vent. 51. in Case of Freeman v. Barns.

7. A lease in Fee of Lands, makes a Lease to W. R. and W. S. for 500 Years in Truít, that himself should receive the Profits during his Life; and that afterwards B. should enjoy them, &c. Afterwards A. being in Possession according to the Truít, Covenanted with J. N. and J. D. to stand sejefj of the said Lands upon the same Considerations as mentioned in the Lease, to the Life of himself for Life, with Remainders over according to the Truít; and further, that the said Lease, and all Estates, made, or to be made by himself, should be and endure to the same Uses; and leaves a Fine, and 5 Years past A. being in Possession according to the Truít, and enjoying the Profits during his Life; A. dies; and W. R. enters. Hale Ch. B. held that Nothing had been done here to displace the Estate of the Leesees; For the Leilior continued in Possession by the Leesee's Leave and Permission, as must be presumed, and so is a Tenant at Will, as Littleton says. Hard. 401. Focus v. Salisbury.

8. So if Leese for Years be, the Remainder over for Life, and Leese for Years levy a Fine, and 5 Years past; the Leilior is not barred by any Nonclaim; because the Fine Operates nothing, and Parties ad finem nihil habeunt may be pleaded to it. Otherwise it is where a Tenant for Life levies a Fine; for he has a Freehold, and his Fine displaces the Remainders; and therefore an Entry is requisite within 5 Years after the Death of the Tenant for Life, for which Reason when a Leese for Years, or at Will, is to levy a Fine, 'tis usual for the Leesee to make a Feoffment first, to displace the other Estates; but here the Lease for Years is antecedent to the ESTATE of the Leilior, who levies the Fine, and he has a Freehold expectant upon the Lease, and not precedent to it, per Hale Ch. B. Hard. 401, 402. Focus v. Salisbury.

9. A Fine with 5 Years Nonclaim must bar an Estate precedent to the Fine, not Subsequent to it; and where there is a Privity betwixt the Leilior and the Leesee, the Fine shall not bar; as in Case of a Mortgage, where the Mortgagor continuing in Possession levies a Fine, per Hale Ch. B. Hard. 402. Focus v. Salisbury.

10. And this very Case was adjudged in Terminis for two Reasons, First, by Reason of the Privity betwixt the Perfons; Secondly, because the Leilior was in the Nature of a Tenant at Will, and there was a mutual Confidence betwixt the Parties, per Hale Ch. B. Hard. 402. cited it as the Dutchess of Richmond's Case.

11. If I make a Lease for Years of my Land, rending Rent, and a Stranger levies a Fine of the Land; and the Leesee for Years payeth the Rent to me duly, I am not barred of my Reversion; because I was always in Possession, and not put to a Right only. Wood's Intit. 248.

12. So if there is Tenant in Tail, Remainder in Tail, or Tenant for Life Remainder for Life, and the first Tenant in Tail, or the first Tenant for Life doth Bargain and Sell the Land by Deed indented and enrolled, and after doth levy a Fine to the Bargainee; in these Cases the Remainders are not bound, tho' the 5 Years past without Claim; For the Law adjudges them always in Possession. Ibid.
1. A Fine Surr Release cannot be intended to the Use of any other, but of him to whom it is levied, unless an Ufe be expected in the Fine, or by another Deed, per Catline. 3 Le. 36. Mich. 15 Eliz. B.R. in Ld. Windfor's Cafe.

2. A. enfeoff B. and 'twas Covenanted between them, that if A. pay B. at Midsummer 471. then the Feoffment should be to the Ufe of A. and his Heirs, and if A. fails and B. do not pay A. 261. at Michaelmas, then also the Feoffment to be to the Ufe of A. and his Heirs, and Covenanted to make further Alluration. A. and B. both failed of payment at the Days, and afterwards in Hillary Term next after both the Feoff, a Fine is levied to B. and no Ufe expressed, and all this was found by special Verdict, and that the Fine was only to the Ufes of the Indenture. The Question was if the Conuee of the Fine, or the Heir of the Feoffor should have the Land ? and 'twas adjudged for the Heir of the Feoffor. Cro. E. 32. Trin. 26 Eliz. B. R. Wencomb's Cafe.

3. A. was feied in Fce of Land, and he, and B. (a Stranger, and who had Nothing in the Land) lifted a Fine thereof to J.S. without Confiduation, the Ufe implied shall be to A. only, and his Heirs; For an Ufe is nothing but a Truth and Confidence; and a Thing in Equity and Confiduence shall be by Operation of Law to him who in Truth was Owner of the Land without having Regard to Effteips, or Conclusions, which are contrary to Truth and Equity. 2 Rep. 58. b. Trin. 27 Eliz. in Beckwith's Cafe.

and there is no Ufe declared to lead the Ufe of the Fine levied of their Lands ; the Law will confine the Fine to be levied of their Lands to the Ufe of the Conuee, to whom the Fine is levied ; * but if there be no Money paid by the Conuee, nor any Ufe declared, the Fine shall enure to the Ufe of the Conuef that levied the Fine. Patch. 22. Car. B. R. For Nothing appears whereby it can be supposed that the Parties had any Intention the Estate in the Lands should be altered by the Fine, b t that the Fine was levied for the Corroboration of the Title of the Conuef ; but where Money is paid, the Law will intend that he paid it, to have Benefit by the Fine. L. P. R. 614. —— See 2 Rep. 58. b. Beckwith's Cafe. —— Pig of Recov. 55, 56. ——* Per Vaugh. Ch. J. it is common Experience. Vaugh. 43.

4. A. levied a Fine to B. and C. with Render to A. for 80 Years, if A. should so long live, Remainder to D. It was agreed per tory. Cur. that the Conuance might necessarily be intended to the Ufe of the Conuees; because otherwise, they could not render by the Fine. But if the Render to void in all, as 'tis in Part, then they thought that the Ufe of the Conuance would go according to the Intent of the Render, but not in the principal Cafe, because the Render for the 80 Years is good, which makes the Conuance of Necessity to be to the Ufe of the Conuances. Mo. 493. Patch. 38 Eliz. Holcroft's Cafe.


6. A Fine, which Operates upon the Possession, shall not alter the Possession upon which it works, and tho' there are words contrary in the Fine, yet the same shall enure upon the Estate precedent and not otherwise, per Yclvelton J. Buls. 162. Trin. 9 Jac. B. R. in Cafe of Heywood v. Smith.

7. If Tenant for Life, and Remainder-man in Fee joint in a Fine, but declare no
no Uses, each shall have the Use, which the Law vests in them according to the Estate, which they conveyed over. 2 Rep. 58. a.

8. A Fine was levied of a Rent to A. and B. and the Heirs of A. and the Use was limited only by the Fine itself, and there was no Deed to hold the Uses; adjudged, that A. and B. were in by the Stat. 27 H. 8. of Uses, and were Jointtenants of the Rent; For else there would be such a Fraction of Estate that A. should be in by the Common Law, and B. by the Statute, and that is not according to the Statute, which is, that where two or three are feited to the Use of one or two of them, City que Use shall be adjudged to have such Estate in Possession, as they have in Use. Trin. 8 Car. Hutt. 112 Purnell v. Bridges.

9. A Fine, levied pursuant to a Decree, for a particular End and Purpose, shall not be lacked in Equity to work larker than the Decree intended it. Patch. 16 Car. 2. 1. Chan. Cales 49. Goodrick v. Brown.

10. Upon the Trial of this Cause at Nifi Prius in Middlesex, before Holt Ch. J. a Case was made for the Opinion of the Court, viz. H. levied a Fine, and afterwards suffered a Common Recovery, wherein the Conufe was Tenant, and there being no Deed in the Case, it was Objected that the Use of the Fine resulted to the Confeur; and tho' the Intent of the Fine might be to make a Tenant to the Precipit, yet no Use or Trust can be averred, since 29 Car. 2. 3. Sed non Allocutus; 'For at Common Law the Use was always intended to be to the Feoffor or Conufe, and in Pleading never was Averred. Co. Ent. 114. 273. Plowd. 477. But if it be to the Use of the Feoffor or Confur, then it must be averred. 2dly, the Court held the Party was in by the Fine immediately, and so there was a good Tenant to the Precipit. 3dly, The Statute extends not to Uses by Operation of Law, but to such Uses as are to a third Person, and that neither the Confur, nor the Conufe could aver the Fine to the Use of a third Person since the Statute. 2 Salk. 6.6. Patch. 8 W. 3 B. R. Ld Anglesey v. Ld Altham.

11. Baron and Feume levy a Fine of the Wife's Land, and no Uses are declared, or such Uses are declared as are void and can never take Effect; such Fine is to the Use of the Wife and her Heirs, and the Estate remains as it was; or if the Fine Operates any Thing, it will be for the Benefit of the Party, to whom it belonged before. Arg. Parl. Cales 166. Davis v. Speed.

300

Fine.

301

(K. a) Enure. How. Where 'tis levied to a particular Purpose.

1. Fine levied by Fine Covert to confirm a Lease; after the Debt on the Lease satisfied by the Profits, no other Debt shall bar her of her Thirds. 15 Car. 1. Chin. R. 132. Naylor v. Baldwin.

2. An Estate Tail was created by the Crown, and afterwards, some Family disputes arising, an Act of Parliament, for continuing an Award made for the Peace and Quiet of the Family, was Assented to by the King, and afterwards one of the Family, sold of an Estate Tail, levied a Fine; yet the King's Reversion is not removed by the Act, which was not as a New Gift, nor did the King intend to pass away any Right; but his Assent was only to confirm the Award; and the Reversion is still within the Protection of 34 H. 8. and therefore the Fine no bar to his Issue; per Pemberton Ch. J. who said, he was ordered to deliver Lord Keeper's Opinion, that it was a New Estate by the Act of Parliament, yet within the Protection of 34 H. 8. Hill. 35 Car. 2 B. R. Skin. 95. E. of Derby's Cafe.

3. Where a Fine is ordered to be levied by Decree in Chancery, if it be so done as to pass a greater Estate, or to Operate farther in Law than this
Fine.

Court intended it, this Court will resign it to what was the Original Intention of levying it. Arg. Mich. 1682. Vern. 95.

Arg. Oxf. 1582. 2 Vern. 56. cites it as Resolved in the Case of Goodrick v. Brown.

4. A seized in Tail, and having a Term in Trust to attend the Inheritance; by Fine, and Deed flied the Land to a Debit of 100l. but declares, that after that Debit is paid, the Land should be to the same Uses as before; afterwards A. deviled the Land for payment of his Debts. Deeced that the Land was liable to all the Debts in general. Sed Quare tamen; For it seems, he was but Tenant in Tail of the Inheritance, and so could not charge it by his Will; unless it be intended he had a full Power of doing it lodged in him by reason of the Fine, notwithstanding he had declared that after Payment of the 100l. it should go to the former Uses. Mich. 1682. Vern. 99. Turner v. Gwyn.

payment of his Debts. The Court thought, the Equity of Redemption should be Affected to satisfy Creditors, or a Subsequent Grantee of an Annuity. Note, the Redemption was limited to him, his Heirs or Assigns. Hill. 1691. Ch. Prec. 39. Fosset v. Auffin.

5. The Wife joins with her Baron in a Mortgage; and levies a Fine with intent to her Discover, and in Consideration thereof, the Baron agrees, that the Wife shal have the Redemption of the Mortgage. The Baron afterwards Mortgaged the Estate twice more. This Agreement is Fraudulent as against the subsequeit Mortgages, so far as to intitle the Wife to the whole Equity of Redemption. But her Dower was decreed, in Cae he should survive her Baron, notwithstanding the Fine, without putting her to her Writ of Dower. By North. K. Hill. 1684. Vern. 294. Dalin v. Coleman.

(L. a) Ensure to make good Prior Estates, and how.

1. I N Sci. fa. upon a Fine of an Annuity, Thine held that a Prior preferable who has a Patron, may charge the Church in perpetuity with his Covant, if he has a Covenant and Common Seal; but contrary of a Parson. Because the one may have a Writ of Right, and the other only Juris utrum; and therefore it seems that a Prior preferable by a Patron, who has not Covenant or Common Seal, cannot charge but for his Life; for he is but merely as a Parson; note a Divinity; and then because the Annuity had Efficse before the Fine, and so the Fine is but as a Judgment or Recovery of the Annuity; therefore, tho' the Fine was acknowledged by the Prior without the Covenant, yet the Plaintiff shall Recover the Annuity, and the Church is bound by the Judgment, quod nota, and so see that a Prior by his Fine without the Covenant may charge the Church in Perpetuity of a Thing which had Efficse before. Contrary of a Thing newly Granted by him by Fine, nota a Divinity. Br. Charge pl. 8. cites 12 H. 4. 11. 21.

2. If Diffellet levies a Fine to a Stranger the Diffellet shall have the Benefit of it. Nov. 59. in Case of Hart v. Ameridech.

Mar. 105. Contra. — per

Gawdy J. Goldib. 162. pl. 66. — If Diffellet declares the Uses to Contuar, it shall be to the Contuar's Use only, and not to the Diffellet's; but otherwise if no Use is declared; For then it would be to the Use of the Diffellet and extinguish the Right of Contuar. Per Bridgman Ch. J. Lev. 128. Hill. 15 & 16 Car. 2. at the Affants at Southwark. Co. of Peterburgh v. Bludworth. — — Per Bramston Ch. J. accordingly; but by Jones J. that whoever has the Land shall have the Advantage of a Fine by Effopple. Jo. 462. — Poph. 65. in Case of Harvey v. Farry. — But if the Diffellet be only at the Efficse of Diffellet, its otherwife. Cro. C. 525. in Case of Blanden v. Bungh. — — Or if the Diffellet be first and un Known to Diffellet, it shall be to the Use of the Contuar. Cro. C. 484. per two Judicites. Fitcherthorpe v. Fitcherthorpe.

3. Tenant for Life and Remainder-man in Tail joined in a Grant of a C. — Cro. C. Rent-charge in For out of the Land, and then they joined in a Fine to a 123. Hill. 3. Stranger and his Heirs; the Estate of the Rent which was before determinable, is now made absolute. Winch. 102. Holbeach v. Sambeach.

H h h h

4. A.
If a Fine be levied to a Fine Covert, of Land in which she had a better Estate before the Fine, the Fine shall not conclude her to claim it. Wilt. S. 15. cites 3 H. 6. 42. 41 E. 3. 7. 50 E. 3. 9. 24 E. 3. 62.

But if she, who takes by the Fine, be examined, she shall be estopped to claim a better Estate, as it seems. Br. Fines, pl. 51. cites S. H. 6. 4.

2. If a Fine sur Render be levied to two, where the one is seised before and at the Time of the Fine, and the other hath nothing; there he who has nothing, has gained joint Possession with the other by Conjunction per Hank. Br. Fines pl. 35. cites 8 H. 4. 8.

3. If two are seised in Fee, and a Stranger levies a Fine to them and to the Heirs of one; in this Case, the other shall be Estopped to claim other Estate than for Life. Br. Estoppel, pl. 92. cites 15 E. 4. 28. per Catesby.

4. If there be Lord and Tenant by Knight's Service, and a Stranger levies a Fine to the Tenant in Tail, to hold to him and his Heirs; in this Case, Horle said, that the Lord shall be concluded; because he is not a meer Stranger, but is Privy in Law. But this is no Law, (as I think) for no Man shall be Estopped, but only Parties and Privies in Blood, as Heirs; or Privies in Estate, as those who have derived any Estate out of the Estate of him that is Estopped; For Privies in Law, as the Lord is, shall not be Estopped, having regard to his Seigniory; For in respect of this he is wholly a Stranger; For he does not claim the Land, but a Thing out of the Land. Co. R. on Fines 16.

5. And Note, that as well he who claims Estate en le Poit shall be concluded, as he who claims the Land en le Per, if he claims the Estate in the same thing, upon which the Conclusion is made; as if a Feme be seised of Land in Fee, and be Estopped, and after he takes Baron and has Issue, he shall be Estopped also. Co. R. on Fines 17. cites 8 Aff. p. 33. Br. Fines 73. 21 E. 3. 3. 5.

6. Estoppel is reciprocal of both Sides; For he, that shall not be concluded by a Record, or other Matter of Estoppel, shall not conclude another by it; and yet in our Books the King estopped the Succesor to fay, that M. had nothing in the Land, by reason that M. held of the King, and levied a Fine to his Predecessor Sur Conuance de Droit come cee, &c. and tho' the King was a Stranger to it and had Nothing but the Seigniory out of the Land, yet the King took Advantage of this Estoppel. Quære the Reason of this Cafe, For this feems * to be the Prerogative of the King, of which I shall not speak; but otherwise 'tis in the Cafe of a Common Person, as 22 E. 3. 17. and 40 E. 3. 30. are agreed. See 41 E. 3. per Finch, that a Stranger shall be concluded by a Fine levied Sur Conuance de Droit come cee, &c. Co. R. on Fines 17.

* Orig. (d'effet.)

7. The Statute of 4 H. 7. and 32 H. 8 extends to Fines levied by Conclusion, and shall bind the Estate Tail, the Parts finis nihil habeunt; as if Tenant in Tail make Feoffment in Fee, or be dissolved, and after levies a Fine with Proclamations to a Stranger, this shall bind the Estate Tail.
Tail, and the Issues in Tail are barred for ever. 3 Rep. 90, cites it as
Refolved by all the Justices in C. B. in Lt Zouch's Cafe.

8. A Fine may be by Way of Conclusion, tho' neither Conunfor nor
Conuee have any Thing in the Land at the Time; but if they Pungebe it
after, the Conuee shall have the Land against the Conunfor who purchafed
it afterwards; per Jones J. and granted by Barkley J. Jo. 495. Trin.

between the Parties; but all Strangers may avoid it by the Averment of Parties Finis nihil &c. Br. Fines pl. 109.

9. A. made a Feoffment to the Use of himfelf for Life, and after the
Death of him and M. his Wife, to the Use of B. (ciflat Son of A.) for
his Life, and after the Death of A. M. and B. to the Use of B. and the Heirs
Male of his Body, and for default of such Issue, to the Use of the Heirs of
B. — B. had Issue a Daughter, and then by Fine and Indenture granted to
G. for 500 Years. B. dies; M. dies; A. still living; upon a Reference
out of Chancery to the Lord Ch. J. Hale, and after hearing the Ar-
guments of Counsel, his Lordhip was of Opinion, that the Eftate as above
limited to B. was a Contingent Remainder; and that the Eftate which
cometh to the Heir upon the happening of the Contingency leads this
Eftoppel; and then the Eftate by Efloppe becomes an Eftate in Interest,
and shall be of the fame Effeft. as if the Contingency had happened before


1. A Man has Issue M. by his first Feme; he dies; and he takes
another Feme, Ifabel by Name, and enfeoffed A. who by Fine gave back to
the Baron and Sibell his Feme (where his Feme is Ifabel) in Tail, the Remainder
to the Right Heirs of the Baron; he dies without Issue by Ifabel; M. enters
as Heir, and Ifabel outhers. M. brings Affife, and Ifabel pleads that her
Name was Sibell, and pleads the Fine to the Affife, and it was found that
she had to name Ifabel; and it was awarded, that M should recover;
and to Note, that the Fine is not good by a contrary Name. And after
Ifabel, by Name of Sibell, brought Seine facias against M. and had Execu-
tion by Default, and M. brought Affife, and per G. Scrope, the Said Feme
Plaintiff may plead the Fine by Conclusion against M. to say that the
Name of the Feme is Ifabel, because the Feme was levied by Name of
Sibell, and because the Father of M. whose Heir he is, was Paify and took
by the Fine, affuming the Name of his Feme to be Sibell, and that upon this
Plea M. shall be barred of the Affife; it seems that this is good Law. Br.
Fines pl. 92, cites 1 Aff. 11.

2. A Man levied a Fine Sur Counceint and Render (which is Executory) of
Land, of which he had Nothing at the Time if the Fine, and after purchases
the Land, he shall render Execution thereof, and cannot conteft it and
avoid; it he had Nothing at the Time of the Fine; but shall be
Elfopped by the Fine, per Tanke and Finch. But per Finch Contro of a
Fine Sur Conuance de Droit come evo, &c. for this is Executed, and there it
suffices to say, that after the Fine his Ancestor was feised and died seised, and
the entred as Heir. But Kirton said that it shall be a good Voidance of the
Fine Sur Render, but not of the Fine Sur Conuance de droit come evo, &c. Quere, for moft think the Opinion of Finch to be marvellous,
and it seems that the one Fine, and the other shall be Eftopped. Br. Et-loppe, pl. 41. cites 46 E. 3. 5.

3. Note, that a Fine Sur Render, levied by J. N. to the Baron and Feme,
and to the Heirs of the Baron, is no Eftoppel to the Feme after the Death of
her Baron, to say, that she never had any Thing of the Left of J. N. For a
Fine Sur Render does not prove a Lease to her, but rather that she was
Tenant at the Time of the Fine; for otherwife a Recess cannot Enure to
them,
them, until they had Seisin before; quod Nods, per Car. Br. Ettoppe, pl. 200. cites 30 El. 3. 6. 7.

4. In Affile, a Fine was levied to the Tenant in Tail in Possession for his Life Sur Grant and Render, the Remainder over in Fee to a Stranger; the Tenant in Tail had Issue and died, and the Issue entered; he in Remainder caled him, and he brought Affile, and the Tenant pleaded the Fine, and the Plaintiff pleaded the Tail before, and avers the Continuance of Possession in his Ancestor all his Life, absolute &c., that those who levied the Fine had any Thing at the Time of the Fine, before or after, and per * Coke and Firdit, the Fine does not bind the Issue in Tail, but per Hank and Gascoigne contras, &c. and adjourned. Brook makes a Quere, and says, that it is inconvenient that where I am feiled in Fee, or in Tail, a Stranger (I not knowing of the levying of the Fine to me for Life Sur Grant and Render the Remainder over) shall make me lose the Fee Simple, where all is the Act of the Convisor and * I lay Nothing; and an Infant shall be in the same Case by some, and the belt Opinion is, that, if it be not a Fine Executed, the Issue in Tail is not bound by the Statute de Finibus of Averment; For this is intended of the Exeat of the Fee Simple, where the Heir claims only by the same Ancestor; but upon Tail he claims by the Gift. Br. Fines, pl. 35. cites 8 H. 4. 8.

5. If there be Father and Son, and the Father levies a Fine of the Manor of D. and after purchases the Manor, and the Cowfeese enters, and after the Father dies, now (as I think) the Son shall be barred. But 'tis good to see the Manner and Form of pleading such Case. Co. R. on Fines 16.

6. If in the same Case the Son brings an Alien Averment, and as Heir, and the Fine be pleaded in Bar, the Son can't say good Partes Fines nihil habuerunt; but if the Son enter and be ousted, and brings Affile, and the Tenant pleads, that the Father of the Plaintiff was seiled inFee, and so seiled levied a Fine, &c. the Son may say, quod Partes Finis nihil habuerunt, but such a one whose Estate be hath. By this way the Plaintiff shall be * trick'ed; and therefore the sure way for the Tenant in such Case to plead, is to plead all the special Matter, how his Father levied the Fine, and after purchased the Land; For be the Fine Executory, or executed, the Fine shall bar his Heir, as I think. Co. R. on Fines 16.

(M. a) Declaration of Uses, Good. In respect of the Person, by whom.

Infant may declare the Uses of a Fine. 2 Eliz. 159. pl. 193. 21 Eliz. in the Star-Chamber. Anon. And Mr. Powden affirmed, that it was so adjudged in his own Case, by which he lost Lands of 40 l. a Year.—Arg. 4 Eliz. 89. says, 'twas adjudged Contra, in the Court of Wards.

2. Declaration
2. Declaration of the Use of a Fine, by a Man in *Dures* is good, but per Andergon Ch. J. Contra. 2 Le. 159. pl. 193. 21 Eliz. in the Star-Chamber, Anon.

3. If *Idiot* levy a Fine and declare Uses upon it, the Declaration is void, and the Fine shall be to his own Use, 4 Le. 89. says, 'twas so adjudged in the Court of Wards.

42. says, that a Man Non Sane Memoria may declare the Use of a Fine, and in the Marg. there cites 2. Rep. 58. a but I do not find such Point there.

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(N. a) Declaration Good. In respect of the Person to whom.

1. USE of the Fine of a *Thing in Grant* cannot be declared to a Stranger without Deed; yet it may be averred, that the Use was to a Stranger, without having the Deed, or making mention of it. The true Law of Reversion. Roll. R. 73. Mich. 12 Jac. B R. Parvis v. Yeaton.

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(O. a) Declaration, &c. good, in respect of the Manner of doing it.

1. Seized of a Manor and Advowson Appendant conveyed it to B. and covenanted for further Assurance by levying a Fine, proviso, that B. shall regrant the Advowson to A. 'that he may present during his Life', and if A. die before any Avoidance, then B. to grant the next Presentation to the Executors of A. and a Covenant that all Assurances should be to the Uses of this Indenture; A Fine was levied Sur Confini de Droit come cco, &c. to J. S. who rendered the Rent to A. in Tall. Remainder over; and B. died without making any Regrant to A. The Church avoided, and in Qua. Impediment by A. Judgment was given for him; Because B. in his Life did not perform the Condition, which remains notwithstanding the Fine, which was with Render of Rent, according to the Agreement between A. and B. so that the fine upon Render shall be to the Uses declared by Indenture before, and not extinct or determined by it. And. 17. Andrews v. Blunt.

2. A Declaration of the Use, either express or in Law, is sufficient; as if A. covenants with B. for Money to do all Acts which B. shall require for Assurance to B. and his Heirs, and then levies a Fine to B. This Covenant and Fine will give B. the whole Land. Hob. 275. Mich. 13 Jac. Clannickard's Cafe.

3. If a Man makes a Bargain and Sale, and the Deed is not enrolled, or make a Charter of Feoffment, and there is no Livery, yet they will be sufficient to declare the Use of a Fine afterwards levied between the same Parties. Hill. 9 W. 3. 12 Mod. 163. Jones v. Morley.

4. Before the Statute of Frauds, even a Pardon Declaration of the Uses of a Fine was good. 4 Mod. 262. Jones v. Morley.

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5. By 4 Eliz. 5 Anne, 5. 15. Declaration of Uses or Trusts by Deed, made after the Fines, or Recoveries shall be good in Law, as if the 29 Car. 2, 3. of Frauds had not been made.——See Ini. (R. a)
(P. a.) Declaration of Ufes, good; notwithstanding Variance as to the Ufes.


2. Covenant was to levy a Fine of the Manor with a Render of Rent in Fee to the Covenantor and his Heirs, the Contrafe by Covenantor's content Renderers in Tail only to the Covenantor, and Remainder to J. S. in Fee; this being by Consent of the Covenantor, and the Contrafe being only an Instrument, Acceptance of the left Estate by the Covenantor is good, and as if the Fee of the Rent had been rendered to him. Jenk. 252. pl. 43.

3. In the Case of declaring the Ufes of a Fine, it is not always necessary, that the Wife's Name be set to the Indenture, which declares the Ufes, per Coke Ch. J. Godb. 180. Trin. 8. Jac. C. B. in Case of Bury v. Taylor.

4. Where there is a Deed, and a last Writing by Husband and Wife, the last Writing, tho' not a Deed, amounts to a sufficient Declaration of Ufes upon the Fine, being levied * at a Time different from the Deed. Cumb. 429. Hill. 9. W. 3. B. R. Jones v. Morley.

This Writing was only a Deed between the Husband of the one Part and the Wife of the other Part. But the Deed was within them and others. Carth. 410. S. C. 2 Salk. 67. S. C.—4 Mod. 261. S. C.—Parliament Cales. 145 S. C. and Judgment affirmed.—* Carth. 5 in Case of Davis v. Kemp.

(P. a. 2) Declaration of Ufes, notwithstanding Variance, as to the Time of levying, &c.

1. Where the Deed is, that the Fine shall be levied of certain Lands, by the Name of 100 Acres to A. and B. and that they shall grant, and render the same in Fee simple, which shall be to certain Ufes. The Fine is levied of the Land, but some * Variance is in the Number of Acres, or in the Fine, as where the Fine is levied to A. only, who grants and renders the Land, yet it may be aver'd to be to the Ufe of the Indentures, and that there was no new Consideration, or Agreement between the Parties. 2 Rep. 76. Hill. 43. Eliz. C. B. Ld Cromwell's Cafe.

But it may in such Case be aver'd by Parol to be to other Ufes. But if the Fine be levied in all Things pursuant to the Indenture, no Averment can be but by Writing; For in this Case, the Indenture is Director to the Fine, and in the other Case, it is but Evidence. Cro. J. 29. Patch. 14. Jac. B. R. Commons of Rutland v. Earl of Rutland.

Covenant to levy a Fine within the Year of 100 Acres, the Year expires, and a Fine is levied of 83 Acres. The Fine shall be to the first Ufe, cited per Coke J. and Montagu Ch. J. Cro. J. 512 as the Earl of Rutland's Cafe. 5 Rep. 26. b.—9 Rep. 1. Downham's Cafe.—* Carth. 412. Jones v. Morley.

Carth. 411. S. C. Parl. Cales. 144 S. C. and P. Per Holt Ch. J. He should not plead that the Ufes were declared by a Deed subsquent. But

3. If a Declaration of Ufes be subsquent to a Fine or Recovery, *tis good; but there may be an Averment, that they were to other Ufes, but with this Difference, that where the Declaration is subsquent, there the Heir of the Contrafe is elipted to ater other Ufes, but a Stranger is not. But where the Deed is Precedent, there, neither the Heir nor a Stranger is elipted to aver other Ufes, in Case the Fine varies in any Circumstances; but if the Fine was levied pursuant to the Deed, no Proof whatsoever, either by Writing or Parol, shall be admitted, that the Fine was to other Ufes.

Cuperatio in Forma prejudic, habitua solut, to such and such Ufes, and, in Case of a Deed Precedent, if the Party set up other Ufes, he must confess and assent; and if a Deed subsequent be set up, the other may traverse those Ufes. Adiournament. 2 Salk. 676. Hill. S. W. 5. B. R. Treganne v. Fletcher. — 9 Rep. to. b. Downam's Cæfæ. — 2 And. 78. cites Vavlor's Cæfæ.

4. Where there is a Deed for levying a Fine, but the Fine is not levied according to the Deed, other Ufes may be averred, tho' these other are declared by Writing, and not by Deed; For, by the Variance, there is a Room and Occasion to enquire, and receive Information, that the old Agreement was relinquished, and by the fame Reason, that the Use of a Fine may be declared by Parol, upon an original Agreement, it may now, as in this Case, where the original Agreement was relinquished; yet without such Averment, the Fine shall be intended to the Use of the first Agreement, notwithstanding the Variance. 2 Salk. 677. Hill. 9 W. 3. B. R. Jones v. Morley.

Fine.

5. A Covenants before the End of Easter Term, in Consideration of the Marriage of B. his Son with Mand a Portion, to levy a Fine to the Use of B. and M. for Life, and to the Heirs of the Body of B. Remainder to C. the second Son of A. and the Heirs of his Body. A Fine was levied as of Easter Term, but the Marriage being put off till after Easter Term, the Deed was not executed, nor deited till after Easter Term, so that the Fine was levied before the Date of the Deed, and so the Deed was no Declaration of the Ufes of that Fine. B. dies, leaving a Son, who Mortgages the Land, and dies without Issue. Deemed that the Consideration of B's Marriage did not extend to C. so that C. was no Purchaser; and as he cannot, by means of the above Defect, maintain an ejectment at Law, he being only an equitable Remainder-man at best, to neither will Chancery relieve him, but he must discharge the Mortgage made by B. who was Tenant in Tail in Equity; And any such may, by any Conveyance, bar the Settlement. Mich. 1703. Ch. Præx. 254. Staplehill v. Bully.

(Q. a) Where there are severals Declarations of the Ufes.

1. Fine, before the 27 H. 8. of Ufes, being seised of Land, suffered a common Recovery, and intending to marry A. B. the, before the Marriage, declared by Indenture that the Feoffees should be seised to the Use of herself and A. B. whom the intended to marry, and their Heirs. The Feoffees executed an Estate after the Marriage to the Husband and Wife and their Heirs, in Fee, without any Ufe expressed. Afterwards the Baron and Feoffee by other Indenture, declare that the first Indenture was unavowed; For that it should have been to the Heirs of their own Bodies, and for Default to the Heirs of the Wife. And they Covenant, Bargain, and agree, to stand seised to the Uses of themselves in Tail, and after, to the right Heirs of the Wife; and the Husband covenanted, if the Wife died without Issue, during his Life, that he would execute an Estate accordingly. The Wife died without Issue, and after the Stature of Ufes the Baron died seised; and 'twas held, that the first Indenture was corrected by the second, and the first Ufe is sufficiently altered without Estate executed, and the Considerations are reasonable and sufficient, and adjudged for the Heir of the Wife. D. 307. b. pl. 71. Pachi. 14 Eliz. Vavlor's Cæfæ.

2. Fine by Grant and Render; no new Declaration shall be to crofs the Grant and Render; but the Regrant in the Fine shall amount to a Declaration to a Use.
ration of the Ufe, and it shall be intended done by the Procurement of the Conufor himfelf. Clayt. 94. Jennings v. Chantry.

3. A Deed is made declaring the Ufes of a Fine to be levied; afterwards (but before the Fine was levied) a fecond Deed of Declaration of the Ufes is made; by Reafon of this fecond Deed, other Ufes, than according to the Deed to the first Deed, may be averred. 2 SaIk. 677. Jones v. Morley.

4. If a Fine is levied by Husband or Wife of Lands, which he hath in Right of his Wife, and there is a Deed made at the fame Time to declare the Ufes thereof, and afterwards this Deed is loft, and then another is made to the fame Effects, and dated as the first; that Deed is fufficient to declare the Ufes of the Fine, per Holt Ch. J. Holt's Rep. 735. Mich. 7. Anna. in Cafe of BulfeII v. Burland.

(R. a) Declarations of Ufes, Good; where made after the Fine or Recovery.

The Cafe, Mo. 191, 192, and 9 Rep. 7. b. found the Deed of Ufes was fubfequent; but that the Intent of the Parties, at the Time of Suffering the Recovery, was to the Ufes in the Indenture declared—Two, or three, or four Years, or more, after a Fine levied, or Recovery suffered, the Ufes may be declared of such Fine and Recovery; but LeafeS and other Charges made in the mean Time shall stand, and the Fine and Recovery shall be to the said Ufes, Subject to the said LeafeS and Charges. Jenk 212. pl. 50.

In Ejectment on a Special Verdict, the Cafe, in Subfiance was this, viz. A. and E. his Wife levied a Fine, and four Years afterwards declare the Ufes; in which Deed, are the Words following, viz. All and every Fine and Ufes levied or to be levied, shall be to the Ufes of this Deed. Holt Ch. J, delivered the Opinion of the Court, that the Ufes were sufficiently declared; (the Jury having found, that the Fine was levied to the Ufes therein declared.) And that, notwithstanding the Statutes of Frauds and Perjuries, a fubfequent Deed is now as good as it was before the Statute. And that it was doubtful, whether the Statute extends to Ufes, because they are not mentioned there, but only Trufs; yet that they took Trufs and Ufes to be the fame, in Refpect of Trufs in their larger extent, &c. So within the Statute of Ufes. Holt's Rep. 735. Mich. 7. Anna. BulfeII v. Burland—And this Cafe is much stronger than Dowman's Cafe; For the Jury there found, that the Deed of Ufes was fubfequent, and the Question was, whether the Deed was fufficient to declare the Ufes? And in that Cafe it was objected, that there was a Limitation of the Ufe without any Impacock of Wrongs, which cannot be without Deed. At the Time of granting the Reversion, there was no Deed; but when the Deed came, and declared the Intent of the Party, then it was a fufficient Manifefration of the Ufes, and the Intent of the Party. And it is true, Wills could not be infinifible without Deed, but when the Deed came, and made good the Ufe, it was well enough. per Holt Ch. J. Holt's Rep. 735. Mich. 7. Anna. in Cafe of BulfeII v. Burland.

(S. a) Enact.
(S. a) Enure how. Where levied by several, and the Uses are declared by one only, or differently by each.

1. If two * Jointants suffer a Common Recovery, and one only declares the Uses, that does not bind the Molyet of the other, unless the Content of the other to that Declaration be proved. Nov. 77. in Case of Argoll v. Chemyey, cites 2 Rep. 57.

which the Remainder-man in Tail is Vouchee, but the Tenant for Life only declares the Uses, the Remainder-man being neither Party to the Indenture, nor attesting to the Uses. Nov. 77. Argoll v. Chemyey. ———- * D. 143. a. pl. 52.

2. If two Jointants, or two having different Estates, join in a Fine, and one declares the Use in one Manner, and the other in another Manner, this is good for every one of their Parts; For the Declaration of the Use shall be directed, and governed according to their Estates and Interests. Trin. 27 Eliz. 2 Rep. 58. Beckwith's Case.


4. If the Baron a. Lone declares Uses, and the Wife * nay, it shall be to the Uses declared by the Baron. S. C. cited 2 And. 78. ——- Because she did not dissent in her Husband's Life Time. Jenk. 238. pl. 17.

Mo. 196. S. C. adjudged. ———- * If she does not disagree, the Law intends that the executed thereupon; because the joined in the Fine, per Windham J. Golds. 69, in Case of Colgate v. Blythe. If she does disagree, yet the Baron by his Declaration, shall be bound as to his Interest, during the Cour- ture. See Mo. 197. Beckwith's Case. ———- But after, it shall be to the Use of the Feme and her Heirs. Jenk. 238. pl. 17.

4. But if the Feme alone declares the Uses, the Assent of the Baron shall not be intended, if nothing appears to the contrary, but the Declaration is void, unless an Express Assent be proved, per Cur. Pach. 2 W. & M. B. R. Skin. 275. Johnfon v. Cotton.

5. If Tenant for Life and Reversioner levy a Fine, and both of them declare several Uses, it shall enure according to their several Interests. Noy. 20. seems to be Hill. 35 Eliz. in the Case of Velverton v. Velverton.

(T. a) Enure, how. Where the Uses declared are repug- nant, or seemingly so.

1. Baron and Feme sealed of Lands to them, and the Heirs of the Ba- ron bargain and sell the Land to J. S. upon Condition, that it they or any of them, or the Heirs, Executors, Administrators or Assigns of the Baron, pay 500l. at such a Day to J. S. then that it should be law- ful for the Baron and Feme to enter and hold in their first Estate, and that, after the Payment, this Indenture and all Fines and other Affurances should be to the Use of the Baron and his Heirs. A Fine was levied to J. S. be- fore the Inrolment of the Deed; the Baron dies, his Wife living; the Heir pays the 500l. the Feme shall have the Land for her Life, because J. S. was in the Fine, and not by the Bargain and Sale; and also upon the Payment, the Use was rescinded in the Feme, as was the ancient Ufe before the Fine, and this, by the express Words, in the first Part of the Provifio aforefaid; and the last Part, which appoints the Use to the Baron and his Heirs, shall be repugnant, and so void, or otherwise shall stand in such Constrution, that it shall be to the sole Use of the Baron for the Rever- sion only. Hill 45 Eliz. No. 695. Wilkinson v. Knowles.

At the same time, the first shall stand rather than the last. Hill 42 Eliz. B R. Cro. E. 144. S C by the Name of Southcott v. Mannory ———- Cro. E. 97: S C

2. Two
2. *Two Deeds of Settlement*, the latter was contrary to the former, and left out the Limitation to the Heirs Male, the first was decreed to stand against Fine levied to the Ufe of the last. 12 Car. 2, ed. 172. Ch. Rep. 192. Bingham v. Huiley.

(T. a. 2) Uses well limited, or Enure how; where the Limitations in the Fine vary from the Limitations in the Deed.

1. A Fine was levied by Baron and Feme, and the Cognisice rendered the same Lands to the Baron and Feme, and to the Heirs of the Feme; and an Indenture was made, by which it was recited, that the Render should be to the Ufe of the Baron and Feme, and of the Heirs of the Baron; the Question was, if the Limitation of the Ufe by Indenture shall hold? Dyer Ch. J. thought that it is well enough; for the Indenture ought to rule the Ufe, altho' in the Render be a Ufe implied to their own Ufe.—Per Brown J. the Possession is transferred to the Ufe by the Statute, and therefore a Ufe cannot be expressed upon a Ufe. As Feoffment to J. S. to his own Ufe, and that he shall be leified to the Ufe of R. H. this is void to R. H. because the Ufe and Possession was to J. S before. And so if a Man bargains and sells the Land for Money, and limits an Ufe upon it, 'tis void. But here the Render, of Necessity, must be to the Heirs of one of them, and for so much, no Ufe is implied. Wilton held to the same Intent, for there is not any Ufe implied upon a Fine, no more than upon a Feoffment, by which they thought the Limitation over good enough; Dyer said, if the Render be made in Tail, the Cognisice is feized of the Reversion to his own Ufe. Quod Bendowes and other Serjeants concernt. 45. pl. 138. Mich. 5 Eliz. Anon.

2. By the Rule of Law, a general Covenant directs the special Uses of a Fine, and the special Operation of thefe is by the General Covenant, and according to the Intent of the Parties; and this is proved by R. 2. Fitz. tit. Etoppeli. Placito. 2. A Feoffment was to two and their Heirs by Deed, and a Fine to be levied; which is [was levied] to them, and the Heirs of one of them; this shall be to the Heirs of both of them; which Caffe is put 2 Rep. 74. b. in the Ld. Cromwell’s Case; where 'tis said that the Precedent Feoffment shall rule and direct the subsequent Fine, and preserve the joint Estate in them of Fee Simple, against the express Limitation of the Fine; and the Fine shall be ruled, and directed according to the precedent Agreement, and Estate made by the Parties. 3 Buls. 256. Mich. 14 Jac. in Caffe of Havergill v. Hare,

[U. a) *What Estate shall pass* by the Declaration.

Without mentioning any Estate in particular, this is an E. for Life; or it is as a Grant. Jenk. 332. pl. 65.

(W. a) Enure
(W. a) Enure how. Where the Lands lie in several Vills.

1. A PARISH may contain 10 Vills, and if a Fine he levied of Lands in the Parish, this carries whatsoever is in any of those Vills. If the Contablewick of the one goes over all the rest, that is the superior or Mother Vill, and the Lands which is in the other shall pass per Nonen of all the Lands in that; and tho' it be found that A. had a Tythingman, (Decemarius,) which, prima Facie, is the same with a Contable, and differed little in the Execution of that Office concerning keeping the Peace; yet Hale said, he was not the same Officer and 'tis found that the Contables of A. have a Superintendency over B. and therefore 'tis but a Hamlet of A. But if found that they had distinct Contables, and could not interfere in their Authority, it would be otherwise. Mich. 23 Car. 2. B. R. Vent. 170. Walden v. Rufcarrit.

(X. a) Second Fines. How they shall enure.

1. In Affile; Fine was levied to two Femes and to the Heirs of their Bodies, and after the Donor, by Fine Sur Constance de Droit came coo, &c. in Writ of Warranty of Charters, acknowledged the Land to both, and the Heirs of the Body of the one the Remainder to the other in Tail; and both have life and die, and the life of the eldest claims by the Fine, and brought Affile of all against the Baron of the youngest, who was Tenant by the Curtesy, and could not recover but only the Moiety. And to fee that this Fine is only as a Confirmation, and shall not alter their Estates. Br. Difcontinuance de Poffedion, pl. 28, cites 8 Aff. 33.

2. A. levied a Fine to the Use of himself for Life, Remainder to his Wife for Life, Remainder to his Executors for 20 Years, Remainder in Tail to B. his Son, Remainder over; afterwards A. levied another Fine to the self same Uses, leaving out the Estate for Years to the Executors. A. died; resolved that the Remainder to the Executors for 20 Years, being in Abeyance, was extint by the second Fine. Mo. 745. Trim. 42 Eliz. Remington v. Savage.

3. A Fine is acknowledged to A. and afterwards a second is acknowledged to B. If the first is not recorded, the second Fine is good. But if the first had been recorded in Court, in Time convenient, viz. the next Term, it had been good, and the first merely void. Cro. C. 284. Mich. 8 Car. B. R. in Cafe of Burgaine v. Spurling.

4. A. Tenant in Tail levied a Fine to the Use of B. for the Life of B. with Warranty; and afterwards he levied another to the Use of himself and his Heirs, with Warranty; and afterwards bargained and sold the Lands to C. and his Heirs. Adjudged that the first Fine thus levied by Tenant in Tail made a Difcontinuance, but 'twas only during the Life of B. For it remains no longer a Difcontinuance, when the wrongfull Estate is gone by which 'tis caufed; that the second Fine did not enlarge the Difcontinuance; because the Estate raied by the Fine returned back to the Cognifer, and by Consequence, the Warranty annexed to it was extinguished. 1 Salk. 244. Hill. 1 Anne. B. R. Hunt v. Bourne.

(Y. a) By
(Y. a) By Grant and Render. Enure How. Construction of such Fines.

1. **Fine** is levied reciting, that the Confor sold certain Land of the Converse by 5 Marks, the Confor acknowledged and rendered 5 Marks Rent to the Converse out of his Land; this is taken to be a New Rent, and not the ancient Rent, nor shall it have Relation to the Recital. *Br. Relation*, pl. 33. cites 21 Eliz. 4. 60.

2. Feoffment by Deed, rendering 3l. Rent, with Clause of Diitrefls, and Covenant by Feoffor to make further Assurance of the Land; Feoffor levies Fine to the Feoffee, who renders 3l. Rent, adjudged that he may avow for the first Rent, notwithstanding the Fine, and that the Render is not a Grant of new Rent, but Confirmation of the old Rent, and the old Rent was prefixed by the Intent of the Fine. *Mo. 298. Trin. 32 Eliz. Sherrot v. Holloway.

3. Where there was a Repugnancy between a third and a fourth Render, the one limiting the Remainder in Fee to the Confor, and the other limiting it to a Stranger, it was resolved, that what was contained in the third Render, shall be of the same Condition and Quality in Construction, as a Charter or other Conveyance between Party and Party, and need not have such precise Form as a Writ or a Judgment. But a Conuance of a Fine, and a Grant and Render shall have such Construction as another Conveyance between Party and Party; For it has Words of Grant and Render, because it is a Conveyance of Record. *Trin. 34. Eliz. B. R. 5 Rep. 38. a. b. Tev's Cafe.*

4. If F. Tenant in Tail, and J. S. a Stranger, levy a Fine to W. R. a Stranger, who grants and renders to J. S. for Years rendering Rent to W. R. and by the same Fine grants the Reversion to A. and his Heirs; it is good; and tho' all be by one and the same Fine at an Initant, yet in Judgment of Law, the Lease precedes the Grant of the Reversion, as is held in 36 Eliz. 8. Br. Fines 118. and so was it adjudged upon a Demurrer. *1 Rep. 76. b. cites M. 41 and 42 Eliz. C. B. Rot. 336. White v. White.*

5. If Baron and Feme levies a Fine to B. who renders again for Life, the Reversion remains in the Confor to his own Use. *Arg. Gouldsb. 68.*


1. A. and B. Jointenants, A. for Life, and B. in Fee, make Leave to J. S. for Term of his Life, and after J. S. surrenders by Fine to A. It seems to me, that this is a Surrender, and shall enure to both A. and B. as I think. *Co. R. on Fines 5.*

2. But if J. S. had granted his Estate by Fine to A. it shall be a Surrender in Law for the Moiety, and a Grant of his Estate for the other Moiety, and B. cannot enter into any Part with A. as I think. *Co. R. on Fines 5.*

(Z. a) Enure.
(Z. a) E nure. Where Conufors, or one of them takes back no greater Estate than before.

1. A. Sold Land to the Husband and Wife, and the Heirs of the Husband; afterwards the Husband and Wife levied a Fine to J. S. and J. N. to the Use of Husband and Wife during their Lives, Remainder to the Husband in Tail Special, Remainder over. It was held in the Court of Wards, that after the Death of the Husband, the Wife need not give out Livery, because the Lands being originally purched in the Names of the Husband and Wife, and then they joining in a Fine whereby the Wife had no greater or less Estate, than she had before, the Estate to her by the Fine was no Conveyance for the Advancement of the Wife within the Meaning of the Statue of 32 H. 8. Trin. 15. Jac. Ley 51. Menfield's Cafe.

[See (B. b.) pl. 7.

(A. b) Enure; By Way of Extirpation.

1. F Effeitment was made by Indenture rending 3d. Rent, with a Clause of Ditrefs; and the Feefor covenant for further Affurance of the Land. The Feefor levies a Fine to the Feeoffice, and renders 3d. Rent, by the Fine; adjudged, that the Feefor may avow for the first Rent, notwithstanding the Fine, and that the Render is not a Grant of a new Rent.

2. A. Tenant for Life, B. and C. Caphearens being Reversions in Fee; A. and B. join in a Leaf to J. S. of the whole Estate, for 21 Years at 10d. Rent per Ann. to A., during her Life, and after to B. Afterwards A. and C. all join in a Fine to W. R. and W. S. to the Use of the Husband of B. The Court inclined that A's Ettare for Life was not surrendered by joining in the Fine, nor the Rent extinct. For every one granted what he Lawfully might, tho' twas urged that the Reversion, to which the Rent was incident, was gone. Cro. E. 285. Trin. 3d Eliz. B. R. Farrar v. Johnson.

3. If Tenant in Tail makes Leaf by Indenture for 30 Years, rending Rent with Reentry, and after, for further Affurance, he demits the Land by Fine for 30 Years to Lefsee, rending the Rent: This is no Surrender of the first Leaf, but a Confirmation, and the Lefsee shall hold subject to the Rent and Reentry, tho' no Ufe can renew by the Fine being but Deme for Years. Arg. Mo. 384. Mich. 36 and 37 Eliz. in Perrot's Cafe.

4. Fine levied by A. and B. to C, with Render of the Land to B. rendering 5d. Rent, with Clause of Ditrefs to C. the Conufee, Remainder of the Land to A. and his Heirs; the limiting the Remainder over by C. (to whom the Rent was first referred upon the Render of the Land in Tail) was Extinguishment of the Rent, and cannot go to the Remainder. Mo. 575. Patch. 41 Eliz. White v. Geritho.


b. 29. Hill. 4 and 1. P. & M. S. C.
5. If one makes a Feoffment on Condition, and afterwards levies a Fine to a Stranger, his Condition is gone. *Cro. E. 665*, per Coke Attorney General.

6. Fine to the Use of himfelf for Life,—Remainder to his Wife for Life—Remainder to his Executors for 20 Years, Remainder over in Tail, &c. After, he levies another Fine to the very same Uses, only omitting the 20 Years to his Executors; he dies and makes his Wife Executrix. It was resolved per two Ch. J. that the Remainder to the Executors for 20 Years, being in Aversion, was extingiuished by the Fine. *Mo. 745*. *Trin. 42*. Eliz. Remington v. Savage.


8. If the Party, to whom the Estate is limited, is in Possession, such Fine enures by Way of Extinquishment of Right. Weft's *Symb. 6*. S. 20.

9. A. by Indenture of Uses raises an Estate in Fee to B. who regrants Turbary to A. by another Deed, and after levies a Fine to confirm the Estate and Uses above declared; and 'twas ruled, that this Fine touches nothing upon the Grant to A. of the Turbary to extinguish it, or otherwise hurt it. *Clayt.* 42, Barron v. Colechirt.

10. A. upon Marriage, settles an Annuity on his Wife as a Jointure, to be infuing out of D. and afterwards they both join in a Fine to mortgage Part of the Lands; but, before the Mortgage, the Mortgagee had Notice of the Annuity, and it was excepted in the Mortgage; and it appeared that it was never intended to extinguish the Annuity by the Wife's joining, and decreed accordingly, and that the be paid the Arrears. *Hill 29*. *Car. 2*. *Fin. R. 277*. Solly v. Whitfield.

11. A. on Marriage with B. gave a Bond for 600l. to a Trustee, and a Warrant of Attorney to confess Judgment thereon deftained for Payment of 300l. to the Wife, if she survive the Husband; they afterwards joined with him in a Conveyance by Leafe and Release and Fine of all his real Estate. 'Twas agreed that the Leafe and Release did not extinguish her Interest in the Judgment, but the Fine extinguished all her Right in the Land, per *Ld Harcourt*. *Pattch. 1712*. *Ch. Prec. 333*. Goodrick v. Shotbolt.

(A. b. 2) Enure; to make a Discontinuance. In what Cases


3. A. B. and C. Coparceners of a Manor; A. infeoff'd J. S. of his Part, to the Use of himfelf for Life, and after his Deceafe, to the Use of his eldest Son and Heir apparent in Fee. And after A. levied a Fine de Tertia Porta 200 Acres Terre, 400 Acres Patfur, &c. (amounting to more Acres than the whole Manor contained) *Sur Conuance de Droict come ceo*,
co. &c. with Warranty of him and his Heirs, and retook by the same Fine for his Life only, and then died, and his Son entered. The Question was, if the third Part of the said Acres be severed from the Manor by this Fine against the Heir, or that against this Fine, it shall be taken, that he had a continual Potestian and Continity of Seisin ante Finem, Tempore Finis, & poit Finem, &c. in the Tenement for Term of Life? It was held strongly by Prowden, Bromlye Sollicitour, and Lovelace, that this Averment by him in Remainder, who was a Stranger to the Fine should be received, Quia nonque Pars Finis nec Partitionis Heres, &c. But Dyer, Saunders, Manwood, Southcote, Harper, and Carlin, held the Law clear contrary, and that the Fine amounted to a Feoffment of Record, which makes Discontinuance of the Remainder or Reversion. D. 333. b. 354.

4. If a Fine be levied to a Tenant in Tail, and he grants and renders the Land to him and his Heirs, and dies before Execution, this is no Discontinuance; otherwife it is if it had been executed in the Life of Tenant in Tail. Co. Litt. 333 b.

5. A Tenant for Life, Remainder in Tail to B.—B. levies a Fine to A. and to A's Husband upon a Conceit Tenement, to the Baron and Feme for the Life of A. and dies after Proclamations. Resolved, that it was not any Discontinuance or Bar of the Entail, but during the Life of Tenant for Life; nor is it any Bar or Alteration of the Entail after that Eftate determined. Cro. J. 40. Mich. 2 Jac. in Court of Wards. The Earl of Rutland's Cafe.

6. If Tenant in Tail accepts a Fine with render to another for Years; this shall bar him, because it works a Discontinuance, but otherwise where it is for Life, per Hurton J. Winch 123.

7. The Statute De Donis says, that a Fine shall be Infjur juris nullus. The meaning is not, that it shall be absolutely void, but only that it shall not be a Fine to bar the Eftue; For it is a Fine to make a Discontinuance, &c. Arg. 10. Mod. 179.

(B. b) By Baron or Feme fingly.

1. HUSBAND and Wife Tenants in Special Tail. Husband aliens by Husband and Fine and Deed inviolate. If this bars the Heir, is left a Quare? Wife Tenants in Special Tail. Husband levies a Fine with Proclamations, and dies—Wife enters. The Feme in Tail is barred. But if the Wife enters after the Death of her Husband, and before the Proclamations pass, the Feme is not barred by the Fine. Le. 250. 18 Eli. B. R. in Cafe of Manning v. Andrews. Kelw. 205. b. pl. 7. Contra. 213. b. Contra. tho' the Entail was in Trustees. He cannot claim as Heir to both; For by the Father he is barred. Arg. Godb. 512. cites 8 Rep. 72.

2. Husband and Wife Dames in Special Tail. The Husband alone levies a Fine of the Lands. "Twas held, that if the Proclamations be made in his Life Time, or before the Wife, by her Entry, had avoided the Fine, the Feme should be barred; otherwise, if the Husband had died before the Proclamations passed. 4 Le. 2. Trin. 8 Eli. Manning v. Andrews. The Heir is bound by the Statute 32 H. 8. of Fines, which does not bind the Wife. But Quare what Eftate the Wife shall have, when the Son of their 2 Bodies shall not inherit? And. 59. pl. 101. Anon.—Bend. 225. Sc. Mich. 16 Eli. She is Tenant in Tail, but if she make Feoffment, her Feeoffice shall not have it. For the Feoffment of the Baron had dispofed of the Fee Simple, and took away the Possibility of the Wife. Litt. R. 29. in Beck's Cafe. She continues Tenant in Tail, and may make Use for 3 Lives or Years, and the Conduite has nothing in her Life, her Heir. Ch. J. Jo. 40. cites 9 Rep. 1490. b. Greenly's Cafe.

* After the Fine levied by the Baron, the Feme is not Tenant in Tail, but is like to a Tenant in Tail after
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Fine.

after Possibility of Issue extinct. Arg. 2 Roll. R. 427. in the Serjeant's Case — The Issue is totally and finally barred, and so are the Cafe, 18 Eliz. D. 331 & 269, & Beaumont's Case; yet the Entail remains to the Wife in Right, as to herself, and to all Estates and Remainders depending upon it; and to all the Consequences of Benefit to herself, and to others by her, as long as she lives, as amply as if the Issue had not been levied. Hob. 357. in Case of Duncomb v. Wingfield.—Per Onions J. The Issue shall be barred; for he cannot claim by the Gift in Tail; because, when he makes Conveyance to himself, he may make himself Heir as well to the Father as the Mother; and this he is whipped to do by the Issue; and that the Issue might have entered, this was by Reason of the Statue, and not by Force of the Tail; and that the Right given by the Statute does not depend to the Heir by the Mother, but only the Right of the Entail, which depends from both. Dal. 72. pl 16. Trin. 18 Eliz. — Kelw. 209. b pl. 7. S. P. — Mo. 28. pl. 97. S. P. — D. 331. b. pl. 24. Trin. 18 Eliz. Anon.

3. Issue was Devisee for 30 Years of the Occupation and Profits of a Term if the Issue should live a Widow; and after her Widowhood the Remainder to B. his Son. She enters, and the Reversioner, by Indenture, granted, &c., the said Tenement to the Issue and her Heirs. The Reversioner and his Issue owned a Fine to the Uses aforesaid; and afterwards the Issue married. Resolved that the Wife of the Reversioner is concluded of her Right of Dower, by the Declaration of the Uses of the Fine by her Husband only, which was after levied by them jointly, because no Contradiction of the Issue appears, that she did not agree to the Uses declared by the Husband by his Indenture solely. Trin. 28 Eliz. C. B. Ow. 6. Haverington's Case.

4. Baron and Issue exchanged the Lands of the Issue, which Exchange was executed, and they levy a Fine of the Lands taken in Exchange. Per Rhodes & Windham J. the Issue, after the Death of her Baron, may enter into her own Lands, notwithstanding the Fine; and Judgment for the Issue. Le. 285. pl. 386. Hill. 28 Eliz. C. B. Anon.

5. Issue, without her Husband, levies a Fine of her Land as a Issue Sole; the Issue shall bind her after the Coverture, if the Husband do not enter on the Conveyance during the Coverture, and interrupt the Possession gained by the Issue, per Periam J. Le. 82. Pach. 29 Eliz. C. B. Zouch v. Bamfield.

6. Baron Tenant for Life, Remainder to the Heirs of the Body of the Wife, by the Baron to be begotten; they have Issue a Daughter; the Wife dies; a Fine by the Baron only is no Bar to the Daughter. Yelv. 131. Trin. 6 Jac. B. R. Repps v. Bonham.

7. A. and his Wife were seized in Special Tail, Remainder to A. in Fee; A. alone levied a Fine to King E. 6. in Fee, which Issue came to B. in Fee; A. having Issue, died; his Wife enter'd; B. confirmed the Estate in the Wife, Habendum to her, and the Heirs of the Body of her and her Husband. And it was ruled that the Confirmation wrought nothing, because the had as great an Estate before; and also the Issues could not be made inheritable, which were before barred by their Father's Fine, and the Estate Tail, as against them, lawfully given to another. And it was further resolved by way of Admittance, that if the Remainder in Fee had not been to A. himself, but to a Stranger; the Entry of the Wife had restored that Remainder to the Stranger, and had left nothing in the Cognisance, but a mere Possibility; so the hath the Tail not only for her self, but to the Benefit, and Advantage of other Estates, growing out of one Root with his. And yet during the Life of A. the Entail had been barred, and all had been in the Cognisance; and the Wife had had nothing but a Possibility. Hob. 237. cit's 3 Rep. 146. Pach. 10 Jac. in the Court of Wards. Beaumont's Case.

8. If Land be Special to entitled to A. and his Wife, the Remainder to B. in Tail; the Remainder to C. in Fee; and A. the Husband levies a Fine alone to D. in Fee, and dies, leaving Issue, and the Wife enters; she is in of her Estate in Tail, and her Entry also remits B. and C. to their several Remainders, and hath put D. out of his whole Estate. And therefore there is clear of Opinion, that the Wife in that Cause may suffer a common Recovery against herself, as Tenant in Tail, and vouch the common Vouchee; and that shall bar the old Remainders of B. C. For the cannot be said to be in
Fine.

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of other Estate at all, much less to them. If the Wife after such common Recovery paffed against her die, leaving Iiife by her Husband; now D: is to have the Land (as hath been faid) neither can the Recovery had a-gainft her, hurt him; For as to bins, she was eins de autre Estate, and therefore the Value can't come to him. And if the had come in as a Vouche, yet it could not have hurt D. For his Estate and hers never stood together, nor had Dependance the one upon the other. And he had his Estate divided from hers, and by contrary means; tho' both out of the Root of the Enail, per Hobart Ch. J. Mich. 16 Jac. Hob. 259. in Cafe of Duncombe v. Wingfield.

(B. b. 2) Amendment of Fines and Common Recoveries; and of Writs relating thereto.

1. Scire facias upon a Fine levied by King E. 2. Reddendo eodem Rege & Hereditus suis 18 s. per Annua Tendenda de nobis & Hereditum usfuris, where it should be E. 2. quondam Rege & Hereditum suis; and because it was a Writ Judicial, therefore it was not abated. Br. Amendment, pl. 104. cites 39 E. 3.

2. Scire facias upon a Fine, which was to him and his Heirs Male, and the Mittiinus was, ad Professionem J. T. consanguinem & Hereditatis, where they cited their Bodies, and Certorarii bifuf to remove the Record out of the Treasury into the Chancery, and now it came into C. B. by Mittiinus, and the Plaintiff brought Scire facias upon it, as ftre to the Baron and Feme of their Bodies; and in the Mittiinus, he made himfelf Heir to the Baron only: and in the Scire facias he had made himfelf Heir to the Baron and Feme; the Opinion was that the Scire facias should abate: For the Fine warrants the Mittiinus, and the Mittiinus warrants the Scire facias, and therefore they ought to agree. And per Vavifor, Readle and Fineaux it shall be amended, because it is founded upon Record Contus of Scire facias, which is founded upon Sampij; note the Diverfity. Br. Amendment, pl. 65. cites 9 H. 7. 1. 8.

3. 23 Eliz. cap. 3. §. 10. Enacts that none of the Fines or Recoveries heretofore levied, paffed, or suffered, which fhall be exemplified under the great Seai according to the Form of this Act, fhall, after fuch Exemplification had, be in any wise amended.

4. 27 Eliz. cap. 9. §. 10. Enacts that no Fines or Recoveries heretofore levied, paffed or suffered; which fhall be exemplified under any Judicial Seai of any the Shires of Wales, or Town or County of Haverford-Well, or under the Seal of any of the Counties Palatine, fhall after fuch Exemplifications had, be in any wise amended.

5. The Return of the Writ of Covenant was Off. Paff. 31 H. 8. and in Truth was ingraffed Transf. Sequen. but was entered thus, viz. & paff Conv. Celf. & Recordat. in Cofin, Southerf. Trans. Anno 30 H. 8. where it fhould be 32 H. 8. And upon this, Writ of Error was brought and pending the Writ of Error, by the Refolutions of Wray, Gawdy, Clench and Shute, Judges of B. R. Sedentia Curia, the Record was amended in his Verbis. (Et poffex Conv. Cofin, Trinit. 32.) 5 Rep. 44. cited as Mich. 27 & 28 Eliz. Kettle's Cafe.

At the Foot of the Writ a Proclamation was inscribed, to have been made 30 Juft. which was after the End of Trinity, 31 H. 8. But it was amended by the Court according to the Note of the Fine, which was 50 Jufis. 5 Rep. 44 b. cited in Mich. 78 & 39 Eliz. Ch. 3. Doan's Cafe.

6. In a Formedon, the Tenant pleaded a Fine with Proclamations; the Demandant replied, Nul tiei Record; and the Truth of the Cafe was, but the Record of the Fine, which remained with the Chirographer, did not warrant the Plea; but that, which remained with the Custos Breuum, did not warrant it; and both these Records were fhewn to the Court. And Rhodes J. cited a President 26 Eliz. Where, by the Advice of all the Judges of England, where such Records differ, the Record, remaining with the Custos Breuum, was amended and made according to the...
Fine.

Record remaining with the Chirographer. Which Windham conceiv'd. And afterwards, the said Precedent was flowed, in which were set down all the Proceedings in the Amending of it, and the Names of all the Justices, by whose Direction the Record was amended, particularly; and that the said Precedent was written, and the Amendment of the said Record, entered, by the Commandment and Appointment of the said Justices in perpetuum rei Memoriam. And the Reason which induced the said Justices to make such Order, is there written; because they took it, that the Note, remaining with the Chirographer, cit Principia Recordinum. 3 Le. 193. pl. 234. Mich. 29 Eliz. C. B. Anon.

7. The Records, before Amendment, were in Cont' Suffix; but were amended and made Noun, as the Truth was. 5 Rep. 44. b. cited as the Cafe of Payn v. Covert.

8. A levied a Fine to B. of the Manor of D. and 1000 Acres of Land, &c. according to the usual Form of Fines, which were valued at 20 Marks a Year; so that the Fine in the Hamper was l l. 6 s. 8 d. and consequently the Fine Pro Licentia Concordandi or post Fine was 40 s. in the whole, and yet the Clerk entered the King's Silver or Post-Fine thus, B. dat. Domine Reginae 40 s. pro Licentia Concordandi &c. in Placita Conventionis 1000 Acres of Land, &c. and purfued all the other Words, only that he omitted the Manor. It was alined for Error, that the King's Silver was not paid as well for the Manor as for the Tenements; but because it appeared, upon Examination and View of all the Parts of the Fine, on a Motion to the Court of C. B. for Amendment of this Fine, that it was only the Misprision of the Clerk that entered the King's Silver, and that the said Sum of 40 s. in Verity was the Fine, as well for the Manor as for the Residue; and always the Value entered upon the Back of the Writ of Covenant is the Warrant for the Entry of the King's Silver; and tho' the Transcript of the Fine was removed by Writ of Error; yet since the Body of the Record remained with them, they unanimously resolved that the said Entry shall be amended, and shall be made in the Writ de Conventione of the Manor aforesaid, &c. and of all the Acres, &c. as it ought to be. And after, upon Diminution alleged in the Omision of the said Manor in the Entry of the King's Silver, the Writ was directed to this Purpoze to the Ld Anderfon, who, one Day this Term, moved all the Justices of Sergeant's Inn in Fleetstreet to know their Opinions concerning the said Amendment in this Cafe, pending the said Writ of Error. And it was resolved by Popham Ch. J. of Eng. Periam Ch. Bar. Clerk, Walmley, Fenner, Owen and Ewync, that the said Entry of the King's Silver should be amended; and this pending the Writ of Error. 5 Rep 43. b. 44. a. Mich. 38 & 39 Eliz. Bohun's Cafe.

9. Also where the Writ of Covenant should be Telle meipse, the Writ was Dede meipse, which was inoffensive and vifious; and this was also amended by all their Opinions. Mich. 38 & 39 Eliz. Rep. 44. Bohun's Cafe.

10. The Certificate of the Note of the Judge, &c. was thus—In Precipio de duabus Partibus Rexforis, & duabus Partibus. Tenement, by Mistake of the Clerk who wrote the Concord, the Cognizance was Partem ultimam quam, &c. But the Foot of the Fine, and the Note in the Hands of the Chirographer, were right, viz. Partes quas, ut illas quas, &c. and by these the Certificate of the Judge was amended, pending a Writ of Error, which had been brought in B. R. Upon which the Plaintr of Error moved the Court of C. B. that the Fine should be made in Statu Quo, as it was before the Amendment; but all the Court denied the Motion, and directed that the Amendment should stand, tho' made after the Writ of Error brought. 5 Rep. 44. cited as Hill. 38 Eliz. C. B. Morgan's Cafe.
11. In the Writ of Covenant, and the Note and Foot of the Fine, the Village was Called, but was amended by the Court, and made called, according to the Acknowledgment to the Judge, which was right. 5 Rep. 44. b. cited as Wethers's Case.

12. In a Writ of Error to reverse a Fine the 4 Eliz. and affirmed for Error, that the Writ of Covenant bore Telfe, 24 Apr. returnable 15 Pach. which in Truth was 15 Apr. and to the Return before the Telfe. Resolved that it shall be amended. Trin. 41 Eliz. B. R. 5 Rep. 45. b. Gages's Case.

This was afterwards reversed and adjudged not amendable. Mo. 1733. 10 Ch. 39. c. cited as Clarke's Report of Gages's Case, it was not amended, but Judgment reversed. 5 Mod. 196. — Jenk. 253. pl. 53.

13. A Writ of Entry Sur Diéfiéin en le Poit was of 15 Acres of Land, and one Acre of Meadow in Alphaston and Langars in the County of Effe, whereas the Feoffment produced, the said Acre of Meadow lay in Great Henney. It was ordered to expunge Langars, and, in the Place thereof, to insert the Name of the Village of Great Henney, and that the Prothonotary's Clerk amend the Entry, &c. Pig. of Recov. 228, 229. cites Mich. 6 Car. 1. Skinner v. Land.

14. The Writ of Covenant in the Certificate, is fì secert eos secet. &c: where it ought to be (vos.) But upon View of the Return of that Writ, certified from Chester, where the Fine was levied, it was (vos.) whereupon it was awarded, that the Roll should be amended, and the Fine was affirmed. Mich. 11 Car. B. R. Cro. C. 415, 416. Done v. Smethiel & Leigh.

15. A Fine, to make a Tenant to the Precipe, was of two Messuages and one Garden, but the Recovery was of one Messuage and one Garden. Ordered, upon Affidavit, Examination in Court, and Convent of Parties, to be amended. Pig. of Recov. 222, 223, 224. cites 13 Car. 1. Drake v. Biddulph.

16. Precipe and Concord were of Tenements lying in the Parish of Lancerdon in Count Cornwall; when in Fact there is no such Parish within all the County of Cornwall, but ought to have been in the Parish of Saint Stephens near Lanecott; it was ordered by the Court, that as well the Precipe and Writ of Covenant, as all Entries and Records of the said Fine in all Offices, which it has palled thro', be amended and rectified, by inserting the Words (St. Stephen's near) as by Law it ought to be done. Pig. of Recov. 217, 219. cites P. 34 Car. 2. Tregear v. Gennys.

17. It was ordered, that the Writ of Covenant be amended, by inserting their Words, (and Knowleson) in the said Writ 3; and that all Entries and Process made thereon, be amended by the said Writ according to the same Rule. Pig. of Recov. 229. cites Hill. 3 Anne. Courtenay v. Blake.

Then he adds two preceding Orders made to show Cause why the said Writ, and all the Entries and Processs should not be amended, and the said Words infurted. Ibid. 221, 222.

Court, and Convent of Camarob. Pig. of Recov. 217. Mich. 1652. 2 Car. 2. Parker Cotton & Ux.

18. Ordered that the Words (Clarendon and Clarendon Park) which were mentioned in a Deed produced in Court, declaring the Use of a Fine and Recovery levied and suffered of Tenements in Laverlock, Pitron, Purton, &c in the County of Wilts, be, by the Curator of the said County, inserted in the Writs of Covenant and Entry, next after the Word Purton; and also that all Parts of the said Fine, between the Parties thereto, and the Recovery aforesaid, and the Exemption thereof, and the Writs of Seisin between the said Parties, be amended on Record in the same aforesaid Words, (Clarendon & Clarendon Park) in all Places neccessary. Pig. of Recov. 225, 226, 227. Hill. 5 Ann. Abney v. Ld Clarendon.—& Heck v. Abney & al.

19. Fines
Fine.

19. Fines were levied of Lands in the Island of Antego, and Error was brought to reverse the same, the Lands being mentioned in the Writ, &c. thus, in Inslulo de Antego in America, in Parthritis Transmarinis, &c. in Parochia familie Marie Yllington in Cont. Middle; and the same was ordered to be amended by striking out the Words (in America in Parthritis Transmarinis) And Articles of Agreement between the Parties to the Fines being read, which were to convey and allure Lands in the Island of Antego; the Court said, that the Repugnancy inferred merely thro' want of Skill, and which would vitiate the Fines, must be rejected, and the Fines made effectual, viz. in common Form; but that, if then they should be insufficient, Advantage may be taken thereof. Barnes's Notes of Cases in C. B. 143. Patch. 8 Geo. 2. Forster v. Pollington, & Forster v. Brooke.

(B. b. 3) Warranties in Fines. How they may be.

1. A Fine was levied by the Baron and Feme, who acknowledged the Tenements to be the Right, &c. and releaved, and quit-claimed from them, and the Heirs of the Feme, and bound the Heirs of the Feme to Warranty, without a Word of the Baron. Br. Fines. pl. 19. cites 44 E. 3. 21.

2. If divers join in a Fine, it is said the Warranty must be by them, and the Heirs of one of them, who is the Owner of the Land. Yet if there are divers Conjoint, they may warrant severally, and either generally or specially; for Warranties are sometimes general, that is, against all Men, sometimes against all except a single certain Person, sometimes against certain Persons only; sometimes against every Conjoint and his Heirs severally, sometimes against one of the Conjoints and his Heirs only, sometimes of all except a certain Part; and sometimes of a Part only certainly expressed. Manb. of Fines 9. cites 44 E. 3. (but there is no Page, Plea or Term mentioned.)

(C. b) By Baron and Feme.

1. BARON makes Gift in Tail of his Wife's Land, and after they join in a Fine of the Reversion; this bars the Wife of all. But if they had granted the Rent only by Fine, then the Wife might have entered after the Death of her Baron, per Caril. as Brown and Walmsley J. vouch it. Mo. 91. pl. 224. Trin. 10 Eliz. Anon.

2. Baron and Feme are seised of Land in Fine Usufr.; Baron alone sells the Land by Indenture in his Name alone, or without Deed indented, and afterwards Baron and Feme levy a Fine to the Vendee. This shall be to the Use of the Vendee. For her Agreement by the Fine shall be intended, unless something be to the contrary. Agreed per Onnes. And. 164. Mich. 29 & 30 Eliz. in Cafe of Colgate v. Blith. al. Kenn. Cafe.

3. Baron seised of Land in Right of the Wife, makes a Lease to A. for 21 Years, and after he and his Wife levy a Fine Sur Cogn. de Droit come coe, &c. to C. and his Heirs; the Baron dies; the Lease is determined by his Death, and the Conjoint shall avoid it; For the Baron joined but for Conformity and Necessity, 2 Rep. 77. b. cited in Cromwell's Cafe, as the Cafe of Harvy v. Thomas.


5. Baron and Feme seised of Land to them and the Heirs of the Baron, They bargain and sell by Deed in Fee, in which is a Proviso, that if either of them pay 100 l. then they to release as in their former Estate; and that this Indenture, and all other Fines, &c. should be to the Use of the Baron and his Heirs. omitting the Feme. And lately it is agreed, that all
all Fines and Affurances to be made between the Parties within &c. should be to the Uses, Intents, &c. and Agreements before herein expressed, and to no other Use, &c. The Deed was not inrolled; A Fine was levied within the Time; The Baron dies; The Feme pays the 100 l. Revolved the shall have her Estate for Life. Hill. 42 Eliz. B. R. Cro. E. 744. Southcot v. Manory.

Day and re-entered.—Mo. 680. S. C. Wilmott v. Knowles.


Feme Tenant for Life, Remainder to her first Son in Tail ; the and and her Baron (before any Son born) accept a Fine of the Fee. The Contingent Remainder is destroyed, and not preferred by the Possibility of surviving the Baron and fo vaying the Estate taken by the Fine. 2 Lev. 39. Hill. 23 and 24 Car. 2. B. R. Purefoy v. Rogers.


An Annuity was made payable out of Lands for the Jointure of the Wife, afterwards Baron and Feme join in a Fine to B. to whom A. after the Marriage, had mortgaged Part of those Lands; B. had Notice of the Annuity before his Mortgage, and 'twas excepted in the Mortgage. Declared that her joining in the Fine was no Extinguishment of her Annuity. Hill. 29 Car. 2. Fin. R. 277. Solly v. Whitfield.

Husband and Wife covenanted to levy a Fine of the Wife's Land to the Use of the Heirs of the Body of the Husband on the Wife begotten. Here can be no Estate to the Husband for Life by Implication; because the Estate was the Wife's, to which he was a Stranger, so 'tis merely void; For taking it as a Remainder, there is no precedent Estate of Freehold to support it; and taking it as a Springing Use, then 'tis a Springing Executory Use, to arise after a dying without Issue, which the Law will not expect; so that 'tis either way void, and it must be one of these; per Cur. Hill. 3 W. & M. B. R. 2 Salk. 675. Davis v. Speed.
(D. b) By Other Person of the Lands of a Feme Covert, either in Possession, Remainder, &c.

1. A Tenant for Term of Life, Remainder in Fee to Feme Covert. The Tenant for Life leaves a Fine. The Baron dies, and Feme takes other Baron; and Tenant dies. 5 Years pass. The second Baron dies. The Feme shall be barred. D. 72. b. pl. 3. Marg. 43 Eliz. Whetstone v. Wentworth.

(D. b. 2) Proclamations. Made at what Time. After the Death of the Parties.

1. The Writ of Covenant, and Ded. Pot. with the Concord, was certified; and the King's Silver entered, the same Term that the Fine was acknowledged; but the Fine was not engraved, but remained in the Chronograph Office; and now the Comfee being dead, his Heir moved to have the Fine engraved with Proclamations; and because a Formedon is pending now for Part of the Land, Curia aviso our; &c. Michaelmas Term, 'twas held per Cur. that the Fine should be engraved, but that the Proclamations should not be entered nor engraved; because the Parties to the Fine are dead, to whom by the Statute of 4 H. 7. Election is given to have the Fine with Proclamations, or without. And no Party is here to make Election. D. 254. pl. 194. Trin. 8 Eliz. Compton's Case.

2. In Formedon. The Tenant pleads a Fine with Proclamations in Bar, by one Richard, the Demander's Ancestor. The Plaintiff replies, that Richard entered upon his Father, being Tenant in Tail, and leased the Fine; and before the Proclamation pailed, the Father re-entered, and died, &c. And by the whole Court it was held to be a good Replication, and the Bar well avoided. For when the Father re-entered before all the Proclamations pailed, the Fine thereby is avoided to all Purposes, as well to himself, as to the Son who leased it; but if the Proclamations had incurred before his Entry, altho' he had re-entered within the five Years, and died, yet it should have bound the Son and his Heirs for ever. Cro. E. 361, 362. Mich. 36 & 37 Eliz. C. B. Archer v. Green.

3. A Tenant for Life of certain Land, the Remainder to B. in Tail, the Reversion to B. and his Heirs expectant. B. leased a Fine to C. and D. and to the Heirs of C. to the Use of them and their Heirs, and had Issue, and died before all the Proclamations were palled, the Issue in Tail then being beyond Sea; the Proclamations are made, and after the Issue in Tail returned, and immediately made Claim upon the Land to the Remainder in Tail, if in this Case the Estate Tail was barred or not, was the Question. It was resolved by all the Judges and Barons of the Exchequer, nullo contradicente, that tho' by the Death of Tenant in Tail a Right of Estate Tail descended to the Issue, inasmuch as he died before all the Proclamations were palled, yet when the Proclamations palled without any Claim made by the Issue in Tail upon the Land, this Right that descended to him is barred by the Statutes of 4 H. 7. and 32 Hen. 8. For tho' the Fine without Proclamations, nor the Proclamations without the Fine, can't bar an Estate Tail; and tho' after the Fine leived, and before all the Proclamations palled, a Right is descended to the Issue in Tail per Formam Domi, which is Paramount the Fine; and tho' there is no Fine with Proclamations leived after the Death of the Tenant in Tail to bar this Right, so descended to the Issue in Tail; yet inasmuch as 'tis provided by the Stat. of 32 H. 8. That all Fines leived with Proclamations of any Lands, &c. to the Person, so leying the same, or to any of his Ancestors in Possession, Reversion, Remainder, or in Life, shall be immediately after the Fine leived,
(E. b) With Proclamations. And how to be read and proclaimed. And the Effect thereof.

1. R. 3. c. 7. § 1. Enacts that a Fine shall be openly read and proclaimed But see pl. 6. the same Term, and three Terms after, at four several Days.

A Transcript of the Fine shall be sent to the Justices of Affairs of the County where the Land lies, to be there proclaimed.

§ 2. A Transcript shall be sent to the Justices of Peace.


2. of that Statute, and the Notes thereon at (W 4).

3. 1 Ma. St. 2. cap. 7. § 1. Strengthens Fines when Proclamations are not made, &c. by Reason of Adjournment of the Term.

It has been extended, where but Part of the Term is adjourned. For it is a favourable Law, and to be taken by Equity. 2 Inf. 519.—D. 186. pl. 68. Mich. 2 & 3 Eliz.

4. Nothing can disturb the Operation of the Proclamations, but the Re-continuance of the Tail by Judgment in a Formedon, Entry, Claim or Remitter, as the Cafe requires. Vid. Pl. C. Smith v. Stapleton.

Death, the Entry or Claim of the Iffue in Tail, prior to the Proclamations, will not render the Fine ineffective. Vid. 5 Rep. 66 b. 61. in Cafe of Fines—see Purfhow's Cafe.—And Vid. Poph. 65, 68. cites 23 Eliz. Ed Sturton's Cafe.

5. Fine to bar an Entail must be alleged to be with Proclamations, otherwise it will be intended to be without Proclamations; and so the Bargainee will only have an Entail for the Life of the Tenant in Tail, because it is no Discontinuance. Mo. 220. Mich. 27 & 28 Eliz. Owen's Cafe.

6. 31 Eliz. 2. Enacts that all Fines with Proclamations to be levied in the Common Pleas, shall be proclaimed 4 Times only, viz. once in the Term in which it is ingrossed, and once in every of the 3 Terms bolden next after the same ingrossing; and every Fine so proclaimed shall be of Force, as if the same had been 16 Times proclaimed according to the Statutes foretime made.

7. If the Conufee dies, the Heir has Election to have the Fine with Proclamations, as well as the Anceflor. For 'tis for his Beneft, and the Statute does not restrain it. And the reason of 8 Eliz. 234. why the Proclamations there made were fegred after the Conufee's Death was, because a Formedon was depending, and that was only in the Discretion of the Court. Cro. F. 693. Mich. 41 & 42 Eliz. B.R. Wakefield v. Hodgfeon.

8. The Proclamations do not make the Fine, but entitle to the Entail made by the Fine, and make the Bar according to the Entail; which passed before by the Fine. Poph. 63. in Cafe of Harry v. Farey.

The Proclamations force only to distinguish, that it is a Fine according to the Stat. 3 H. 7. For tho' the Iffue having Notice by the Proclamation brings his Formedon accordingly, yet it shall not avail him. 3 Rep. 91. Patch 44 Eliz. in the Cafe of Fines.

9. Where a Fine and 5 Years past are urged to bar a Right, &c. by Non-claim within the Statutes, the must force the Proclamations under Seal;
and the Chirographers mentioning that 'tis a Fine with Proclamations, as is usual, will not serve. Clayr. 51. 13 Car. Allen's Cafe.

10. A Fine with Proclamations when given in Evidence, ought to have the Proclamations inserted on it; and 'tis not enough to say that it is second Formam Statuti. Held on a Trial per Scroggs Ch. J. 2 Show. 126. pl. 107. Trin. 32 Car. 2. B. R. Anon.

(E. b. 2.) Reversal. What must be done in Order to reverse Fines. Scire facias against Tertenants, &c.

1. In Scire facias, W. acknowledged the Manor of Dale to be the Right of R. by Force of which Acknowledgement R. granted and rendered again to the said W. and his Heirs; and after W. died, and F. his Son and Heir brought Scire facias to execute the Fine; per Fencett, Fine fur Conuance de Droit, is to be executed by Scire facias; For such Fine is Executory. Contra ellewhere of a Fine Sur Conuance de Droit come cee, &c. nevertheless it feems it feems in the Cafe above, that the Comufe or his Heir may enter, as upon a Recovery. Br. Sci. fa. pl. 199. cites 38 E. 3. 17.

2. Scire facias to execute a Fine, it feems by the Argument of the Cafe, that where a Fine is levied to the Baron and Fene in Tail, the Remainder to W. And the Baron died without Issue, and the Fene leased his Estate, to W. and he died, his Heir shall not have a Scire facias, for it was surrendered to his Father, and fo he is feited by Force of the Fine. Br. Sci. fa. pl. 38. cites 45 E. 3. 18.

3. Scire facias upon a Fine, the Defendant said that he had nothing but for Term of Years of the Leave of J. N. and that he is not Peverou; and so fee if he be Tenant of the Franktenement or Peverou, the Writ lies against him. Br. Brief. pl. 434. cites 8 H. 6. 32.

4. Coke demanded the Opinion of the Court in this Cafe, M. being Tenant in Tail, had issue two sons R. and J. and dies. R. levies two Fines of the Land and dies without Issue. J. brings two Writs of Error upon these Fines; the Defendant, to the first Fine pleads the second Fine not reversed; and to the second he pleads the first not reversed; the Question was, what is to be done? Curia, you may reply, that the said Fine pleaded in Bar is also erroneous, and do aid your felt. 7 H. 4. 39. Cro. E. 151. Mich. 31 & 32 Eliz. B. R. Molton's Cafe.

5. Fine by Tenant in Tail was reversed by Writ of Deceit. The Issue in Tail is remitted, and shall avoid all Estates made by him; For the Fine is void between the Parties. But the Tenant in Tail, after that Fine levied, and before it was reversed, had made a Lease for Years, the Remainder over for Life. And whether the Issue might enter to avoid those Estates, was the Question? And 'twas held, that he could not, without a Scire facias filed against him, who had the Prechold; for he, who is to defeat a Record, is always to commence his Suit against him, who is privy to the Record; But when he hath reversed it against him, he ought always to have a Sci. fa. against him who is Tertenant; For it may be, he hath some matter to bar him of Execution; And otherwise he shall not be bound, unless he be made privy by a Sci. fa. or that 2 Nihils be returned. Cro. E. 471. 472. Pach. 38 Eliz. B. R. Cary v. Dancy.

6. A. & B. his Wife, the Wife being then within Age, levied a Fine of the Lands of the Wife, and a Precipe quod reddat was brought against the Comufe, who vouched the Husband and the Wife, and they appeared in Person, and vouched over the Common Vouchee, who appeared, and after made Default, whereby a Recovery was had; and now the said Wife and her Husband brought a Writ of Error to reverse the Fine, and another Writ of Error to reverse the Recovery, by reason of the Nonage of the Woman; and the Course was of Opinion to reverse the Fine, but they would advise upon the Recovery, for that the said A. and his Wife appeared in Person and vouched over; and so the Recovery was bad against them by their Appearance.
Fine.

Appearance, and not by Default, and fo it seemeth no Error; and to prove that, Gawdy cited 1 & 2 Mar. D. 104. and 6 H. 8. 61. Sayer Default 50. Also, as this Case is, it seems, that by general Entry into Warranty, the Error upon the Fine is gone; but upon Examination, it was found that the Recovery was before the Fine; For the Recovery was Quinquies Trin. and the Fine was Tris. Trin. and so the Recovery doth not give away the Error in the Fine. Goldsb. 181. pl. 116. Sir Henry Jones's Case.

7. It was agreed by the Counsell at Bar and Coke Ch. J. that Write of Error must be brought against a Party or Privy to Revere a Fine, and not against the Tertenant. Roll. R. 37.

8. But in a Writ of Action or Deceit, the Write shall be against the Tertenant; and the Court was of the fame Opinion as to the first Part of the Diversity; but Coke only spoke to the second Part. Roll. Rep. 37.

9. The Court will not reverence a Fine without a Scire facias returned against the Tertenants; For the Counsellors are but nominal Parties; and tho' it was otherwise in the Precedent in Co. Ent. and Herr's Plead. 375. and the Law perhaps does not strictly require it, yet the Court of the Court does; per Cur. i. Salk. 339. Hill. 6 W. 3. B. R. Anon.

(E. b. 3) Avoided or Revered, &c. for Fraud; and Pleadings.

1. Collusion may be averred contrary to a Fine. Br. Fines, pl. 115. cites 29 Aff. 53. and Trin. 33 H. 8. S.P. Br.Fines pl. 11. per Danby, but he said it was otherwise, if there was not only one of that Name, and a Stranger acknowledged the Fine in the Name of R. D. But Brooke says, that it seems to him all one; For in pleading he shall say, that there are two of one Name, and the other R. D. levied the Fine, and not be. Welt's Symb. 191.

2. If there be 2 R. D.'s of one Name, and the one levy a Fine of the Land of the other, and the other R. D. levied the Fine, and not be. Welt's Symb. 191.

3. A Man may levy a Fine in the Name of another, that is Owner of the Land, 34 H. 6. 19. Contra held 19 H. 6. 44. because 'tis a Matter of Record; therefore, he hath no other remedy in such Case, but an Action of Deceit. Welt's Symb. 191.

3. And in like manner, if any Stranger levy a Fine in the Name of another, that is Owner of the Land, 34 H. 6. 19. Contra held 19 H. 6. 44. because 'tis a Matter of Record; therefore, he hath no other remedy in such Case, but an Action of Deceit. Welt's Symb. 191.

4. A. levies a Fine in the Name of B. being beyond Sea; and Sentence was given that the Fine should be void. Noy. 99. in the Star Chamber, Gillibrand v. Hubbard.

on the Roll. Cro. E. 531. S.C by Name of Hubert's Case.—Mo. 650. Mich. 38 & 39 Ellis. in the Star Chamber, S. C.—12 Rep. 123. cites S.C. but says, that part of the Sentence was, that if Defendant did not re-affume the Land to the Plaintiff, he should forfeit a greater Fine to the Queen. But that there was no Sentence to draw the Fine off the Fine, nor Damages awarded to the Plaintiff.— A Re-convenance was Deemed. Roll. R. 115 cites S. C.

O 000

5 A.
326

Fine.

5. A. leased to B. for Years, Land in D. rendring Rent; B. has other 

Lands of Inheritance in D. — B. Leases to C. for Life the said Lands leased to

to him for Years; and afterwards B. leaves a Fine with Proclamations of all

the said Lands which were his Inheritance, and of those which were leased

to him for Years; (the Number of Acres in the Fine amounted to the

whole) B. paid his Rent yearly to A. during the Years; the said Fine was

levied of all the said Lands with Proclamations; and 5 Years passed; A.

shall not be barred in this Case, for there is apparent Covin in levying

this Fine; by all the Judges of England. Jenk. 253. pl. 45.

Report of it lies much weight upon; yet it does not thence follow, that the Law is not the same where

there are not such Evidences of Fraud. In other Books where that Case is reported, the Resolution

does not seem to go so much upon the Particulars of the Fraud; in Fraud apparent in the Leffe.


6. If a Fine be levied to secret Uses to deceive a Purchasor, an Averment of

Fraud may be taken against it by the Stat. 27 Eliz. 4. 3 Rep. 80 Hill.

44 Eliz. in Chancery, in Fervor's Cafe.

7. So if a Fine be levied upon arious Contrary, it may be avoided by

Averment by the Stat. of 13 Eliz. 8. 3 Rep. 80. in Fervor's Cafe

By 21 Jac. 1. 26. §. 2. It is Felony without Benefit of Clergy, to

acknowledge, or procure to be acknowledged any Fine, Recovery, &c. in the Name

of any Person not Priory, or consenting thereunto.

(E. b. 4) Avoided or Revered for Error; for what Errors

in General; and at what Time.

A Fine is not good by a

contrary Name

as Sibell for

Isabell. Br.

Fines, pl. 72.
cites S. C. —

Br. Etoppel,


1. A Fine was levied to the Baron and B. his Wife, where her Name was

M. it was said by Bereford, that Nothing palled to her; but per Scroope,

he may conclude the Heir of the Baron, who took by the Fine with her

to say, that she had other Name than B. Br. Feoffment, pl. 20. cites

1 All. 11.

2. A Fine was levied by A. and B. his Wife, where the Name of the

Wife was M. yet this shall bind her by Etoppel, and the Tenant may

plead, that the, by the Name of B. levied the Fine. Br. Fines, pl. 117. cites Tempore H. 8.

3. It was resolved that the Conutor shall not assign Error, in the Grant

and Render, by which himself takes Estate, no more than the Conuder shall

in the Conuside, for this is to defeat the Elate, which by the Fine is given
to himself; neither shall the Recoveror bring a Writ of Error to defeat

the Record, in which himself was Recoveror; For the Judgment in the

Writ of Error is to be restored to all that he lost by the Fine or Judgment;

and not to avoid and lose that which he had gained by the Fine or Judgment;

7 Eliz. 3. 25. b. A Man shall not reverse Judgment for Error, if he

knew that the Error is in his Disadvantage, 8 H. 5. 2. b. and F. N. B. 21.

accordingly; and after the Fine was Affirmed. 5 Rep. 39. b. Trin. 34

Eliz. B. R. Tey's Cafe.

4. In the Conuside of a Fine false Latin, or Incongruity, will not hurt

the Fine; as where a Fine is levied de Manersis (in the plural Number)

of B. and H. where (in Truth) B. and H. are only one Manor. 9 Rep.


5. Fines and Recoveries being Conveyances by Consent, are as Feoffs

ments or Deeds; and an Error to reverse them, ought to be palpable, great,

and apparent; and ought to be in the Essence of the Fine or Recovery. Jenk.

258. pl. 53.

6. To & 11 W. 3. 14. §. 1. For quieting Men's Titles and Posessions under

Ancient Fines and Recoveries, and ancient Judgments; it is enacted, That no

Fine,
Fine.

Fine, or Common Recovery, nor any Judgment in any real or personal Action, shall after 1 May 1699, be reversed for any Error therein; unless the Writ of Error or Suit, for reversing such Fine, Recovery, or Judgment, be Commenced and Prosecuted with Effect, within 20 Years after such Fine levied, Recovery suffered, or Judgment Executed, or entered on Record.

Seeking the Rights of Infants, &c. so as they bring their Writ of Error within 5 Years after such Impediments removed.


1. By Release of all Right in the Land by him, who has Title to Reverse a Fine or Recovery by Writ of Error, the Error is extinct; per Fenner J. Ow. 22. 37 Eliz. B. R. in Wright's Case v. Wickham (Mayor).

2. By general Entry into Warrant, the Error upon the Fine is gone. See Goldsb. 181. pl. 116. Sir H. Jones's Case.

(E. b. 6) Pleadings to Reverse Fines; and where there is Variance between Writ of Error and the Record.

1. Writ of Error on a Fine mention'd 105 Acres, and the Fine certified was 150 Acres; it was intituled that this was good, because it agrees with the Record which is with the Cadast Brevium. But Wray said, that the principal Part of the Fine is with the Chirographer, and it ought to agree with that, or otherwise it is not good; and afterwards the Fine was Revered, Quad one of the Conutors only, he being an Infant. Cro. E. 124. Hill. 31 Eliz. B. R. Pigot v. Russell.

2. Mr. Carrhew moved for Leave to quash his own Writ of Error to reverse a Fine, because one of the Parties to the Fine is omitted in the Writ of Error; per Holt Ch. J. we can't do it; how can we take Notice of any Thing but what is on Record? We can't quash it on a foreign Suggestion; but let them shew Caufe why you should not Discontinue. Writs of Error are rarely discontinued, but some times they may be. 5 Mod. 67. Mich. 7 W. 3. Winchurit v. Mafely.

3. A Fine was levied by three, and two of them brought Error to reverse it; perhaps the other had Nothing in the Land, and it was reversed, per Holt Ch. J. who said it was so done in time of Pemberton Ch. J. 5 Mod. 67. Mich. 7 W. 3. in Cafe of Winchurit v. Mafely.

(E. b. 7) Error in the Return of the Caption; what.

1. Error to reverse a Fine, because, upon the Back of the Dedimus Potestatem, it was Executio illius brevis patet in quodam panello huic brevi adnse; whereas it ought to have been, in quodam Sedula huic Brevi annexa. For it is not any Panel, but a Schedule. Sed non Allocatur, for it is but matter of form, and not material; For altho it be not properly said to be a Panel, yet a Panel and a Schedule are all one in Substance, and no Caufe to reverse it. Cro. J 77, 78. Trin. 3 Jac. B. R. E. of Bedford v. Forster.

(E. b. 8) Pleadings. Setting forth the Title.

1. Note, per Thinning, that 'tis no Avoidance of a Fine to say, that those who were Parties to the Fine had nothing, without saying, but one J. N. whose Estate be Unitus; For he must shew who had any Thing in the Land at the Time, &c. but where a Recovery against my Ancestor is pleaded against me, 'tis sufficient to say, that the Ancestor had nothing in the Land at the time, &c. without shewing who was Tenant thereat. Br. Fines, pl. 43. cites 14 H 4. 33.
2. A Man may confess and avoid a Fine levied by his Ancestor whose Heir, &c. of the Manor of D. by saying that there are two Manors, viz. Over D. and Neither D. and that the Fine was levied of Over D. &c. [whereas the Heir is of Neither D. and a good Plea, per Vavilow, Davers, and Brian Justices; contrary Contable and Woodes; For by them the Ancestor was Enlarged, and therefore his Heir shall be Enlarged likewise, quare.; For the best Opinion is, that he may Confess and Avoid, if it be well pleased. Br. Conifile and Avoid, pl. 39. cites 12 H. 7. 6.

3. Error to reverse a Fine levied by A. and brought the Writ as Confign, and Heir of A. and alligns the Errors, and brings a Scire facias ad instanti. Errors, and doth not join in either of the said Writs, how he was Confign to the laid A. and for this Cause, the Defendant pleaded in Abatement of the Writ, and it was thereupon demurred in Law; and after Argument, the Court refolved, that it was good enough, without shewing how in the Writ of Error, or in the Scire facias; For the one is but a Commilition to hear the Errors, and needs not such certainty; and the other is but a Writ founded thereupon. And therefore, How Confign, need not be shewn in the Writ; nor is it requisite that the Title be shewn therein, unless it be in a special Case, varying from the Common Course; as where an especial Error in Tail brings a Writ of Error, or be in Remission, because he is to ininit himself, he ought to shew specially, How Confign, or how he hath the Remission; but otherwise not; and altoine in some such Writs, 'tis shewn, How Confign, as in Denier's Case, and is good enough, yet 'tis not of Necessity, and the Omitting thereof, is no Cause of Abating the Writ. See 33 H. 6. 54. 34 H. 6. 44 * 38 H. 6. 17. & 39. 45 E. 3. 25. the Book of Ent. 272. wherefore it was adjudged accordingly. Cro. J. 160. 161. Patch. 5 Jac. B. R. Sir Rich. Champernoon v. Sir Wm. Godolphin.

(F. b) Reversed by Reason of some Defaults as to the Proclamations, and the Effect thereof; and Pleadings.

1. If the Fine with Proclamations be not read openly; or be read for one Day in every Term, or only on Term, or if the Pleas do not come at the time of reading; or it be read there, and none of the Justices present; and this Form, which does not accord with the Statute, appears there of Record; the Fine, so levied, has not the Force of this Statute; but if the Record be, that the Fine was Proclaimed according to the Statute, the Fine is good, and has the Force of this Statute. Denih. R. 5. upon 4 H. 7. 24.

2. 1 Mq. 7. § 2. Enables that, Proclamations not duly made, by Reason of Adjournment of the Term, shall not prejudice the Fine.

3. Where 15 Proclamations were made, and one of them out of Term, it was adjudged, that the Fine should stand, and makes a Discontinuance, and the Proclamations be reversed. 4 El. D. 216. pl. 54.

Yet it stands as a good Fine at Common Law. Buls. 206.


For the Fine, by itself, is a Matter of Record perfect and full before the Proclamations made, and binds the Parties, and the Right of the Land between them before the Proclamations; and the Proclamations, that are made after, are other Matter of Record, which have other entry in the Record after the Fine; and the Proclamations, tho' they are grounded upon the Fine, and are puritan upon it, are several from the Fine, and they and the Fine are several Matters of the Record, and therefore Error in them is not Error in the Fine. Pl. C. 266. Mich. 4 & 5 Eliz. Fift v. Broket.

4. If any Proclamation be made on a Sunday, it is Error; because it is not Dies Juridicus. D. 181. b. pl. 52. 182. a. pl. 35. Fift v. Broket.

5. Tenant in Tail levies a Fine, and dies before the Proclamations pass; a Writ of Error is brought before the Proclamations; yet the Proclamations may pass in the Common Pleas; For only the Transcript of the Fine is removed by the Writ of Error. Jenk. 193. pl. 97. cites 21 Ed. 3. 40 All. Dy. 95.
6. Proclamation made in a subsequent Term, by Reason of Adjournment of the former Term, was held good. 4 Le. 202. Hill. 25 Eliz. C. B. Wingate v. Sands.

7. Error was brought upon a Fine, and the Error was assigned in the Proclamations; whereupon a Certiorari to the Cytos Breuwm, who certified the Proclamations, by which Certificate it appeared, that two of the said Proclamations were made in one Day, upon which the Defendant prayed another Scire facias to the Chirographer, in whose Office it appeared, that all the Proclamations were well and duly made. It was the Opinion of Wray Ch. J. in this Case, that the Defendant ought to have his Prayer; For the Chirographer makes the Proclamations, and he is the principal Officer as to them, and the Cytos Breuwm hath lat the Affract of the Proclamations, and we may in Discretion amend them upon the Matter appearing; but the other Justices seemed to be of a contrary Opinion; For that the Proclamations being once Certified by the Cytos Breuwm, who is the principal Officer, we ought not afterwards to refer to the Chirographer, who is the inferior Officer; and afterwards the Clerks of the Common Pleas were examined of the Matter aforesaid by the Justices of the King's Bench, and they answered according to that which was said by Wray Ch. J. wherefore it was awarded by the Court, that a new Certiorari be directed to the Chirographer, who certified the Proclamations to be well and duly made. And thereupon the Court awarded, that the Proclamations in the Office of the Cytos Breuwm, should be amended according to the Proclamations in the Custody and the Office of the Chirographer. 3 Le. 106, 107. Patch. 26. Eliz. B. R. Ragg v. Bowley.

8. A. Tenant for Life, Remainder to B. in Tail. B. dies leaving two Daughters L. and M. — L. takes Husband, and the and her Husband levies a Fine Sur Cognizance de Droit come ceo, &c. and before Proclamations L. dies; M. claims the Land, and afterwards Proclamations are made. See the Arguments, 2 And. 169. Mich. 36 & 37 Eliz. but no Judgment. Harvy v. Facy. by v. fafy, was well Resolved in the Case adjudged in C. B. reported by Sergeant Blackstone, 122., pl. 156. (which see sup. D. 3.) that the Heir in Tail was barred by the Fine of his Ancestor, tho' the Ancoret died before all the Proclamations passed; tho' in that Case the Heir which passed by the Fine was utterly avoided before the Proclamations passed. But when they passed afterwards the Estate Tail was barred.

9. A. by Fine was Tenant for Life, Remainder to M. his Wife for Life, Remainder to the Heirs Males of the Body of A. Remainder to the Heirs Males of B. — A. and M. levy another Fine to the Ufe of A. for Life, and after to the Ufe of M. for Life with diverse Remainders in Ufe; After one of the Proclamations made, A. died; the eldest Issue of A. was beyond Sea; After A's Death, the Reil of the Proclamations were made; 'twas agreed by all the Judges that this Fine shall be bar to all who might claim by the Estate Tail, created by the first Fine. 2 And. 177. Hill. 44 Eliz. Sir John Danvers's Cafe.

Heir and Privy, cannot by any Claim, which he can make, save the Right of the Estate Tail, which defends to him, but that after the Proclamations passed the Estate Tail shall be barred by the Statute 4 H. 7. & 52 H. 8. notwithstanding any Claim, which may be made by him.

10. Upon a Fine the first Proclamation was made in Trin. 5 Jac. and the second in Mich. 5 Jac. and the third in Hill. 6 Jac. (where it should be Hill. 5 Jac.) and the fourth and fifth in After 6 Jac. and this was agreed to be a palpable Error; For the fourth Proclamation was not entered at all, and the fifth was entered in Hilary Term 6 Jac. (where it should have been in Hilary Term 5 Jac.) and it shall not be amended; because it was of another Term, and the Court conceived that this was a Forfeiture of the Office of Chirographer; For it was abusing of it, and the Statutes of 4 H. 4. 23 and Wettn. 2. are that Judgments given in the King's Court shall stand until reversed by Error. 2 Brownl. 329 Patch. 7. Jac. C. B. Anon. P pp p

11. No
II. No Proclamation made the first Day is Error apparent to reverse the Proclamations, but the Fine still remains a good Fine at Common Law. 1 Buls. 226. Patch. 10 Jac. B. R. Anon.

(F. b. 2.) Avoided for what Cause, Dures, &c.

1. If Men, compelled by Threatnings or Imprisonment, should be admitted to levy Fines, they should thereby be barred; because the Law intended such Persons are at Liberty when they acknowledge Fines. Well. Symb. 3. S. 11. cites 17 Ed. 3. 52. 78. 17 All. 17.

(F. b. 3) Reversed for Default in the Dedimus, or Writ of Covenant.

1. If the Dedimus Potestatem bears Date before the Writ of Covenant, the Coninance taken upon it is void; because the Dedimus Potestatem recites Cum breve nofrans de conventione inter A. potestatem & B. defensorium, &c. so that the Coninance was taken without Writ of Covenant; or otherwise, Precipite quod reddit, is void, albeit tis taken by the Judges of C. B. but they use to have Writ of Covenant pending before the Certificate, and this makes the Coninance, and Note good; because the Writ is intended before Coninance. Denh. R. of Fines 8.

2. The Caption of the Coninance of the Fine was before Sir Roger Manwood Ch. Bar. 27 Mart. 27 Eliz. and the Writ of Covenant, and Dedimus Potestatem bore Teffe 9 Aprilis; so the Coninance taken without Warrant, and by the Stat. of 23 Eliz. the Day of the Caption is always to be certified; but the Court over ruled it, and would not hear it argued; for they said it is good enough, and otherwise they should reverse divers Fines. Cro. E. 275. Hill. 34 Eliz. C. B. Argenton v. Wetover & Lucas.

3. Error to reverse a Fine levied 21 Eliz. because the Writ of Covenant, whereupon it was levied, bore Teffe the 2d. of January 21 Eliz. and the Dedimus Potestatem to take the Coninance bore Date the fame 2d Day of January, reciting cum breve conventions ponent, &c. whereas it was not depending until the Return, which was Octob. Hillarii. Gawdy and Fenner only in Court held, that is was not Error; For the Writ is pending presently upon the Purchase thereof. Cro. E. 677. Trin. 41 Eliz. B. R. Arundel v. Arundel.

Where the Writ of Covenant bore Teffe after the Teffe of the Ded. Pot. it was held manifest.Error. And a Fine levied in Cheffer was Reversed for this Cause. Cro. E. 742. Hill. 42 Eliz. C. B. Goburn v. Wright.

4. If Dedimus Potestatem be admitted to two, and the one of them takes Coninance of a Fine, and this Fine is after drawn up in C. B. yet the Party may well have Error upon this Fine, viz. that the Coninance was without Warrant, for 'tis not contrary to the Record; For the Dedimus Potestatem is Partecel of the Record, and the ALIGNMENT of Error agrees with it, per Popham. Pach. 1 Jac. B. R. Yelv. 34 in Case of Arundel v. Arundel.

But if such erroneous Coninance upon Ded. Pot. be taken, and the Fine is after drawn up as a Fine acknowledged in Court only, per Popham. Yelv. 34 in Case of Arundel v. Arundel.

5. Where a Sheriff was one of the Cognizees, the Writ was directed to the Coroners, with this Clause at the end of the Writ, Quod prædict. Johannes Dono (one of the Cognizess) se Vicecomes Conventus Cognizes, fiat Executius Brevis prædict. per Coronavos, et quod Vicecomes non se intrimitat; and Resolved by all the Court, that it was not Error, tho' he is not the sole Party...
Party, but others are joined with him; For if the Writ be directed to the Sheriff, and he is Party, it is doubted in the Books, if he, as Plaintiff, may execute a Writ for himself, and, as Defendant, may do it upon himself. And therefore it is good, and the general Course is to award the Writ to the Coroners, to avoid the doubt of Delay; and when the Party appears, and levies a Fine thereupon, he never shall assign it for Error afterwards, that it ought not to have been directed to the Coroners, especially upon this amicable Writ to make Affluence, &c. Cro. C. 415. Mich. 11 Car. B. R. Done v. Smethier & Leigh.

(F. b 4) Error. Variance between the Caption and Fine ingrossed.

1. By the Caption of the Fine upon the Dedimus Poteftatem the Land was given to W. and his Wife, and to the Heirs of the Body of the Baron of the Body of the Feme begotten; and the Fine ingrossed was, to the Heirs of the Body of the Baron upon the Wife begotten, so is variant. But all the Justices conceived, that it was not material; For in both Cases the Feme had been an Estate for Life, and the Baron an Estate Tail, and the Words are of the same Sense. Cro. E. 275. Hill. 34 Eliz. C. B. Argenton v. Weltower & Lucas.

2. The Caption was, fi ouating at the Baron to die without issue, that it should remain over, and the Fine ingrossed was, fi contingat, that the Baron and Feme die without issue, that it shall remain over, so it is variant; but it was held all one; For the Estate in Remainder is always limited upon the more long Estate, which is the Estate Tail, yet it was all of one Sense; and afterwards, the Fine was affirmed. Cro. E. 275. Hill. 34 Eliz. C. B. Argenton v. Weltower & Lucas.

3. Error, the Writ of Covenant was de Maneiro de Corthruker, and the Dedimus Poteftatem was de Maneiro de Corthoder, and for this Variance, it was intitled there is no Conflance upon the Writ; but it being with an alias Corthruker, it was held good. Cro. E. 275. Hill. 34 Eliz. C. B. Argenton v. Weltower & Lucas.

4. Error assigned was, that the Writ was, Inter Nicholau Forster que- rentem & Johanne Forster deforcantem, and so was the Dedimus Poteftatem. And in the Caption of the Fine annexed to the Writ of Dedimus Poteftatem (which was certified) it was in this Manner, Precipe Johanne Forster militis, quod teneat Nicholau Forster, &c. so it varies from the first Writ & Dedimus Poteftatem, sed non allocatur; For they held, that the Names are all one, Forster and Foster, and are of the same Sound, &c. qui- fo one and the same Name. Cro. J. 77, 78. Trin. 3 Jac. B. R. E. of Bedford v. Forster.

5. The Writ of Covenant was, Precipe, &c. quod teneat, &c. de alio Meftngis, dacem gardinis, &c. so it varies from the first Writ or Con- million, and there is not any Warrant for the Conmillion; sed non Allo- catur, it is not any Cause to reverfe the Fine; For alio alio Mef- ningis is pro duobus Toffis, yet they held it not material; For the Con- cord hath Relation to the Writ of Covenant, and the Dedimus Poteftatem; and the Entry of the Precipe upon the Title of the Concor, is a Rehearsal of the Substance of the Writ of Covenant, and is more than needs to be, and being variant from the Writ of Covenant, is idle, immaterial, and meerly void; wherefore the Fine is good enough, and it was affirmed. Cro. J. 77, 78. Trin. 3 Jac. B. R. E. of Bedford v. Forster.

(F. b 5) Reverfe
(F. b. 5) Revered for Errors, in the Caption.

1. Error to reverse a Fine in Cheshire, the Conuance was taken of it by one, and the Dedimus Poteilatem was to Eing, and another jointly; and this was Erroneous. Cro. E. 249. Trin. 33 Eliz. B. R. Downes v. Savage.

(F. b. 6) Revered in Respect of Payment of the King's Silver. And what the King's Silver is, &c.

1. The King's Silver is the Fine paid to the King, Pro Licentia Concordandi.

2. A. and his Wife acknowledged a Note of a Fine the 26th of March 1621, before Commissioners by Dedimus Poteilatem, and the Wife died the 27th Day of the same Month. The 28th Day Composition was made in the Alienation Office upon a Writ of Covenant made returnable in Eall Term before, and the King's Silver was entered in the Office of the King's Silver as of the same Eall Term, and so the Fine was paid and engrossed, and now in Eater Term the Heir of the Wife moved against this Fine; but upon Debate the Court resolved, that the Fine must stand. Hob. 330. Farmer's Cafe.

3. It was assigned for Error, that one of the Conuors died before the Return of the Caption, and alleged a Diminution in the Record before the judge in Cheshire (where the Fine was levied) and after before the Prothonotary there, who returned no fuch Diminution, but that in a Paper Book, in which the Things of the Office were written, it was entered, that such a Day was paid for the King's Silver (without bheving what). The Question was, whether this Fine was Erroneous for this Reason (amongst others) 2 Sid. 54 55. &c. Row v. Evelyn. —And afterwards it was held by Newdigate J. and as it seems by Warburton J. that it was; and Glyn Ch. J. held the Fine Erroneous for other Reasons, and so thought that the King's Silver came not in Question in the Cafe; For to proceed upon the Fine, the Conuor being dead before the Return of the Writ, is, as to him, a Building without a Foundation. 2 Sid. 93 94, 95. Trin. 1658. B. R. Row v. Evelyn.

4. And Glyn Ch. J. said, that if, in the Cafe above, one of the Conuors had not been dead, he thought, that the King's Silver might well be paid; For if it was not paid, yet there was a Composition for it before the Original; and in favour of Common Allurances, we ought to presume that it is paid, if nothing appears to the contrary. 2 Sid. 95, 96. Trin. 1658. B. R. in Cafe of Row v. Evelyn. — cites *Carrell's Cafe.

5. Four Conuors, two die before the Fine ingrossed, or King's Silver paid, whether the Fine shall be Revered for part, or for all? It was argued that it is a Fine without an Original, and therefore should be revered in Toto, and cited Hill. 1662. B. R. to have been so adjudged in Cafe of Roe v. Yearly. 2 Lev. 127. Hill. 26 & 27 Car. 2. B. R. Biddulph v. Harrison.

6. Husband and Wife levied a Fine of the Lands of the Wife, and this was by Dedimus in the Lent Vacation, she being then but 19 Years of Age; the King's Silver was entered in Hilary Term before, and she died in the Easter Week; and upon a Motion made the first Day of Easter Term, tolay the engrossing of the Fine, it was denied by the Court; For they held it to be a good Fine. 3 Mod. 141. cites it as the Cafe of *Warnecomb v. Carrill.

7. A Fine was acknowledged before Herbert Ch. J. by a Man and his Wife 7 December 1689. And by Reason that the late King James had defeated the Kingdom; and taken away the Great Seal, there followed a Stop of Proceedings at Law; and the Woman died the 20th of February following,
Fine.

ing, and upon the 22d of February, the King's Silver was paid, as upon a Writ of Covenant in King James's Time, tho' no Writ was then found out. But afterwards a Writ of Covenant was taken out returnable in Michaelmas Term, which was Sealed with the Seal of King William and Queen Mary; and the Fine was engrossed, and made as a Fine in Michaelmas-Term. The Court, (after the Cause had been twice moved, and full Consideration of it gave their Opinions feriatim, that the Fine should stand. For the Entering of the King's Silver after the Parties Death could not be now Examined, in Regard the Fine was engrossed, and completed as a Fine in Michaelmas-Term. 2 Vent. 47. Trin. 1 W. and M. C. B. Ball v. Cock.

8. Fine acknowledged before Commissioners in Long Vacation, and no Writ of Covenant taken out, the Partry dies immediately.—They shall after, enter the King's Silver, and take out a Writ of Covenant as of the Term before, per Holt. Farr. 95. Mich. 1 Anae B. R. in Cafe of Oades v. Woodward.


(G. b) Reversed or avoided for what Error.

1. 23 Eliz. 3. Enacts that, No Fines, Proclamations upon Fines, or common Recovery, shall be receivable by Writ of Error for false Latin, Raffure, Inter- lining, unfruitful of any Warrant of Attorney, or of any Proclamation, mis-returning or not returning of the Sheriff, or other want of Forms in Words and not in Matter of Substance.

to annul Fines. Arg. 10. Mod. 43. in Ld Say and Seal's Cafe,—But was intended to support them, per Cur' Ibid. 45. Mich. 10. Anne B. R.

2. A Fine is before such Justices and aliis fidibus, and if there be no such Judge as one of them which is named, yet the Fine, being levied before other Judges, is good. Cro. E. 320. Parch. 36 Eliz. B. R. Wallh v. Collinger.—Obiter.


4. A Writ of Covenant bore Telle 15 April, returnable Quindena Parch. and that Year Quind. Parch. was the 14 April, and so the Return was before the Telle, and the Fine was revered. Nov. 171. Gage v. Taylor.

5. A Fine levied in the Vacation was agreed, by the Court of Common Pleas, to be, at the Election of the Parties, a Fine either of the precedent or subsequent Term. Now whether the Intervening of a Term can make such a Difference, as that in the one Cafe the Fine shall be good, and in the other utterly void, cannot be discovered from the Reason of the Thing; But must depend entirely upon the Practice of the Court of C. B. every Court being Judge of its own Rules. Such Kind of Evidence was refuted in the Cafe of Clith and Ward, even by a Court of Equity, viz. the Chancery and this Judgment was confirm'd in Error in the House of Lords, per Cur. Mich. 10 Anae B. R. 10 Mod. 44. In Ld Say and Seal's Cafe.

Q q q q  

(G. b. 12)
(G. b. 2.) Error to reverse Fines. By *whom* the Writ must, or may be brought.

1. A made a *Favourment* to the Use of *himself* and B. his Wife, and to the Heirs of their two Bodies, the Remainder to the right Heirs of the Husband. They had *Fruite M.*—then A died; B. the Wife sold the Land in Fee; M. married J. S. And afterwards B. M. and J. S. her Husband joined in Fine, come *ceo* &c. in Confirmation of the Estate. But before the Certificate and Ingrollment *M. died without Fruite*; now J. S. and B. and one C. as *Co infinit* and *Heir of M.* brought a Writ of Error to reverse the Fine, and then to avoid the Sale of the Widow, upon the Statute 11 H. 7.

Note, that the Writ of Error is brought by C. as Cousin and Heir Collateral to M. and it appears, that no *Right* is descended to him by M. so that she had but an *Estate Tail*, which is determined by her Death without Fruite. And now Contra, that the *Fee Simple* was in her as right *Heir of A.* her Father; for it might be, that A. had Fruite a Son and another Daughter besides M. for any *Thing* that is shewn to the contrary; for the is not named Heir to her Father, in any *throwing before*; And then he is not damned by this erroneous Judgment, as the Writ supposes, as right *Heir to M.* from whom no *Right* is descended; And the Writ of Error shall be brought by him, who shall have the *Throw*; whereof the Judgment was erroneously given, and that is the right *Heir* of A. so this Judgment is reversable by him in the Remainder by the common Law, or by the Equity of the Statute of 9 R. 2. 3. (Quaere hoc.) and not by the *Heir General* of M. and admit that it should be intended, that M. was right Heir to A. yet because this *Fee Simple* was not then *executed* in her, but was *exspectant* upon the Tail, he, who shall demand this *Fee Simple*, when the Tail is spent, must make himself right *Heir* to A., according to the Limitation of the Remainder; For tho’ C. was of the whole Flood to M. yet he shall have this Remainder of the *Fee Simple* as right *Heir to A.* if he be of the whole Blood to him, by whom, &c. D. 89. b. and 90. Mich. 1 Mar. Reynolds v. Dignum, als. *Verney’s Cafe.*

—Ibid cites 3 H. 4. where the *Fruite Female in Tail Special brought a Writ of Error*, because that she is to reheave the Land, and not her Brother, who was general Heir to the Ancestor. And cites also *Hill* to 10 E. 3. to the like Purpose.

It ought to be a Remainder, or *Reversion* * expendant* on *Estate Tail*, may have Error. *Trin.* 25 *Eliz.* 3. Rep. 3. b. 4. a. the third Revolution in the Marques of Wincheter’s Cafe.


*Error 152.*—And 32 E. 3. Error 73. where it was required to know how he came to the Reversion, and that he had a Reversion, and no Right only.——Le 273: the Queen v. Braybrooke S. C——S. S. cited per Haughton J. Palm 245.——S. C. cited and agreed per Counsel. *Arg. Roll. R.* 301.——See 3 Lev. 56. *Harness’s Cafe.*

Le 270. S. C. by the Name of the Queen v. Braybrooks——See Braybrooks Cafe. —See Mar. of Wincheter’s Cafe.

3. *Mich.* 21 & 22 *Eliz.* ‘Twas argued, and 25 adjudged between Braybrooks and the *Ld* *Horns*, that be in *Remainder* may have *Writ of Error*; but if he in *Remainder* be *attainted*, during the *Life* of the *Tenant for Life*, the *Queen* shall not have it. D. 128. Marg. pl. 9. *Mich.* 21 and 22 *Eliz.*

*And 17 Eliz.* so adjudged, as there was said, between Bennett’s and Justice Wundham. D. 118. Marg. pl. 917 Eliz.

S. C cited D.

90. b. Marg.

pl. 2

5. A filed two Writs of Error, one to reverse a Fine, the other to reverse a Common Recovery, by Reason of his Nonage. Tanfield moved that the Writ to reverse the Fine, was not well brought. The *Cafe was, B. ear, Tenant Right*
for Life, in Right of his Wife, the Remainder to the Plaintiff in Fee, and they joined in a Fine to D. It was infinital, that they all ought to join in the Writ, and there ought to be Summons and Severances, and he can't bring it alone; but it was answered, that this Writ is well brought by the Plaintiff alone; for it is brought for an Error in Fine, viz. his Nonage, and of his Nonage, the other can take no Advantage; to the Cause of the Action being severd, and not joint, they cannot join in the Action, 34 H. 6 in Cafe of Attaint, 7 H. 4. 44. and they relied upon the Cafe, 29 Aff. 14. The Court held the Writ was well brought, because it is no Error in the Record, but an Error in Fait; and if two Infants bring a Writ of Error, they must affign the Errors severally; and therefore if one be within Age he must bring the Writ alone. Cro. E. 115. 30 and 31 Eliz. B. R. Pigott v. Ruffell.

6. If Husband and Wife levy a Fine of the Wife's Land unto a Stranger, the Wife being within Age, they shall have a Writ of Error during her Nonage. F. N. B. 21 (D).

7. A. levies a Fine of Lands to B. — C. can't have a Writ of Error to reverse this Fine, although C. be in Possession, and Tenant in Fee Simple of the Land. Jenk. 161. 6.


1. Where a Fine is pleaded, it is no Plea, that there is no such Record of Writ of Covenant, upon which 'twas levied; For a Fine levied without Original is not void, but Error; For they are Judges of the Thing. Br. Affile. pi. 397. cites 26 H. 6. and Fitzh. Affile. 13.

3. If Error be in the Proclamations of a Fine, they shall be reversed by Plea without Writ of Error; but that Fine nevertheless remains of good Force still; For they are several Matters of Record; yet if Error be in the Fine, the Proclamations are void; because the Fine is the firft Record, whereupon the Proclamations depend, and Sublato Subjeto tollitur ejus Accident. Weil's Symb. S. 192. cites Pl. 266. a. D. fol. 216. pl. 54. 4 Eliz.

(G. b. 4) Pleadings. Where a Fine is pleaded, How it may be avoided by Pleading Parties Finis non, &c. Or by confessing and avoiding.


2. If a Fine be levied to a Monk, by a strange Name, it shall be Ettoppel to plead Poffeffion. Br. Ettoppel, pl. 2. cites 3 H. 6. 23.

3. Where a Recovery, or Fine of my Ancestor is pleaded against me, I ought to plea how my Ancestor came to it after, and otherwife, he cannot confess and avoid it; For it is not sufficient to lay, that the Ancestor was seised after, without shewing how he came to it. Br. Confefs and Avoid pl. 57. cites 6 E. 4. 11. per Neale.

4. It hath been resolved, that against a Jointenancy pleaded by Fine, the Demandant may confess and avoid the Fine; as to say that the Jointenancy not named, seised before the Writ brought, or that they both intrusted one who re-intrusted the Tenant, or the like; For these, or the like Pleas, Confessing and Avoiding the Fine do in no Sort weaken the Strength or Force of the Same. 2 Init. 524.

5. 'Tis
5. "Tis said in one Book, that a Fine may be avoided in two Manners, viz. either fo say Quod Partes Finis nec eorum aliquis Tempore Locutionis Finis utint habueruit; nec eorum aliquis aliquid habuit, &c. sed quidam J. S. currit Statum ipse habet; or to confess and to avoid the Fine, as he says, that J. S. was seised, till by the Counsel disputed, who levied the Fine, viz. their J. S. enter'd, who confessed him. Co. R. on Fines, 17. cites 3 H. 7. 9.


7. Et Notandum est, if one plead in Avoidance of a Fine, Quod Partes Finis, nec eorum aliquis, &c. the other, in Maintenance of the Fine, need not to shew, that the Parties had the Estate; but he, that pleads in Avoidance of the Fine, ought to conclude, & de hoc point si super Patriam; then he that maintained the Fine, shall not say more than, & Prodictus quier, &c. and if he, that pleads the Fine, can prove, that any of the Parties to the Fine had any Thing; this is good enough for him. Co. R. on Fines, 17

immediately, as Ne Dona pas, Nul Tert, Not Guilty, &c. Br. Issues joint'd, &c. pl. 6. c. 1. per Littleton, who said that it was adlag'd by Sir John June in C. B.

8. And upon this, that hath been said, it appears clearly, that if one plead Quod Partes Finis, &c. sed quidam J. S. currit Statum ipse habet, &c. the Seisin of J. S. is not transferable; but he, that pleads the Fine, ought to maintain the Fine, as is aforesaid. Co. R. on Fines, 17.

9. If a Fene Covert only, without her Baron, levies a Fine executory; tho' the Baron continues in Possession during his Life, and after dies, yet this shall conclude the Fene and her Heirs; but if Execution had been sued, and after the Baron had died, this had avoided the Fine for ever. Co. R. on Fines, 17.

10. Scire facias to execute a Fine levied by D. where he had but two Parts in Common with J. S. at the Time of the Fine, who was seised of the third Part in Common with the said D. who levied the Fine of the third Part, &c. it is dangerous to say that D. had nothing at the Time of the Fine, but shall say that he had nothing but in Common with J. S. which Estate he has; nota. Br. Sci. fi. pl. 1. cites 26 H. 8. 9.

11. "Tis a good Plea to say, that J. S. was seised Tempore levat', and before the Fine levied, without that, that the Parries in the Fine had any Thing therein at the Time of the Fine levied. Well's Symb. S. 291. cites 9 H. 4. 27. 3 H. 6. 27.


13. A. devised to B. for Life, and if B. have Issue Male, then to such Issue Male and his Heirs for ever; and after B's Death, if he have no Issue Male, then to C. and his Heirs. B. suffered a Recovery, in which he was Vouch'd, and the Use was declared to B. and his Heirs. The Coheirs of A. were E. and F. two Femes, then of Age and unmarried. B. by Will gave the Land to J. N. in Tail, Remainder over. B. died, and C. entered; afterwards, J. N. and W. R. joined in levying a Fine, and suffered a Recovery to
the Use of W. R. and his Heirs. It was objected that Partes Finis nihil habuerunt, in Regard, that before the leasing it, W. R. (who was said to be the Dispossor of the Premises), by Lease and Release did convey the Inheritance of the Premises to W. S. in Mortgage, and that tho' W. R. had the Possession, yet this was under the Proviso of the Mortgage, as Tenant at Will to the Mortgagee, until Default of Payment. But Lt C. Parker, held, that in this Case, it could not be said, that Partes Finis nihil habuerunt; because J. N. as Devisee of B. had a Right against all Persons but the Heirs of A. and that W. R. entering upon him was a Dispossor, and tho’ W. R. afterwards mortgaged in Fec, yet he continuing in Possession, and joining with J. N. in the Fine, it could not be said, that Partes Finis &c. when one of them, viz. W. R. had the Possession, and J. N. the Right against W. R. and also against his Mortgagee; and also that E. and F. the Coheirs of A. being of Age, and unmarried at the Time of Recovery, suffered by B. were barred by the Statute of Limitations. Wms's Rep. 505, 506, 507, 519, 520. Mich. 1718. Carter v. Barnardilton.

(G. b. 5) Reversed by one, where it shall benefit others.

1. The Law, after the Statute of 4 H. 7. is, that if the Easate contained in the Fine was defeated within the 5 Years, the Fine thereby had left its Force, not only against him, who had defeated it, but against all others that had Right or Title Paramount, and who do not put in their Claims within the 5 Years after the Proclamations, tho’ he who defeated it had brought his Action within 5 Years, but had no Judgment and Execution till 7 Years were passed after the Proclamations. per Saunders. Pl. C. 358.

b. in Case of Stowel v. Lt Zouch.

2. Tenant for Life, Remainder for Life, Remainder in Fee; if the first Tenant for Life alien, and the Alienee levy a Fine, he in Remainder for Life may enter, and defeat the Fine, and not he in Remainder in Fee; and if he enters, this shall give Benefit to him in Remainder in Fee; For the Fine against him shall be outed. And by the same Reason, if he makes continual Claim, he in Remainder in Fee, at all Times after shall take Advantage of it, and shall avoid the Fine, as Saunders said. Pl. C. 359.

3. Fine being levied by A. in the Name of B. a Reconveyance was decreed. and that a Vacat should be made, if by Law it might be. Roll. R. 115. in Case of Dap v. Dungate, cites 38 & 39 El. the Case of Geller band v. Hubard:

(H. b) Reversed or Avoided by Death of Conusor, or Conusor.

1. If Fine be acknowledged before a Judge, and the Conusor dies, it may be involv’d after. Co. R. on Fines, 10.

2. If one of the Conusors dies before Return of the Writ, this makes not the Fine void, but voidable only by Writ of Error. Per two Justices against Glynn Ch. J who held it void, for this Reason. 2 Sid 94, 95. Trin. 1658. B. R. Row v. Yeelely.

3. The Father and Son join in a Fine in order to make a Settlement upon the second Wife of the Father, who was only Tenant by the Curtesy, the Remainder in Tail to his said Son. One of the Cognisors died after the Caption, and before the Return of the Writ of Covenant; and now the Writ of Error was brought to reverse it, and this was alligned for Error. Per Cur. If it had been in the Case of a Purchaser for a valuable Consideration, the Court would have frowed him some Favour; but it being to do a Wrong to a young Man, they would leave it open to the Law. 3 Mod. 99. Patch 2 Jac. 2. B. R. Okell v. Hodgkinson.

Conusor
4. Confor died between the Teste and Return of the Writ of Covenant, for which Reafern the Fine was reversed, Hill 3 and 4 Jac. 2. B. R. Cumb. 57, 51. Price v. Davis.

5. If the Caption of a Fine be taken in the Vacation, and the Writ be returned the next Term, the Death of the Party determines it; but if it be returnable the Term before, it shall be well, notwithstanding the Party's Death. Farr. 2, per Cur. Pattach. 1 Amne. B. R. in Dr. Woodward's Case.

(H. b. 2) Reversed by Error brought in B. R. How.

1. If a Writ of Error be brought in B. R. to reverse a Fine levied in C. B. the very Record of the Fine itself is never removed hither, but on a Transcript of it: But if this Court adjudge it erroneous, then a Certiorari goes to the Chirographer, to certify the very Fine; and when it comes up, it is actually cancelled; per Holt Ch. J. Salk. 384. Fazachary v. Birdo.

2. Where a Writ of Error brought in B. R. was directed to the Coffers Brevium, which was to remove the Foot and Record of a Fine, levied Tempore Reg. and Reginae P. & M. (which, in Law and Truth, only the Transcript was removed before by Writ of Error, and Error and Error and adjudged in this) to the Intent, that the Record of the Fine Should be removed a Pluribus in C. R. and cancelled in B. R. and of this are Books and Precedents. And Egerton, Clerk of the Office of Chirographer, showed a Precedent Tempore E. 3. of Certiorari out of the Chancery directed to the Justices of C. B. & pro Tenter Poets Fals pro Error, and by Certiorari sent over into B. R. Amne. 16 E. 3. D. 274. B. pl. 42. Pattach. 10 Eliz. Aonon.

3. When a Fine is to be reversed for Error, the Course is for the Plaintiff in the Writ to have several Writs of Error; viz. one, directed into the Ch. 7. of the Court of Common Pleas, to certify the Record and Proces of the Fine, and another to the Coffers Brevium, of the Fine Court to certify the Transcript of the Foot of the Fine, and the third, to the Chirographer to certify the Transcript of the Record and Proces of the Fine. Welt's Symb. S. 192.

4. Error being brought in B. R. of a Fine in C. B. the Fine was affirmed, and now a Writ of Error, coram Vobis Refidin. was brought here; and Exception was taken, that the Writ ought to abate; for that no such Writ lies in this Case, because *only a Transcript of the Fine is removed into this Court; and it was likened to the Coffers of Error in the Exchequer Chamber, where only a Transcript goes up, and if the Writ abates, no Writ of Error Coram Vobis lies. Sel per Cur. The Reason of that is, not, because they in the Exchequer Chamber have only a Transcript, but because they have only a particular Authority to affirm or to reverse. It was admitted, that the Transcript of the Record of a Fine is only removed, because, upon Judgment of Reversal, a Certiorari goes for the very Foot of the Fine, and it is cancelled. But notwithstanding that, the Court held, that Error coram Vobis Refidin. lay. Patch. 5 W. & M. B. R. 1 Salk. 337. Winchurc'h v. Belwood.

*The Reason why Transcript of the Fine only, and not the Record of the Fine, shall be removed by Writ of Error, is, because in B. R. there is no Chirographer. Co. R. on Fines. 12. Br. Record. pl. 46. S. P. cites 42 Aff. 29.

1. Scire facias was issued upon a Writ of Disceit, which was to reverfed a Fine levied of Land, which is ancient Domaine; the Lord brought the Writ of Disceit, and the Record of the Exchequer was shown, proving the Manor of E. to be in Ancient Domaine; and the Plaintiff said, that Parcel of the Land in the Fine, was Parcel of the Manor, and Parcel at the Common Law, and the Defendant cannot deny it; and because the Transcript was sent, therefore the Court sent to the Chamberlain of the Exchequer for the Writ itself; and upon this, they adjudged that the Fines, as to this which was Ancient Domaine, should be reverfed, and * annulled; * Orig. and the Lord restored to his Seigniory; and the Fine was marked of this (Ancient) Parcel, and not drawn off the Fine; For 'tis good for the reft, and therefore it seems here, that by these Words, (Void and Annull,) that it is void, as well to the Parties as to the Lord; and yet by 17 E. 3. the Com拳头 shall have the Land. Br. Fines. pl. 47. cites 21 E. 3. 22. and 7 H. 4. 28.

2. Fine was levied of Land in Ancient Domaine at Common Law, the Lord brought Writ of Disceit against those only, who levied the Fine and not against the Terre-tents; and had Scire facias against the Terre-tents, and well; and it was agreed that the Fine shall be annulled against the Lord; but quare, if by this it should be void between the Parties, and so fee in this Action Non-tenure, is no Plea, if it may be against those who are not Terreteants. Br. Defceit. pl. 38. cites 7 H. 4. 44.

3. If a Man levy a Fine at the Common Law unto another of Land, which is in Ancient Domaine; the Lord of Ancient Domaine shall have a Writ of Disceit against him, who levied the Fine, and he, who is Tenant, shall avoid the Fine; and there he, who ought to give the Land, shall be restored unto his Possession or Title, which he had given by the Fine; because the Fine and Gift thereby is avoided; But if he, who levies the Fine, had after by his Deed released unto him, who hath the Possession by the Fine, or by the Deed confirmed his Estate in the Land; then he, unto whom the Release or Confirmation is made, shall have and keep the Land, notwithstanding that the Fine be avoided; because that Release, or Confirmation, made unto him being in Possession hath made his Estate firm and rightful against him and his Heirs, who released or confirmed the same. F. N. B. 98. (A.)

(H. b. 4) Reverfal of Fines, of Ancient Domaine.

At what Time.

1. Where a Man recovers Land in Ancient Domaine Court, which was made Frank Fee before by Fine levied at Common Law, this Judgment in Court of Ancient Domaine is void, & corum non judice. Br. Judgment. 19. cites 7 H. 4. 27.

2. 'Twas argued, and at length agreed, that a Lord in Ancient Domaine shall have a Writ of Disceit, after a Fine levied, and the King's dinner paid, tho' the Fine be not ingrossed. No. 6. pl. 21. Hill. 3 E. 6. Anon.
(H. b. 5) Pleadings. In Maintenance of Fines.

1. He, who maintains the Fine, may say, that the Conserver was seised in Fee. Br. Fines. pl. 50.

2. As in Ward, the Defendant intituled himself by joint Estate to the Austere and himself by Fine, and that he survived; the Plaintiff said that those who were Parties to the Fine, had nothing at the Time of the Fine, &c. and the Defendant said, that the Conserver were seised in Fee, at the Time of the Fine, &c. Br. Fines, pl. 50. cites 7 H. 6. 21. and 33 H. 6. tit. Replic. and Rejoinder.

(I. b) Avoided, &c. Not being perfected.

S.P. 254. D. pl. 104. as to the Fine, but the Proclamations denied to be engrossed, the Parties being dead. Compton's Case—The Reason of the Case in D. 254 why the Proclamations there made, were played after the Conserver's Death, was, because a Formotion was dependant, and that was only in the Discretion of the Court. Cro. E. 693. Mich. 41. and 42. Eliz. B. R. Wakefield v. Hodgeson.

* See (V) (P. a. 2).

(I. b. 2) * Averment against Fines. Continuance of Possession, and dying seised, &c.

1. A Fine was levied between Baron and Feme and H. R. by which Fine H. R. rendered to the Baron and Feme in Tail, Remainder to the Plaintiff in Fee; and he in Remainder fued Execution, supposing the Baron and Feme to be dead without Issue of their Bodies; the Tenant said, that before the Fine H. R. gave to the Baron, who was Party to the Fine, in Tail, the Remainder over, who had Issue P. by another Feme, and died, whose Estate P. the Tenant has, and did not shew where the Fee Simple was, and yet well, and averred the Continuance of the Possession in the Donee, at the Time of the Fine, and was not etopped by the Fine to the contrary thereof. But per Thinning, if it had been Conufance de Droit comme coc, &c. it had been contra, by which the Plaintiff said that H. R. was seised in Fee, at the Time of the Fine, abque hoc, that he gave in Tail before the Fine. Br. Etoppel pl. 67. cites 11 H. 4. 85.

2. The Issue in Tail can't etover Continuance of Possession against a Fine Sur Conufance de Droit comme coc, &c. but contrary of His Wife, and him in Remainder; For they are not Parties nor Privies. Br. Averment, pl. 57. cites 12 E. 4. 15. Neverthelefs, where the Baron is etopped, the Feme, who claim'd by him shall be etopped. Br. Averment pl. 57. cites 4 E. 3.

S. P. Because this is by the Statute of 25 E. 1. de Fines, but and not at Common Law, which was after the Statute of W. 2. de Donis Conditionalibus, made 13 E. 1. Contra of a Fine Sur Conufance de Droit canto; For this was at Common Law. Co. R. on Fines 4. cites 12 E. 4. 15. 19.—Br. Fines pl. 74. S. P. cites 13. Aff. 8.

3. Against
3. Against a Fine Sur Conuance de Droit come co, &c. if a Tenant in Tail, or by Averment, the Plaintiff may aver Continuance of Possession in their Ancestor. For, although the Statute de Donis Conditionibus was made by Act 27 E. 1. yet it was not the Intention of this Statute to take away the Liberty and Benefit of the Illue in Tail, which the Statute, de Donis Conditionibus had given to them; For it appears, that the Intention of the Makers of this Statute was to reform such Averments, which were Contre Leges & Consecutivas Anglie Antiquae. Unitat. and not to toll such lawful Averments, as by the Statute De Donis Conditionibus were given to the Tenant in Tail; but against a Fine Sur Conuance de Droit come co, &c. to which the Ancestor in Tail is a Party, the Illue in Tail shall have Averment of Continuance of Possession in his Ancestor against the Fine in some Cases, and in some not. And therefore I have taken this Diversity, that against a Fine leyzd by Tenant in Tail Sur See Co. Fines Conuance de Droit come co, &c. the Illue in Tail shall have no Averment of Continuance of Possession; but if a Fine Sur Conuance de Droit come co, &c. be leyzd to the Tenant in Tail, this shall not conclude the Illue (as divers Books say) to aver Continuance of Possession. Co. Read. of Fines, 16.

4. And in some Cases, Privies in Blood and inheritable also shall have an Averment against the Fine, notwithstanding the Statute of 18 Ed. 1. And therefore, if Tenant in Tail accepts a Fine Sur Conuance de Droit come co, &c. yet the Illue in Tail, that is Privy and Heir in Tail, shall aver Continuance of Possession in the Father; For it standeth well with the Fine, which is (Come coe quo il ad de fon done). 2 Intit. 517.

5. So is it in the Case above, if Tenant in Tail had granted and rendered the Land to the Conuor, the Illue in Tail might have averred Continuance of Possession in the Father; For the Fine was Executory, and nothing vested in the Conuor until Execution. 2 Intit. 517.

6. But if Tenant in Tail leyzd a Fine Sur Conuance de Droit come co; the Illue in Tail, tho' he be not barred by the Fine, yet he shall not against this Fine aver Continuance of Possession in the Father; and that Diversity was holden for Law after the Statute 18 Ed. 1. neither after this Statute could the Illue in Tail have generally pleaded, that Partes Fines nihil habercnt, but was ousted thereof by this Statute, albeit some have relied much upon these Words in this Act Rite Leuentis; now, the Statutes of 4 H. 7. and 32 H. 8. and the Expulsion thereof makes this out of Quelton. 2 Intit. 517.

(I. b. 3) Averment against Fines. Death of Conuor before the Tette of the Dedimus, Return of the Writ of Covenant, Execution, &c.

1. In Affiis, the Tenant pleaded in Bar by Fine of the Ancestor of the Plaintiff, whose Heir, &c. It is no Title for the Plaintiff, that the same Ancestor was seised, and died seised; For if he died seised before Execution of the Fine, the Entry of the Conuor is lawful. But this is a good Title, that, after the Execution of the Fine, his Father, or the same Party to the Fine, was seised, and died seised, and he entered as Heir, and was seised until, &c. Quod Nota, Diversity of dying seised before Execution, and dying seised after. Br. Aff. pl. 453. cites 33 E. 3. and 10 H. 4. 9. and Fitzh. Tidte. 4. and 14.

2. A Man may be received against the Conuance of a Fine taken before the Ob. 7. of the C. B. (which may be without a Dedimus) to say, That the Conuor died before the Return of the Writ of Covenant, per Popham Ch. J. Cro. E. 569. (bis) Patch 35. Eliz. B. R. in Cafe of Wright v. the Mayor, &c. of Wickham.
3. A Fine was levied by a Feme covert, who died before Certificate and
Enroachment, and the Fine afterward certified; it was alleged for Error in
the Certificate, that the Woman died before the Feast of the Dedu-ments,
whereas the Judge had certified the Conveyance taken after; and this was not admitted to
be questioned after the Certificate. Hard. 127. Arg. Trin. 1658. in the
Exchequer. cites D. 59. b. Vernon’s Cafe.

[I See Error (U.) pl. 4, 5, 6, 7.]

(I. b. 4) Averment against Fines. Collusion or Usury, &c.

1. Error to reverse his own Fine, because he was within Age at the Time,
and the Court adjudged him within Age by Inspec- ion; the Tenant
cannot aver that he was of full Age, but shall have Averment, that another
of the same Name levied the Fine, and not he who appeared. Br. Averment,
pl. 55. cites 27 Att. 53.

2. The Lord may aver Collusion, against a Fine levied by his Tenant, to the
Intent to take his Ward from him. Br. Averment, pl. 64. cites 12. H. 4. 16.

3. Upon the Statute of 13 Eliz. against Usury, and 27 Eliz. against Fraud,
although Fines be levied, yet where there is Usury, or Fraud, or Covin,
they may be averred to be against any Act whatsoever. Jenk. 254.
pl. 45.

(I. b. 5) Averment against Fines. Other Matters.

1. In Scire Facias upon a Fine levied of Land in D. the Tenant shall not
say, that there is no such Veil, for this will avoid the Fine, which will not

2. If the Record be, that the Fine was proclaimed according to the Statue,
the Fine is good, and has the Force of this Statue. Denh. R. 5. upon
4 H. 7. 24.

3. If J. S. has Warrant of Attorney for J. D. and this is taken by a Judge
in C. B. and the Record is accepted in Court, it shall not be averred af-
ter, that there is no such J. S. because contrary to that which the Court has
recorded; yet, if the Judge had been informed of it at first, he would,
and ought to have stay’d it. Per Popham. Yelv. 34. Patch. 1. Jac. in
Cafe of Arundel v. Arundel.

4. A. levied a Fine to W. his Son, and his Heirs; upon this Fine the Judge
cannot make Question for any Matter in Law; but if the Party comes
and avers matter in fact, and says that A had two Sons named W. Elder and
Younger. This Averment out of the Fine is good of this Matter of Fact,
which stands well with the Words of the Fine, and shall be tried per

5. Against Jointenancy by Fine the Demandant cannot take a general Aver-
ment, that the Tenant is sole fied; for that should seem to weaken the
Force of the Fine; and the Statue of Conunption Feoffitis, Anno 34. E. 1.
extends not to Jointenancy by Fine, but to Jointenancy by Deed only;
to take the general Averment against the Deed, that the Tenant is sole
fied. 2 Inst. 524.

6. If
6. If the Fine be received and recorded, the Fine covert, or her Heirs, shall not be received to aver, that she was not examined nor allotted; for this should be against the Record of the Court, and tending to the weakening of the general Affurances of the Realm. 2 Inst. 515.

7. In some Cafe the Party him/elf shall not be concluded of his Averment against the exprest Fine; as if 2 Jointenants be in Fe, and they accept a Fine for a common recess come cong. to them and the Heirs of one, the Exchequer is not changed, and they may plead the former Feoffee to them and their Heirs, and that by Law they could have no other Fine. 2 Inst. 517.

8. A Dedimus potestatem, to take Conuance of a Fine, is directed to j. S. Knt. and he takes the Conuance, and certifies it by the Name of J. S. Knight, whereas in Truth he is not a Knight. This is not erroneous, nor asignable for Error that he is not a Knight, for it is against the Record. Jenk. 260. pl. 3.

made a Kn. and Chief Baron of the Exchequer; Though the Dedimus, which necessarily must overreach the Conuance, be directed to J. S. Knt. who returns it, yet it shall not be asignable for Error. Ye. 55. 3d. Pach. i. Jac. Arundel v. Arundel.

(I. b. 6) Averment against Fines. By Strangv.

1. Baron and Fene levied a Fine to C. who granted and rendered back to the said Baron and Fene, and to the Heirs of the Fene. Afterwards j. S. brought Formon in Defender against the Baron and Fene. After many Delays the Fene was received, and vouche to Warrant C. which Voucher J. S. counterpleaded, and thereupon it was demurred; but the Judges of C. B. neglecting to proceed to give Judgment, though by the King's Writ commanded so to do, for which Purpose J. S. had applied to the House of Lords, and at length the Record being brought thither by the justices of C. B. it was there agreed, that J. S. being a Stranger to the Fine, might aver, that the Baron had nothing in the Premisses; and agreed that J. S. recover. Pryne's Abr. Cott. Rec. 30. 14 E. 3. Sir John Stanton's Cafe.

2. In Formon, the Tenant denied a Gift by J. R. &C. and because it was by Fine, and executed by the Hands of the Fine, therefore Finch awarded the other to anwier; for he said, that Party, Priev, or Srainger shall not have Averment against a Fine executed. But Brook makes a Quere thereof as to the Stranger. Br. Efoppell. pl. 31. cites 42 E. 3. 9.

3. Tho' the Statute of 27 E. r. 1. extends to Averments taken by Parties and Privies, and extends not to Averments made by Strangers, that are no Parties nor Privies to the Fine, yet by the Common Law, the plaintiff Force and Nature of Fines was such, that a meur Stranger could not have a general Averment against a Fine; and therefore it is reported by Shard, one of the Justices of the Court of C. B. that it was resolved by the Sages of the Law, that the Parties, or their Heirs, should have no Averment against Fines levied, contrary to the Fine levied, to avoid it; and that a Stranger should have no general Averment directly to avoid a Fine, if it were not upon some special Matter; for he, that is Tenant after the Fine levied, is intended Tenant under the Excheque of some of the Parties to the Fine, to whom, by the Common Law, a general Averment is not given, more than to the Priey or Privy; and the special Matter, which gives him the Averment, is, that after he pleads, that the Parties to the Fine had nothing in the Land at the Time of the Fine levied, he doth formally add, that either he himself, or some other whose Excheque he hath, was seized at the Time of the Fine levied, &C. But yet the Matter is not transferible, but a Mean to traverse
(K. b.) Unduly gained. Equity.

1. A Fine was levied by a Feme Covert, Infant, of her Inheritance, and the Father of the Baron was one of the Commissioners, that took the Fine, and the Ufes were declared to her and her Husband, and the Heirs of their two Bodies, Remainder to the Heirs of the Survivor. The Feme dies without Issue, and under Age. The Husband, after her Death, mortgages the Land to J. S. of whom the Heir at Law of the Wife gets an Alignment, and then levies a Fine and 5 Years Pals. W. R., who was entitled under the first Fine, brought a Bill to redeem, and for a Discovery of the Deed of Ufes. The Heir of his Wife pleads the ill Practices, and his own Fine and Non-claim, and denied that there was any such Deed of Ufes, and if there was, that it was obtained by Practice. And per Cur, all Titles at Law, that are not directly against Confidence, shall be admitted here to a Redemption, and if there were only a Blemish in the Title, to should the Plaintiff, but could not get over the Fine and Non-claim. The Plea is good, and to diminish the Bill. Patch. 1703. Ch. Prec. 215. Puckingston and Barrow.

(K. b. 2) Pleading a Fine in Bar of Actions; In what Cases it is a good Estoppel, unless the Plaintiff shews how he came to the Land after.

1. In Affife, a Man seised in Fee acknowledged a Fine Sur consanua de droit conto, &c. the Contrie granted, and rendered to the Coniisor for Life, Remainder to A. in Tail. A. after the Death of Tenant for Life, entred and was seised, and granted a Rent-charge of 10 l. and died; the Office in Tail entred; the Grantee is seised and distressed of the Rent, and brings Affise; the Heir alleges this Matter of the Tail to avoid the Grant; the Plaintiff says, that the Ancestor of the Tenant was seised in Fee at the Time of the Grant, abique hoc, that he was seised in Tail at the time, &c. and the other pleaded the Fine for Estoppel; and the Opinion of the Court was against the Plaintiff, and that he should be estopped, as well as he who took by the Fine, and that he should not have the Averment without showing how his Estate was changed, as by Recovery of a more high, &c. or that another was seised at the time of the Fine; quare; for he in Remainder, who changed, was not party to the Fine. Br. Estoppel. pl. 135. cites 30 Alfr. 9.

2. If a Man levies a Fine, or loses by Recovery, and enters after the Fine executed, or after the Execution of the Recovery, and dies seised, this is no Title for his Heir in Affise, if the Fine or Recovery be pleaded in Bar, without showing how he came to the Land after. And it is said, that there is a great Diversity between a Fine executory and executed pleaded in Bar. Note. Br. Affise, pl. 483. cites Fitzh. 'Title 5.'

3. In Trespals, the Defendant said, that the Ancestor of the Plaintiff, whose Heir, &c. levied a Fine sur consanua de droit conto, &c. to J. N. and conveyed from him, Judgment, if he shall be received to say that it is his Frank-tenement, without showing how he came by it after, and it was held a good Estoppel. Br. Fines, pl. 6. cites 3 H. 6. 27.
(L. b.) Avoided in Part.

1. A Writ of Error is Quasi a Commission, and may reverse for part, and affirm for part, and is not abatable; because the Fine is good for part. Mo. 366. Mich. 36 and 37 Eliz. Barton v. Lemon and Brownlee.

2. A brought a Writ of Error against the Mayor and Commonalty of B. to reverse a Fine levied by his Ancestor of 20 Acres of Land, the Defendants, in Abatement of the Writ of Error, did plead that the Plaintiff after the Death of his Ancestor, did diffuse the Defendants of the Land, and made a Feoffment to a Stranger; the Plaintiff replied that they distr-ee enter upon him, without that, that he did es-off a Stranger modo &c. The Jury found, that there was a Fine of 20 Acres, and that the Plaintiff being Defensor, made a Feoffment of 6 of the Acres to a Stranger. Et iptra extant materia, &c. But it was reversed by the Court, that the Feoffment does not destroy the Title of the Writ of Error for more than so much as a Feoffment was made of, and thereupon they first took a Difference between Suspenion and Extinguishment of an Action; for, peradventure, if he suspend his Action as to any part for any time, this is a Suspenion unto all, but extinguishment of part is a Bar to that part only. And the Opinion of all the Court was, that the Fine should be reversed for that part of the Land only, wereof no Feoffment was made, but for some Defects in the Writ of Error, Judgment was stayed. Owen 21. Wright's Cafe.

3. Gawdy cited the Cafe in 9 H. 6, where Judgment was reversed for part only, and it is not usual to have a Fine reversed for part, as if a Fine be levied of Lands in ancient Denum, 47 Eliz. 9 a. there, by Parley, if there be Error in Low as to one Parcel, and Error in Fall as to another Parcel, the Judgment, as touching the Matter in Law may be reversed, Owen 22. in Wright's Cafe.

4. Baron and Feme (the Feme within Age) levy a Fine, and upon Inspeccion the Writ was adjudged to be within Age, and Judgment was given, quod finis predict. reverentias, and Wray laid, he had conferred with many of the other Justices who were of the fame Opinion. Gawdy, the Fine shall be reversed in all, for this is an Error in Low of the Court, V. B. 21 D. for by this Fine the Husband gives nothing divided from the

Fine.

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(K. b. 3) Plea good; By or against Strangers to the Fine

1. In Formedon, the Tenant prayed Aid of, because W. was seised in Fee, and leasted to the Tenant for Life, and granted the Reversion to 2 in Fee, of whom the Tenant prayed Aid, and had it, and the Prayers came and vouch'd W. and the Demandant counter-pleaded, that W. had nothing in Demejye, nor in Service after, &c. and the Opinion was, that the Demandant should not be stopped to counter-plead the Voucher by the Suffering of the Aid Prayer, and though the Gift be by Fine, yet the Fine shall not be stopped to plead ne dona pas, and this where the Fine was levied by a Stranger, as it seems. Br. Etooppe pl. 70. cites 38 E. 3. 23.

2. The Tenant vouch'd to Warranty f. Son and Heir of R. and the Demandant counter-pleaded generally by the Statute, and the Tenant said, that to this he shall not be received, for at another time R. levied a Fine for conuance de droit come coe, &c. to our Ancestor, &c. and demanded Judgment, &c. and noe allocutur. For the Demandant is a Stranger to the Fine, and also the Fine is good if any of the Parties be seised at the Time, &c. Br. Etooppe, pl. 26. cites 40 E. 3. 30.

3. And in Formedon upon a Gift by Fine, the Tenant may say, that ne dona pas, if he is a Stranger to the Fine. Quod nota. Br. ibid.
Fine.

Estate of the Wife, but all paiseth from the Wife, therefore all shall be revered, and if the Fine should be revered as to the Wife only, then the Fine, levied now by the Husband alone, is a Discontinuance, by which the Wife at the Common Law shall be put to her Cui in Vita, and that is not Reason. And we cannot, by this Reversal, make the Consecus to have a particular Estate during the Life of the Wife, and therefore the Fine is to be revered for the Whole, and as void for the whole to the Consecus.


If there be Tenant for Life, Remainder to an Infant in Fee, and they join in a Fine; upon a Writ of Error brought, it shall be rever ed only as to the Infant. Le. 317. Mich. 30 and 31 Eliz. B. R. Pigot v. Harrington.

6. Baron and Feme, and a third Person, levied a Fine, and the Writ of Covenant was against the Baron and the third Person, and in the Summons the Fine was left out. Coke moved, that for this Error the whole Fine should be rever ed, and it being ill in part, is ill in all, and so was the Opinion of the Court, but they would advise. Cro. E. 290. Hill. 34 and 35 Eliz. B. R. Baxter and Us. v. Mounting.

7. And it is not a strange thing for a Fine to be rever ed in part, and to be in force for the Residue. Arg. Cro. E. 469.

8. As a Fine levied of goodable Lands and of Land in ancient Demesne, in which Case, though the Lord by a Writ of Difcuff avoids the Fine for the ancient demesne Land, yet it is good for the other. Arg. Cro. E. 469. (his) Patch. 30. Eliz. B. R. in Case of Wright, v. Mayor, &c. of Wickham.

This Point is held per Hobart, Ch. J. Hob. 2:8. in Clarickard's Case.

9. So where a Fine was levied in Chester, and D. as Heir Male brought Error to rever ed it, and the Defendant appeared, and pleaded a common Recovery, in which the Confor came in as Vouche, and he vouches over, and the Plaintiff replyed by Non-tenure in the Party suppose to be Tenant in the Recovery, upon which they are at Issue, and found that he was Tenant of Parcel, and not of the other Parcel; the Question was, whether the Plaintiff shall be barred for all; and agreed not, but for Parcel only, and therefore Rule was given that the Lands should be examined. Jo. 352. Mich. 10 Car. B. R. Donne v. Smithurst.

10. So where an Infant Tenant in Tail, Remainder to B. in Fee, join in a Fine, this may be rever ed against the Infant for Non-age, and shall stand against Remainder-man. Arg. 2 Jo. 182. cites Hob. 278. English's Cafe there cited, and 17 H. 7. Kelw. 43.

11. Error of a Fine levied by 4 Conforers, and assigned the Death of 2 before the Fine engrossed or Silver paid; and if by this the Fine shall be rever ed or quoad those two, was the Question? and it was argued by Newdigate Serjeant, that it shall be rever ed for all; for by it the Writ was abated, and so it is a Fine without Original. 2 Lev. 127. in Cafe of Biddulph v Harrison, cited it to have been so adjudged Hill. 1662. B. R. Rot. 1179. in Cafe of Roe v. Yeatley.

12. A Fine may be rever ed quoad one, and a Stand in Force against others. 2 Jo. 182. Mich 33 Car. 2. B. R. Cockman v. Farrer.

—Popham. Ch. J. said it was otherwise of a Fine at Common Law. Ow. 76. Hunt. v. King. (L. b. 2)
(L. b. 2) Nient Compriz.

1. A Fine cannot belevied but of that which is specified in the Writ of Covenant, and not of a foreign thing, unless it be consequent. Br. Fines, p. 97. cites 18 E. 4. 22.

2. As in a Writ of Covenant of Land, he acknowledges the Tenements to be the Right of the Plaintiff, &c. there the Plaintiff may grant and render 20 s. Rent to the Confofur, and it is good; For this is consequent to the Land to grant a Rent out of it. Ibid.

there for the same Cafe in 9 E. 4. adjudged, that a Writ of Covenant was brought of 5 s. Rent, and the Fine was levied of an Annuity. Co. R. on Fines 11.

3. And in the same Cafe where a Writ of Covenant to levy a Fine makes mention of Land, where the Party has only in Reversion, and acknowledges all his Right in the Land, &c. to be the Right of the other; there the Reversion paffes. Br. Fines, pl. 97. cites 19 E. 4. 9. which Chocke agreed the same Year. Fo. 3.

4. And it is adjudged in our Books, that where one R. brought Affise of dartein Presentent against a Prior, who came into Court, and levied a Fine and Release of the Advocation to the Plaintiff, for which the said R. by Affent of the Ordinary, granted an Annuity to the said Prior and his Successors imperpetuum, per manus Perfone Ecclesie quicunque fuerit; and it was adjudged a good Grant, and yet the Annuity was not contained in the Writ of Covenant, was infining out of the thing contained in the Writ. Co.R. on Fines. 11. cites 31 E. 3. Br. tit. Fines 92.

5. If a Writ of Covenant be brought of a Manor except a Mefnage, and of this this the Fine is levied without any Exception, yet the Mefnage shall not pass, because it was not contained in the Writ. Co. R. on Fines 11. cites 38 E. 3. 17.

6. In Warrantia Chartae, quod Warrantiam acran, if the Defendant will levy a Fine of the same Acre, and of one other Acre; the Fine is not good for the other Acre, for it is not comprized within the Original. Co. R. on Fines 10. cites 20. H. 6. 3. 4.

7. A Scire Facias lieth sometimes of things not comprized in the Writ; as if in a Fine for relence, the Cognizee render Rent in Tail. 43 E. 13. 8. Wit's Symb. S. 179.

8. In a Formedon a Fine with Warrantcy was pleaded, and as tu part the Tenant said, that himselfe was feised tempore finis levati, and to the rest he said not comprized, &c. Br. Fines p. 26. cites 46. E. 3. 14.

9. Scire Facias upon a Fine levied of the Manor of D. and was of 40 Acres of Land, and 10 s. Rent as parcel of the Manor, and the Tenant said, that the 40 Acres and 10 s. are not comprized in the Fine, and it is held there that he shall say, Not parcel at the time of the Fine levied, &c. for if he does not deny, but that the Fine was levied of the Manor, and that this is Parcel, then this is comprized, &c. Br. Scire factas, pl. 47. cites 48. E. 3. 11.

10. Forcible Entry; in Scire facias upon a Fine brought of 3 Acres, which is alleged to be parcel of the Manor of D. of which Manor the Fine was levied, where their Intention is of 3 Acres parcel of a Manor, which was recovered, there not Parcel is no Plaie, but shall say, Not Parcel and so not comprized; and in Recovery of Affise he shall say, that it was not put in
in View, and so not Parcel; Quod non negatur. Br. Comrife, &c. pl. 9, cites 26 H. 19, 29.

11. A Fine is levied of the Manor of D. and I have another Manor of D. in the same County, and after a Seis Facias is brought against me to execute the Fine of my Manor; if I plead Nient Comrife generally, it will be found against me; but I may well say, that I have 2 Manors of D. in the same County, that is to say, one called East Dale, and another called West Dale, and that the Fine was levied of West Dale, without this, that my Manor of East Dale was comprized within the Fine, and this was adjudged in the Sci. Fa. in the 19th Year of H. 7. Keilw. 49. pl. 6. Ld. Brook v. Ld. Latimer.

Roll. R. 103. 117. S. C but fines the two other Mesuages deoxid to A. R. 118. per Coke and Dodderidge. in S. C.

12. A. seised of the Manor of W. and 2 Mesuages in W. bargained and sold his Manor of W. and all his Lands and Tenements in W. to B. and covenanted to levy a Fine for further Affurance of all his Lands in W. B. rendered a Fine to be levied by A by the Name of 4 Mesuages comprehended in the said Indenture of Covenant. A. after entering into the Covenant, and before the tender of the Notes of the Fine, had purchased two other Mesuages, and therefore refused to acknowledge. Coke Ch. J. held clearly, that A. was not bound by his Covenant to acknowledge this Fine, and that a Nient Comrife cannot be pleaded against an express thing, and cited 48. E. 3. 11. and Dodderidge J. agreed; and yet per Dodderidge and Houghton J. if the Fine comprehend 4 Mesuages, 2 only shall pass, and per ton. Cur. the Refusal was no Breach of Covenant; and Judgment was given against the Plaintiff. 2 Bals. 317. Hill. 12 Jac. Wilton v. Welsh.

13. A Man cannot plead Nient Comrife in a Fine upon Intention that he did not intend to pass more than is contained in the Indenture, when the certain number of Acres is comprehended in the Fine. Per Coke, Ch. J. Roll. R. 103. Hill. 12 Jac. in Cafe of Wilton v. Welsh.

14. A Fine was levied in the Isle of Ely, in Court of Record there, by the Name of one Mesuage, one Garden, one Orchard, and Common of Pasture. In a Formedon in Defender for one Mesuage and 15 Acres of Land, the Question was, whether those 15 Acres of Land were contained in the Fine, and such Fine was a Barr? And upon Demurrer, Judgment was given for the Demandant; for admitting the Fine to be good, which will be difficult to maintain, it is but a Discontinuance of the Estate. Lurw. 959. 2 Jac. 2. White v. Aftin.

15. A. the Conriff had ten Acres in D. and B. the Conufre had ten Acres in the same Vill; and A. levied a Fine to B. of 20 Acres, and B. granted and rendered 20 Acres to A. in Fee; yet A. shall not have the ten Acres of B. unless there had been an express Agreement between them to such Effect; for otherwife the Conufe shall be laid to render more than he received, 2 Rep. 76. b. cites it as agreed upon a Reference to the Judges out of Chancery in Taverner's Cafe.

(L. b. 3) Pleadings at what Time. And how.

1. It was agreed, that the Note of a Fine is pleadable before the Fine be engrossed, and shall pass the place, where it was acknowledged, and before taking, &c. but after the Fine is engrossed, he shall not plead the Note, but the Fine itself, which Fine is levant in C. B. coron, &c. Quod Nota. Br. Fines, pl. 41. cites 12 H. 4, 16.

2. A second Fine, before it be engrossed, cannot be pleaded to a Writ of Error brought for reverting the first, and the engrossing was faid on Purpose by the Conufe of the Second. Noy. 59. Hart v. Amerdith.
(L. b. 4) Pleadings of Fines. What Good, and in what Cases necessary.

1. A Fine is no Plea in Aff'g, or in any other Action, unless it be shown sub pede fatis, which is the Great Seal of England. Br. Fines. 103. cites 24 E. 3, 35.

2. In pleading a Fine, every one of the Justices of C. B. must be named by their Names, the other Writs which come out of Chancery are directed to J. S. Capitolio Jutticiario de Comunl Banco & Soctis suis, without expressing the Names but contrary of a Fine. Br. Fines. pl. 123. cites 1 H. 7. 10.

3. He who pleads a Fine ought to shew in what Term, and what Place, as at Westminster; for the Party may say no such Record or Fine. Br. Pleadings. pl. 167. cites 10 H. 7. 28.

4. Note, per Fitzh. and the Prothonotaries, that in Pleading of a Fine, they shall not say that the Fine was levied generally, but that such one was seized, &c. and so seized. The Fines were levied. Br. Fines. pl. 3. cites 27 H. 8. 4.

5. And if Celynque use levies a Fine, which is pleaded by such Words ut supra, viz. that he was seized and levied the Fine, &c. and the other says, that the Parties to the Fine had not any Thing, it shall be found against the other; for Celynque use, had nothing in Fact; but in this Case he shall plead that J. N. was seized, &c. to the Ufe of P. and so seized the Ufe Finis fe levavit. Br. Fines. pl. 3. cites 27 H. 8. 4.

6. Fines are as effectual to bind the Right of the Intitlue, when they are found by special Verdict, as when they are pleaded in Bar. per Cur. 2 Le. 37. Hill. 31 Eliz. C. B. in Cafl of Johnfoa v. Bellamy.

7. One cannot be said seized upon a Fine Sur Render, without an Entry alleged. And the Pleading by Force whereof he was seized, &c. doth not supply the Entry; But upon a Fine Sur Complance, &c. come ceo, &c. tis otherwise. For that is executed, per Cur. Cro. E. 903. Mich. 44 and 45 Eliz. B. R. Buitard v. Coulter.

8. Exception was taken to the pleading a Fine; Because it was Sedusio finalis Compendia fett a fieri & postea Complance & Concordatum, where the usual Form is Quia/un fiant fe Lexor, which includes all. But when they would plead by Parts, they ought to shew the Whole, and that perhaps no King's Silver was paid. But the Exception was over-ruled; for the ancient Course of Pleading was as here, 2 Lev. 31. Mich. 23 Car.

9. The Defendant pleaded a Fine with Proclamations, and concluded it with demanding Judgment; if against this Fine which contains Warrant, the Plaintiff shall be required to bring Error; and the Court held it ill pleaded, and that he ought to say, if against this Fine with Proclamations so levied; For a Fine at common Law makes a Discontinuance, but does not bar the Right; and by the Conclusion it shall be intended to be without Proclamations, and as a Fine only at common Law, nor will the Word (So) aid it. For the Conclusion ought to take the Substance of the Bar, that it was a Fine with Proclamations, and not a Fine only. Palm. 243. Mich. 19 Jac. B. R. Darcy v. Jackson.
(L. b. 5) Pleadings. As of what Term.

1. The Issue in 'Tall brought a Formacion in Defender, and the Defendant pleaded in Bar, and confessed the Estate Tall,' but said, that before the Death of the Tenant in 'Tall,' J. S. was seized in Fee of the Lands in Question, and levied a Fine to him, and 5 Years past, and then Tenant in Tall died, and whether this Plea be a Bar to the Plaintiff or not, was the Question; and it rested upon this whether J. S. upon this general Plea shall be intended to be in by Differfin or by Feeffment? For if it be in by Differfin, then he is bair'd, if by Feeffment, nor; and the Opinion of the Whole Court was clear, without any Debate, that he shall be intended in by Differfin, and so the Plaintiff is bair'd as the Books are. 3 Rep. 87, a. Fl. C. Estande in Cafe. And Bankes Ch. J. said, that it shall not be intended, that Tenant in Tall had made a Feeffment to bar his issue, unless it be flown; and it lies on the other Part to fliew it; and a Feeffment is as well an unlawful Act as a Differfin, for it is a Discontinuance; Mar. 195, 196. Patich. 18 Car. Taylor's cafe.

2. A Fine was thus; Hac effe finalis Concordia facta in Cur' Regis apud Westm. dixit facti Michaelis in tres septemans Anno Decimo Willielmi tertii coram Thom. Trevor, &c. & Polica in Cافت. Sanctæ Trinitat. 1 Annae conced. & Recordat. coram eisdem Julicari to the Concord of the Fine was of one Term, and the Recordat. of another Term following; and therefore the Question was, of which Term this should be said to be a compleat Fine. Per Cur' 'tis a Fine of that Term when the Concord was made, and of which the Writ of Covenant was returnable; for the Concordia facta in Curis is the Compleat Fine, the Conchetic Recordat. is the Leave of the Court to inroll it. 1 Salk. 341. Mich. 10 Annae; E. R. Lloyd v. Vicount Say and Seal.———cites 6 Rep. 68. Hob. 320. 2 Vent. 47.

(L. b. 6) Pleading. Partes Finis nihil habuerunt. By whom.


2. Note, that in the Exchequer Chamber 'twas said by Yelverton and affirmed by others, that my Father Tenant in Tail, or in Fee-Simple, grants Land by Fine, if I will convery by the Ancestor, I shall not say that those, who were Parties to the Fine, had nothing, but such a one whose Estate I have. Br. Confects & avoid. pl. 5. cites 33 11. 6. 18.

S. P. for he ought to shew who had any thing in the Land at that Time. But where a Recovery of my Ancestor is pleaded against me, it is sufficient to say that the Ancestor had nothing in the Land at the Time without shewing who was Tenant thereof. Br. Fines. pl. 43. cites 14 H. 4. 53.

3. But 'tis said that I shall say, that after the Fine such a one was seized of it in Fee and conveyed me in Fee. Quere, if without shewing how he came by it after. Br. Confects and avoid. pl. 5. cites 33 H. 6. 18.

4. Differfin levies a Fine to A. B. and after Differfin re-entered and conveyed Differfin, and A. B. re-entered, the Differfin brought又有, and A. B. pleaded the Fine; Differfin shall avoid the Fine by the Matter asorefeid, and fo shall take Advantage of his own Wrong; per Littleton. Br. Confects and avoid. pl. 21. cites 15 E. 4. 5.

5. N. D.
5. N. D. is seized of a Parts of certain Land in Common with J. S. who hath the third Part of it; and N. D. levies a Fine to W. P. of the third Part, and he brought Sui re facias against the Feodar of J. S. It is dangerous to say quod Tempore Finis levati N. D. had nothing, &c. by which was agreed that he may say, quod Tempore Finis levati N. D. had nothing but in common with J. S. whose Estate he hath. Br. Fines. pl. 2.

6. 4 H. 7. 24. Enaeds, that the Exception which none of the Parties, nor any to the Use had any Thing in the Lands at the Time of the Fine levied is freed to all Persons, except Parties and Privies.

7. A. B. and C. Coparceners of a Manor; A. escauf'd J. S. of his Part to the Use of himself for Life, and after his decease to the Use of his Eldest Son and Heir apparent in Fee, and after A. levied a Fine de tertia Parte, 200 Acrarum terre 400 Acrarum Pasturae, &c. (amounting to more Acres than the whole Manor contained) sur Conuance de Droit come eoe, &c. with Warranty of him and his Heirs, and re-took by the fine Fine for his Life only, and then died, and his Son entered. The Question was, if the third Part of the said Acres be severed from the Manor by this Fine against the Heir, or that against the Fine he shall be received to over a continual Possession and Continuance of Sekin ante Finem. Tempore inis, &c. &c. in the Tenant for Term of Life. It was held strongly by Plowden, Bromley Solicitor and Lovehace, that this Averment by him in Remainder, who was a Stranger to the Fine, should be received qua non qua pars Finis nec Partium heres, &c. But Dyer, Saunders, Manwood, Southcote, Harper and Catlin, held the Law clear contrary, and that such Fine amounted to a Feoffment of Record, which makes Discontinuance of the Remainder or Reversion. D 333. b. 334. a. pl. 39. Patch. 16 Eliz. Anon.

8. Parties and Privies are concluded to say Partes ad finem nil halau- vent, &c. by the Statute of 4 H. 7. but a Stranger may plead this Plea. Hob. 334. Mich. 19 Jac. in Mackwilliam's Case. Le. 85. in

Caeo. of
Zouch v.
Bampfield.

— Mo. 231. in S.C.

(L. b. 7) Exception; That the Defendant was always feized; And by whom to be taken.

1. 27 Ed. 1. Stat. 1. c. 1. Enaeds, that it shall be no good Exception to a Fine, that before, or at the Time of the Fine levied, the Demandant, or his Ancestors were seised of the Land contained in the Fine, or some Part thereof.

2. In Affise, Fine upon Remainder of the Ancestor of the Plaintiff, was pleaded in Bar, and the Plaintiff said, that he was continually seised of the Time of the Fine, before the Fine, and after, till he was dispossessed; and the Court held, that he shall have the Plea, notwithstanding the Privity of Blood. M. 9 E. 3. The Reason seems to be, because he claims of himself and not by such Ancestor. And for Tenant in Tail, this Averment is well, that his Father was seised, and died seised after, notwithstanding the Fine upon Remainder levied by the Father, and that he entered after as Heir. H. 17 E. 2. and M. 18 E. 2. But Sharde made a great Difference between such Fine of Render, and * Fine Sur Conuance de Droit come eoe, &c. For this is executed, and the other is but Executory. And therefore the Heir is remitted by the Entry by Defeat before the Execution, as he thought. Vid Statute de finibus inde. Br. Fines. pl. 74. cites 13 Aff. p. 8.

3. A. was Tenant in Tail, Remainder to B. and A. levied a Fine come eoe, &c. B. the Remainder-man may aver Continuance of Possession, notwithstanding the Fine; for he is not Party nor Heir to the Conquer. And the same Law of a Fine Corvett, where the Baron alone levied the Fine. Br. Fines pl. 95. cites 12 E. 4. 12. per Fairfay, to which Littleton agreed.

(L. b. 8)
(L. b. 8) Pleadings. In what Cases Seisin must be alleged in the Cognitor.

1. In Replevin, the Defendants made Cognizance as Bailiffs to R. M. who was seized of the Place where, &c. as a Remainder-man under a Marriage Settlement made by S. M. the Father, and a Fine levied thereof, &c. the former Tenant in Tail and Remainder-man being dead. The Plaintiff recovered the Seisin in Fee of S. M. at the Time of levying the Fine, &c. and upon this they were at Iffuc, and after a Verdict for the Plaintiff, it was moved in Array of Judgment, that this was an Immaterial Issue, whether S. M. was seised in Fee at the Time, &c. because the Tenant in Tail who claimed under him, joined with him in the Fine, and conveyed the Lands to R. M. and his Heirs, and therefore the Seisin of S. M. was but formal and to induce the Matter, and not traversable, and so the Judgment was set aside.—Serjeant Lutwych says, that he could not discover what were the particular Reasons given by the Court for the said Resolution, and therefore (citing the Cases, &c. in the Margin) observes, that 'tis said by Fitzherbert in 27 H. 8. 4. a. that in pleading a Fine, Seisin shall not be intended if not shewn, and that the Prothonotaries say, he who pleads a Fine ought to shew Seisin of one of the Parties, and that all are the Entries. But in Dyer, 291. a. 'tis said, that the ancient Court was otherwise, and that to say generally, quidem tisiis fe levatis, was well enough; for it might be of a Reversion, of which Seisin cannot be alleged. But admitting that the constant Form of Pleading hath been to allege Seisin in one of the Conjours, yet it does not follow that a Travelfe may be taken to the particular Estate, for the Fine is good if any of the Parties hath an Estate in the Land.

* Mr Nelson in his Lutw. page 515. says: this is a mistake, and that there is nothing relating to it. But Mr Nelson might have found it at Br. Fines. pl. 57.

* Br. Tit. Fines 109. And if a Fine Sur Cognizance de Droit, &c. be pleaded in Bar, and the Averment be quod Partes frinis nihil habuents, the Demandant need not reply and shew a Seisin; for the Defendant ought to have concluded his Bar to the Country, without any Rejoinder, and so it is held in 2 Init. 527. and by Lord Coke in his R. on Fines, LeEt. 22. Nor is there any Case that gives Countenance to the traversing the Seisin in Fee in this Case, but that of South and Balmfield. 1 And. 153. Sav. 84, and 1 Le. 75. in reporting which Case, the Ch. J. Anderson makes no mention at all of a Travelfe of the Seisin in Fee; so that upon the Whole, it seems that the alleging of Seisin, &c. is only Matter of Form to induce a Plea to a Fine, and not of Substance to be traversed. 2 Lutw. 1608 to 1625. Trin. 1 Anne. Walters v. Hodges and al:

(L. b. 9) Pleadings. Proscript or Montrans necessary, in what Cases.

1. Affise by an Infant; the Tenant pleaded a Fine in Bar, and because he did not shew it sub pede Sigilli, nor any Part of it, the Affise was awarded, and this for that Cauta only as it seems, and not because the Plaintiff is an Infant to enquire of the Circumstances. But Note, That the Jury cannot find Matter of Record in their Circumstances. And 'tis said elsewhere, that if a Fine be pleaded in the same Court, it suffices to be exemplified in the same Court. But if he pleads it in another Court, he must shew it exemplified under the Great Seal of England in Chancery, if he would plead it, but he may give it in Evidence under the Seal of C. B. Br. Montrans. pl. 63. cites 24 E. 3. 45.

2. Formes
2. 

Formedon in Defender, and the Writ rehearsed, that N. granted the Reversion of a Tenant for Life to the Baron and Feme in Tail by Fine, and for default of Issue, the Remainder to the Ancestor of the Demesnant in Tail, and made the Defecants to him; and notwithstanding that he might have declared upon an immediate Gift, and now has made mention of the Fine; yet by the best Opinion 'tis only Surplusage, and he need not shew the Fine, because the Action is of a Gift Executed; for in Formedon in Defender, which is always executed, a Man need not shew Deed, quod Neta; and so fee that before the Remainder be executed, Deed or Fine is necessary to be shewn, and e contra after 'tis executed. Br. Monitans. pl. 34, cites 11 H. 4. 39. and 14 H. 4. 31. accordingly.

3. In Square Impediment, the Plaintiff makes his Title to the Advowment by Grant by Fine to J. N. in Fee, who after granted it to W. for Life, and after [by another Deed] granted the Reversion to the Plaintiff, and that W. is dead, and so makes Title to himself; and the Plaintiff was compelled to shew the Deed of Grant of Reversion; for it belonged to him, but not the Grant for Life to W. and per Hank. he shall shew the Fine also, and so he did. Br. Monitans. pl. 40. cites 14 H. 4. 10. 11.

(L. b. 10) Pleading in Bar in General.

1. An Exception was taken to the Pleading of a Fine, by saying, that a final Concord was made, and because it did not say, that a Fine was levied, as the usual Form is; but it was answered, that the Matter and Substance of the Fine is shewn as fully by this Form of Pleading, as by the other, so that there is no Variance in Substance, and in such Case a Man is not bound to a Form of Pleading; but if he shews his Matter effectually, it is sufficient. Pl. C. 431. a. b. Patch. 15 Eliz. Smith v. Stapleton.

2. Another Exception was taken, because it was not said, that the Fine was levied in C. B. to which it was answered, that the usual Form is to say, that the Fine was levied in Curia Domini Regis quod Westmonesteriam, as before was pleaded, and not to say in C. B. Pl. C. 431. b. Smith v. Stapleton.

(M. b) Taken by Dedimus Potestatem.

1 15 E. 2. Stat. of Carisflde. Enactts, that If the Party be not able to come before the Justices in the Court, then two or one of them (by the Affirm of the rest) shall go to the Party, and receive his Cognizance, and if but one go, he shall take with him an Abbot, Prior, or Knight being of good Fame and Credit.

The Commissioners, that take the Cognizance, shall make a Certificate thereof to the Justices, so the End the Fine may be lawfully levied according to the former Ordinance.

Coke's R. on Fines 9. says, that the Us- trary to this Statute.—If a Knight be Created an Earl, yet he may take Cognizance by Ded. Pot. But if an Abbot was created a Baron, he could not. Co. R. on Fines 10.

2. If a Person, able to take a Fine, takes the Cognizance of a Fine to him- self, it is utterly void. Because he is Judex in propria Casa. Co. R. on Fines 10. cites 8 H. 6. by Martin.

3. One Justice alone with a Dedimus Potestatem may take it; and the Ch. J. of C. B. without Dedimus Potestatem, may take Cognizance of the Fine, as well as other Justices by Ded. Pot. But the Ch. J. of B. R. cannot
Vid. (J. B.)

4. Conurance of a Fine Hill. 20 H. 8. where the Ded. Potestat. made no mention of the County, and all is certifie the same Term. and the King's Silver ytngkol, but the Fine was not engroffed, but remained in the Office of the Chirographer. And it was resolved that it may be now engroffed: But because it is at the Election of the Party to have it either with or without as before 4 H. 8. he is dead, so that now no Election may be made, it shall be a Fine without Proclamations, as at the Common Law.


5. Dedimus was to take the Conulance of a Fine of four Persons.—The Commissioners return the Conulance of three only. — The Name of the fourth may be raz'd out of the Dedimus, and make the Writ of Covenant to accord therewith, and 'twas said to have been done about 30 Years since. Cro. E. 576. pl. 24. Trin. 39 Eliz. C. B. Anon.

6. A Dedimus was awarded to take the Conulance of a Fine from Baron and Feme, and the Conulance of Baron only was returned, and the Feme would not acknowledge it. Lord-Keeper ordered, that a new Dedimus Pot. should be awarded to take the Conulance of the Baron only, and that it should be of the same Date as the first was, and that the Return of the Commissioners should be annexed thereto; and Anderdon said, so it might be done here, or otherwise, if the Fine be levied between the Plaintiff and the three others only, it shall be good without Quelion; for there is no Prejudice to the fourth, for the Writ of Dedimus might be amended, and the Writ of Covenant made to accord with it, and any of the three Ways it would be well enough. Cro. E. 576, 577. Trin. 39 Eliz. C. B. Anon.

7. If a Dedimus Pot. be to take the Conulance of a Fine of three Persons, the Commissioners may take the Conulance of one at one Time, and of another at another Time; for it may be they cannot come to one Place at the same Time; and when the Conulance of one is duly taken, it's against Reafon, that the Refufal of the other should impeach it. Quod ali!. Jufliciarli Confequenter. Cro. E. 577. Trin. 39 Eliz. C. B. Anon.

8. A Fine by Dedimus was taken of an Infant, but because it was not Apparent to the Commissioners, that the Infant was within Age, the Court acquitted them. 12 Rep. 122, 123. Hungate's Case.


Per North and Windsam, J. there is a great TrufT reposed in the Commissioners, and they are to inform themselves of the Party's Age, and a voluntary Ignorance will not excuse them. Mod. 246, 247. Patch. 29 Car 2. C. B. in Cafe of Barrow v. Parrot.

10. A Ded. Pot. was direcrred to two, and one of them executes it; the other cannot certify it; for the Execution of it ought to be upon his own Knowledge. Godb. 356. Trin. 21 Jac. B. R. in Leonard's Cafe.

11. A Ded. Pot. is directed to four, to take a Fine of Lands in several Counties. If two take it in one County and certify, and the other two take it in the other and they certify it, none of the Certificates are good. Godb. 356. per Haughton, J. in the Case above.

A Dedimus was directed to A. B. 149; and was retained by A. B. Knight, and held good. Jenk. 279. pl. 5. cites Arundell v. Arundell.—Yevl. 35. S. C.—Cro. E. 677. Trin. 41 Eliz. B. R.—Cro. J. 11. Patch. 1 Jac. B. R. S. C.

13. Tho'
13. Tho' now most Fines are in fact taken by Dedimus, yet they are
Recorded as taken in Court, and this to prevent Questions about Captions.
per Cur' 10 Mod. 45. Mich. 10 Annæ B. R. in Ld Say and Seal's Cafe.

(M. b. 2) The several Parts of a Fine.

1. It was resolved by all the Court, that there are five Parts of every
Fine, viz.

1. Original Writ. 
   For without
   Original 
   Writ a Fine

2dly, Licence, or Leave to accord. 
   For which Licence, 
   there is a Fine due to the King, which is the ancient Revenue of the Crown, and this is called the King's 
   Silver, and this appears fully by the said Statute de modo levandi Fines, and the Entry of the King's 
   Silver in such Cafe at Bar was thus, Robertus Drury Armiger dat Dna. Regine Septem Libr. pro 
   licentia Concordand; cum Tho. Tey Armigero & Elianora uxore ejus, de placito Conventiónis, 
   de maneria de, &c. & habet Chirographam per pacem Admissum, coram Jacobo Dyer. Et nota bene, 
   the Custom is, that he in whom the Fee is repofed pays the King's Silver, and not the other Conufee, 
   who had only for Life; and all the Presidents are according to this. And Note, the King's Silver is 
   entered upon the Writ of Covenant, and it ought to express, FIrft the Sum given for Licence to accord.
   2. The Party that paid it, viz. he in whom the Fee is repofed. 3. The Plea, and between whom, &c. 
   4. The Land, for which the Fine is paid; and all this was well observed in the Principal Cafe. 5 Rep.
   59. Trin. 54 Eliz. B. R. in Tey's Cafe.

3dly, The Credit. 
   The Credit 
   commences thus, Et eft Concordia talis, Sc. quod præd' Tho. & Elianora Recognovérunt maneria, &c. eft jus, 
   &c. Ex notandum eft, that this is the Foundation and Substance of the Fine; for if upon this the 
   King's Silver be entered, tho' the Conufee dies after, the Fine is good, as was adjudged in Carrell's 
   Cafe. 5 Eliz. D. 220. b. and the Note and the Foot of the Fine are not only Abstracts out of it, but 
   the Credit is the Ground and Substance of the Fine—5 Rep. 59. Trin. 54 Eliz. B. R. in Tey's Cafe. 
   —Co. R. on Fines. 5 calls the Credit the Foundation, Ground, Life, and Heart of the Fine.

4thly, The Note of the Fine. 
   This is only 
   an Abstract 
   out of the Original and the Credit, and commences in this Manner, Sc. inter Robertum Drury and 
   Thomam Cannock querentem, et Thom. T. & E. usuœm ejus deforciun. de maneria, &c. unde 
   Placitum Conventionem Summatit. faci inter eos, Sc. quod Præd' Tho. Tey & Elianora Recognové-
   runt maneria, &c. But 'twas observed, that in ancient Books, the Note of the Fine is taken for the 
   Credit, as in 12 H. 4. f. 16. a. that the Note of the Fine is pleasurable before the Fine engroffed; 
   and 22 H. 6. 51. accordingly. But this is intended of the Credit itself; and all the Pleadings in Quid 
   juris clamant, &c. that the Leftice had Fee the Day of the Note levied, are to be intended of the 
   Credit itself. 5 Rep. 59. Trin. 54 Eliz. B. R. in Tey's Cafe.—The Note of the Fine may be entered 
   three or four Years after the Record made. Co. R. on Fines 5.

5thly, The Foot of the Fine. 
   This Com-
   mences thus, 
   viz. Hæc est finalis Concordia fœtæ in Curia Domini. Regis apud Welfm. a die Paschae in quindecim 
   dies, Anno, &c. coram Jacobo Dyer, &c. so that the Foot of the Fine includes all, and has the Day, 
   Year, and Place, and before what Judges the Credit was made. 5 Rep. 59. a. 39. b. Trin. 54 Eliz.
   B. R. in Tey's Cafe. 
   The Foot of the Fine may be entered three or four Years after the Record made. Co. R. on Fines 5.

(M. b. 3) Effect. At what Time Fines take Effect.

1. Note, that a Fine, before it is engroffed, is a perfect Record, and B. Fines. pl. 
   may be executed; and the Conufee must file his Quid juris clamant. Per 56. citia 22 
   que Servitia, or Quem Redditarum reddit as his Cafe is, before the Ingroff-
   ment of the Fine; For the Fine being engroffed, the Conufee has no 
   means
Fine.

means, to compel the Tenant to attorn; and then the Conufee may by this way lose his Service, and all Actions, that the Law, after Attornment, gives him. Co. R. on Fines. 3.

(M. b. 4) Sur Release. To whom good. In Respect of
Estate, &c. And how.

1. If a Land be given to the Baron and Feme in Tail, for Jeuitenure of the Feme, by the Ancefor of the Baron; and after the Baron dies, and the Feme suffers a Recovery againft the Statute of 11 H. 7, by CoVin, and after the Issue in Tail recedes all his Right by Fine, and dies, his Issue may enter; For the said Statute says, that the Recovery shall be void, being suffered by such Feme, unless he in Reversion attests to it by matter of Record, which ought to be by Voucher in the same Action, or such like; For if there be none Idfent between the Recovery and the Action as above; then if the Recovery be once void by the Statute, an Action by Fine after, which is matter of Record, will not make the Recovery good, which was once void before. Br. Judgment. pl. 148 cites Doct. & Stud. lib. 1.

2. Tenant in Tail made a Lease for his own Life, and he in Reversion releas'd to the Leafee for Life by Fine, and to his Heirs; it seems to me, that this Release is utterly void,—For tho' Littleton says, that in every Cafe, where he, to whom the Release is made, hath a Freehold in Deed, or in Law, such Release is good; this is true, but not in all Cases. And therefore I have taken a Diversity, viz. In all Cases, when a Release shall enure by way of Mitter le Estate, it is not sufficient to him, to whom the Release is made, to have Freehold only, but there ought to be Priority between Release and Releafe; But when a Release shall enure by way of Mitter le Draf to him without Priority (as if the Difefor makes a Lease for Life, and after the Disefee releas'd to the Tenant for Life,) this is good; But if Tenant in Tail make a Lease for another's Life, the Release of the Donor is good to such Leafee. Co. R. on Fines 6.

3. If a Man makes Lease for Years, and before the Entry of the Leafe the Leafee by Fine releas's to him and to his Heirs; now this is a void Release. For the Leafee, against his own Fine might say, that the Leafee had not entred into the Land before the Fine levied; and yet 31 Al. 24. tis adjudged contra, in such a Cafe; but other Books are all contrary, and fo is the Law. Co. R. on Fines 6. cites 16 H. 7. 59 E. 3. 37. 3 H. 6. 23. 46 E. 3. 13. 15 H. 7. 14. 47 E. 3. 27. &c.

(N. b) The several Sorts of Fines, and what are execut-
ed, &c. and how enure.

1. There are 2 Kinds of Fines, viz. one executed, and the other executory. Executed; that is, where the present Estate paileth unto, or is superseded in the Conufee; For such a Fine is a Feoffment of Record, as this Fine come co, or Sur Releafe, or Confirmation, or Sur Surrender; executory, as when no Estate is vested in the Conufee, until it be executed by Entry or Action; as Fines Sur Grant and Render by the Conufee, which must be made upon a Fine come co, or Sur Releafe, &c or other Fine which is executed; or otherwise the Conufee could not make any Grant and Render of that Land, &c. which he had not. 2 Init. 513.

Wad. Symb. S. 26,—If a Fine Sur
Cognisance de Droit come co &c, be le-
ved of a Re-
cession by the
name of the
Land, it is
not execut-
ory.

Wad. Symb. S. 179. cites 45 E. 3. 15.—It is not called executed, because the Conufee is in Possession; but because the Fine is executed between the Parties; so that the Conufee cannot sue Execution, because the Fine in itself is superseded to be executed. A Fine is not called executory, because the Fine does not supersede any Execution, but the Conufee may execute it, either by Entry or by Seize Facts. Co. R. on Fines 4.
6. Fines are either \textit{without Proclamations}, or \textit{with Proclamations}. The first at Common Law, the other by Stat. 4 H. 7. 24. Well's Symb. § 19. 7. And they are either \textit{single} or \textit{double}, and are such as are either \textit{with Render} or \textit{without Render}. See Well's Symb. § 21.

8. A. Leefe for \textit{Life}, Remainder for \textit{Life} to B. \textit{A.} levies a Fine to \textit{B.}

\textit{Sur Conuance de Droit}; this is Truth enu res by way of \textit{Surrender}. \textit{But if } \textit{B.} accepts a Fine \textit{from } \textit{A.} \textit{Sur Conuance de Droit come ex, } \&c. this is a \textit{Forfeiture} of both the Estates of \textit{A.} and \textit{B.} and shall not enure by way of \textit{Surrender}; but he in \textit{Reversion} may enter immediately for the \textit{Forfeiture}. \textit{Co. R. on Fines 5.} cites 3 All.

9. If a \textit{Leafe} be made for \textit{Life}, the Remainder to the \textit{Feme in Fee}, and \textit{Tenant for Life} levies a Fine \textit{Sur Conuance de Droit} to the \textit{Baron} and \textit{Femes}; and to the \textit{Heirs of the Baron}, in this Case, \textit{if the Fine dies without } \textit{Heri} the Lord shall have the Land by \textit{Escheat}, \textit{for this amounts to a Surrender in Law}. \textit{Co. R. on Fines 5.} cites 39 E. 3. 39 All. Osborn's \textit{Cafe}. \textit{Remainder in Fee to C. Tenant for Life} levies a Fine to \textit{A.} and his \textit{Feme in Fee}. \textit{A.} dies without Issue. \textit{C.} enters for the \textit{Forfeiture}, this is not a \textit{Surrender}. \textit{Co. R. on Fines 5.} cites 4 E. 3. 41 Aff.

10. Of Fines there are \textit{4 Kinds.} \textit{1st,} a Fine \textit{Sur Conuance de Droit come ex, &c. that it } \textit{be done,} \textit{i.e.} upon Acknowledgment of the Right of the \textit{Cognizee}; as that which he had of the \textit{Gift} of the \textit{Cognizor}. It is a \textit{single Fine}, and admits the \textit{Possession} (at least in Law) of the \textit{Lands}, by \textit{Virtue} of a \textit{Feoffment} or former \textit{Gift} of the \textit{Cognizor}, and works by way of \textit{Release}; a \textit{Fee Simple} pafing without the \textit{Word Heirs}, and nothing being rendered back to the \textit{Cognizee}. This is the principal and \textit{surest} \textit{Fine}, and is a \textit{Fine executed}; so that the \textit{Cognizee may presently enter.}

\textit{2d}, A Fine \textit{Sur Done,} \textit{Grant and Render}; which is a \textit{double Fine} (being in a Manner two Fines, \textit{viz.} a Fine \textit{Sur Cognizance come ex, } \&c. and a Fine \textit{Sur Cognizee,} \&c.) and where the \textit{Cognizee, after a Release and Warranty made to him by the \textit{Cognizor, doth grant and render back to the Cognizeor, the Lands,} &c. limiting often times thereby \textit{Remainders to Strangers not named in the Writ,} \textit{if the Party is in Possession, this Fine is executed,} \textit{otherwise he must enter, or have the Writ of Hubere faciis Seifiam,} &c.

\textit{3d}, A Fine \textit{Sur Cognizance de Droit tantum;} which is commonly used to \textit{pass a Reversion.} It may be expressed in such \textit{Fines, that the particular Estate is in another, whom the Cognizor is willing should have the Reversion. Sometimes it is used by Tenant for \textit{Life,} to make a Grant and Release to him in Reversion. In a Fine \textit{Sur Cognizance de Droit tantum,} the \textit{Cognizee hath a Freehold in Law in him before he enters.}

\textit{4th}, A Fine \textit{Sur Conuance is,} where the \textit{Cognizeor is feized of the Lands contained in the Fine, and the Cognizee hath no Freehold therein, but it \textit{pall} with the Fine. It is commonly used to grant away Estates for \textit{Life or Years}. And if the \textit{Cognizee is not in Possession, they must enter, or have a Writ of Hubere faciis Seifiam,} &c. \textit{Wood's Int. 240.}

\textit{Tenant in Tail after Possibility, Tenant in Dower, or by the Curtesy, by Fine surrender their Estates to him in Reversion; and the Form of the Fine is such in Effect, as the Fine \textit{Sur Conuance de Droit; having that the Words } forall redditt in the Fine upon \textit{Surrender, and the Clause of the Warranty omitted. Co. R. on Fines 5}.\textit{ This Fine is executory only, and therefore the Law pre-supposes, that he who rendered is feited; yet if the other, at the Time of the Fine levied be feited, the Fine is good, and executed professedly; and therefore the Court will receive this Conuance de Droit only; and that the Conuace be by the same Fine, renders to the Conuor the same Land, that he who surrendered by the Conuance, shall have nothing in the Land; the Conuace in this Case, cannot grant Rent to the Conuor by the same Fine, \&c. Denfih. R. of Fines 6.}

\textit{This Fine pre-supposes the Conuor to be in Possession at the Time, \&c. and therefore may be executed by \textit{Entry, or Seira faciis; and that the Conuace be in Possession, the Fine is good. Denfih. R. of Fines 6.} cites to E. 3. 1.}

\textbf{Y y y y (N. b. 2)}
(N. b. 2) What Fines proper for what Estates,

1. 'Twas agreed that a Fine Sur Conuance de Droth come ceo, &c. is always intended of Fee Simple, and no less Estate; and that after the Party is sealed by the Fine, Scire facias lies nor, but a Formidon. Br. Fines, pl. 13, cites 42 E. 3. 5.

2. Tenant for Life may levy a Fine Sur Grant and Release of the Lands which he holdeth for Life, to hold to the Cognizee for Life of the Tenants for Life, and it is no Forleiture 44 Ed. 3. 36. But if the Estate were larger, or the Fine Sur Cognizance de Droth come ceo que, &c. it were a Forleiture of his Estate. Weil's Symb. §. 13. cites 4 H. 7. fol.

3. So of such Fines by Tenant in Tail after Possibility, Tenant in Dower, or by the Curtsey, 39 Ed. 3. 16. But such Fine of a Rent feuqueth to be no Forleiture 2 H. 5. 9. Yet a particular Tenant as in Dower, by Curedly, or for Life, cannot by fine grant and surrender their Estates to the Owner of the Reversion, or Remainder, but may by Fine grant and relenue the same. Weil's Symb. §. 13. cites 17 Ed. 3. 62. 24 Ed. 3. 26. 29 Ed. 3. & 14 Ed. 3.

4. A Lapsie for Tears levies a Fine Sur Conuance de Droth come ceo: This Fine is void; For he had no Freehold; Parties ad Finem nihil habuerunt. Jenk. 254. pl. 45.

5. Feme Tenant for Life, Remainder to J. S. in Tail, Remainder to the Baron of the Feme for Life, * Remainder over. Baron and Feme by Fine Sur Conuance granted Tenementa pre uit & tenus, &c. quaeque habent in Tenementis pre vitis of the Baron and Feme, with Warrantcy, which descented upon J. S. The Question upon this was, whether this shall be continued to pass one entire Estate for the Lives of the Baron and Feme, or several distinct and divided Estates for the Lives of them? Hale Ch. J. & Wild J. Held clearly, that the Intent here was to prevent a Forleiture; But what Operation it should have as one entire Freehold for both their Lives, or a divided Estate they would consider & adjournarum. The Parties agreed, fo no Judgment was given. 2 Lev. 154. Hill. 27 & 28 Car. 2. B. R. Piggot v. Ed Salisbury.

(N. b. 3) The Operations of the several Sorts of Fines.

A Fine Sur
Conuance de Droth come ceo, &c. gen. &c. ge-
nerally implies a Fee Simple;

but it is only by Implication, and therefore there is no Repugnancy to limit an Estate for Life to the Conu-
nee; For the precedent Donation or Feoffment, which is lapsued, might be for Life only, or in Tail, and the general Intendment of the Conuance may be quailed by an express Limitation. 1 Silk. 340. in Caze of Hunt v. Bourne—cites 41 Ed. 3. 14. Co. Lit. 9. 5—Lutw. 781. S. C

1. As well the Fine Sur Conuance de Droth come ceo, as Sur Conuance de Droth tantum, gives a Fee Simple to the Conuuse, without the Words his Heirs; For every Fine Sur Conuance de Droth is intended Fee Simple. Co. R. on Fines 7.

2. Any Estate by Fine that operates by Way of Grant; the Law, to a-
3. A Tenant for Life, Remainder to B, in Tail; B. levies a Fine with
Proclamations Sur Conquest to A & C, for their Lives; this Fine bars the
Intail, during the said two Lives only, and is not a Discontinuance on-
nino; For B. was not feald by Force of the Tail, and the Fine is Sur
Conquest: It seems that As Acceptance of this Efirate to him and C. is a
Surrender of the former Efirate which he had: As in Cae of a Leafe for
Years made to A, and during the Years he accepts a Leafe for Years of the
same Land to him and B. Jenk. 321. pl. 28.

4. A Fine Sur Conquest de Droit come cao, &c. is a Prouinment upon
Record of the Lands comprised in the Fine, and doth imply a Liveroy and
Seisin of those Lands, Hill. 1649. 26 Jan. B.S. to pass the Efirate out of
the Conuent to the Conuent, but if another Person were in by Tor, it
would amount to an Entry, as a Prouinment will, to purge that Tor. L. P. R.
615.

(N. b. 4) Ancient Demefne. The Force and Effict of
Fines in Ancient Demefne.

1. In Affile the Tenant pleads that the Land is Parcel of the Manor of
D. which is Ancient Demefne, Judgment &c. He shall not be relieved to
say that its Ancient Demefne, For a Fine of Releafe was levied between
us and you of the same Land, and because this is a Judgment in Curia
Regis, therefore is there none no Transmutation of Possession, yet 'tis a
Judgment which made it Frank-sei between the Parties; but the Lord and
Strangers shall not be bound by it, but shall have Advantages of Ancient

2. And note, that the Lord himself was one of the Defendants in the
Affile, and because he pleaded by Bailiff, and did not take the Tenancy upon
him; 'tis said that it doth not effect him in a Writ of Deceit to reverse the
Fine, and to make it Ancient Demefne again; and so fee, that tho' it
was Sur Releafe, which is not Transmutation, yet 'tis a Judgment in Curia
Regis, and fo Frank-sei for the Time; and it seems there that none can
claim Ancient Demefne but only the Tenant. Br. Ancient Dem. pl. 17. cites
21 E. 3. 25.

3. A Fine levied in Ancient Demefne is not good, for 'tis no Court of
Record: but at this Day Common Recoveries by Sufferance are used there to
bind the Tail, per Kniver, which note, and well; for the Land ought to be
impeled there by Writ of Right-Close, and not elsewhere; contra

4. By the best Opinion, if a Fine levied of Land, which is Ancient
Demefne, be reversed by Deceit, yet it is good between the Parties. Br.
Fines. pl. 101. cites 7 H. 4. 44. And also 17 E. 3. 31. that nothing is
effected by the Revelal, but to restore the Land to be Ancient Demefne,
but it remains good between the Parties. Ibid.

5. If in Ancient Demefne, a Writ of Right Close be brought against A.
and it be prosecuted in the Nature of a Foraation in the Defender, a
Fine levied there, and without Proclamations by the Bailiff there, is a
Bor. If this Judgment be reversed in the Common Pleas, the Common
Pleas shall only Judge that the Plaintiff shall be restored to his Action in
the Court of Ancient Demefne, unless there be some other Cause which
takes
a Fine levie in C. H. except that it is no bar, which is on ly by Force of the Statute 4 H. 7. Resolution the second.

Lutt. 781. Hunt v. Bourne.——

S. C. and says the Dis continuation is because the Freehold is recovered in the Action. For every Recoveror recovers a Fee Simple, and a Recovery of a Fee Simple, must work a Discontinuance; and if this be allowed to be a Fine, it ought in Consequence to have the Effect of Fines. But Note, that it is no Bar to the Entail; For it is by the Statute 4 H. 7, that a Fee with Proclamations shall bar an Entail, and No Fine, but with Proclamations is within the Statute, nor can bar an Entail Tail. It is only a Discontinuance. Lutt. 919.


6. And the Coke in the 3d Part of his Institutes seems of another Opinion: For it seems to him that no Custom shall prevail against a Statute made within Term of Memory. Under Correction neither the Stat. 4 H. 7, of Fines, nor the 18 Ed. 1. of Fines concerns this Case; for neither of them says in express Words, that Fines with Proclamations shall bar the Intail; These Statutes only say, that Fines with Proclamations shall be bars to all Parties and Privies, and to Strangers, if the Stranger doth not bring his Action, or make his Claim within 5 Years after such Fines levied with Proclamations. And the true Intention of the 4 H. 7, was to take away and repeal the Statute of Non-claim the 34 Ed. 3. c. 16, and not to bar the the Entail Tail any more than 18 Ed. 1. had done, as appears by the Statute of 32 H. 8. c. 36, which ordains Fines levied as above, and Non-claim as above to bar the Tail. Jenk. 87. pl. 68.

(N. b. 5) Scire facias. \(\text{In what Cases. And How.}\)


2. Land is rendered by Fine to an Husband and Wife, and to the Heirs of their two Bodies; they have 5fie A. the Husband and Wife dies; A. enters and confesses B. with Warranty; A. dies; D. his Issue brings a Scire facias against B. to execute this Fine: It does not lie; For Executo facit effe, & non refat fiacienda, as Wett. 2. c. 48, speaks; and this Scire facias should lie, the Feoffee should lose his Warranty. Resolved, that the Heir in Tail is put to his Formedow in this Case: In a Scire facias, a Voucher doth not lie; the Feoffee shall not lose his Warranty, and therefore a Formedow only lies for the Heir in Tail in this Case. Judgment affirmed in Error. Jenk. 18. pl. 34. cites 29 E. 3.

3. Scire facias upon a Fine levied to T. R. and W. and to the Heirs of the Body of R. the Remainder to the right Heirs of the said W.——T. died, and R. and W. survived and died; his Heirs need no Scire facias to execute this Fine, because it is executed in his Life, by the Fee and Franktenement in W. Well's Symb. §. 179. cites 49 E. 3. 25. S. Sci. 19. 43 Ed. 3. 9. 24 Ed. 5. 57.

4. Scire facias upon a Fine, the Tenant for Life prayed in Aid of him in the Remainder in Tail, and had it notwithstanding that delays are outd in Scire facias by the Statute, quod Nota. Br. Sci. 16. cites 41 E. 3. 16.

5. After
5. After the Party is joined by the Fine a Sci. t. does not lie, but a For-merit. Br. Fines. pl. 14. cites 42 E. 3. 5.

6. If the Plaintiff have several Estates created by one Fine, he needeth but one Writ of Sci. t. 43 E. 3. 11. the it be of several Things against several Tenants. 11 H. 4. 15. 21 Ed. 3. 14. 24 Ed. 3. 25. Welt's Symb. § 179.

7. If Land be given by Fine for Life, the Remainder to Baron and Fee in Tail, and the Baron death; and then the Tenant for Life dies, and the Fine enters, the Fine is executed, so as their Issue needeth no new facias. Welt's Symb. § 179. cites 49 E. 3. 12.

8. Per 4 Judges and Serjeants, where a Fine is levied to the Baron and Fee in Special Tail, Remainder to the Heirs of the Body of the Baron, the fine dies without Issue; the Remainder is executed in the Baron, because he is not as Tenant for Life, and then the Remainder in the Heirs of his Body vests the Tail in him, quod vide ibidem and yet notwithstanding this, and a Bar in Ablife by Judgment against the Plaintiff himself in this Scire facias he had Execution; quod mirum! for it seems that 'twas executed before, and also the Judgment in the Ablife, being in Force, binds him. Br. Fines. pl. 53. cites 7 H. 4. 23.

9. If a Fine be levied to A. in Tail, the Remainder to B. in Tail, the Remainder to C. in Fee. And the Record is filed into the Chancery, and the first Tenant in Tail dies without Issue, and the Record cometh back into the Bench by Mummari, at the Suits of him in the first Remainder, and thereafter he had a Scire facias to execute the Fine, and dies without Issue before Execution bod; he in Remainder in Fee, shall not hereupon have a Scire facias without a new Commandment, because the Record was once out of the Court, and came in again at the Suit of him in the first Remainder, unto whom he in the Remainder in Fee is a Stranger; yet the Issue of him which removed the Record, in this Case might have a Scire facias without any new Commandment, because he is Prerog. Welt. Symb. § 176. cites 14 H. 7. 16. 9 E. 4. 15. 11 E. 4. 13.

C. B. without a new Commandment to them to make Execution, unless he only, at whole Suit it was brought into C. B. per Cur. For per Choke, the Writ is ad Profectionem A. B. Quere of his Heir, quod memo negavit. Br. Fines. pl. 6. * cites 9 E. 4. 15.

* D. 29. pl. 196. Hill. 28 H. 8. Anon. cites 14 H. 7. and 11 E. 4. 6o. ultimo accordingly. But in Dyer it is said, that the Heir must have a New Consecrate of the Fine, by a new Writ out of the Chancery; For the Mummari was to impress the Justices to proceed ad Profectionem of such an one (the Ancestor) and when he is dead, the Warrant is determined, and the Court cannot proceed at the Profection of another.

10. If a Man grant the Reversion of an Acre of Land, where he both nothing in the Land, by Fine executory, and afterward purchase the Reversion; now the Grantee shall enter when the Reversion doth fall, of shall have Execution thereof, by a Scire facias. Perk. § 66.

11. Upon a Fine for Consequence de Droit come ecc. &c. with a Grant and Render; the Fee was limited by the Word Remainder, as a Remainder when it was a Reversion, it was doubted if a Sci. t. lay; For the Fine was execrated before, and Sci. t. lies only on Fine Executory. But now he is put to a Formedow. See D. 199. pl. 55. 56. Patch. 3 Eliz. Gale v. Gale. —And fee Dal. 29. pl. 4. —The Opinion of the Court was against the Plaintiff. D. 199. b. pl. 56. 6. S. C.

brought Sci. t. in Remainder, as Heir of M. after B's Death without Issue, and had Judgment. D. 199. pl. 55. Marg. cites M. 13 & 14 Eliz. La Shandois's Case.

12. But where 3 Defecceans granted and rendered to the Plaintiff in Tail, with diverse Remainder over in Tail, the Receiver to the Grantees, and the Heirs of one of them in Fee, without any Consequence de Droit come ecc. &c. at the Beginning, and the Heir of him who had the Fee Simple limited to him, brought the Sci. t. supposing all the Tills given, so that there seems difference between this and the Case above. D. 199. a. b. pl. 56. cites a Precedent in T. 18 H. 6. Rot. 111.
(N. b. 6) Scire facias. *At what Time it lies to execute a Fine.*

1. A Scire facias may be sued upon the Note of the Fine, before it be ingrossed by the Chirographer. Weit. Symb. § 179. cites 22 H. 6. 13.


2. But of a Fine levied before Time of Memory, a Man shall not have Execution by Scire facias. Weit. Symb. § 179, cites * 1 E. 4. 6, but cites † 16 H. 7. 9, contra.

(N. b. 7) Scire facias. *By whom.*

1. If Land be given by Fine to A. for Term of Life, Remainder to B, and C. and the Heirs of their two Bodies, and each have Issue and die, the Tenant for Life dies; the one Issue and a Stranger enter; the Issue shall have several Writs; for the Inheritance is several, and the Issue held out may have Action of Scire facias against the Stranger *only to execute the Fine for his Moiety, and not join the other Issue; For he is in by Title in his Moiety, and the Stranger in the other Moiety by Torr; and when he has recovered, he and the other are Tenants in Common. Br. Brief. pl. 444. cites 24 E. 3. 29.

2. Fine was levied to A. and M. his Wife in Tail, Remainder to M. in Fee. They had Issu a Son named B. The Baron died, and M. by an after Husband had Issue C. then M. died, and B. entered and died without Issue. C. shall have Sci. fi. to execute the Fine, and not the collateral Heir of B. For B. was seised in Tail only, and the Fine was in Abeyance and not executed in him; and now C. is Heir of the whole Blood to A. but of the half Blood to B. And whosoever is Heir to the Ancestor when the Fee falls, shall have Execution thereof. Br. Scire facias. pl. 126. cites 24 E. 3. 30. 62. and 37 E. 3. Ib. Alf. 4.

3. N. acknowledged all the Right which he had in 100 Acres of Land in D. to be the Right of W. N. and his Heirs, and obliged himself and his Heirs to Warrant, and to acquit W. N. and his Heirs; and the Lord Paramount granted W. N. and he brought Scire facias, which is returnd warrant, and the said N. did not come to acquit him, by which he was barred Execution; and per Belknap, he shall have Writ of Mefne; but per Kirton, he shall have Writ of Execution by Scire facias; For the Thing is Executory, and this by the Statute de his que Recordata sunt, &c. Br. Scire facias. pl. 50. cites 49 E. 3. 8.

4. A Fine Sur Conuance de Droit, &c. levied to A. and B. and to the Heirs of A. the Jointenant for Life survived and died; the Heir of the other who had the Inheritance, shall not have Scire facias to execute the Fee; For 'twas executed before. Co. R. on Fines 4. cites 11 H. 4. 5. b. per Hill & Thirning.

5. But if a Fine be levied Sur Conuance de Droit, &c. to A. for Life, Remainder to B. in Tail, Remainder to A. in Fee; there B. after the Death of Tenant for Life, shall have Scire facias to execute the Estate Tail, and the Son also of Tenant for Life, after the Death of Tenant in Tail. Co. R. on Fines 4. cites 40 E. 3. 9. 53 H. 6. 5.
6. If two sit a Sci. fa, to execute a Fine, and the one diest, the Surviv- 
or shall have a Scire facias without any new Commandment. Welt. 
Symb. § 179. cites 1 E. 4. 13.

13. A Fine was levied between the Prior of B. and J. S. that the Prior 
should find so many Maistles in the Manor and Chapel of C. and, for Non-
Performance, the Heir of C. brought Sci. fa, and yet C. was a Stranger to the 
Fine. However because it was an ancient Fine in the Time of H. 3, and also
the Heir of C. was to have Advantage of the Fine, the Sci. fa. was a-

(N. b. 8) Execution. Of what Conunese shall have Ex-
ecution.

1. A Man gives in Tail by Grant or Render, facing to himself the Re-
verson, and dies; and the Tenant in Tail dies without Issue; and R. enters 
and endows the Fanue of the Tenant in Tail; the Heir of the Donor brings 
Sci. fa. against R. of two Parts, and recovers, and another Scire facias a-
gainst the Fence of the third Part, and the prays to have Aid of R. And so
see a Scire facias of a Reversion that was referred, and never was out of 
the Donor and his Heirs, and which was not given by the Fine, but re-

2. If the Services used after a Fine levied of the Seigniory, the Con-
nee shall have Execution of the Land eccheated, Welt. Symb. § 179. cites 
48 E. 3. 11.

3. If the Fine be levied to A. for Life, Remainder

22. The Remainder-Man, after the Death of Tenant for Life, shall have Sci. fa. of the Land eccheated. 
For now it is Parcel of the Manor, and is come in Lieu of the Services, and yet it was not properly 
comprised in the Fine. Br. Sci. facias. pl. 47. cites S. C.

3. A Man shall have Writ of Execution, of Things which are not comprised 

4. 4. E. 2. b &

4. If the Conunese renders Rent, Scire Fucias lies upon it. Ibid.

5. so, where a Man levies a Fine in Tail rending Rent, Scire facias 
will lie for the Rest, per Belknap. And to see that a Thing executory shall 
be executed by Scire facias. Ibid.

6. Scire facias lies of a Common or Coherdy upon Fines levied of them. 
Per Aftton Quod not fit a Contradictum in Entry in Nature of Affin. 
Br. Scire facias. pl. 171. cites 4 E. 4. 2.

(N. b. 9) Pleadings in Scire Facias.

1. In a Scire Facias by him in the Remainder upon an ESTATE_Tail against 

A. B. supposing the Donne to be dead without Issue, if A. B. plead that he pl. 15. cites 
is Issue to the Donee, and the Plaintiff repelth, that he is a Beneficy, it is S. C.

2. Scire Facias upon a Fine, the Tenant said, that those who were Parties 
to the Fine, had nothing, &c. but one f. was feised, &c. whofe Estate he 
has, &c. and the Plaintiff said, that f. had nothing at the time of the Fine, 
&c. and no Plea, but he ought to maintain his Writ, that the Parties to 
the Fine were feised, &c. Br. Maintenance de Brief. pl. 22. cites 40 E. 
3. 30.

3. In
In Symb. appears 33. 179. Ancelior &c 13.

Welt's is had cites &c. &c. to have and to hold to him, and the Heirs of his Body, &c. And the Opinion of the Court was, that it is executed ; so that Fermondel lies, and not Scire Facias. Nota. Br. Brief pl. 47. cites 41. E. 3. 13.

4. In Fermondel in Reverter or Remainder, the Demandant must mention. The Death of every one that had Estate, and survived his Acestor, but not in a Scire Facias for Fine. Symb. S. 179. cites 42 E. 3. 19


6. Where a Man alleges the Death of several in Scire Facias to execute a Fine, which he need not, it is only Surplusage. Br. Nagation pl. 21. cites 43 E. 3.


8. In a Scire Facias, to execute a Fine as Conting and Heir to him in the Remainder or Reversion; after the Death of the particular Tenant the Plaintiff needed not to show how Conting and Heir, so long as the Plea hath Continuance by idem dies, &c. given to the Tenant; nor at this Appearance, nor until the Plaintiff pray Execution; and then the Comity Conting and Heir is to be entered thus in the Roll only, Et predictis &c. dicit, quod ipsi eft confingements & heres. J. W. &c. where. T. W. Fratris & Harens ejufdem J. W. Welt's Symb. S. 179. cites *33 H. 6. 54. 41 Ed. 3. 13. &c. 8 H. 4. 31.

9. If the Tenant be one who entered by Title prior to the Fine, it ought to be so pleaded ; for it shall be intended, that he is in under the fine, if it be not pleaded specially. Per Priorit. Br. Brief pl. *242. cites 36 H. 6. 16. 17.

10. In Scire Facias to execute a Fine of Lands in D. the Tenant shall not say, that no such Vill as D. For that would avoid the Fine; per Chocke, quod fuit concumtu. Br. Etoppel. pl. 172. cites 21 E. 4. 51. 52. and 54.

11. Scire Facias to execute a Fine of 200 Acres of Land, Surlyard said, that pending this Scire Facias, J. B. had brought a Formacion of 100 of the Acres of Land (inter alia) and had recovered and had Execution, and prayed that the Writ shuld abate of this Parcel; 'tis no Plea, because he pleaded inter alia; For Recovery shall be pleaded certain to every Intent, and these Words (interalia) is not ce tain to any Intent; for he ought to have said that he brought Formacion of 100 Acres, and recovered and had Execution, of which these 100 Acres which are now in Demand are parcel. Br. Pleadings pl. 115. cites 22 E. 4. 8.

(N. b. 10) Scire Facias. How the Writ shall be.

Br. Fines pl. 45. cites S. C.

1. Where the Writ of Scire Facias against a Prior, for not paying of Mun- fess, upon a Fine levied by his Predecessor to P. M. and his Heirs was brought by W. Son of R. M. against the Successor, and did not make himself Heir to P. 'twas held good, because he was Heir to him, and it was quere Executio firi non debet, and did not show what Execution, and yet good; for it refers to the Fine, and therefore good, though he does not say, quere diversi non debet, and the Writ paid nothing of Successor to the Prior, for it appears that he is Successor, and that the Plaintiff is Heir to P. and therefore the Writ is good, and Judgment that the Plaintiff distrain the Prior to make the Chantry. Br. Sci. Fa. pl. 91. cites 38 E. 3. 33.

2. Scire Facias upon Fine, the Writ was quere querenti * de fercwrc non debet, where it should be executionem habere non debet, Judgment of the Writ; &c.
non allocatur, for the Writ is judicial. Next he demanded Judgment of the Writ, because it is brought as Cosen and Hear, and not sworn as Cosen, &c non allocatur; For though this shall be shown in Formdon, yet in Scire Facias the one or the other is sufficient. Then he demanded Judgment of the Writ, because the Writ is a quod defendere non debet, which proves Poffeflion, and so executed, &c non allocatur; and again demanded Judgment of the Writ, because the Fine was for confmance de droit come ecce que il ad, &c. Hobendom & tenendum fini & hereditum de corpore suo, and therefore by the Opinion of the Court, this proves it executed, and this goes to the Action. And per Finch, an original Writ, which wants Form, shall a base; for it is made in the Chancery, and pleadable here, otherwife of a Judicial Writ as Scire Facias, for if this wants Form, and hath Matter sufficient, it is good, and therefore (defendere debet) for (Executionem habere non debet) is not material. Br. Si. Fa. pl. 18. cites 41. E. 3. 13.

Matter; but as to the Miflake of (Defendere debet) instead of (remanere) it was amended, and nothing here mentioned of Quare Executionem, &c.—† S. F. Br. Sci. Fa. pl. 148. cites 38. H. 6. 39. that the Writ was abated.

3. Scire Facias to execute a Fine levied of one Manor, and of two Parts of another Manor to one for Life, the Reversion in Tail to R. D. of one Part; and of another Part to A. for Life, the Reversion in Fee to R. And the Heir of R. brought Scire Facias to execute the Tail, and set forth that the Tenant for Life, on whom this depended, was dead, and alleged A. dead also, which was pleaded to the Writ, because he alleged the one and the other dead; where he need say nothing of the Death of A. till he demands Fee Simple; &c non allocatur, for it is only Surplusage. And another Exception was, that the Writ was, that it ought to revert to him; where it should be, that it ought to remain, because no Poffeflion was in him before; &c non allocatur, because it agrees with the Fine. Br. Sci. Fa. pl. 24. cites 43. E. 3. 11.

4. Scire Facias upon a Fine, against A. and C. of two Manors, (and set forth) that A. entered into the one Manor, and C. into the other Manor; and after it was quod finit aput Wifdomonferium ofenjuri, &c. and yet the Writ is good; and they answered severally and not jointly, for the Writ was also quod tji separatim ex tenentes; and it was quare to the Baron and Feme Plaintiff's remanere non debet, where it was de jure usavis, and yet good; For it cannot remain to the one without the other; contrary in Formdon in defendant, reverter, or Writ of Ejeq. Per Hill, which was not denied. Br. Sci. Fa. pl. 72. cites 11 H. 4. 15.

5. Scire Facias to execute a Fine, supposing the Fine to be levied to the Baron for Conflunce de droit come ecce, which the Baron and Feme bace of the Gift of the Conouer, and to the heirs of the Baron, and they supposing that they are dead, and now the Plaintiff, as Colin and Heir to the Baron, brought this Writ, to execute the Fine in Fee. Per Norton, if the Feme survived, the Writ well lies. But Hill denied it. Per Thorne, if this Matter shall aid, as I do not think it will, yet it shall not come by Surmise, but shall be expressed in the Writ. Per Culpeper, the Writ cannot lie, because the Fine was levied for Conflunce de droit come ecce, &c. which is always executed, by which it was awarded, that the Tenant go fine die; and to fee that it is not alleged that the Feme survived, and therefore it seems that it is not very clear. Br. Sci. Fa. pl. 77. cites 11 H. 4. 55.

(N. b. 11) Scire facias. How the Writ must be, in respect of the Fine. Writ varying from the Fine.

1. Scire facias to Execute a Fine of Lands in C. according to the Fine, Br. Brief, pl. the Tenant said that C. is neither a Vill nor a Hamlet, and yet because it 143. cites S. was according to the Fine, the Defendant was compelled to Answer over. C. Br. Variance, pl. 83. cites 21 E. 3. 14.

2. Scire
2 Scire facias upon a Fine; the Fine was to 7. S. & Hered' quos ipse procer corde &c. and the Writ was, & Hered' quos procer corde, and yet well by Judgment; for all is one and the same meaning, quod nota bene. Br. Variance, pl. 91. cites 24 E. 3. 28.

3. In Scire facias the Cite was, that W. acknowledged the Manor except one Acre to be the Right of F. who rendered the same Manor as is foresaid, to W. in Tails; and R. as Heir of W. sued Execution by Scire facias of the Manor, (quære, it seems that it shall be intended the same Manor which was given to F. by the Fine;) for per Thorp the Writ is good without Exception. Br. Brief, pl. 139. cites 38 E. 3. 17.

S. P. and because he did not put in the Vill, in which the Land lay, therefore the Writ was abated, quod nota. Br. Variance, pl. 86. cites S. C.—Br. Fines, pl. 44. cites S. C. acc.

Thorp said, he had seen that a Fine had been in a Hamlet, and the Scire facias ought to issue out of the Record, and therefore the Writ was quit. Co. R. on Fines 13. cites 21 E. 3. 14. 38 E. 3. 19.

5. So it is said in some Books, that if a Fine be levied in a Hamlet, the Writ ought to be brought in a Vill. Co. R. on Fines 13. cites 21 E. 3. 14. 38 E. 3. 19.

6. Scire facias of Tenements in Espeyeve, and the Fine was of Tenements in Depegrave, and therefore the Writ was abated for the Variance. Br. Variance, pl. 16. cites 42 E. 3. 3.

7. A Fine Exequatur was levied of a Seigniory; and then Land eschewed to the Seigniory, or the Tenant was forejudged, &c. the Conuene shall have Sci. f. of the Land instead of the Services. Br. Fines, pl. 99. cites 45 E. 3. 11.

8 Scire facias upon a Fine to have Execution of a Manor and Hundred, the Tenant demanded Judgment of the Writ, because the Hundred is Parcel of the Manor, and so he demands one Thing twice &c. non allocatur; for he cannot vary from the Fine, and therefore the Writ is good by award; contrary upon a Recovery; For if the Writ be not good, he may have a new Suit, but not a new Fine as here, and so note the Difference. But quære if a Hundred may be Parcel of a Manor. Br. Sci. f. pl. 7. cites 27 H. 6. 2.

So of Manor and Advowson, where the Advowson is Appendant, or of Manor and three Acres, where the three Acres are Parcel. Br. Scire facias, pl. 147. cites 36 H. 6. 16;—Br. Variance, pl. 58. cites S. C.—And he, who is Party or Privy to the Fine, or comes in under it, shall be concluded. Br. Brief, pl. 424. cites 36 H. 6. 16; 17.

9. In Scire facias upon a Fine, if the Defendant be made a Knight, a note between the Fine and the Scire Facias, he shall be named Knight, per Cur. Br. Variance, pl. 98. cites 5 E. 4. 5.

10. Scire facias out of a Recovery of a Manor to have Execution in A. and B. the Tenant demanded Judgment of the Writ; For the Manor extends into A. B. and C. Per Brian, this is no Plea; For it ought to agree with the Recovery or Fine, whence it Illeges. Br. Brief, pl. 315. cites 4 H. 7. 7.

11. Scire facias was brought upon a Fine, by which A. gave Land to B. for Life, Remainder to himself in Tail, where it should be Reverter, and the Writ was Remainere debet according to the Fine; and it was held by all the Justices, that the Writ ought to be Remainere debet, as the Fine ought to have been, and not Remainere according to the Fine; Because, tho' in Fable the Fine was Remainere, yet in Law it is a Reversion, and so the Writ ought to Accord to the Form of the Law and not to the Form of the Fine. For in many Cases the Writ ought to vary from the words of the Fine. Dal. 29. pl. 4. Pach. 3 Eliz.
12. So, where a Remainder is limited to a Feme sole, who takes Baron, the Br. Scire facias shall be Remainere &c. to the Baron and his Wife. Dal. 29. in pl. 4. 3 Eliz.

13. So where a Fine is levied to the Baron and his Wife, and in the Name the Name of the Feme is put before the Name of the Baron; yet in the Scire facias the Name of the Baron shall be put first. Dal. 29. in pl. 4.

14. So where a Fine was levied to A. for Life, Remainder to a Monk, Remainder to B. in Fee, or in Tail. B. shall have Scire facias without mentioning the Monk; because he is no Perfon in Law. cited to have been adjudged. Dal. 29. in pl. 4.

(N. b. 12) Scire facias awarded in B. R. in what Cases.

1. Note, that the Chancellor delivered a Fine levied of Land in C. B. to the Justices of B. R. by which the Party brought Scire facias in B. R. to Execute the Fine levied in C. B. and the Defendant pleaded to the Jurisdiction the Statute of Magna Charta, quod communia placita non sequuntur Cariam notam, &c. and yet Hank said that because the Record was there, they would hold Plea therefor, 'tis do not come there by Carta novar non Minimus; quod mirum inde mihi. Br. Jurisdiction, pl. 84. cites 5 H. 5. 1.

2. If a Fine be removed into B. R. for Error, and after it is affirmed, the Justices may award Scire facias of Execution; For it shall not be remanded, and so that, which at first was not within their Jurisdiction, shall be now within their Power, and yet if the Fine had been levied there it had been Error. Br. Jurisdiction, pl. 77. cites 18 E. 4. 6.


1. Scire facias to Execute a Fine levied to J. for Life, the Remainder to B. in Tail, and J. is dead; and the Plaintiff as Her to B. brought the Action, the Tenant pleaded the Confirmation of B. Father to the Plaintiff with Warranty for Term of the Tenant's Life, and Affers defended, Judgment given for Execution; and admitted a good Bar, and so see that Confirmation with Warranty and Affers of the Tenant in Tail is a Bar; contrary without Warranty. Br. Scire facias, pl. 23. cites 43 E. 3. 9.

2. In Scire facias upon a Fine, the Tenant pleaded joint tenancy to part, and Nontenure to the rest, and likewise who was thereof Tenant as he ought; and the Plaintiff prayed Execution of this Parcel at his Peril, and could not have it, by which he maintained the Writ, that sole Tenant as the Writ supposes, abiguus hoc that the other any Thing has, pritf, &c. Br. Nontenure, pl. 12. cites 11 H. 4. 16.

3. Scire facias upon a Fine, the Tenant pleaded that R. brought Foreclosure in Reverter against W. 22 E. 3. and recovered and had Execution, and set forth all in certain, and after enfeoff'd P. who enfeoff'd the Tenant, and the
Fine. * Oris. (mills.) Fine not between the Gift and the Recovery of the Execution of it; Judgment if you ought to have Execution; and the Plaintiff said nothing to it, therefore it seems a good Bar. Br. Finns. pl. 55. cites 8 H. 6. 29.

4. In Scire Facias the Defendant demanded Judgment of the Fine, for "tread levied of several Manors, and in divers Counties, and the Per-chase was made placentum conventum, subj. inter esse, where it should be Placita Convention. Per Brian, the Fine is good; For there is no other Form, and also it is good for the Manor in the County, where the Writ is brought, tho' it was not good for the other Lands, by which he was awarded to Answer. Br. Finns. pl. 58. cites 15 E. 4. 33.

(N. b. 14) Scire Facias. New Writ. In what Cases there must be a new Writ.

1. Fine is sent into Bank by MIittimus, as the Suit of R. S. commanding them, that they proceed to Execution of the Fine, as the Proclamation of the said R. S. and he brought Scire facias, and died; and the Heir prayed another Scire facias; and some held, they could not proceed without another Writ, commanding them to proceed at the Prosecution of the Heir, and for the Heir ought to sue a new Writ. Per Choke, the Heir may have Scire facias by the first Removal, for he is privy to R. S. his Father who brought it; contrary to him in Remainder; for he is a Stranger. And Trin. 21 E. 4. it was done according to the Opinion of Choke, and the like H. 15 E. 3. where the Heir had a Writ commanding the Justices to proceed, and 16 E. 3. it is said, he shall sue a Writ to bring in another Transcript of the Fine. Br. Sci. 1a. pl. 184. cites 11 E. 4. 13.

2. And if a Fine comes into Bank at the Suit of two, who sued Scire facias, and after the one dies, the other shall have Scire facias by Force of the first Mitiimus, without suing a new Writ. Br. Sci. 1a. pl. 184. cites 11 E. 4. 13.

3. And by Littleton, if divers Persons come as Heirs to R. S. and pray a Scire facias, the Court will not grant it without suing several Writs to the Bank, commanding them to make Execution. Br. Sci. 1a. pl. 186. cites 11 E. 4. 13.

4. If a Fine is levied with Remainder over, and, after Death of the Tenant, a Stranger abates, and he in Remainder recovers by Sci. fa. and after the Recovery is reversed for Error. Now he shall have a new Sci. fa. or his Heir, tho' it was once Executed; For the Caufe now ceases. D. 60. b. pl. 23. Pach. 36 & 37 H. 8. B. R. in Trewinnard's Cae.

(N. b. 15) Scire facias. Abatements by what, and How.

1. Scire facias upon a Fine levied to Baron and Feme, and to the Heirs which the Baron should beget of the Body of the Feme; the Heir brought the Writ, and made himself Heir to the Baron of the Body of the Feme begotten; and becaufe he did not make himself Heir to both, therefore the Writ was abated; quod nota. Br. Sci. 1a. pl. 103. cites 21 E. 3. 43.

2. Scire facias upon a Fine aginst three, by several Demands of a Manor &c. that 7. M. into the aforesaid Manor, cum pertinentiss, except two Carces of Land, and 7. L. into one Carce of Land, without the words (cum pertinentiss) and M. P. into one Carce of Land, cum pertinentiss, which are Parcels of the Manor aforesaid enter'd; and exception was taken, because that the one Carce had not (cum pertinentiss) and yet Wilby awarded the Writ good; because that after the Manor was put (cum pertinentiss) which goes to all. Thorp said, that never was such a Writ before now awarded, nor
not never will be again; and the Fine was levied by A. C. & B. of B. for his Life, the Remainder to R. in Tail, and if they die without issue, being P. of B. then the Remainder to P. of B. in fee; and the Writ was in vain ex. infirmatione T. Son and Heir of the aforesaid P. of B. excepted that the aforesaid W. and P. died, and that the aforesaid R. died without Heir of his Body, &c. and the aforesaid Peter forewitting, and that I. &c. enterd at above. Defendant prayed Judgment of the Writ: For where it is that the aforesaid W. and P. died, &c. it ought to be that the aforesaid W. and R. died without Heirs of their Bodies, &c. P. surviving, and P. died, &c. Per Gr. all is of one Effect, by which he awarded the Writ good. And held there that Scire facias against three severally in itself and the Per-cloze of the Summons joint is good; quod non. Br. Brief, pl. 194. cites 24 E. 2. 23. † 37. 38.

3. Scire facias to Execute a Fine by two, the one was summoned and severed, and the Tenant pleaded the Death of him who was severed, and did not say, if he died before the Severance or after, and the Writ was awarded good, by Reaton of the Severance. Br. Brief, pl. 55. cites 42 E. 3. 8.

4. Scire facias to Execute a Fine levied to A. for Life, Remainder to B. Father of the Plaintiff in Tail, and that A. is dead, and the Defendant had Entred, &c. the Defendant said that B. Father of the Plaintiff confirmed his Will for Term of his Life with Warranty, and that the Plaintiff ass'ts by Deceas, and 'twas held a good Bar. Br. Barre, pl. 12. cites 43 E. 3. 9.

5. Scire facias upon a Fine levied of the Manor of D. to have Execution of 12 Acres Parcell of the Manor in D. and the Tenant pleaded to the Writ: because it was not brought in a Vill; & non allocatur, inasmuch as it is Parcell of the Manor of D. and Manor is sufficient without Vill. Br. Brief, pl. 470. cites 43 E. 3. 9.

6. Scire facias upon Fine against B. because H. acknowledged 100l. of Land in D. to be the Right of B. come coe, &c. for which B. granted and rendered again to H. and the Heirs of his Body, and that the Tenant enter'd into Parcell of the Tenements, and the Plaintiff fixed Execution as Heir of H. in Tail; Belknap pray'd Judgment of the Writ, because mention is made of the Value of the Land in demand; For if it was of a Carve of the Land, the Writ shall be, that the Tenant enter'd into the 3d. Part, 4b. Part, &c. & non allocatur; quod miram inde. Br. Sci. f. pl. 204. cites 43 E. 3. 27.

7. If a Fine be levied of the Land which A. holds for his Life, and of Land which W. holds for his Life, and which after their Deaths ought to return to the Composer, the Remainder to the Composer and his Heirs, and the Composer brings Scire facias against the several Tenants of those Lands, supposing that A. and W. Tenants for Life are dead; there it is a good Plea, for the one to say, that A. who is, suppos'd to be dead is alive. Judgment of the Writ for this Parcell; but by this all the Writ shall not abate, quod non. And to fee that Writ may abate in Parcell. Br. Brief, pl. 70. cites 44 E. 3. 39.

8. Scire facias to Execute a Fine, the Writ was, in the Premisses, cum quodcumque finis certat (but cum Perrintentiis was wanting) and in the render it was Manerium cum Perrintentiis, and this was presented to the Writ, &c. & non allocatur; therefore the Tenant said, that E. who is suppos'd to be dead without issue, bad Issue * W. who deriv'd him, and pray'd Judgment of the Writ, &c. & non allocatur: contrary of such Officion in Writs of Foremen: note the Difference. Br. Sci. f. pl. 35. cites 44 E. 3. 49.

9. Scire facias upon a Fine, per Philippum D. & Johanna his Wife &c. quare pretiosa Johanna uxoria dicit Philippi revertere non debet; because Philippus was rated in the Original, the Writ was abated. Br. Sci. f. pl. 39. cites 45 E. 3. 18.

(To be continued.) In Scire facias upon a Fine, one is received by the Default of the Tenant, and pleaded a Gift in Tail by the Ancestor of the Plaintiff by Deed with Warranty, Judgment is against Deed with Warranty, &c. and the other

But in Scire facias that at first, the Writ was (ex infirmatione) instead of Infirmationes, and therefore it abated. See 24 E. 3. 22. 23. 33. 194. This (al. 17. should be omitted, this Case being only at fol. 25. pl. 1 &c. 38. pl. 17.

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demurred, because the Lease to the Tenant for Life is a Discontinuance of the Tail; for he is received by Reversion in Fee, and pleaded in Bar by Ejectment, and yet well, per Cur. because 'twas by way of Rebutter; contrary, if it was by way of Voucher; for there the Vouchee Warrants only the Estate Tail. Br. Sci. f. pl. 206. cites 45 E. 3. 18.

11. Scire facias upon a Fine by the Heir of him in the Remainder; the Tenant said that the Fine was lay'd to H. for Life, the Remainder to the Father and Mother of the Plaintiff in Tail, and that the Mother of the Plaintiff, after the Death of the Tenant for Life, entered into the Land and was seised by Force of the Fine, Judgment of the Writ; and admitted a good Plea to the Writ; quere, if it be not to the Action of the Writ, and the other said, that H. intestated his Mother, and prayed Execution. And per Perley, Kirton and Clopton, this is a Surrender, and so seised by Force of the Fine; and if the said H. the Tenant for Life had charged, and intestated him in Remainder, yet he shall hold charged for Life of the Tenant for Life and not after, and yet Belknap awarded the Writ good; quod mirum! Br. Sci. f. pl. 53. cites 50 E. 3. 6.

12. In Scire facias upon a Fine as Coaf and Heir the Writ was general, and did not flow the Cofnage, but in the Court, and good; for it is a Writ judicial; contra in Writ Original, as Formedon, &c. Br. Brief, pl. 518. cites 8 H. 4. 22.

13. Scire facias upon a Fine against three, who, as to one Parcel, said that they had nothing but for Term of Years of the Lease of J. N. Judgment of Writ; and another Answer for the rest. Patton said as to the Parcel of which they have pleaded Special non-tenure, viz. the Lease for Years only, that the Defendants are Tenants in Common, Prit, &c. and if it seems that Special non-tenure is a good Plea in Scire facias; but 'tis said elsewhere that general non-tenure is no Plea, but there the Plaintiff may have Execution at his Peril. Br. Sci. f. pl. 108. cites 7 H. 6. 25.

14. In Scire facias the Defendant pleaded to the Writ, because it was of Land and Rent, & quod terram tenet & redditum deforciat, and said, that the Defendant is Pernour of the Rent, and therefore it ought to be redditum tenet; but whereas he is Ter-tenant, it shall be redditum deforciat. Babb. Ch. J. said, where there is Lord Meine and Tenant, the Meine is called Pernour of the Rent, and in Aisle of Rent the Pleading is, that the Defendant answer as Pernour of the Rent, and where there is Deforciant it is that such a one Deforci. &c. &c. and therefore ruled him to answer, quod nota, and so the Writ good. Br. Brief, pl. 171. cites 8 H. 6. 27.

15. Scire facias upon Fine of Rent levied to one in Tail, the Remainder in Fee to the Plaintiff, and that the Tail is extinct, &c. Markham said, that those who were Parties to the Fine had nothing in the Rent at the Time, Prit, &c. and non allocatur, wherefore he said that one A. was seised of the Land, whereas &c. discharged and infeoffed him, without that, that those who were Parties to the Fine had nothing. Br. Sci. f. pl. 113. cites 19 H. 6. 59.

16. A Man brought Scire facias to Execute a Fine as Coaf and Heir, and did not show that the Ancestor is dead; and yet good; for it shall be intender; for he is not Heir in the Life of the Ancestor, therefore this word Heir intends that the Ancestor is dead. Br. Brief, pl. 497. cites 33 H. 6. 54.

17. Scire facias upon a Fine of the Manor of C. and two Houses and 20 Acres of Land, and because it is not flowed in what Vill the Houses and Land lie, therefore the Writ was abated; contra if it had been of one Manor only; For a Manor may be out of any Vill, and known by the Name of a Manor; quod nota. Br. Brief, pl. 383. cites 19 E. 4. 9.
Fine.

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(N. b. 16) Fines. Of the Ingrossing, Inrolling and Tabling of Fines and Recoveries; and the further Ordering them.

1. Immediately after the Fine is ingrossed, it shall be sent into the Treasury. Co. R. on Fines 12, cites 17 Eliz. 3.

2. And then when the Fine is ingrossed and sent into the Treasury, he, that will have Execution fled, must remove it out of the Treasury by a Certiorari directed to the Treasurer and Chancellor of the Exchequer in the Chancery, and from the Chancery send it to C. B. by a Missiva; and then out of this the Comtesse, or his Heirs, or he in Remainder (as the Case is) shall sue Execution by Scire facias. Co. R. on Fines 12.

3. § 4. 14. Enacts, that all Writs of Covenant, and all other Writs whereupon Fines shall be levied with the Writs of Dedimus Poreftatem with all Knowledge and Notes of the same before they be drawn out of the Common Bench by the Chirographe shall be imrolled of Record, to remain in Custody of the Chief Clerk of the Common Bench for the old Fee of 22 d. for entry of the Concourse.

and nothing remained with the Ch. J. of the Common Bench, but the Licence to accord. B. R. 5 Rep. 39. b. in Tey's Cafe.

The Certiorari to direct one Writ of Error to the Ch. J. of the Bank, another to the Coffers Brevium to certify a Transcript pedis Fines, and another to the Chirographe to certify Transcriptum Nota Fines. And more, the Words are added in the Writ to the Coffers Brevium, cum omnibus eundem finem tangel by Force of which words he certifies the Original Writ. § 5 Rep. 39. b. Trin. 54 Eliz. B. R. in Tey's Cafe.

Before this Statute § 4. 14. the Coffers Brevium had nothing to do with Fines; but 'tis given by the said Statute, that the Chief Clerk of C. B. who is the Coffers Brevium, shall keep a Record, viz. the Note of the Fine, or Fine; and if the Notes in the Custody of the Chirographe, or the Notes of the Fines are imbezzled, &c. that a Man shall have Remedy to the said Roll to have Execution, &c. Upon which it appears clearly that the Record remains with the Chirographe, &c., if it be not imbezzled, 'tis sufficient whereof Execution may be fixed. Co. R. on Fines 12.

4. 23 Eliz. 3. § 1. Enacts, that Fines and Recoveries, and all Matters concerning them, now Extant and in Being, may be Inrolled, which Inrollment shall be of as great Validity as the same so Extant and remaining in Being. § 6. That there shall be an Office of the Inrolling of Fines and Recoveries, and one of the Justices of the Common Pleas (other than the Chief Justice) shall have the Care thereof.

And Enacts the Fees for Inrolling of Fines and Recoveries.

And Directs the Justices to Affix Fines for Misprision, Contempt, Negligence. § 7. That a Table, containing the Content of every Fine, shall be set up in the Common Pleas, and at every Juries. And affirms, the Chirographe's Fee for Writing the Content of the Fine. § 9. The Record shall not be carried forth of the Office.

5. A Fine is said to be ingrossed, when the Chirographe makes the Indentures of the Fine, and delivers them to the Party, to whom the Conformance was made. § 5 Rep. 39. b. in Tey's Cafe.

6. A Fine was double, viz. Sur cognizance de droit come ceo, &c. and Sur Conciffe, in one and the same Concourse, and therefore the Chirographe refused to make out the Indentures. It was urged for the paying the Fine that a Fine is a real Agreement and ought to be considered as a Conveyance, and that the Party at his Peril may have it in what Manner he pleases; but per Car. such double Fine is unprecedented; and after an Agreement of the Counsel to strike out the Conciff Part of the Fine, it was Ruled, that it pafs as a Fine Sur Conformance de Droit come ceo, &c. Baraue's Notes of Cases in C. B. 144. Patch. 9. Geo. 2. Lazenby, Knight.

(N. b. 17) Of
Of the Certiorari and Mittimus to remove Fines.

1. Scire facias upon a Fine, which came out of Chancery into Bank by Mittimus, which Mittimus makes no mention, that the Fine came there at the Suit of the Plaintiff; and this notwithstanding, because the Fine is brought in, the Opinion was, that it is good; and to see that the Bank awarded the Scire facias and Execution, and not the Chancery. Br. Sci. fa. pl. 33. cites 44 E. 3. 18.

2. In a Scire facias in B. R. to execute a Fine levied in C. B. the Tenant took Exception, that Certiorari was fined, but no Mittimus to send it into this Court, and the Execution of this Record belongs to C. B. But Hawk said, that the Chancellor himself delivered it to him, which counter-vailed Mittimus, and so ruled Defendant to answer, quod Nota. Br. Caufe de Remover. pl. 15. cites 5 H. 5. 1.

3. Where Scire facias issue upon Transcript of a Fine sent into C. B. by Mittimus, if no Roll be made of it, it is ill by the butt Opinion. Br. Brief pl. 412. cites 11 H. 6. 43.

4. Neither the Mittimus nor the Certiorari to the Chancery do make any mention if the Fine be ingrossed or not. Br. Scire facias. pl. 115. cites 22 H. 6. 13.

5. A Certiorari with a Mittimus to remove a Fine bearing Date before the Fine comes into Chancery, is good enough. Well’s Symb. §. 193. cites 1 R. 3. 4.

Exemplification of Fines.

1. When any of the Parts of a Fine are inrolled according to the Statute 23 Eliz. 3. then may the same be exemplified either under the Seal of the Office, or under the Great Seal of England. But to exemplify such a Fine under the Great Seal, hath this Discommodity, that if any Errors appear in the Record of the same Fine, they are not amendable after the Exemplification thereof. Well’s Symb. §. 175.

2. But it seems that this extends only to Fines levied before the same Statute. Well. Symb. §. 175.

3. And he says, that these Inrollments and Exemplifications seem very necessary, because of the Privy and Warrant of the said Court, many Errors happening in the former Records thereof, may be amended, and these Inrollments will suffice, if the former Record, or any Part thereof be embezzeled, or otherwise defaced. Ibid.

(P. 372) Fine.

(N. b. 17) Of the Certiorari and Mittimus to remove Fines.

(N. b. 18) Exemplification of Fines.

(N. b. 19) Pleadings. Variance between the Fine and the Writ on which the Count, or Pleadings are.
1. A brought a Sci. fa. and had Execution of the Fine, and made a Feoffment upon Condition to B. and after re-entered for the Condition broken; after which the Tenant in the Sci. fa. reversed the Judgment by Writ of Deceit, it being found upon Examination, that he was not warned. And upon arguing whether such Setin and Execution and Feoffment Conditional, reversed by Entry, be a Discharge of Execution, if Issue was taken, if the Feoffment was in Fee Simpliciter, or upon Condition; quod Nota. And hence it follows, that tho' he had made Feoffment, and the Judgment had been recorded before the Re-entry, it should be a Bar and Discharge of the Execution for ever. But by his Re-entry for the Condition broken before the Reversal of the Judgment, so that the Feoffment is avoided, the Reversal of the Judgment revives the Execution, so as it may be tried again. Quod Nota. Br. Scire facias. pl. 88. cites 38 E. 3. 16.

2. A Fine Executory, may be executed before that the Fine be engrossed; it is a Re-before the Indentures of the Fine made and delivered to the Parties. Co. cord, tho' not engrossed, and when the Court is satisfied of the Fine, it has sufficient Warrant to award Scire facias. Br. Fines. pl. 16. cites 22 H. 6. 15.—And diverse Fines have been executed, which never were engrossed. Br. Scire facias. pl. 115. cites 22 H. 6. 15.
(O. b) Equity and Defects supplied.

1. Such assurances as are used for the common Restor of Men's Estates, the Chancery will not draw in Question; for a Fine with Proclamation ought, after the 5 Years, to be a Bar in Consequence, as it is in Law; to shall it be of a Common Recovery for docking the Intail. Cary's Rep. 6. cites Doctor & Stud. 33. 155.

2. A Fine and Recovery got by Circumvention, the Party who got it, may be compelled in Equity, to reconvey the Party circumvented; as the Matter of the Rolls was of Opinion, at the hearing of the Cause. 1 May 1595. Toth. 164. Welby v. Welby.

3. The Plaintiff (being simple) was drawn in to levy a Fine of his Lands, yet ordered that the Lands should be re-affired, if the Defendant did not pay a valuable Consideration; or if he failed of Payment thereof, then the said Lands should be re-affired. 3 Jac. lii. 509. Toth. 166. Wright v. Booth.

4. Because a Fine was not levied according to Covenant, a Power became void to make Leases, but decreed in May 13 Car. Toth. 166. Scamiber v.

5. Tenant in Tail, upon Marriage, covenants to levy a Fine for further Assurance of Land which he had settled, and of which he had covenanted that he was feised in Fee. He acknowledged a Fine, but died before it was perfected. Equity will not supply this Defect against the Fine in Tail. The Defendant's Title being per Formam Doni. Tr. 1686. 2 Vern. 3. Wharton v. Wharton.


7. Fine or Recovery of a cozy que Trust shall be as it should an Estate at Law, if it were on a Consideration. Ch. Cases 49.


8. A Fine fraudulently obtained, and much razed to make it correspond, is not relievable in Chancery; and were it examinable here, it would be a great weakening of Fines, and can only be examined here to punish the Party Criminaliter that did it, and in * Cellybrand's Cafe, where one was perfonated, yet the Fine was not fet aside, but a Re-conveyance ordered per Ld Wright, who dismissthe Bill. 'Twas argued that the Examination, as of a Judgment irregularly entred, or obtained at Law, is proper only for the Examination of that Court, where the Fine was levied, or Judgment entred. Hill. 1790. Ch. Prec. 150. * Clark v. Ward.

9. On a Bill brought to have a Fine set aside, or to have a Recovery, it was held by the Court, that the Chancery has a Power to relieve as much against a Fine obtained by Fraud or Practice, as any other kind of Conveyance; yet that such Relief was not by decreeing a Vacate of the Fine, but by ordering a Re-conveyance; But that, for any Error in the Fine, or Irregularity, or ill Practice in the Commissioners; it was a Matter properly cognizable in that Court where the Fine was levied, and for which that Court may vacate the Fine; and there being no Proof of Fraud or Practice in this Cafe, the bill was dismisst. Hill. 1700. Abr. Equ. Cases 259. St. John v. Turner.

10. The Intention of Marriage Articles, for a Settlement to be made afterwards, will be considered in Equity, that it a Fine be levied to different
Firft-Fruits and Tenths.

(A) Original thereof; and Statutes relating thereto.

1. Note, Annuities, Prinities, and Firft-Fruits are all one; it was the Value of every Spiritual Living by the Year, which the Pope, claiming the Difposition of all Eccleiatical Livings within Christendom, referred out of every Living. Mich. 5 Jac. 12 Rep. 44.

2. Decim, ed eft, the Tenths of Spiritualities, were perpetual, which in ancient Times were paid to the Pope, until Pope Urban gave them to R. to aid him against Charles, King of France, and others who supported Clement the 7th against him. 12 Rep. 45.

3. By 26 H. 8. cap. 3. §. The Firft-Fruits and Profits for one Year of all Spiritual Livings are granted to the K. to be paid or secured before actual Possession of the Benefice.

§. 3. Commissioners are to enquire into the Value of the Benefices and compound for the Firft-Fruits and the Money taken for the fame to be delivered to the Treasurer of the Chamber.

§. 4. Whole Aciuance fhall be a sufficient Discharge for the fame. And Bonds given for Payment thereof, fhall be of the fame Force with Statutes Staple.

§. 5. And Persons enquiring upon Benefices before Composition made, fhall forfeit double the Value of the Firft-Fruits.

§. 6. And Firft-Fruits payable to other Persons, fhall cease and be paid to the King.

§. 7. Provided that Bishops may institute and induf as before this Act.

§. 9. A Rent or * Pension to the Value of the Tenth Part of every Benefice fhall be paid to the King annually at Christmas.

§. 10 The Value of each Benefice to be inquired of, and certified by the Commissioners.

§. 11. Who are to be upon Oath.

§. 12. Spiritual Persons shall be charged for their Tenths in their Dioceses, where they are, tho' their Possessions lie in other Dioceses.
§. 13. And Bishops to be charged with the Collection of them in their proper Dioceses.

§. 14. And Processes to be awarded against them for Payment thereof.

§. 15. Which they are impowered to levy in their Dioceses by Ecclesiastical Censors, Diocesans, or otherwise at their Discretion.

§. 16. And in the Vacation of a Bishoprick, the Dean and Chapter thereof are chargeable in the same Manner.

§. 17. Every Incumbent, who, being reasonably demanded, and required at their Dignities, &c. or * Hues of, by the Bishop or Person charged with the Collection of the Tents, or by their Servants or Officers, to pay the same, shall neglect to pay it within 40 Days after such Request, shall, upon + Certificate of such Default given into the Exchequer under the Seal of the Bishop, &c. be adjudged Ipso jacto deprived of his Benefice, which shall be adjudged void, to all Intents and Purposes, as if he were dead.

In Ejection it was found specially, that an Apparitor came to Church to the Parson, and there failed to him, that he must pay his Tenths to such a one; that the Parson refused and his Default was certified; upon which another Person was prefered, and the Question was, whether the Demand was made according to the Statute. And all the Justices held it was not; For that a Summons to pay is not a sufficient Demand, but it must be an express Demand to pay. Mo. 541. Mich. 28 & 29 Eliz. Reyner v. Parker—* It was held that the Demand must be at the House of the Incumbent, and there the Refusal must be. Mich. 29 & 30 Eliz. Mo. 915. Q. v. Blancher.—Sav. pl. 2. Patch. 22 Eliz. Anon. S. P. + It was held by all the Justices, that a Demand of Tenths, by Virtue of the Statute, ought to be by one who has Authority to give them; and that an Apparitor has not such an Authority. Mo. 541. Mich. 29 & 30 Eliz. Reyner v. Parker.—* It was held that the Bishop must authorize one to demand and receive them. Mo. 915. Q. v. Blancher.—Cro. E. 80. Mich. 29 & 30 Eliz. In the Exchequer. S. C. The Queen v. Blancher.

† Upon a Special Verdict, whereby it appeared a sufficient Demand had not been made according to the Statute, all the Justices held, that the Bishop had certified a Refusal after a Demand duly made, yet the Judges are to rely upon the Verdict, and not the Certificate. Mo. 541. Mich. 28 & 29 Eliz. Reyner v. Parker.—And Popham cites it to have been adjudged so in Brooks Case. —It was held that the Certificate of the Bishop of a Refusal to pay Tenths is not peremptory, but transferable. Mo. 915. The Queen v. Blancher.—Cro. E. 80. Mich. 29 & 30 Eliz. In the Exchequer, S. C.—bro. Certificate of Bishop. pl. 51. says it was held in Time of E. & H. 8. that in such Case there can be no Action against the Certificate. A Certificate of a Refusal to pay First-Fruits and Tenths was in these Words, Adhibimus omnis Domini dignitiam parochorum sanctorum perosnos per totos Diocesos, &c. concessus J. A. Vicarius de G. Rectori in fe iure subduci Vicaros suis, qui nullo modo Metu Pannorum hujusmodi producit potuit ad Solutionem Subsidii Predicti, sed perseverans in Obligatione suis Malicia.—Quare, whether by this Certificate the Vicarage be void or not. Dy. 116. pl. 69. Pat. 2. & 3 P. & M. The Vicar of Gargrave's Case.

‡ In Case of an Avoidance, by Refusal to pay the Tenths, the Benefice is void to all Intents Ipso Facto, as it would by the Death of the Incumbent. Dy. 237. pl. 20. Pat. 7 Eliz. Anon. In a Qu. Imp. the Question was, if a Benefice becomes void for Non-payment of Tenths according to the Statute, and the Default is certified into the Exchequer, whether the Ordinary must give Notice thereof to the Incumbent. And it was held by all the Justices, that he need not; For the Certificate is in the Exchequer of Record, and notorious to every one; and the Statute, which makes the Avoidance, is a General Law, of which all are to take Notice; and the Certificate is a Temporal Act, and made to the Temporal Judges; as where an Incumbent is made a Bishop, and not like the Case of a Reignation or Depetration, which is a Spiritual Act privately done, of which the Bishop himself is the Judge, and must therefore give Notice to the Patron. Dal. 59. pl. 9. 6 Eliz. Anon.

§. 18. Bishops certifying such Default shall be discharged thereof, and Processes shall issue against the Defaultor.

§. 19. Acquittances by the Treasurer or Commissioners shall be a full Discharge.

§. 20. Nothing shall be taken of the Bishop or his Collector for his Account or Sinecur off.

§. 21. Persons, which pay Penions to others out of their Benefices, may retain the Tenth thereof.

§. 22. No Pension shall be reserved upon the Resignation of a Benefice above the Value of a 3d thereof.

§. 23. Persons, which in one Corporation have several Penions belonging to them, shall only pay for their own Penions, and not for others.

§. 27. No First-Fruits shall be paid for a Benefice not above the yearly Value of 8 Marks, unless the Incumbent lives 3 Years after Induction thereof, and in Bonds given by such Incumbent for Payment of First-Fruits, there shall be inserted a Proviso to that Effect.
First Fruits and Tenths.

S. 30. All Fees payable by Bishops, &c. for Temporal Justice, shall be deducted out of the Valuation of their several Dignities.
5. By 27 H. 8. cap. 8. 3. Tenths to be allowed on Composition for First-Fruits.
S. 4. Successor may disclaim the Goods of his Predecessor, if he leaves the Tenths unpaid, or sit in Chancery or at Common Law for them.
6. 28 H. 8. cap. 11. S. 3. Directs at what Time the First-Fruits shall begin to be paid after an Avoidance.
8. By 32 H. 8. cap. 22. S. 5. Bishops are discharged as to what they can't levy.
S. 7. Exchequer is empowered to enter any Promotion omitted.
How to be answered, where a Benefice is not certified.
9. By 2 & 3 Ed. 6. cap. 20. S. 3. Incumbent may be deprived only of the Benefice for which the Tenths are in Arrear.
10. By 7 Ed. 6. cap. 4. S. 2. Colllectors are to indemnify Bishops.
S. 4. The Crown may levy the Tenths of a vacant Benefice on the Globe.
11. By 2 & 3 P. & M. cap. 4. The above-said Statutes are repealed.
S. 23. Advowsons of Vicarages reverts to the Crown.
S. 29. Small Livings discharged of First-Fruits.
S. 30, 31, 32, 33. What Proportions of First-Fruits an Incumbent dying or removing shall pay.
S. 34. Grants of First-Fruits to Colleges ratified.
13. If a Man be instituted to a Benefice, he ought to pay the First-Fruits before Induction by the Statute; but by the Common Law it was otherwise. For he is not now to have the Temporalities till Induction, and therefore he could not pay the First-Fruits. Lane 20. Paufh. 4 Jac. in the Exchequer. Anon.
14. A recovers for the King in Quare Imp. because the Incumbent was presented by the King, as in Right of Lapé, where the King had the very Patronage, which was a void Presentation; upon which A. for the King recovers, who was presented, admitted and inducted; but for the Affurance of his Title, was instituted and inducted again, but never resigned; Per Walters Ch. B. First-Fruits in this Case shall not be paid double, there being no Resignation. Litt. R. 139. Mich. 4 Car. in the Exchequer. Curtiss's Cafe.
15. 2 Anne. cap. 11. S. 1. Enabled the Queen to incorporate a Body Politick, and to grant to such Corporation the First-Fruits and Tenths of all Benefices, for the Maintenance of the poor Clergy.
S. 2. Provided that all Statutes for levying the same, should continue in Force.
S. 3. And not to affect any Grant of the same.
S. 4. Enabled Persons to convey Lands or Goods to the said Corporation, and the said Corporation to purchase Lands, &c.
S. 5. But not to extend to capable Infants, &c.
S. 6. And directs one Bond only to be given for the First-Fruits and Tenths, and the same to be paid according to former Rates.
S. 2. Bishops to certify the several Livings under 50 l. per Annun.
S. 4. All Curates and Minifters entitled to this Bounty.
S. 5. To be taken as a Publick Act.
S. 6. Not to be confirmed to diminish any Stipend or Pension granted and charged on the First-Fruits.

5 D

By
First Fruits and Tenths.

17. By 6 Anne cap. 27. S. 5. Bishops are allowed four Years to pay their First Fruits.
18. 1 Geo. 1. cap. 16. S. 1. Bishops are to certify the improved Value of all Livings in their Dioceses.
3. Orders by the Governors of the Queen's Bounty approved under the Sign Manual to be good.
4. Churches augmented to be perpetual Cures, and the Ministers Bodies Corporate.
5. Impropriators, Patronos and Refidens and Vicars of the Mother Churches to have no Profit by the Augmentation.
6. Parson of the Mother Church not to be divorced of his Rights.
7. Such augmented Cures to lapse to the Bishop, if not filled in six Months.
8. Agreements made with Benefactors to poor Livings about the Right of Patronage shall be good.
10. Patron and Ordinary's Consent required.
11. If any such Agreement be made by a Person jealied in Right of his Wife, he shall be Party to the Agreement, and seal and execute the same.
12. Exchanges of Lands allowed.
13. Doutriees augmented are to be subject to the Bishop.
14. Agreements made with a Patron, Impropriator and Parson of a Mother-Church for yearly Allowances to the Minister, shall be good.
15. Governors, &c. impow'r'd to administer Oaths.
16. Augmentations to be recorded.
17. Settlement of any Augmentation to be valid after Involvemt.
18. By 3 Geo. 1. cap. 10. S. 1. Bishops are discharged from collecting the Tenths.
19. A General Colletor appointed.—Who is to give Security to account truly.—And shall keep his Office in London.—And Persons not paying their Tenths shall forfeit double the Value.
20. Prices to issue out of the Exchequer against Persons in Arrear.
21. Statutes concerning First Fruits and Tenths, not hereby altered, to remain in Force.

(B) How First Fruits and Tenths were to be received and accounted for before 2 Anne. 11.

By the Stat. of 26 H. 3. 3. The Revenue of the First Fruits and Tenths of the Clergy was granted to the Crown, and the several Bishops were thereby appointed Collectors thereof, in their respective Dioceses. The Auditor was to make up their respective Accounts, which were by him transmitted into the Office of the Pipe, according to the Course of the Exchequer, where the Bishop had his Quietus eft, and where all Accountants accountable in the Exchequer have their Quietus eft at this Day. But the Auditor was not thereby enjoined to give the Bishop a Duplicate of his Account; and it was needless then, because he had his Quietus eft from the Pipe, without Fee or other Reward for the same.

The Statute of 32 H. 8. 45. altered this Course, and a Court of First Fruits and Tenths was erected, consisting of a Chancellor, Treasurer, Attorney and two Auditors, who were to make up the Accounts of that Revenue, and being fairly ingressed, were to remain in the same Court as the King's Records, and not transmitted into the Pipe: But no Quietus eft or Duplicate of his Account was thereby enjoined to be made and given to the Bishops.

—By—
Forcible Entry and Detainer.

By the Stat. of 7 E. 6. c. 1. The Auditor were enjoined to make forth and give Duplicates of their Accounts, at the reasonable Request and Cost of the Accountant, wherein the Bishops were included, and accordingly the Practice has gone ever since the beginning of Queen Elizabeth: And I never heard it was disputed by any, until the Arch Bishop of York, when the Bishop of Carlisle was pleased to call his Duplicate of his Account a Querious bit, and so would pay nothing for it.

By an Act made, the 1 Mar. Sess. 2. c. 10. She by her Letters Patents dissolves the said Court of first Fruits, and then creates a new Office and Officer, viz. The Remembrancer of the first Fruits and Tents, who was to take all Compositions and enter all Accounts, and to make out all Proces against Non-fulfants and all Proceedings wherein, to be under the Survey of the Court of Exchequer.

In the 2 and 3 Phil & Mar. the Clergy were exonerated from Payment of first Fruits and Tents.

In the 1 Eliz. c. 4. The Payment of first Fruits and Tents was referred to the Crown, and all Things concerning the same, that remained untaken away the 8th of August in the 2 and 3 Phil & Mar. was then referred and settled under the Survey and Government of the Exchequer; but the Court of first Fruits was not revived; for that was dissolved before the said 8th of August, and the Remembrancer being then establisht, continues to this Day in every Degree, Sort or Condition, as it was, at or before the 8th of August, in the said 2 and 3 Phil. & Mar. at which Time the Clergy were exonerated from Payment of first Fruits and Tents.

The Arch Bishop set up an Account for the Years 1675, 1676 and 1677. which he required the Auditor to examine State and Palt, but the same was not pursuant to the Auditor's Truth, and would be prejudicial to the King, by the lodging to him all Arrears owing by the Incumbents; for in his State there was no Arrears of the Clergy are continued in Charge, nor understanding the true Nature of those Accounts, in that they relate not barely and simply to the Bishop's Receipts and Payments, but to the whole Revenue of the respective Diocesses each Incumbent is thereby charged and discharged. And if no Arrears are continued in Charge upon the Incumbents, they all, or any of them, may plead the Account made out in the Bishop's Name (when entered on Record) in their Discharge. Raym. 312, 313, 314. Trin. 31 Car. 2. in the Exchequer. in Caffe of Bambridgc v. Bates & al.

Forcible Entry and Detainer.

(A) At Common Law, and now. What is, and where the Writ lies, and for whom.

1. It seemeth that (before the troublesome Reign of K. Richard the 2d) the Common Law permitted any Person (which had good Right or Title to enter into any Land) to win the Possession thereof by Force, if otherwise he could not have obtained it. For a Man may (in Britton 111.) that a certain Respite of Time was given to the Difciplin, (according to his Difance and Abence) in which, it was lawful for him to gather Force, Arms, and his Friends to throw the Difciplin out of his wrongful Possession. And at this Day, if (in a Common Action, or Indictment of Trepass for entering into Land) the Defendant will make Title thereunto; the Matter of the Force alleged against him will rest altogether upon
Forcible Entry and Detainer.

upon the Validity of his Title, as appears at ? H. 6. 13, and 40. But after the rebellious Tumults, and Insurrection of the Villains, and other, the base Commons, which happened the fourth Year of the Reign of R. 2, the Parliament thinking it necessary to provide against such Occasions of further Sedition, Uprightness, and Breach of the Peace, did ordain among other Things Lamb. Eiren. 127.—— as follows, viz.

2. § R. 2. Stat. 1. cap. 8. Enacts that, None shall make Entry into Lands but where Entry is given by Law, and in such Case not with Strong Hand, nor with Multitude of People, but only in lawful and easy Manner. And if any do to the contrary, and thereof be convicted; he shall be punished by Imprisonment, and ranjoned at the King’s Will.

3. § H. 6. 9. S. 7. Enacts, that Those who keep their Possession by Force in any Lands, whereby they, or those, whole Estates they claim, have been in Possession three Years, or more, shall not be endamaged by this Statute.

4. If several enter with Force to the Use of one, who does not enter, and be after agrees to it; this makes him a Dilettor or Trespassor, but not to be punished for the Force; For he cannot make forcible Entry, without an actual Entry. By the last Opinion. Br. Forcible Entry pl. 25. cites § H. 7. 16.

5. Forcible Entry is, if *one, or more Persons, come sweep’d to a House or Land, and violently enter; or if they there offer Violence to any possessed; or if they forcibly or furiously expel another out of his Possession. Lamb. Eiren 114. § 2. Forcible Entry.

6. If one enters peaceably, and when he is come in, after Violence; this is a Forcible Entry. Lamb. Eiren 134.

* It was said, for Law in B. R. that if a Man come with more than he had accustomed to attend upon him, that this is a Force, which was not denied. Br. Forcible Entry, pl. 50 cites to H. * 12.


———But See pl. 9.; and 1. Hawk. Pl. C. cap. 64. S. 26. Where the Serjeant is of Opinion, that such inconsiderable Circumstances, which commonly pass between Neighbours without any OFFENCE at all, can never being a Man within the Meaning of the Statutes, which speaks of Entering with Strong Hand or Multitude of People.

8. A. being Tenant for Years, B. purchased the Reversion, and A. paid Rent unto B. for 15 Years. Before the End of the Term, one C. came to A. and persuaded him, that D. had Title to the Land, and advised him to take a Leafe from him; whereupon he took a Leafe of him for 10 Years, rendering 70l. per Ann, and the Land was worth 140l. per Ann. and willed him to hold Possession against all Persons, and he, at the End of the first Term, kept the Possession with Drum, Guns and Halberts, &c. (The Drum was only to give Notice, if any came to enter, but no Body offered to enter) he was convicted for this, being a Rude and forcible Detainer; altho ‘none other offered to enter; For it was held, that the Possession of the Termor, was the Possession of the Leifor; And when, at the End of the Term, he kept it against him, to whom he had paid the Rent fo long, it was a forcible Detainment. And whereas the Statute is, that where one hath had Possession for 3 Years quietly, he might hold the Possession with Force; that is to be intended, where the Estate is continued. Cro. J. 159. Mich. 5 Jac. in the Starr Chamber. Snigg v. Shirton.

9. If one break the House, and so enter into the Houfe, none being in the House, ‘tis resolved that this is Forcible Entry. But it seemed by them, that if he had entered by the Windows, or if he had opened the Door with a Key; this will not be forcible. Hill. 15 Jac. B. R. 2 Roll. R. 2. Anon.

10. If two come to make a Forcible Entry, and one breaks open the Door of the Houfe, and 2 or 3 Hours after, the other enters peaceably, without a Weapon, the Door being open; yet ‘tis a Forcible Entry by him. Nov. 136. Beade v. Orme.
Forcible Entry and Detainer.

11. If A. claim Common, in the Land of B. and B. with Force and Arms keeps A. out from his Common, whereupon a Justice of Peace committed B. and another, who afflitt B. upon View of the Force. It was held, per tot. Car. Abieute Brampton, that this Commitment was not warranted by the Statute of 15 Ric. 2. For altho' one may be didified of a Rent or Common, by Force, which is inquirable in Alliies, and punifiable, if it be found: Yet one may not be indicted or committed for entering his own Land with Force, or holding his own Land with Force against a Commoner; For it ought to be Ubi ingenisci non datur per Legem; and one in his own Land may enter lawfully, and may detain with Force against any who pretend to have Common there, he being allowed to be Owner of the Soil, and this Statute is not to be extended against any, but him who enters unlawfully, and oufs another of his lawful Possession; wherefore the Caufe of Committing and Detaining them in Prison was held unlawful, and the Prisoners were discharged. Cro. C. 486. Mich. 13 Car. B. R. Sydnam and Parr's Cafe.

12. This Writ lies, where one is seized of any Estate of Freehold in Lands or Tenements, and is thereof didified with Force; Or, tho' he be didified thereof proceedings, yet if it be detained with Force, he may have this Writ. F. N. B. 248. (C).—and 8 H. 6. 9.—And tho' the Words of the Statute are in Difficultie; yet, if the Entry and Difficen are both with Force, the Writ lies. For the Intent of the Makers was to punish such Force, whether upon the Entry and Difficen, or upon the Detaining, &c. F. N. B. 243. (D).

13. A Man shall not have Action upon the Statute, [5 R. 2.] Ubi ingenisci non datur per Legem, where a Man enters with Force, and his Entry is lawful; For the Force is only to be convicted for the King, as Vi & Armis, & contra Pacem, but otherwise it lies upon the Statute of 8 H. 6. Per tot. Car. Br. Action for le Statute. pl. 7, cites 9 H. 6. 19.

14. One Jointement, or Tenant in Common, may maintain this Action against his Companion, if he be put out with Force, &c. F. N. B. 249. (D)

(B) What is Forcible Detainer.

1. If one Person obfaminately keep the Door fone against the Justice, or if he find Persons armed, or in other warlike Sort appointed, or proceedy enter into a Housi, and there find Ar- mor, or other Weapon for the War, the sufferic of it to remain there (without the Use thereof) will not charge him as a Forcible Holder. Lamb. Eiren. 136.

2. If a Man, being entered into a House, beftow Men with Force and Armes some other Place, not for distant, to the Intent they shall afflitt them that would attempt Entry upon him; this is a Detaining with Force. Lamb. Eiren. 137.

3. Or, if a Difpcen forfae the Way of the Diffcens, with Force, &c. Or, if the Difpcens threaten to kill him that hath comte to enter; this is a Forcible Holding. Lamb. Eiren. 157.

(C) Of what Things it may be.

1. The Statue of 5 R. 2. cap. 7. Against Forcible Entry mentions; In Cap's Abr. of Stat. it is called cap. 8.

Lands and Tenements.
2. The Statute 15 R. 2. 2. mentions Lands, Benefices and Offices of the Church.

3. The Statute 8 H. 6. cap. 9. S. 2. mentions Lands, Tenements or other Possessions.

4. Forcible Entry was brought of * Rent, and awarded good, as well as of the Land; for a Man may distrain for Rent with Force, and therefore this shall Counteract the Entry with Force, by which the Defendant was awarded to answer. Br. Forcible Entry. pl. 1. cites 20 H. 6. 11.

5. An Indictment on the Statute of 8 H. 6. was, That the late Queen, by her Letters Patents under the Great Seal, had granted to J. S. the Office of Cazedy of the Castle of D. with all Profits, &c. and an annual Fee for exercising thereof; and that the Defendant with Force expelled her and dispossessed her of that Office. Exception was taken, that an Indictment lies not on that Statute for such an Office; But that there ought to have been a Difference alleged of the Tenant of the Freehold of the House. But the Court delivered not any Opinion herein. Cro. J. 175, 18. Mich. 1 Jac. B. R. Lady Rufell's Cafe.


7. Forcible Entry lies of Tithe, tho' it was objected, and agreed, that Allise lies of Tithes by the Statute 52 H. 8. and that they are recoverable as Lay Inheritance. Cro. C. 201. Mich 6. Car. Anon.

8. Indictment was of a Forcible Entry on a Leafe for Years upon Statute 21 Jac. 15. Exception was taken, 1st. That it did not appear by the Indictment that the Leafe had any Title to the Land at the Time of the Force committed. For the Force is supposed to be done before the Lease commenced. 2d. The Leafe is supposed to be a Leafe for so many Years, if it is for long live, and it is not averred, that f. 3. was alive at the Time of the Forcible Entry made. And the Indictment was quashed. Stv. 147. Mich. 24 Car. the King v. Bray.

9. An Indictment was of Forcible Entry into a Church; and Exception was taken, that Indictments for Forcible Entry, is by Statute Law only, and that they speak of Mefluages or Tenements, &c. and so extend not to a Church, for which the Common Law has provided proper Remedy, viz. Breve de Vi Laica removenda. But per Cur. The Statutes for Quieting Possessions, shall have liberal Constructions, and extend to Churches, and in the Statute R. 2. Churches are particularly named; & Vi Laica removenda, is but a feeble Remedy; because it does not restore the Party to his Possession. Sid. 101. Hill. 14 and 15 Car. 2. B. R. the King v. March, Hollingworth, &c.

10. An Indictment was of a Mefluage, Passage or Way; and it was objected, that a Passage or Way is no Land or Tenement, but an Easement. And as to that, the Court thought it not good; tho' otherwife, as to the Mefluage. Mod. 73. M. 22 Car. 2. B. R. the King v. Holmes.
(D) Of what Possessions it may be.

1. A Lie for Years cannot maintain the Action, because of the Words, Expelit & Dilectivit and Tenant for Years, cannot be dilated.

F. N. B. 249. (E).

Yet note, the Words in the Statute are,
Put out, or Delineate.

on F. N. B. 248. (E) and cites Br. Action Sur Statute 17. And adds a Quo W, if a Liever can have it;
For he is not expelled. cites D. 142. — Jenk. 118. pl. 5.

2. An Inquisition of Forcible Entry was quashed, for that it did not appear, what Estate the Party, on whom the Entry was made, had; For if he were Tenant at Sufferance, it would not lie. 12 Mod. 417. Mich. 12. W. 3. B. R. the King v. Dorney.

(E) Justifiable by whom, and in what Cases.

1. If a Man continueth three Years in peaceable Possession, without Intrusion, then he may hold the Lands with Force, and shall not be punished for that Force, and that by the Statute of 8 H. 6. 9. F. N. B. 249. (C).

If a Man enters with Force into Lands and Tenements, to which he hath Title and Right of Entry, and put the Tenant of the Freehold out of those Lands or Tenements; now he, who is so put out with Force, may indit him for this entering by Force, and by this Indictment, he shall be relieved to his Possession again; But he, who is so relieved, cannot maintain the Possession with Force, altho' he has had a peaceable Possession for 3 Years before the Expulsion. For the Possession is interrupted. F. N. B. 248. (H) and the Notes thereupon. And if a just and lawful Possessor for 20 Years be once removed clearly and neatly from his Possession, he cannot retake Possession by Force, and detain with Force. D. 141. b. pl. 48. Patch. 3 and 4 P. & M. Dalbar v. Lyttle —— S. P. Farr 138. Hill. 1 Anne. B. R. Hardely v. Goodenough —— See (E) the King v. Burges.


2. A Tenant at Will can't justify a Forcible Detainer, till he has been 3 Years in Possession; but he ought to quit Possession, and apply to the Justices for a Restitution upon the Forcible Entry. 11 Mod. 32. Patch. 4 Anne. B. R.

3. Tenant at Sufferance is not within the Statute of Forcible Entries. Arg. says it has been often adjudged 11 Mod. 273. in pl. 18. Hill. 8 Anne B. R. Queen v. Depuke.

4. None can be guilty in Respect of Land, whereof he him self hath the * sole lawful Possession, and another the bare Custody 
(Ch. 64. S. 22.) but a Joint tenant may be guilty (Ch. 64. S. 33.) fo may every Perfon, who has a || defeasible Possession (Ch. 64. S. 34.) So, also may an $ Infant or Fema Covert, acting in their own Persons, and not barely commanding others. (Ch. 64. § 35.) 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer (G). The Book at large, cites as follows, * Mo. 786. Cro. J. 18. 2 Keby. 495. * 8 E. 4. 9. a. 19. a. 10 H. 7. 27. a. Latch. 224. Palm. 419. S. 32. || Co. Litt. 256. 7. Crom. 66 b. Lamb. 165. a. Dal. Ch. 77. § Dal. Ch. 77. Crom. 69. Co. Litt. 357. Br. Imprison. 43. 45. 75. 101.

± Nor by Forcible Entry into the Land of His Lease Tenant at Will. Sed

Queere: 1 Hawk. Pl. C. 147. cap. 64.

(F) Inquirable by whom. What Power the Justices of Peace, and other Officers have.

1. 8 H. 6. cap. 9. S. 4. Enacts, that when Complaint is made of any such Entry be Detainer, to any Justice of the Peace, he or they, by Warrant or Precinct, shall command the Sheriff to summon a sufficient Jury, to enquire of the Force committed
Forcible Entry and Detainer.

committed, and upon Force found, the Justice or Justices shall cause the Lands, &c. to be re-seized, and shall put the Party distressed in Possession, in the Absence, as well as Presence, of the Party offending; and every Alienation of the Premises, to have Maintenance, shall be void.

Every Force shall have Lands or Tenements to the Value of 40 £. per Ann. and every Sheriff not duly executing the said Precepts, to forfeit 25 l. to be divided between the King and the Professor.

2. If any hold a House or Land with Force, it was agreed, that one Justice of Peace may remove it; and so may more, and so are the Words of the Statute. Br. Forcible Entry, pl. 19 cites 21 H. 6. 3.

3. The Justices of Peace may record without Premonition, if any Aggregation with Force be before them at their Sessions. 7 E. 4. 18. a. per Yelverton.


5. And they may inquire of coming together with Force, and of Distress with Force, and this before the Statute of Forcible Entry; and contra of Entry with Force before the Statute; for they could not inquire it before the Statute. Ibid.

6. In no Case one Justice only may make Inquisition, if it be not given by Statute. Br. Peace, pl. 14. cites 7 E. 4. 18. a. per Yelverton.

7. Commissioners of Oyer and Terminer have no Power to inquire upon the Statute of Forcible Entry; for the Statute of H. 8. 9, which provides an Enquiry and Retribution in this Case, appropriates it to the Justices of Peace. But the Judges of B. R. are within this Statute; for the King sits there, and where the King sits sit Plenitude Potestatis. Jenk. 197. pl. 6.

8. An Order made by Justices of Peace, upon Conviction of Force upon the View, may be quashed upon Motion. Sid. 156. Mich. 15 Car. 2. B. Challoner.

9. Upon a Conviction of Forcible Entry, the Justices ought to commit the Offender. If they find Force, they are, upon the View, to remove it, and commit the Offender; but not to award Retribution without Inquisition; and this they may do, though the Entry be peaceable, if the Detainer be with Force, in which Case they may convict the Offender upon the View. Per Holt, Ch. J. 12 Mod. 495. Patch. 13. W. 3. Anon.

10. Justices of Peace, upon their View of a Force, cannot meddle with the Possession; but all they can do, is to remove the Force, and commit them that use it, and to make a Record thereof; and here the Record of the Commitment was arrestrari in the Preterperfect Tenù, and not in the present Tenure, as it ought to be; and all Records of Commitment are; as Committitur Marecìalo in this Court of B. R. and the Record was quashed, Nifi. per Holt, Ch. J. 12 Mod., 516. Patch. 13. W. 3. the King v. Brown.

S. P. by Coke Ch. J. § Bks. 92. the King v. Sagar. —
Sed. 156. S. P 15 Car. 2. the King v. Challoner. Vent. 508. Patch. 29.

Car. 2. Anon.—They may not alter the Possession without an Inquisition, nor does it become them to go armed on that Occasion, Per Holt, Ch. J. and he said, that if a J. of P. conveys all the Perquisites to Possession for Offenders, and sets the Doors open, this is an altering of the Possession by necessary Consequence, and therefore it was ruled, that there should be a Retribution, Nifi. Comb. 260. Patch. 6. W. 5. B. R. Lady Lovelace's Cafe.

11. Holt Ch. J. said, that the Justices of Peace, in the Case of Forcible Entries and Detainers, ought to adjourn their Courts, and give the Party an Opportunity to traverse the Force, or else the Party has no Remedy but by Cerimonial; and every Inquisition is traversable by the Stat. of Westminster; but generally the Justices enquire into the Possession only, and
Forsible Entry and Detainer.

and award Retitution without trying the Forsible Detainer or Entry upon a Traverfe. 11 Mod. 42. Pach. 4. Anne B. R. Anon.

12. A Justice of Peace may set a Fine, but he ought to committ him immediatley, where, by his own View, he finds a forsible Detaining; and then, as he is a Judge of Record, he may adjourn his Court, and then set a Fine upon him, and commit him in the mean time. Per Holt Ch. J. 11 Mod. 47. Pach. 4. Anne B. R. in Col. Layton's Cafee.

11. Mod. 52. pl. 25. Pach 4. And as the Entry is under Examinacion, the J. of P. may adjourn. Per Holt, Ch. J. Anne Anon.

13. Upon the Return of a Habeas Corpus it appeared, that A. was convicted by Sir B. Lord Mayor of London upon View, by Vertue of the 15 Ric. 2. 2. for a forsible Detainer of the Prizon of the Fleet, and that he was committed until delivered by due Course of Law, and quoniam he paid the Fine of 100 l. set upon him: Exceptions were taken, 11f. That it did not appear that the Mayor was a Justice, fed non allocutur; for the 8 H. 6. gives the same Power to Mayors, &c. 2d. That the Complaint was of a forsible Entry and Detainer, and here is no forsible Entry at all; and a Man's House is his Cattile, which it is lawful for him to defend with Force. Curia advisire vult. 1 Salk. 373. Pach. 4. Anne B. R. the Queen v. Layton.

14. And at another Day it was farther objected, that the Fine was set at another Time, but the Court held that it might be set after the Convacion, as in Lambert's Eirenarcha. 1 Salk. 353. Queen v. Layton.

(F. 2) Inquiry, as to the Force, prevented or discharging by what finding.

1. If the special Matter alleged in the Bar be found for the Defendant, he shall be executed; and the Force shall not be enquired of; and if it be found for the Plaintiff, and against the Defendant, the Defendant shall be attainted of the Force, and shall pay treble Damages and Costs, * without Enquiry of the Force; and the same is the Ufage at this Day. F. N. B. 249. (D).
(G) What shall be said three Years quiet Possession.
And Pleadings.

1. THOUGH the Defeifeor had held with Force for three Years before the Indictment, yet the Party shall be barr'd, but contrary of the King; and though he has kept by Force for 20 Years upon an Indictment, the Party shall have Restitution, and yet he shall not have an Action per Fineaux, to which Read and Tremail agreed. Br. Forcible Entry, pl. 10. cites 14. H. 7. 28.

2. One, who has been seised peaceably for three Years, may detain with Force; but if the Defeiseor has continued his Possession for three Years peaceably, and after the Defeiseor re-enters, (as he may lawfully) and then the Defeiseor re-enters, he cannot detain with Force; because the first Defeise is determined by the Entry of the Defeise, and the Defeise is thereby remitted, and this Entry is a new Defeise. Br. Forcible Entry, pl. 22. cites 23 H. 8.

3. But if a Man has been seised by good and just Title for three Years, and after is seised by Tort, and then he re-enters, he may retain with Force, by some; For he is remitted and in by his first Title, by which he first peaceably for three Years; nevertheless, by others it is not Law in this last Case, therefore quere; for it seems to them, by the Provile in the End of the Statute, that this is good Law, and stands well with the Statute, quere. Br. Forcible Entry. pl. 22. cites 23 H. 8.

4. The three Years Possession, which shall barr a Retribution, must have an uninterrupted Continuance, (ch. 64. S. 53) and regularly ought to be lawful (ch. 64. S. 53) but perhaps does not necessarily require that the first Entry was peaceable, (ch. 64. S. 54) 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer (L.) The Book at large cites Dal. ch. 79. 22 H. 6. 18 b. Crom. 71.

Note: he who is restored cannot maintain the Possession with Force, although he has had a peaceable Possession for three Years before the Expulsion; For the Possession is interrupted. Hale's Notes on F. N. B. 248. (H) cites Dy. 141.

But after Resolved, that the Possession was not good, because it is not said that the Defendants were in Possession three Years before the Inquisition found according to Dyer. Raym. 85 S. C.——-Keb. 614 S. C.

And it has been held, that the Plea of such Possession is good, without barring, under what Title, or of what Estate such Possession was; because it is not the Title, but the Possession only, which is material in this Case. 1 Hawk. pl. C. 153. cap. 64. S. 55.

(H) In whose Name the Suit or Recovery shall be.

But ibid. cites Trin. 28 Eliz. Sir Mat. & R. 3d's Case. That Lese for Years must lie in the Name of the Revere-

1. If Lese for Years be expuls'd, he shall not have Action in his own Name, by himself, upon 8 H. 6. 9. But per Cur. that comes in by a Proviso, and he that would have the Benefit of it, must plead his Possession. Vid. Cro. J. 199. and Statute 31 Eliz. Alto, the 3 Years Possession is intended where the Estate is continuing, not else. 1 Salk. 353. Patch. 4 Anne. B. R. the Queen v. Layton.—cites Mo. 848.

36 Eliz. B. R. per Cur.
Fforcible Entry and Detainer.

2. If Leased for Years of a Copyholder by Licence is ejected by Force, he may sue in the Name of the Lord to have Restitution; for the Restitution shall be to the Lord who has the Frank-tenement. D. 142. a. Marg. pl. 48. cites Trin. 38 Eliz. Sir Mat. Arundell's Cafe.


1. Quere Impedit by the King against the Disturber and Incumbent. * In all the Editions of Brook, the Word (St) Anglices (If) proy'd a Writ to the Sheriff to remove the Force, and the Court said, that if it is Intended, the Defendant had disturbed the Bishop from putting the Incumbent of the King in Possession, that he should have such Writ, but when Judgment is given here, and the Judgment executed, then they have no more Power. Br. Forcible Entry. p. 14. cites 12 H. 4. 26.

2. It is not usual to make Restitution to the Party, unless these Words Extra tenet are contained in the Verdict. Br. Forcible Entry. pl. 13. cites 14 H. 6. 16.

3. In Indictment of Forcible Entry it was not mentioned, that it was found at the Complaint of the Party according to the Statute; yet the Party had Restitution. Br. Forcible Entry. pl. 16. cites 7 E. 4. 18.

4. By the Words of the Stat. (of H. 6.) no Restitution can be made, unless the Forcible Entry be found by Inquisition. Quod Nota. Bro. Forcible Entry. pl. 27. cites 4 H. 7. 18.

5. If a Writ of Entry be brought upon the Statute 8 H. 6. and it be found with the Plaintiff, yet he shall not have Writ of Restitution of the same Land. Bund. 37. pl. 68. M. 1 and 2. Ph. and M. in C. B. Patchall. Tending.—And says, that the like Judgment was there. M. 6 E. 6.

6. If a Man be indicted for a Forcible Entry upon 8 H. 6. and before Restitution, the Force is pardoned by Statute or general Pardon. Now there shall not be any Restitution upon that Indictment; For the first Force and Offence is pardoned. But if the Party had brought his Action for Forcible Entry, &c. such a Pardon shall not reach the Restitution. per Cur. that so it has been adjudged. Noy. 119. Fawcet's Cafe.

When the K. has pardoned the Force, the Strength of the Indictment is gone. For the Party is not to have Restitution by means of the King, who has given away his Title, (viz. his Fine) by the Pardon, Yelv. 99. S.C.—Fawcet had tendered a Querity to the Indictment. And after a Venire arrayed and returned, and a Differring with a Nisi Prius, the Pardon came, which discharged the Fine for the King. Whereupon 'twas moved, that the Trial ought to be th'ld, for there ought not to be any further Proceedings thereupon; For it, being the King's Suit, is discharged by his general Pardon. But it was carried to the Court, That the Party indicted, was seated from his Possession by Order of the Indictment, it being false; The Writ of Restitution being awarded upon it. Whereas he prayed, that he might proceed, and he would rely upon any Benefit of the Pardon. For he had not any other Means to be referred to his Pardon; and it was not Reason, that the general Pardon should prejudice And of that Opinion were Fenner and Tanfield. It appearing here upon Record, that his Possession was taken away by a Writ of Restitution upon this Indictment, 'in Reason he should proceed upon the Issue joined before the Pardon to be referred to his Pardon, for which, otherwise, he had not any Remedy. But Williams and Yelverton, (abente Poplain) held, that there ought not to be any Proceedings upon this Indictment, the Offence being Pardoned by the General Pardon, whereof they are to take Notice, and the Party cannot proceed to have Restitution, when, if it should pass against him, the King should not have the Benefit of any Fine. Afterwards, being moved again, Yelverton said, They had conferred with all the Judges in Sergeant's-Inn in Fleet-Street; who held, that * the Offence being pardoned, there ought not to be any Proceeding to have Restitution. Wherefore by the Rule of the Court, it was ordered to be stayed.—And Williams said, it was so resolved in this Court upon Conference with all the Judges of England, by express command from the Queen, in a Cafe between the Lord Stafford, and Sir Thomas Eppyn; And it was commanded to make Search for that President, but there could not any such be found. Cris. J. 145. 149. Hill. 4 Jac. B R. Fawcet's Cafe. 4 S. P. 1 Hawk. Pl. C. Abv. 131. cap. 24. 8. 49. the Defendant would waive the Benefit of the Pardon.

7. Restitution
7. Restitution upon Forcible Entry and Detainer was awarded Nisi 
Causa, where the Jury found punishable Entry. Mich. 14 Car. 2. and Hill. 
14 and 15 Car. 2. Sid. 97, 99. the K. v. Satler and Honesty.

8. If a Justice convicts all the Persons in Possession for Offenders, and 
sets the Doors open, this is an altering of the Possession, and therefore it 
was Ruled, that there should be a Writ of Restitution, Nisi, per Holt. 
Pach. 6 W. and M. Cumb. 260. Lady Lovelace's Cafe.

9. A Motion was made for a Restitution upon quashing an Inquisition 
of Forcible Entry; the Cafe was, That the Letter arrested the Lease for 
Rent, and, while he was in Custody, entered the House, under presence of 
Forfeiture by a Premio in the Lease; but the Motion was denied, because 
here appears a Title standing out, which he shall not avoid by finiter 
Means, but ought to pursue his Remedy by Ejecutament according to Law; 
otherwise, had no Title appeared. 2 Salk. 587. Hill. 10. W. 3. B. R. 
the K. v. Tollin.

10. If Inquisition be removed into B. R. no Restitution can be, if 
Defendant trespassed or pleaded two Years Possession. Pach. 11 W. 3. 1 Salk. 
260. the K. v. Harris.

S. C. by the 
Name of the 
Kingly Ear.

it is reported 
that, Upon 
the 
Vi Laica 
Removenda, a 
Person had 
forcibly sei-
fed the 
Church, and 
upon Inqui-
sition, the 
Forcible was 
found, but the J of P. did not restore the Possession (as he ought to have done) but had a Record of it 
made up and deferred the Delivery of the Possession for two or three Years; and the Court held this Proceeding very irregular, and that Restitution ought to be awarded. 3 Mod. 435.

11. Inquisition of a Forcible Entry was taken, and Restitution pre-

ently granted, which was soon after Set aside by a Vs Laica Removenda, and 
years after, (viz. two or three Years or more,) a new Restitution was 
granted, whereupon the Inquisition was removed by Certiorari into B. R. 
and there the Restitution was set aside, by Reason of the long Delay, 
which might be a great Inconvenience and Prejudice to Purchasers; and 
they grounded this Resolution on 8 Rep. 19. Dr. Bonham's Cafe; and 
Holt, Ch. J. ordered a Special Entry, to be made, that because it appeared on Examination, that Restitution was not awarded 'till three 
Years after the Inquisition, that therefore Restitution was granted to 
Harris. 12 Mod. 268. Hill. 11 W. 3. K. v. Harris.

12. After a Man is found guilty of forcible Entry, Restitution must be 
awarded presently; and where such Person was put out after 3 Years after 
Conviction, Restitution was awarded to him. Trin. 11 W. 3. B. R. 
Cath. 496. the K. v. Harris.

13. The Inquisition of forcible Entry be quashed, yet Restitution is 
12 Mod. 423. Anon.

14. After Certiorari to remove Inquisition of Forcible Detainer, Justices 
cannot Award Restitution. But if after the Certiorari there be a New 
Forcible Detainer, they may record the Force. Pach. 5. Anno. 1 Salk. 
151. Sir. Godfrey Kneller's Cafe.

15. No Indictment can Warrant a Restitution, unless it shew a Con-

tinuance of the Outfit, (ch. 64. S. 41.) 1 Hawk. Pl. C. Ind. tit. Forcible 
Entry and Detainer. (H) The Book at large cites as in the Marg.
(K) Restitution. Of what Kind of Possessions. And to whom,

1. Copyholder for Life leased for Years to B. by Licence of the Lord; B. is ejected with Force, the Restitution shall be to the Lord, in whom the Franktenement is, and B. ought to sue in the Name of the Lord to have Restitution. D. 142. a. Marg. pl. 48. cites Trin. 38 Eliz. Sir Mat. Arundel's Case.

2. Indictment was laid of an Entry into a Copyhold Tenement of B. of which A. was Lord, and had the Franktenement by dissenting A. and expelling B. thereof, &c. Tho' A. opposed a Restitution to B. (the Entry being in Truth made by A's Order upon B. who had forfeited his Copyhold) and tho' it was objected, that Restitution is to be made in respect of the Franktenement, which A. does not desire, but the Contrary; yet the Court granted Restitution in respect of B. the Copyholder; For since the Indictment is a Record, by which the Expulsion by A. and the Dissenting of B. appears, the Court in Differrion, and the Jury also, ought to reform the Wrongs in their several Degrees, and that is by first restoring B. who was expelled, and thereupon enforces cons which the Restitution of the Franktenent. Yelv. 81. Hill. 3 Jac. B. R. Sir And. Nowell's Case.

3. But if the Indictment had been only of a Dissenting without any Expulion, in such Case no Restitution may be, but upon the Prayer of him who has the Franktenement. Yelv. 81.

4. J. S. was Indicted of a Forcible Entry upon the Possession of B. Lease for Years of A. and dissenting A. and expelling B. and tho' A. opposed the Restitution, yet, Nolens Volens, it was granted to redress the Tort done to B. the Tenant, who by the Indictment was found to be expelled; cited per Williams J. Yelv. 81. Hill. 3 Jac. B. R. as adjudged in Ed Norris's Case.

5. By 21 Jac. 1. cap. 15. Upon Forcible Entry or Detainer, a Justice of Peace is empowered, after the Indictment found, to give Restitution of Possession to Tenants for Years, Tenants by Easement, Statute, Merchant, or Staple and Tenants by Copy of Court-Roll, as well as those who claim a Freehold or Inheritance.

6. One was indicted upon the Stat. 21 Jac. 1. for entering into a House in C. in the County of O. adquirens liberum Tenementum of such a Feme ad voluntatem Domini sexismus Confidendum Manerii, &c. The Party came into Court, and, being put out of Possession upon this Indictment by a Justice of Peace, prayed that the Court would grant her Restitution, and it was granted to her by Dodderidge and Whitlock, Jones absent. The Reason was, because the Words of the Statute gives Power to a Justice of Peace, or to a Judge, to make Restitution to the Leior for Years, Guardian in Chivalry, or Tenant by Copy of Court Roll, at Will, &c. But for any thing here alleged, the Feme may be Tenant at Will, by Verge, and not by Copy, but the Statute shall not be taken by Equity; and therefore he that will have Restitution upon this Statute, must be within the Words of the Statute. And at another Day Dodderidge, and Whitlock, continued their Opinion. But Dodderidge agreed, that if one has a Widow's Estate by Cullion after the Death of her Baron Copyholder, she is within the Statute; Because her Estate is mediately by Copy. Lat. 182. Widow Stacy's Case.

7. Restitution can be awarded only of Tenements visible and corporeal, * Dal. 81. [ch. 64. S. 45.] and to one, who was seized of an actual Freehold, 6 ch. 64. S. 46.] which alone seems necessary whether it were by Right or Wrong. * Dal. 81. [ch. 64. S. 45] 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer. (J.) The Book at Large cites as in the Margin.

5 G (L) Restitution.
Forcible Entry and Detainer.

(L.) Restitution. By whom. And How.

1. The Statute of Northampton, commonly called the Statute of Northampton, if there be any Use made of Arms to strike a Terror into the Persons upon whom a Forcible Entry is made, any Justices of Peace, or other Officer, who is within the Purview of that Statute, may seize the Arms for the King's Use, and also imprison the Offenders, but not restore the Party injured to his Possession. 1 Hawk. Pl. C. 141. cap. 64. S. 5, cites the Books in the Marg. *

2. None may grant Restitution but those Justices before whom the Force is found, and the Writ shall be under the Seal of one of them, and then no other Justices but those of B. R. can grant a Superedes. Hale's Notes on F. N. B. 249. (A.) cites D. 187.

3. Upon an Inquisition, return'd in the King's Bench, of a Forcible Entry, the Court, upon Argument, awarded a Writ of Restitution. Br. Forcible Ent. pl. 27.

4. Wray Ch. J. said, that he never used to grant Restitution without hearing the Party indilled. Sav. 68. pl. 141. 19 Dec. 114. Eliz. at Newgate; And the Reporter there says, that it stands with good Reason. For in the principal Cause, the Party that preferred the Indictment had no Estate but as Tenant, by Reason of an Execution, who cannot preter such a Bill upon this Statute of 8 H. 6. For he has no Freehold. Ibid.

5. An Indictment of Forcible Entry was found before the Justices of the Peace at their Quarter Sessions, or Special Sessions; they grant a Restitution: This Writ of Restitution ought to be made under the Seal of one of the Justices of Peace before whom it was granted. Jenk. 221. pl. 74.

6. The Sheriff may raise the Pleas to execute it, (ch. 64. S. 52.) 1 Hawk. Pl. C. Ind. tit. Forcible Ent. and Detainer. (K.) The Book at large cites Dal. ch. 82. D. 187.

(M.) Restitution Stayed. For what Causes.

1. It was held in B. R. per Cur. that notwithstanding a Traverse tendered to an Indictment of Forcible Entry upon the 8 H. 6. they may grant or lay the Writ of Restitution at their Discretion, according as the Truth of the Title appears to them. Nota. D. 122. b. pl. * 26: 2 & 3 Ph. & M. Anon.—But the Book adds a 'Nota,' that there are Precedents for both Ways.
either traverses the Force, or pleads three years, quiet Possession before the Force. 1 Salk. 262. 1'.
11. W. 5 The King v. Harris.

2. If Justices of Peace award Restitution, and, before Restitution made, a Certificate comes from the Justices of B. K. to remove the Indictment, which is delivered to a J. of Peace, who was not at the Sessions; he may award Superfedeas. D. 187. b. Marg. pl. 5. cites it as adjudged. Hill. 45 Eliz. in Fitzwilliam's Case.

3. By 31 Eliz. cap. 11. 5. 4. No Restitution upon any Indictment of Forcible Entry, or holding with Force, shall be made, if the person indicted had the Occupation, or been in quiet Possession three years next before the Day of such Indictment found, and their Estate therein ended, which the Party indicted may allege for stay of Restitution; and if the other traverse the same, and the Allegation be found against the Party indicted, he shall pay Costs.

4. Restitution must be stayed till the Defendant have Notice of the Charge against him, (ch. 64. S. 59.) and if he appears and renders a Traversee, it must stay till such Traversee be tried, (ch. 64. S. 57.) and so much found as will warrant a Restitution. (ch. 64. S. 58.) 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer. (L) The Book cites as in the Margin.

(N) Restitution. Superfedeas before or after Execution.

How, and by whom.

AFTER an Indictment of Forcible Entry upon the Statute, 8 H. 6. before the Justices of Peace in Exilis, they awarded Restitution, and before Restitution made, there was a Certiorari delivered to Sir T. M. Calthos Rutolurum, which was not received by him; nor would he read it till after the Restitution made. * And yet the Judges thought clearly that the Restitution was well awarded and made; and a Diversity was taken between an Act, Judicial and Ministerial, the Act of the Justices of Peace is Judicial, and their Negligence in not awarding the Superfedeas, shall not prejudice; but where a Minister receives a Countermand as if the Sheriff be superfees, this is a Discharge of the Authority which he had before. And if the Justices of Peace receive a Certiorari, all that they do after is without Warrant; but all the Sheriff does after, upon their Warrant before, is not erroneous; and yet their Negligence is punishable by Attachment, as Contempt. Mo. 677. cites Hill, 45 Eliz. B. R. Fitzwilliams's Cafe.

the Hands of the Justices of Peace were closed; For the Writ is an express Prohibition unto them, viz. Ulterius terminari coram voibus nostris. So every Act done by their Authority, after its Delivery, is void. And although the Writ of Restitution was awarded by all the Justices of the Sessions, yet the Writ of Certiorari being delivered to any of them, they ought to have allowed thereof, and awarded a Superfedeas; quod Popham conceifor. + S. P. and it avoids any Restitution which is executed after its Telle; but does not bring the Justices into a Contempt without Notice, &c. 1 Hawk. Pl. C. Abr. 181 cap. 64. S. 59.

2. Where a Writ of Restitution is made, no other Justices can award a S. P. Hawk. Superfedeas to such Writ of Restitution, except those who granted it, and the Judges of the King's Bench, for the Law presumes the King himself holds there. Jenk. 221. pl. 74.


(O) Re-Restitution.
Forcible Entry and Detainer.

(O) * Re-Restitution. In what Cases.

2 Salk. 588. 1. Two were indicted of a Forcible Entry into a Meadow, and offered to traverse the Force, but the Justices of Peace refused it, and awarded Restitution. And the Indictment being removed into B. R. was quashed upon affidavit that they were not permitted to traverse the Force, but Restitution awarded presently. And it was moved for a Re-Restitution; and the Court said, that the Justices ought to have accepted of the Traversel: For the first finding is in the Nature of Pretension, which, upon traverse of the Party, ought to be tried immediately; and if it be found no Force, no Restitution shall be; and therefore they awarded Re-Restitution. 1 Sid. 237. Tr. 18 Car. B. R. the King v. Parker, Stacy, &c. al.

* Vid 7. pl. 1.

(P) Indictment. Lies. In what Cases.

* He shall not maintain it on the Stat. R. 2. Sec. 9 H. 6. 19. but the Party shall make Plea to the King for his Forcible Entry. See 31 H. 6. 39. (11 H. - 17.) That if the Title be found for the Plaintiff or Defendant, they shall make Plea, &c. Hale's Notes on F. N. B. 248. (H).

2. After Judgment in Qua. Imp. against the Incumbent, he was, by Assent of Parties, to continue in the Vicarage for a certain Time. After the Time ended, he kept Possession, and committed great Want. Attachment is not grantable, because his Stay was not by Rule of Court, but by Assent of Parties. Vi Laica will not lie, because he is a Parson; But you must bring an Indictment of Forcible Entry, or an Ejectment. per Coke Ch. J. 3. Buls. 91. Mich. 13 Jac. the King v. Sakar.

(Q) Indictment. Good or not in Respect of not Shewing what Estate or Title.

1. In Pretension of Forcible Entry, the Defendant pleaded to the Vi & Armis, and to all that which is contra pacem, &c. Not guilty, and yet he was compelled to answer to the Entry; for otherwise this is not sufficient; by which he entitled himself by Remainder, as Heir of his Father. And
Forcible Entry and Detainer.

And where the Defendant justifies between him and the King, there the King himself shall make Title. Br. Forcible Entry, pl. 2. cites 17 H. 6. 13. 2. Exception was taken, that there was no Word of Freehold in the Indictment, so to prove that the Party graved had any Freehold, whereto he might be expelled, fed non allocatur; because * Expulsio & Disjussio were there, which could not be true, if the Party expelled and disjaeled had not Freehold. 3 Le. 102. pl. 149. P. 26 Eliz. B. R. Wroth v. Capel. Freehold was, and per Cole, Ch. J. clearly, this ought to be shewn, and to say, "Disjussio & Impraesum; and therefore Tenant by Easement or Statute Merchant, cannot indite one on the Statute of S. H. 6 but he should show, that he did expulse and disjutte the Recusantor; But per Cur. this may be the Statute of S. R. 57. Houghton to pursue the Words of the Statute, ob ingressus non datur per legem tollem, &c. and the Indictment was quashed. 3 B. & C. 15 Jac. Anon.—* Expulsion must be ipso jure charged, and the Words (being expelled and disjutted, they held him out) are a Conclusion without Premises, per Holt, Ch. J. and the Indictment was quashed per Cur. 1 Salk. 262, 263. M. 12 W. 3, the King v. Dorney—Indictment was quashed for not shewing what Easement the Party had, and that the Word "Dissipatio had been in, the Court held it would not be sufficient, tho' it might be taken to imply a Freehold. 1 Vent. 506. Hil. 23, and 29. Car. 2. Anon.

3. So because the Words were, in annum tenementum introictit, it was objected, that the Word Tenementum is too general and uncertain; And as to that the Party was discharged. 3 Le. 102.

4. But the Indictment was further, in annum tenementum & decem acres terra eadem pertinent, and therefore as to the ten Acres, the Party was inforced to unlie. 3 Le. 102.

5. In every Indictment of Forcible Entry, the Estate of the Person graved ought to be shewn, and 'tis not enough to say, *Quod Possessorius suiet &c. which shall be intended to be but as *Tenant at Will, which is not within the Statutes. 1 Sid. 102. Hill 14 & 15 Car. 2. A Note of the Reporter's.

6. Nor is it enough to say, *Quod juit Liberi tenentum; But ought to be *Adiunct exstitit &c. and *Adiunct exstitit. Sid. 102. A Note of the Reporter's.

P. Anon.—*S. P. Palm. 426. P. 2. Car. Turner's Case—Exception was taken, because the Word (Adiunct) was omitted, so that no convey, whose Freehold it was at the time of the Entry, fed non allocatur; For when it is found, that such a Day they entered into a Mefagee Exilens folium & libens Tenementum, &c. this Word (Exilens) must necessarily refer to the Day and Time of the Entry. Yev. 27. 28. M. 42 & 45 Eliz. The Queen v. Fenston, Pecke, &c. Such Exception was disallowed. All. 49. Hill 23. Car. the King v. Simmons, &c. If the Indictment had began with the Day, Time, and Year, then all which follows after shall be taken, and intended to be at the same time, per Williams J. and for this cited 5 E. 6. Dy. pl. 68. & 23 H. Kelw. 98. and said, that an Indictment was required the last Term, for want of the Word (Adiunct) because it might be exlibitis libeis Tenementum 20 Years before. But per Fleming. Ch. J. and Williams J. the Day, the Time, and the Place being all coupled together in the principal Case, then the Words make all good; For thereby it appears, that it was his Freehold, and the Time being here laid which he entered, this Indictment may be good enough without saying (Adiunct) and if they both seemed clearly to hold the Indictment good, but did not overrule it, but gave time to search for Precedents 1 Bals. 175. Tr. 9. Jac. Moor and Lankford's Case, Cro. J. 214. M. 6 Jac. b. R. S. P. Sir Nicholas Poynct's Case. 639. Tr. 10 Jac. Bridges's Case, But upon a Condition of Forcible Detainer, by View of the Justices of Peace upon the Stat. 15 R. 2. the Word Adiunct is not material; Because no Justification is to be attended, but the Misd于 to, being convicted by the View of the Justices, are to be fined and imprisoned. 1 Vent. 23. Pat. 21. Car. 2. the King v. Sergeant—* &c. 5 Roll. R. 65. Hill. 16. Jac. B. R. Alling's Case.

7. Indictment by a Parson, for a Forcible Entry into the Church, said, that the Parson was seized pro termino Vites, and it was held good; For a Parson may make a Leaf for Life of the Rectory, and by this the Church poses, though the Parishioners have the Use, as in the Case of an Impropriation. Nota. 1 Sid. 102. Hill. 14 & 15 Car. 2. at the End of the Case of the King v. March. &c.

8. An Indictment of Forcible Entry was quashed, for that it did not appear, what Estate the Party, on whom the Entry was made, had; for it were Tenant at Sufferance, it would not lie. 12 Med. 417. Mich 12 W. 3. The King v. Dorney.

9. It was moved to quash an Indictment of Forcible Entry, which forth, that the Defendant entered forcibly into the Close of J. S. and turned him out; whereas, before the Time, J. S. possefiusus fuerit de Termino utl'elaps'; his Exception was, that the Easement of J. S. should have been
Forcible Entry and Detainer.

been particularly set forth; for he might have been Tenant at Sulliance; and it has been often adjudged, that Tenant at Sulliance is not within the Statute of Forcible Entries; likewhile he said, that by the Word (forcible) it does not appear, but that the Estate of J. S. was determined before the Entry, Ergo qualified per Cur. Holt abcense. 11 Mod. 273. Hill. 8. Amex B. R. Queen v. Depule.

2. Kem. 495. 9. An Indictment on 15 Ric. 2. needs only show, that some Person was in Possession; but an Indictment on 8 H. 6. must shew, that the Party had a Freehold, and on 21 Jac. 1. that he had a Term for Years, &c. (ch. 64. S. 38) 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer (H). The Book at large cites as in the Margin.

(R) Indictment. Good or not, in Respect of the Description of the Place where, &c. And Uncertainty.

So Exception was, because the Entry was laid to be into a Road of Land, or into half a Road of Land, which is uncertain, and this was held by the whole Court, except Williams J. to be a good Exception, and the Indictment was qualified. 1 Buls. 201. Path. 10. Jac. Anon.

2. Indictment was ad Seizionem pacis tent. spud B. and shews not in what Country, but the Country was in the Margin; nor was it shewn before what Justices it was taken. Ruled ill. 1 Cro. E. 738. Hill. 42 Eliz. B. R. Ludlow's Cafe.

3. Justices of P. certified to the Court, that Complaint was made to them, that R. and S. riotously made a Forcible Entry in London, whereupon they repaired to the Place and found it true, according to the Complaint, and they removed the Force and sent the Defendants 201. This Certificate was challenged, because they did not shew the Time when the Complaint was made to them. Haughton J. asked, to what Purpose ought it to be so alleged, since this Certificate is not traversable as an Indictment of Force is? And thereupon it was adjourned; but it was afterwards reversed, because it is in the Nature of an Indictment of Force, which ought to have Certainty. 2 Roll. R. 39. Trin. 16. Jac. B. R. Anon.

A Conviction was of a Forcible Detainer of a Chamber in a House in King Street in the Parish of St. Margaret-at-Straw, &c. by Force, but did not allege whole House it was, or where situate, nor whether forwards or backwards, or up how many Pair of Stairs, so that the Sheriff might not know of what to deliver Possession; but it was answered, that the Court will not intend so, but that it ought to appear. 8 Mod. 67 Hill 8 Geo. the King v. Waton

(S) Indictment.
(S) Indictment. Good or not, by Reason of Repugnancy.

1. Indictment was, that expulsit Vi & Armis, &c. out of a House, and it was adjourned to a Certainty, adiurn & adiurn in quinta Possessio of J. S. and it was qualified for Repugnancy. 2 Roll. R. 511. Pach. 21 Jac. Anon.

held ill on Exception to it, as repugnant; For it could not be his Freehold after a Difficult; Because then the Definitor was fored, and no Practice could be brought against the Difficult. Show 2. 2 Tr. 5 W. & M. The King v. Hayes. — S. P. 2 Bals. 121. Trin. 11 Car. The King v. Skeet & al. —

And after the adiurn Evidence, there was the Word Estrangement, which also was repugnant. Ibid.

2. Indictment was, that practice intraverunt, & cum adiurn, & videm Vi & Armis differvenir, and upon Exception it was quashed for the Repugnancy. All. 49, 50. Hill. 23. Car. The King v. Simmons. S. C. cited Show 272. in the Case of the King v. Hayes.

(T) Indictment. Good or not; In Respect of wrong or improper Words, &c.

1. As was Lese for Years, Rescission to B. An Indictment against J. S. was, that expulsit & diuersit B. & sequens A. Tenetum expulsit. Exception was taken, that a Person might be diffein, tho' not in possession, as a Reversioner on a Lease for Years, but not expulsid; For Privative pridupperit habitum, and that two cannot be expelled where only one was in Possession; and therefore it should have said, that the Tenant of the Freehold was diffeinited, and the Termor expuls'd; whereas, here the Word expulit is apply'd to both. But Clerch. J. answer'd, as to the expelling the Tenant of the Freehold, out of the Possession of the Freehold, that the Possession of the Termor is the Possession of him in the Reversion. Goeb. 45, 46. Mich. 28 and 29 Eliz. B. R. pl. 56. Anon.

makes no Alteration, but only grants Restitution, where a Termor for Years, &c. is put out of Possession, and that in the present Case it is naught, that the Tenant of the Freehold was expelled, but that the Lese for Years was expelled, and compared it to the Case above, (tho' it cites not the Book), and re-cites the very Words, viz. that it should have said, that the Tenant of the Freehold was diffeinited, and the Lees for Years expelled; and for this Reason the Indictment was held to be nought, per Dolben and Eyre, J. only in Court. 4 Mod. 249. Mich. 5 W. & M. B. R. the King v. Waite.

2. An Indictment was Quaes intravit in Mediatorum Vi & Armis, and Exception was taken to it, for that it cannot be, and that a Man cannot enter, without entering into the Whole, sed non allocatur; For Jones said, that it's a Manbe Tenant in common with the King, a Stranger may enter into a Moiety Vi & Armis, and gain a Moiety. Palm. 419. Pach. 1 Car. B. R. Anon.

3. Indictment of Forcible Entry, into a Copyhold must not have the Word (Diffein) in it, because a Copyholder has no Freehold. Poph. 295. Mich. 2 Car. the King v. Ployden, & al.

For this is by the Statute of 21 Jac. 15. and because the Indictment had (Diffein) in it, it was quashed. Rayn 67. Hill. 14 & 15 Car. 2. the King v. Hardy. — And cited 2 Ht. 7. — And per Holt. Ch. J. upon this Statute, it suffices to say, that the Entry was made on a Copyholder or Lese for Years, and that he was expelled. Farr. 123. Hill. 1. Anne. in the Case of the Queen v. Taylor. — The Indictment mentioned Commons Tenants, and Exception was taken because it did not place the same to be Secundus in condittione suae; and for that and other Exceptions, the Indictment was quashed. 2 Bals. 121. Tr. 11 Jac. the King v. Skeet and al.

4. The Indictment was expulsit where it should have been Expulsit & forteri Molo, where it should have been forteri Molo [Manu] and therefore the Party was discharged. Noy. 155. Anon.

(U) Indictment.
(U) Indictment. Good or not, in Respect of Words implied.

S P. 4 Hawk.
Pl. C. ch. 64.
S. 44.
Nov. 122.
Anon.

1. The Indictment was eun Dilettisft, but said not, (Inde) but the Exception was not allowed; For it shall be intended. Cro. E. 186. Trin. 32. Eliz. Farr v. Earl.

2. Dilettisft alone, omitting the Word (Expulit) is well enough; For dissents implies Expulsion. Cro. J. 31. 32. Trin. 2 Jac. Andrews v. Ld ch. 64. S. 44. Cromwell.

3. Exception was taken to an Indictment of Forcible Entry, because it not said that he was dissented. But, per Cur. Expulit implies it. Comb. 70. Mich. 3 Jac. 2. B. R. Anon.

(W) Indictment. Good or not, in Respect of Omission of Vi & Armis, &c. and Want of Certainty.

1. An Indictment on 8 H. 6. wanted Vi & Armis; For it was Pacifice intravit, & fine Judicio dissentis, & a Pellefisne expulit & ammonis; and Exception being taken to it, it was said, 41. That the Entry being Pacifice, it was not the Coucre to lay it, Vi & Armis. 2dly. That 37 H. 8. 8. supplied the Defect of Vi & Armis in an Indictment. But as to the later, the Court were of Opinion, that the Statute supply'd only the Want of the Words Gladiis, Bicinis & Cultellis, as are mention'd in the Statute. Vent. 265. M. 26. Car. 2. B. R. Anon.

2. Indictment not alleged to be Mansa fortii is ill, alloho' it was laid to be Vi & Armis. Cro. E. 461. 38 Eliz. B. R. Warner v. Collins.

3. Indictment said, that he Enteres and dissented Inquisite, &c. but does not lay, whether he entered Pacifice or Mann Fortii, and Exception was taken, for Want of the Word Pacifice, which is usually inferred, where the Indictment is Forcible Detainer; For that otherwise it might be, that the Entry was alo With force, which ought to be mention'd certainly, and every Indictment ought to be certain in every Point; And for that Reason, Gavdy and Yelverton J. held the Indictment insufficient, but Popham and Fenner conceiv'd it well enough. Cro. E. 915. Hill. 45 Eliz. Fitzwilliams Cafe. ——And the Reason, why Popham and Fenner J. held it good enough, was, that the Indictment may be upon 8 H. 6. upon both Branches thereof, viz. for the Entering With Force, and Detaining with Force, or, upon any of them by itself: And that, when the Indictment mentions that he enter'd generally, it shall never intended to be with Force, unless it be shown. And an Indictment, charging any with a Tort, ought to be precise in the Point of Charging the Offence or Tort; But where the Indictment is not to charge him for his Entry, but for Forcible Detainer only, it is good enough; For no Force shall be intended, unless specially alleged. And tho' Indictments ufe to mention that he enter'd peaceably, it shall not be intended, but that, without those Words, it may be good enough, when it is not to charge him with any Forcible Entry. Cro. J. 20. M. 1 Jac. S. C. Sir Wm. Fitzwilliams's Cafe.

4. An Indictment upon 8 H. 6. was quaff'd, because it was in quoddam Meff exiuent Lib. Tenement. in, &c. and did not say, adhibit exiuent, and for
Forcible Entry and Detainer.

5. The Conclusion of the Indictment should be Contra Formam Statutum. Whether if

wrote at length, it should be Statutum or Statutum. See All. 49, 50 Hill 25 Car. where this Point was
differently held by Roll. Ch. J. and Bacon J.

6. In the Conclusion of the Indictment (Manus Forti) and (Contra Co-

venaun & Pacem Regis) were omitted, the Indictment being (Fortitudine

& Potentia magna) but no Manus Forti also; and because the fame was taken

before one J. of Peace only, and yet it did not appear, upon which statute

the Indictment was taken, there being two Statutes, it was quashed, the

whole Court being clear of Opinion that it was not good. Tr. 12 Jac.
2 Buls. 258. the King v. Cox.

7. So, because it did not conclude Contra Pacem. 2 Buls. 258. ut fip. But where

the Words

(Contra Pacem) were in, and the Words (Contra Convenaun) omitted, it was held good. All. 49 Hill 25
Car. the King v. Simonus, &c 21 — The Contra Pacem be omitted, yet if the Words I. & Ami.
&c. and Contra Formaun Statutum are there, they imply as much per Way. Cro. R. 180. Trin. 52 Eliz. Part v.
in the 2d — But if Contra Formaun Statutum be omitted, the Plaintiff cannot have Restitution, per Haught-

8. Exceptions were taken.

1. That the Inquisition was taken before A. and B. Justices of the Peace, and doth not say, Nor now ad diversas Feloci-

nias, Transgressiones, &c. fo that they have no Power to inquire. See non du

Allocatur. For, upon this Statute, Justices of Peace only, tho’ not Justices ception, says ad Audien
d. & Terminand. &c. have Authority to inquire. 2. Because

the Entry is supposed, In manus Meftagium free Domum, which was alleged

implies to be uncertain, as a Meftagio or Tenement hath been ruled to be ill. Said

Franken-

non Allocatur. For it was said, true it is, that an Entry into a Meftagio ment, and

or Tenement, is not good; because Tenement is uncertain what it is; but

Meftagium five Domus, are all one and the fame. 3. For that the Jailor of

Indictment is, that he was Seifius five Poaffionatus, which is not certain, those who

fod non Allocatur. For it is of a Meftagio five Domum adnue exsistent. Lite-
runt Tenementum, which proves, that he was feized of an Estate, whereof he might be diffeated; wherefore the Indictment was good, and

Ellis’s Cafe.

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for that Fault, the Party was discharged. Nov 13. * Sir Nicholas Po-

Cafe—Cro-
gar’s Cafe.—cites it as ruled accordingly. P. 42 Eliz. B. R. Rot. 27.

Stansby v. Croxton.

Exetics Liberum Tenementum J. B. without paying duex Excipsum, was ill; For it may Be, that at

the Time of the Indictment it was the Freehold of J. B. but not at the Time of the Entry. Cro.

—So saying

5 I

Poynt’s Cafe.
Forcible Entry and Detainer.

posse'nd, de quodam Termino * without saying Auctorum; Twifden said it was naught, and the Indictment was quashed. Mod. 73. Tr. 22 Car. 2.
B. R. the King v. Holmes.

11. Exception was taken to an Inquisition, for saying, Per Sacramentum Duo dicendi, &c. Juravit, &c. without saying Aduit & Iudex iuravit, &c. For that if the Time and Place are not sufficiently ascertained, the Inquisition cannot be good; because the Fact might be committed above a Year past. But notwithstanding this, and an Authority cited out of Dy. 68. b. in a Case of Murder, it was held not material here to shew the Place, &c. For the Party could not be amov'd, so as to make the Defendant guilty of a Forcible Entry from another Place, but from the Land, per Dolben & Eyre J. Ceteris absentibus. 4. Mod. 248. Mich. 5 W. & M. B. R. the King v. Waite.

Cro J. 41. D. 68. pl. 28.

12. The Oyer shall be intended to have been at the same Time and Place with the Entry, without adding aduit & iudex. (Ch. 64. S. 42.) 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer (H) The Book at large cites as in the Marg.

13. Before the Day of the Indictment, and before the Indictment, in El. 11. have the same Meaning. (Ch. 64. S. 56.) 1 Hawk. Pl. C. Ind. tit. Forcible Entry and Detainer. (L)

(X) Indictment. Good or not. Varying from the Statutes.

1. Indictment upon 8 H. 6. was good Finem factum Domine Regine, &c. where the Statute is Finem factum Domino Regi. And it was held by Wray, Anderdon, Shute, Windham and Fleetwood, to be Vitiates. And the Party put out was restored. Sav. 148. pl. 141. 19 December, 27 Eliz. at Newgate Sessions. Anon.

Dilex Domino Regi; whereas the Words in the Statute are Domino Regi, without the Word (Dilex;) this was held per tot. Cov. to be a good Exception, and said to have been to adjuged several Times before. 1 Ball 218. Trin. 10 Jac. The King v. Cole.

2. An Indictment was upon the Statute 8 H. 6. 9. and the Statute was recited to be made in Westminster, but shewed not in what County, and the Indictment was discharged. Cro. E. 166. Trin. 30 Eliz. Earl v. Wilton.

3. Indictment was for entering in Domine Redcliffes de P. ac in certas Terras eadem Domini Pertin. jacen' in P. And Exception was taken, because it recited two Parts of the Statute (of 8 H. 6.) 1. Expulsion and Diffilition with Force, 2. Holding out; and there is no Office contained in it, as to one of them, viz. the Holding out; and tho' it was not necessary to recite the Statute, yet if the Party meddles with it, and does not apply it to the special Matter, it is naught, and for this cites Pl. C. Strange v. Partridge.

2. The Entry is suppos'd, In Domine E & certas Terras, eadem Domini Pertin., jacen. in P. which is uncertain, as to Lands and naught for the Houle also. For it is not shewn in what Town the Houle is. For this Clause, E & Certas Terras eadem Domini Pertin., jacen. in P. is a distinct Clause of itself, and refers only to the Lands, and does not extend to the Houle. The first Exception was disallowed; For it is not like Partridge's Case.

For there, the Statute is recited, which needed not; and therefore, being misrecited, made the Indictment insufficient: But here the Statute is well recited, and therefore, as to the Matter, the Indictment is sufficient. As to the 2d Exception, the Justices thought the Indictment, in that Respec't, too general and uncertain. The 3d. Exception was not allow'd; For the later Words (in Putney,) refer to the whole, and extend as well to the Houle as the Lands. But, as to the Words, Lands to the said Houle belonging. See Pl. C. 85. b. where it is good enough, because the Number of Acres is set in certain. 1 Le. 186. Mich. 32 Eliz. B. R. Farmam's Case.

4. In
4. In rectifying the Statute, it said *vel aliquum Fossamationem ex Difcon-
timationem*; whereas the Statute is *sift taken ingregium aliquam Fossamationem*
and upon Exception taken, the Indictment was held insufficient for this
mifepticall. Cro. E. 307. Mich. 35 and 36 Eliz. B. R. Hall v. Gaven & al. (Fos-
tament, and Discon-
tainment), was omitted, it was, upon Exception taken, held ill. For there is not any such Statute, and

5. Indictment recited the Statute in the Conjunctive, where it is in the
Difjunctive, *Si aliquis expulsus fit vel Diflicitus*; yet Gandy and Fenner
held it not much material; for they are always expounded as copula-
tive. And if he be not Expulsus & Diflicitus, Action lies not upon the

6. Exception was taken, that the Indictment did not say, that the Party
entered *Illicit & Manu Forti*, as the Words of the Statute direct; And
Roll Ch. J. said that there ought to be Manu Forti in the Indictment
according to the Statute, to distinguish this Kind of Entry from an ordi-
nary Precept by entering into another's Land, which is not so violent, as
a Forcible Entry is suppos'd to be. Sty. 135. M. 24 Car. R. B. Anon.

7. An Indictment on 15 Riz. 2. must shew, that both the Entry and De-
tainer were Forcible, but an Indictment on 8 H. 6. needs only shew that
one of them was fo. (Ch. 64. S. 40.) Hawk. Pl. C. Ind. tit. Forcible
Entry and Detainer (H) The Book at large cites as in the Marg.


(Y) Indictment. Certiorari. And how it must be obeyed,

1. A was indicted of a Forcible Entry, upon the 8 H. 6. and after-
wards the fame Indictment being in Force, he was indicted a se-
cond Time upon the same Statute, upon the same Day, and upon the same
Entry. The first Indictment was removed by Certiorari into B. R. And
upon the second Indictment, the Justices of Peace awarded Restitution, but
before it was executed, a Certiorari was deliver'd to one of the J. of Peace,
who refered to open it, and granted no Superfetitas, by which Restitution
was made. Afterwards the Indictment was removed into B. R. and Re-
estitution granted per tot. Cur. upon great Deliberation. For the Certi-
iorari, coming to the Hands of one of the J. of Peace, is in itself a Pro-
bilation to all, and the not obeying the Writ was a Misdeemor, and he
was much check'd by the Court. Yelv. 32. Hill. 45 Eliz. B. R. Fitz-
williams's Cafe.

2. Justices of Peace may fend the Indictment into B. R. by Certiorari,
or deliver it per Proprias Manus; but not by the Hands of another. Palm.

3. No Writ of Error lies on a Conviction of a Forcible Entry, on the
View of the Justice of Peace; but it may be examined by Certiorari,

(Z) Conviction of Forcible Entry quashed in what Cases, and
How.

1. A N Inquisition of a Forcible Entry was denied to be quashed,
the it had not the Words *Ad Inquirendum pro Corpore Comitatis*,
since it is a particular Offence, and at the Suit of the Party by the Statute;
and the Reason, why in Prefentments at the General Quarter Seions it is
necessary
Forcible Entry and Detainer.

necessary to say Ad Inquirendum pro, &c. is, because their Commission is such, and the Jury must inquire according to their Commission, but here their Commission is by a Statute; per Holt Ch. J. and the Inquisition was confirm'd, per Cur. 6 Mod. 95 Hill. 2 Anne B. R. the Queen v. Watton.

2. Upon a Conviction of Forcible Entry, if a Fine be set, the Conviction cannot be quashed upon Motion, but the Defendant must bring a Writ of Error. Otherwise if no Fine be set, for then it may be quashed upon Motion. 2 Salk. 420. Patch. 4. Anne B. R. The Queen v. Layton.

3. A Conviction of a Forcible Detainer was quashed, because the Adjudication was in the Pretender's Tenure, instead of the Present. 8 Mod. 65, 66. Hill. 8 Geo. 1. the King v. Watton — And says that in Trin. T. following, the like Judgment was given for the same Fault in the Cafe of the King v. Morgan.


1. If a Man be ousted by Force by him that has Lawful entry, in such Cases Copy of Life shall not have Action; For the Force is only to the King as Vi & Armis & contra Pacem, and of this he shall make Fine to the King, but the Party shall not have Action where the Entry of him who entered it is Lawful, per Bab. which was agreed. Br. Forcible Entry pl. 18. cites 9 H. 6. 19.

2. Tenor shall have this Action, per Prius. Br. Action Sur le Statute pl. 15. cites 37 H. 6. 31 ——— But per Needham * Tenor cannot have this Action, but Brian contra, that at this Day Tenor may have the Action. Br. Action sur le Statute, pl. 23. cites 5 E. 4. 34.

3. Trespass upon the Statute 5 R. 2. ubi ingræfius non datur per legem lies for Tenor; but see elsewhere that contra it is of Action upon the Statute of 8 H. 6. quod expult & diffequit; because it is only for Tenen of the Franktenenent, quod Mirum! for the Statute in the ancient Book is expul't vel diff explosives. Br. Action sur le Statute, pl. 17. cites 38 H. 6. 4.

4. And the Baron may have the Action alone on 5 R. 2. quæve of 8 H. 6. it seems he may; for he recovers only Damages in the one, or in the other, and no Land, and therefore all is one, as it seems. Br. Action sur le Statute, pl. 17. cites 38 H. 6. 4.

5. Tenant by Statute Merchant, by Elegit, &c. may have such Actions, per Brian. Br. Action sur le Statute, pl. 23. cites 5 E. 4. 34.

6. If a Man has no Estate but as Tenant by Reason of an Execution, he cannot prefer an Indictment upon the 8 H. 6. because he has no Freehold. Sav. 68 pl. 141. 19 Dec. 27 Eliz. at the Sessions at Newgate, Anon.

(B. a) Actions. Writ or Declaration good or not. And in What Cases the Writ shall abate.

1. Forcible Entry the Writ was, that illicitly intravit, and not paid as & armis and therefore the Writ was abated quod nota. Br. Forcible Entry, pl. 18. cites 9 H. 6. 19.

2. It is confessed, that Vi expul't & diff explosives, and of Vi tenet, after peaceable Entry is within the Cafe of the Statute 8 H. 6. but these words
adhibe extra me dent are not in the Statute but are at Common Law; nevertheless note, that it is not usual to make Restitution to the Party, unless these words are contained in the Verdict, wherefore Ellerker pleaded to the Writ, because extra me dent is in the Writ and not in the Statute. But Jany laid, it is only a Stain, as, Alia enormia, and such like; therefore the Writ was awarded good. Br. Forcible Entry, pl. 13 cites 14 H. 6. 16.

3. It was agreed, that if it be, quod in tres Acres ingressus est, and not quod inquis quercum, the Writ is not good. Br. Action for the Statute, pl. 15. cites 57 H. 6. 31.

4. Forcible Entry, the Defendant in another Term demanded Judgment of the Count, because the certainty of the Land, as 12 Acres of Land, 4 Acres of Meadow, &c. is not alleged; and therefore the Writ was abated and cannot be amended; for it was counted of another Term; and so see that for Default in the Court, Judgment shall not be that the Count shall abate, but that the Writ shall abate. Br. Brief, pl. 247. cites 38. H. 6. 1.

5. In Forcible Entry, because the Defendant ousted the Plaintiff of the Land with Force, & difficilis & adhibe extra me dent: and Exception was taken to the Writ, that the Statute is in the Disjunctive, viz. where a Man diffilises another with Force, or enters peaceably and holds with Force, and yet the Writ was awarded good; and it is laid there, that 29 H. 6. and 14 H. 6. agrees herewith. Br. Forcible Entry, pl. 15. cites 1 E. 4. 19.

6. Trefpaus upon 5 R. 2. by Baron and Fone; Catesby prayed Judgment of the Writ; for the Baron has nothing but in Jure Usum, and the Writ is, that the Baron and Fone entered into the Manor, where it should be the Feme enter'd into the Manor; &c and non Allocatur, but the Writ good. Br. Brief, pl. 345. cites 4 E. 4. 13.

7. Trefpaus ubi Ingressus non datur per legem in the Manor of P. in A. B and C. Littleton said that one Acre Parcel of the Manor is in P. not named in the Writ, Judgment of the Writ; and no Plea, by clear Opinion of the Court; for the Plaintiff does not make his Plaintiff but of entry into the 3 Viles, and shall not recover Damages but in thofe 3, and not in the 4th. and if he gives the Manor in the 3 that which is in the 4th, does not pass, and so of a Fine of it in 3 Vills. Br. Brief, pl. 330. cites 5 E. 4. 103. the Plaintiff declares that, the Defendant with 10 Persons entered; it is not good without saying with 10 Persons ignorant good note. Br. Forcible Entry, pl. 24. cites 1 H. 7. 19.

8. Trefpaus was brought for Entry into, &c. such a Day, and detaining the Possession, to the Time of exhibiting the Bill without alleging any Day when the Bill was exhibited. After Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Time of the Detainer should have appeared to the Jury; for they ought to give Damages, according to such Time, and his Loss thereby; and the Appearing thereof of Record, is not sufficient, and of that Opinion was Doderidge J. and Broome informed the Court, that the Court was to limit a Day certain in the Declaration. 2 Roll. R. 135. Mich. 17 Jac. Sliford v. Goodrick.

5 K (C. a) Pleadings.

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1. In Trespass upon 5 R. 2. the Defendant said, that his Predecessor, Master of the Hospital of D., was seised and died, and he enter'd as Master and gave Colonies, and held no Plea, because he did not pay the Foundation, and that he was elected and Professed Master, quod nota, by which he amended his Plea, and said, that he had the Hospital of Sir John, incorporated of Master, Brokers and Sisters Time out of Mind, and that they used after the Death of every Master, that the Brothers and Sisters should choose another Master, and that A. late Master, was seised and died, and that this same Defendant, before the Entry, &c. was elected Master by the Brothers and Sisters, and enter'd, &c. as above, and well, without expressing the Number of Brothers and Sisters; For the Corporation was made before Time of Memory, and peradventure no expres Number.

Br. Action Sur le Statute, pl. 9, cites 34 H. 6. 27.

2. Trespass upon 5 R. 2. Fragment of the Moiety of the Land where, &c. and giving Colonies is no Plea; For it may be of a Moiety severed. Br. Action Sur le Statute, pl. 43. cites 38 H. 6. 8.

And the same

3. Trespass upon the Statute 5 R. 2. the Defendant said, that the Place is 20 Acres, which is Parcel of the Manor of B. which is his Franktenement, and per Choke Justice, it is no Plea in this Action. Br. Action Sur le Statute, pl. 27. cites 2 E. 4. 6.


4. In Trespass ubi ingressus non datur per legem, or in Trespass of Forcible Entry in A. B. and C. it is no Plea to say, that C. is a Hamlet of B. Judgment of the Writ; for nothing is to be recovered but Damages in those Actions; but it was said, per Jenny, that to say, that * No such Vill, Hamlet, nor Place known, &c. is a good Plea in those Actions, but the first Plea is a good Plea in an Action in which a Man shall recover the Land; For he shall not demand a Thing twice; but in this Action nothing is to be recovered but Damages; and after the Defendant was awarded to Answer; quod nota. Br. Brief, pl. 329. cites 5 E. 4. 88.

5. In an Action upon the Statute 5 R. 2. 7. the Defendant said, that he was seised, till by B. dispossessed, who enfeoff'd the Plaintiff, upon whom he entered peaceably, the Plaintiff said, that B. did not dispossess him. Pitt, &c.

Per Fairfix and Catesby, the Plaintiff has not made Title to himself, therefore ill. But per Pigot and Jenny, the Defendant has given Title to the Plaintiff in his Bar, and therefore is sufficient for the Plaintiff to maintain it. Br. Trespass, pl. 188. cites 9 E. 4. 49.

6. Trespass upon 5 R. 2. of entering into 20 Acres in D. the Defendant said, that A. was seised of 20 Acres in S. and infested him, by which he enter'd, and gave Colonies, &c. Abjurate him, that he entered into the 20 Acres of Land in D. and a good Plea to make the Vill parcel of the Illue, for inveighing of the Jury, and a good Replevin, which was acknowledged by the one, and
Forcible Entry and Detainer.

and by the other, which was agreed by the Justices. Br. Action Sur le Statute, pl. 32. cites 11 E. 4. 9.

7. Trespas by the 5 R. 2. the Defendant said, that the Plaintiff had another Writ pending of the same Entry upon the Statute 8 H. 6. and averred, in support, that all was of one and the same Entry; and no Plea per Cur. because nothing is to be recovered but Damages and no Land, as in Precipice quod reddat, and diverse Entries may be made in one and the same Day. Br. Brief, pl. 317. cites 5 H. 7. 15.

took was utterly denied by the Court, where it is said, that because diverse Trespas may be done in one and the same Day, therefore it is no Plea (as it is there said) in Trespas, that other Action is pending, &c. for the same Trespas: For by the same Reason, after the Plaintiff has recovered in Trespas, and bring, Action for the same Trespas again, the Defendant cannot aver, that all is for one and the same Trespas.

8. In an Action upon the Statute 5 R. 2. the Defendant shall not plead by an Action a Name; for there the certainty of Acres is comprised in the Writ; contrary in Trespas, per Bryan and Choke Justices, quod Catesby concedit; but by him, where the Plaintiff gives Name in his Count, the Defendant may vary from it, and so note a Diversity. Br. Trespas, pl. 360. cites 21 E. 4. 80. Acre of Land with the Services, the Defendant pleaded in Bar, and gave the Acres a Name, and was not suffered to give Name more than in Affidavit or Precipice quod reddat, because the Plaintiff has given certainty in his Declaration, and to the Defendant shall plead to it at his peril; as in Writ of Entry in Nature of Affidavit he shall not give Name. Br. Pleadings, pl. 134 cites 5 H. 7. 28.—Br. Action Sur le Statut, pl. 21 cites S. G.

—Br. Trespas pl. 27. cites 5 & 6.

9. In Forcible Entry, the Defendant pleaded a Deed of Easement with an In Trespas Warranty of the Ancestor of the Plaintiff to whom he is, &c. the Plea good, per Townfend, but Brian e contra. Br. Forcible Entry, pl. 31. cites 11 H. 7. 15.

10. In Action upon the Statute of 8 H. 6. of Forcible Entry, or in Trespas upon 5 R. 2. ubi ingressus non datur per legem, Non ingressus est contra formam Statuti, is a good Plea. Br. Action Sur le Statut, pl. 45. cites P. 23 H. per Sherwood and others.

11. In an Action upon the Statute 5 R. 2. in Trespas, it is a good Plea that the Defendant was seized till by the Plaintiff diffused, upon whom he be entered; for the Defendant shall not be compelled to make Title to him unless he will, per Firzh. Arg. Br. Trespas, pl. 1. cites 26 H. 8. 4. but cites 27 H. 6. 3. contra. But 21 E. 4. fol. 74. is accordingly, if he say, that it is the same Trespas, &c. of which the Plaintiff brought his Action, and herewith agrees 5 H. 7. fol. 11. and 9 H. 6. fol. 32. and 27 H. 6. fol. 1. and in 15 H. 7. fol. 11. it is a good Plea for the Defendant, that he infringed him, by which he was seized till by the Plaintiff diffused upon whom he be entered, but there he made Title; contra Supra. Br. Trespas, pl. 1. cites 26 H. 8. 4.

12. It suffices upon the Statute 21 Jac. 1. 15. that entry was made on a Copyhold or Lease for Years, and that he was expelled; but upon the Statute 8 H. 6. 9. you must always allege a Freehold and Seisin in some Body; and if it be an Entry upon a Lease for Years, you must say, that the Entry was made on the Freehold of A. in the Possession of B. and that he diffused A. and of Necessity there must be a Diffusum of the Freehold laid; and upon Restitution the Possession is restored to the Leesee, and the Freehold to the other, and on this Statute, Diffusum is a Term of Art not to be supply'd by any other word, per Holt; and Rule abolishes, per tot. Cur. Farr. 125. Hill. 1 Anne B. R. Queen v. Taylor.—Poph. 205. Anon. was a Case upon the Stat. 21 Jac. 1. 15. per Holt ibid.

(D. a) Pleadings.
Forcible Entry and Detainer.

(D. a) Pleadings. *Not Guilty,* &c. In what Cases it is a good Plea.

1. NoT, on an Indictment of Forcible Entry found before Justices of Peace and removed higher on the Statutes 5 Eliz. and 15 R. 2. the Party pleads, as to the Entry with Force, *Not Guilty,* and he was forced to answer to the Entry, wherefore he justified the Entry. Hale's Notes on F. N. B. 248 (H) cites 7 H. 6. 13.


3. Treps upon Forcible Entry against E. D who said that J. N. was seized in Lee, and leased to the Defendant for Life, and by this he was seized; and the Plaintiff, by Colour of a Deed, &c. made by J. N. where nothing passed, &c. entered upon him, and be re-affued peaceably, abjuge loco, that the Defendant outed him with Force, or detained with Force, and thowed that he in Reversion was in Ward of the King, and pray'd Aid of the King; and by the bell Opinion, because he is Tenant for Life, and has Frankenement, he shall not have Aid in Treps in the King, nor of a Common Person; by which the Defendant pleaded *Not Guilty,* and 'twas admitted a good Issue; for 'twas argued, whether he shall have it or not, and at last 'twas admitted for Plea and well; For 'tis said elsewhere, that in Actions and Treps the Defendant may waive the Pleading and plead the general Issue. Br. Forcible Entry, pl. 6. cites 22 H. 6. 17.

4. Treps of Forcible Entry by G. against K. Priorcs of B. and count'd, that he disinherited with Forces, and yet disinted with Force; the Defendant pleaded, that the Plaintiff was seized of the same Land the Day of the Writ purposed, judgment of the Writ, & non allocatur; for per Moyle, in Replevin, and counted good adverse detinue, it is no Plea, that the Plaintiff is seized of the Beasts, and was the Day of the Writ purposed. Per Newton, the Plea does amount only to good non detain with Force, which is no Plea by itself, nor to say, that he did not Disinter with Force. Br. Forcible Entry, pl. 8. cites 22 H. 6. 37.

6. And in Treps of Grafjs spoyle, it is no Plea, that Non depaite heritas, &c. but shall say, *Not Guilty,* by which he was ruled to answer, wherefore he said that D. his Predecessor was seized in Fee in Right of the Church, till by J. S. disintered, who enfeigned M. whose Estate the Plaintiff has, and the Predecessor's; and his Successor entered peaceably, abjuge loco, that he entered with Force, or detained with Force; the Plaintiff, Predecessor, that he did not confess any Thing by the Defendant alleged, pro placio [said] that M. his Mother was seized and died seized, and the Land descended to the Plaintiff who was seized, till by the Defendant, with strong Hand, ousted the Defendant Predecessor [that] he did not confess such *Defendant, pro placio [said] that the Defendant made continual Claim, in which time M. died, by which the Precedence was ousted as being repugnant; for he confesses and avoids the Defendant by the continual Claim. Br. Forcible Entry, pl. 8. cites 22 H. 6. 37.

6. In Treps upon 5 R. 2. 'twas admitted, that Colour shall be given in this Aetion, as in Treps, and the Defendant may plead, *Not Guilty,* and so to Issue, and admitted there. But 'tis said at this Day, that it is no Plea, but shall say, *Non ingressus est contra formam Statum.* Br. Aetion Sur le Statute, pl. 29. cites 3 E. 4. 1.

7. Treps upon the Statute of 5 R. 2. against A. B. and C. which B. came and pleaded *Not Guilty,* and so fee that *Not Guilty* is a good Issue; and A. and C. came and said, that one B. was seized, and, a long Time before that the Plaintiff any Thing bad,-interceded the said A. and C. and gave Colour to the Plaintiff; and the Plaintiff said, that this B. is the same B. which is one of the Defendants, and they make Title of their own Possession, and yet good; for two may make Title by the third as well as by a Stranger, and

9 The Words in larger Edition of Brooke is (defent) and va both the other Editions (defets) but the Year book is (defent).
it is well; for there is no reason, that the name of the feoffor, put in the 
Writ by the plaintiff, shall out the defendants of their bar. Br. Action 
for the statute, pl. 36. cited 1 E. 5. 4.

(E. a) Pleadings. * Justification. In what cases it is a * Sec (F. a) 
good Plea.

1. In action upon the statute 8 H. 6. the defendant pleaded that the 
fraudtoretament, at the time of the entry supposed, was in J. N. and that 
he, as servant to J. N. and by his command, entered peaceably, abjous 
that he be entered with force; but this was held no plea per cur. and he 
shall make title, because the word difference supposes fraudtoretament at the 
time _c. in the plaintiff. Br. forcible entry, pl. 13. cites 14 H. 6. 16.

2. Whereupon the defendant pleaded, that J. N. was seized in fee, till 
by the plaintiff dispossessed; by which the defendant, as servant of J. N. and 
by his command, entered peaceably, abjous he be entered with force, or 
dispossessed him with force; and per jure, if he had said abjous he be 
dispossessed him with force, it had been a good plea. Br. forcible entry, 
pl. 13. cites 14 H. 6. 16.

3. In Trefpafs upon 5 R. 2. the defendant said, that the plaintiff, in the 
court of A. was attacked for taking beasts, and dispossessed, and the 
baillif prayed the defendant to aid him to eject the baillif to distrain the 
plaintiff in the place where the entry is supposed, who did so, which is the 
same entry, &c. and per alston and needham, justices, this is no plea; 
for by such entry he claims no interest in the soil, and therefore he does 
not confesse and avoid, nor traverse; by which he said abjous he be 
dispossessed, that he be entered in any other manner, and then a good plea, per chocke, for the 
instruction of the lay jury; if general issue shall be joined, but alston 
and needham contra; for per needham, it shall be abjous he be 
dispossessed, that he be entered as the writ supposes; contra alston, therefore quare. Br. action 
for the statute, pl. 36. cites 4 E. 4. 13.

4. Trefpafs upon 5 R. 2. the defendant justified for a way; and per Brian 
and needham, this is no justification; because he claims nothing in the soil of 
interest, as leafe for years, &c. nor any manure, but catesby contra, 
quere. Br. action for the statute, pl. 31. cites 8 E. 4. 8.

5. In Trefpafs upon 5 R. 2. ubi ingrefftus non datur per legem by 3. 
Defendant pleaded a recovery of the 3d. part of the moiety against one of the 
plaintiff, and execution had; and 'tis a good bar. Br. barre, pl. 83. 
cites 18 E. 4. 28.

6. The defendant justified his entry by common appendant, abjous he 
that he be dispossessed the plaintiff. Per fither, this is no plea; for claim of com 
mon is no property in the land, but per keble contra; for common is in 
interest in the land; contra, if he enters to see walt, or to disfrain, or if he 
enters as sheriff to serve a writ, but to enter to have common of effovers 
5 L. or
(F. a) Pleadings. **Traverse in what Causes.**

1. If the Defendant doth plead Matter in Bar, yet be ought, in the end of his Plea in Bar, to traverse the Entry with Force which is alleged, as to say Abjure hoc, that he did enter with Force, &c.; but yet the Defendant or Plaintiff ought to answer to the special Matter alleged in the Bar, without answering to the Traverse with Force, &c. N. B. 249. (D).

2. Forcible Entry, supposing him to be dispossessed with Force; the Defendant conveyed himself in by Distress, by which he entered peaceably, Abjure hoc, that he entered with Force, or detained with Force, and no Plea; for the Plaintiff alleged dispossessed with Force and not Entry with Force, and also the Plaintiff did not allege Detainer with Force, and the Defendant cannot traverse that which is not alleged by the Plaintiff, by which he said, that he did not dispossessed with Force, nor detain with Force. Per Newton, this is not good; for it is two Matters; by which he said, Not dispossessed with Force, Prift; and the others c. contra. Br. Forcible Entry, pl. 12. cites 14 H. 6. 1.

9. The Defendant said, that T. and S. were seised, and thereof infeoffed T. and P. in Fec, and he as Servant, &c. entered peaceably, and gave Colour to the Plaintiff, Abjure hoc quod intravit manus fortis & ipsum expelit & extra tenet modo & forma prout, &c. and did not traverse the Distress, and yet well, because dispossessed cannot be but by expulsion, and therefore this word expelit answers to it. Br. Forcible Entry, pl. 24. cites 1 H. 7. 19.

4. In Forcible Entry, if an Abatement be alleged, and Gift in Tail by the Abitor, and that the Donee died seised; the dying seised is traversable and not the Abatement; for the dying seised takes away the Entry. Br. Forcible Entry, pl. 26. cites 3 H. 7. 8.

5. The Court held, that tho' the Conviction was only of Forcible Detainer upon view, yet it was traversable upon the 8 H. 6. by him that had been 3 Years in quiet Possession, as well as upon a finding by Inquisition; and that, because the Party is to be imprisoned. 1 Salk. 353. Patch. 4 Anne B. R. Queen v. Layton.

(G. a) Pleadings. **Monstrans or Proseft of Deeds.** In what Causes.

1. Reports upon the Statute of 3 H. 6. the Defendant pleaded a Gift in Tail by an Abbot and Convent to A. B. the Remainder in Tail to J. S. and after A. B. died without Issue, and J. S. entred and died, and one N. entered as Heir in Tail to the said J. S. whose Estate he hath, which
which N. is yet alive, and gives Colse to the Plaintiff; and per Littleton, Coke and Brian J. the Defendant who pleaded ought to have the Deed of Gift; for an Abbot and Convent cannot give but by Deed; and the Defendant ought to have the Deed. Br. Montrans. pl. 63. cites 15 E. 4. 16.

(H. a) Issue. Of what the Issue shall be.

1. TF Issue in Forcible Entry of entering with Force, and detaining with Force, shall be always upon the Title, and not upon the Force; and yet both speak of the Force; but if the Title be found against the Defendant, he is eo Facto convicted of the Force; and if the Title be found for the Defendant, he is excused of the Force, quod Nota; for so it is put in Ure. Br. Forcible Entry pl. 5. cites 21 H. 6. 32.

(I. a) Verdict. How the Jury may find. Supported or intended by it, what; or what is a sufficient finding.

1. IN Forcible Entry against two, who pleaded not guilty, it was found that the one entered with Force, and the other held with Force; and the Plaintiff recovered against both in such a Writ in B. R. per Greenfield, which was not denied. Br. Forcible Entry pl. 15. cites 1 E. 4. 19.
2. Trespa on 5 R. 2. the Defendant said, that Now ingressus est contra Formam Statutj; and 'tans found, that in 2 Parts divided from the third Part Now ingressus est prout, &c. the Defendant alleged in Arrest of Judgment, that it shall be intended, that the Plaintiff and Defendant, by this Fer- diff, are Tenants in Common; and then this Action does not lie by one Tenant in Common against another; and upon good Argument it was agreed, that it shall not be fo intended; by which the Plaintiff recovered; quod Nota. Br. Action fur le Statute pl. 34. cites 21 E. 4. 10.

Action fur le Statute. pl. 34. cites 21 E. 4. 10.

3. Forcible Entry upon 8 H. 6. the Defendant pleaded Not guilty, and 'tis found, that the Defendant dispossessed the Plaintiff peaceably, and detained with Force; and the Plaintiff recovered, per Cur. For the Statute is in the Disjunctive; and if the one Point or other be found, the Plaintiff shall recover. Br. Forcible Entry. pl. 14. cites 6 H. 7. 12.
4. Indictment on 8 H. 6. that he entered with Force, and dispossessed H. with Force, and held him out with Force. The Bill was found Seound the Detaining with Force, and thereupon Restitution was awarded. Upon removing the Indictment, Exception was taken, that the Indictment was ill; For it is not found that he entered peaceably, as it ought, according to the Words of the Statute. And of that Opinion was the whole Court. Cro. J. 151. Hill. 4 Jac. B. R. Ford's Cafe.—Yelv. 99. S. C.

5. Indictment laid, that they, Mann forf., entered upon the Possession of J. S. the Farmer of A. B. and dispossessed A. B. and him so dispossessed extra tenus till the Day of the Inquisition. Upon Exception taken, it was agreed per totam Cur. that the Indictment was insufficient, because they have not found that J. S. the Farmer was amoved and expelled, which is the Force of all the Matter; For the Possession of the Farmer or Terminus, is the Possession.
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Forcible Entry and Detainer.

If the Indictment is not good, and the Restitution shall be made to him in Reversion; and if he will not have Restitution, the Lease is a sufficient Remedy, and so it was ruled. D. 142. 2. per Sanders Ch. J. and in Marg. pl. 43. cites Trin. 36 Eliz. B. R. and Matthew v. Camber———* See D. 142. in Marg. pl. 43. cites Patch. 33 Eliz. Contra. The King v. Lockett.

6. But if the Indictment had not expressed J. S. to be Farmer, but generally that the Cattle &c. were in his Occupation; then, per Williams J. the Indictment, which found the Distress only, had been good; Because no Title is found in any other but in him only, who is found to be distressed; But finding J. S. to be Farmer is an Estate known and certain, and such Farmer must be ejected, otherwise he, who has that Distressment, cannot be distressed. Quod Nota. Per tot. Cur. Yelv. 165. Freiton v. Shellito.

7. In an Indictment against two for a Forcible Detainer upon the 8 H. 6. it was found, Quod intraverunt & Monti fortis extratemens. it was objected, that the finding Quod intraverunt was not sufficient without showing How, whether peaceable or with Force. But per Lea Ch. J. and Houghston and Chamberlaine J. Restitution must be awarded, for there is no Mean between a Peaceable and Forcible Entry, and both go before the Forcible Detainer found here; and Lea Ch. J. said, that the Word (Peaceable) in the Statute, is to supply what was not remedied by J. R. 2. and he thought the Entry should be intended Vi & Armis. But Doderidge doubted if by the Tenor of the Statute it be good; for there cannot be a Detainer without a torious Entry, and this Entry might be either with Force or without, and by the Indictment it does not appear what the Entry was. But upon the Opinion of the 3 other Judges, Restitution was awarded. Palm. 194. Trin. 19 Jac. B. R. Ed Salisbury v. Sir Anthony Aldley.

8. An Indictment of Forcible Entry and Detainer was preferred against S. and the jury found, as to the Detainer with Force, Billa Fora, but as to the Entry, Ignoramus. This upon Exception was held not good; For they ought to have found all or none. 1 Vent. 25. Pach. 21 Car 2. The King v. Serjeant.

The Indictment was quashed, and Restitution awarded. 1 St. 414. 8 C. Yelv.


(K. a) Punishment thereof, and what shall be recovered.

1. 5 Rich. 2. cap. 7. Enacts that none shall enter into Lands or Tenements, but where Entry is given by Law, and in a peaceable Manner, upon Pain of Imprisonment, and randomed at the King's Will.

In Trepass upon this Statute, the Plaintiff shall not recover Damages for the Loss and Profit, but only for the Entry, quod Nota. Br. Action for the Statute. pl. 28. cites 2 El. 4. 23.——Br. Damages pl. 120. cites S. C. For the Action is, that he entered where his Entry is not given by Law.

But because that Statute provided no speedy Remedy in this Point, nor extended to holding with Force, nor left any Special Power therein to the Justices of Peace in the Country. Whereas the Experience of that unquiet Time, required a more ready Hand to the Suppression of such Disorder, and Justices of Peace were (by 13 Rich. 2. Stat. 1. 7. then newly constituted. Lamb. Eire. 128. says that therefore

2. 15 Rich. 2. cap. 2. Enacted, that when a Forcible Entry is made into Lands, Benefits, or Offices of the Church, one or more Justices of the Peace taking sufficient Power, and going to the Place kept by Force, and finding any that hold such Place Forcibly, may commit the Offender to the next Gaol, there to remain Confin'd by the Record of the Justice till be hath made Fine and Random to the King; And all People in the County shall be affesting to the Justice to arrest such Offender upon Pain of Fine and Imprisonment.
Forcible Entry and Detainer.

3. 8 H. 6, cap. 9. §. 2. Enacted that upon Complaint made to the Justices of Peace, or one of them, of a Forcible Entry or Detainer by the Party grieved, they or one of them shall cause the Statute of 15 Ric. 2. 2. to be duly executed at the Costs of the Party grieved.

Tenements of his Companion deceased. Relfort be made, and on. Vi & Armitis, the Plaintiff shall recover but findes Damages, and if 'twas Vi & Armitis, then treble Damages by this Statute. Br. Aliis. pl. 7. cites 55 H. 6. 20.

§. 6. And if any Person be put out or dispossessed of any Lands or Tenements in Forcible Manner, or put out peaceably, and afterwards holden out with Force, or after such Entry any Fragment or Discontinuance thereof be made to defend the Right of the Possessor; the Party grieved shall have Aliis of Novel Disfeifin, or a Writ of Trespaifs against such Defeifor; and if the Party out with grieved recover, and if it be found by Verdict * or in other Manner, that the Force, Defendant entered with Force, or after his Entry did hold with Force; the Plaintiff shall recover treble Damages, and make Fine and Ransom to the King.

Damages. For the Statute is in the Dommaitie, where he is oufshed by Force, or if he be oufshed peaceably and held out with Force; to which Dunby and Chlope agreed. Br. Forcible Entry pl. 17. cites 10 E. 4. 11.

* In Trespaifs or Aliis upon this Statute, the Defendant is condemned by non sum incontinenti: He shall pay treble Damages and treble Costs; fo adjudged and affirmed, in Error. The Words of the Statute gives them, where the Recovery is by Verdict, or otherwise, in due Manner; and this Judgment is in due Manner, the not by Verdict. Jenk 197. pl. 8.

4. Where the Writ is, that Vi disagreit & Vi tennit, and this is found, the Plaintiff shall recover treble Damages for the Disfeifin with Force, and also treble Damages for the Detainer with Force, per Patent; but Cot. e contra. Br. Forcible Entry. pl. 13. cites 14 H. 6. 16.

5. For Entry to the Damage of &c. found for the Plaintiff to the Dam- 

age of 20 l. and the Court awarded that the Plaintiff recover the 20 l. 

taxed by the Jury, and 40 l. over by the Statute, viz. 60 l. in the whole 

for treble Damages; and that the Defendant capiatur, quod Nota, and 

therefore he shall be fined. Br. Forcible Entry, pl. 3. cites 19 H. 6. 6.

6. In Forcible Entry, the Defendant pleaded Not guilty, and was found Guilty to the Damage of 100 l. viz. 80 l. for the Tort, and 20 l. for the Costs, and with great Deliberation, the Plaintiff recovered 300 l. notwithstanding that treble Damages are given by the Statute; and so he recovered treble Damages and treble Costs, quod Nota. Br. Forcible Entry, pl. 9. cites 22 H. 6. 57.

7. Forcible Entry against several, and the Plaintiff counted according to 

the Statute, and upon this they were at general Issue, and found that 

done entered with Force and held peaceably, and done entered peaceably and 

held with Force, and taxed the Damages severally; by which he had severa- 

l Judgments of treble Damages against the one, and the like also against the 

other; and that he recover the Costs of his Suit, and yet contrary in Waffe, 

for there are no Costs; and in this Case the Plaintiff was amerced, 

Br. Forcible Entry, pl. 4. cites 19 H. 6. 32.

8. If a Man enters with Force into Lands or Tenements, into which he hath Title and Right of Entry, and puts the Tenant of the Freehold out of those Lands or Tenements; in this Action of Forcible Entry, the 

Plaintiff shall recover treble Damages, as well for the occupying the Lands, 
as for the first Entry therein. F. N. B. 248. (1).

9. If a Man enters and dispossesses another by Force, and afterwards the 

Dispossessor reneth again; yet the Dispossessor may bring his Action of Forcible 

Entry,
Foreign.

Entry, and recover his triple Damages, altho' he be seised of the Land at the Time of the Action brought. F. N. B. 249 (C).

10. If a Man enters with Force, and detains with Force any Lands or Tenements, the Party may have his Action upon the Statute of Northampton, made An. 2 E. 3. c. 3. F. N. B. 249 (E).

11. Per Car. not only the Costs asserted by the Jury, but also those which were adjudged de Incremento, shall be trebled, and the Party so convicted of the Force at the Suit of the Party should be fined, tho' fined before on Indictment for the same Force. Patch. 28 Eliz. C. B. Le. 252. Rollithon v. Chambers.

12. Termor paid his Rent unto B. for 15 Years, and at the End of the Term, he kept it against him to whom he had so long paid his Rent; this was adjudged a Forcible Detainment; and for this Offence he was fined in the Star Chamber 500 l. Cro. J. 199. Mich. 5 Jac. in the Star Chamber. Snigg v. Shirton.

13. In an Action of Forcible Entry grounded on those Laws, if the Defendant make himself a Title which is found for him, he shall be dismissed without any Inquiry concerning the Force; for howsoever he may be put-defeasible at the King's Suit for doing what is prohibited by Statute, as a Contemner of the Laws and Disturber of the Peace; yet he shall not be liable to pay any Damages for it to the Plaintiff; whose Injustice gave him the Provocation in that Manner to right himself. 1 Hawk. Pl. C. 141. cap. 64. §. 3. cites the Books in the Margin.

Foreign.

(A) Foreign Courts. Decrees, Judgments &c. there, How far binding or Regarded here.

The Ship being unladen at Barcelona, where the Freight was payable by the Charter Party, the Factor refusing to pay the Freight, the Master of the Ship litigated there in the Admiralty for it; and the Cause was heard, and Judgment there given, that the Master should have his Freight, but that the Damages the Goods had sustained in the Voyage, by Reason of the Deviation, should be deducted, and the Account transferred to the Deliquinators, (who are in the Nature of our Masters in Chancery) to take the Account, and the Money ordered to be brought into Court; But the Factor had appealed to a higher Court there. Ed. Chancellor declared, that he would not flight their Proceedings beyond Sea; and if in this Cause the Damages had been there ascertained, or a peremptory Sentence given, the same should have been conclusive to all Parties: But it appearing, the Factor was a Notice of that Place, and therefore, in all probability, might against Justice prevail, and Defendant being willing to desert his Suit there, his Lordship directed a Trial here by Jury, to ascertain the Damages sustained by the Deviation. Mich. 1681. Venn. 21. Newland v. Horlaman.

(B)
(B) Foreign Lands. Judgments, &c. of Things done there.

1. A was sued in the Admiralty upon an Obligation supposed to be made and delivered in France, and now he prayed a Prohibition; Per Cur., such a Bond may be sued here in B.R. but being begun in the Admiralty, we cannot prohibit them, because perhaps the Witnesses of the Plaintiff are beyond Sea; which may be examined there but not here. 3 Le. 232. Mich. §1 Eliz. B. R. Delabrock v. Barney.

(C) Foreign Laws and Customs. How far regarded here.

1. ON Marriage of two French People in France the Contract was, that the Husband, surviving the Wife, should have two thirds of a Cafe of her Fortune for Life, (whereas by the Custom of Paris, where they married, the Husband surviving, is to have but a fourth) and 300 Livres in the first Place by way of Pretend, and that the rest should go according to the Custom of Paris. Afterwards they fled hither from the Persecution, and several Years after the Wife died. Her Relations brought a Bill for an Account of the Estate, and to have the Benefit of the Contract. It was objected, that they could not bring over the French Law hither, but must now be governed by the Laws of England; the Husband surviving is entitled to all the Wife's Personality, or that at least there was no Colour to carry it further than the Sum stipulated in the Contract, and not to that which was left to go according to the Custom of Paris, which is only a local Law, and fo could have no Benefit of it here. It was answered, that Marriage Contracts are to be supported in all Countries without Regard to the Place where made, and that this Contract extended to the whole Fortune of the Wife, and not only to the Particulars mentioned, and the saying that the Reit should go according to the Custom of Paris, is as much as if the Custom had been recited at large, and that the Fortune should go fo. Lt Keeper decreed Relief only as to the Sum stipulated; But on Appeal to the Lords they had Relief for the Whole. Chan. Prec. 207. Mich. 1702. Peaubert v. Turf. so Ruled, that it ought to have been proved in this Cafe, what is the Law of Holland, as in the Cafe of Joubert and Turf, it was proved, what was the Law of France, without which Proof, our Courts cannot take Notice of Foreign Laws. Wms's. Rep. 451. Patch. 1718. Frencoila v. Dedire.

(D) Foreign Money.

1. W H E N one Demands Foreign Coin in Specie, the Writ ought to be in the Detinue only; but when the Value of it in English Silver is demanded, it may be in the Docket & Detinue per Counsell, to which Holt and Eyre, J. Seemed to agree, and by Eyre, J. Guineas are as Foreign Coin. Lutw. 488. Mich. 5 W. & M. in Cafe of Pope v. St. Leger.—Jo. 69. Patch. 1 Car. B.R. Ward v. Kedgrose al. Kedgerow. Holt, Ch. J. Skin. 525; in Cafe of St Leger v. Pope.—Per Holt Ch. J. They must demand English Money, and not Foreign Money, and they are to value it according to the Value it bears here in England; but if a Man will bring an Action for for Foreign Money, it must be Detinue. 12 Mod. 447; Try. 13 W. 3; B. R. Brown v. Gulluck.
(E) Foreign Plantations. Barbadoes, &c.

1. A Writ of Error lies here upon any of their ultimate Judgments in Barbadoes, viz. in any Dominions belonging to England. Vaughn, 2 Mod. 46. Trin. 37 Car. 2. C. B. Arg. in Case of Proctor into Wales.

2. In Barbadoes they have Laws different from ours, as that a Deed shall bind a Feme Covert, &c. 2 Mod. 46. Trin. 37 Car. 2. C. B. Arg. in Case of Dawes v. Pindar.

3. An Appeal lies from those Lands to the King in Council here, but that is by Constitutions of their own. Arg. 2 Mod. 46. in Case of Dawes v. Pindar.

4. The King constituted a Governor and Council of State in Barbadoes. In Action of false Imprisonment brought against the Governor for Imprisoning the Plaintiff by Order of the Council, Judgment was given for the Plaintiff in B. R. Hill, 3 Jac. 2. 3 Mod. 159. Witham v. Dutton.

5. These Plantations are Parcel of the Realm, as County Palatines are; their Rights and Interest are every Day determined in Chancery here, only that, for Necessity and Encouragement of Trade, they make Plantation Lands as Assets in certain Cases to pay Debts; in all other Things they make Rules for them, according to the common Course of English Equity. Arg. Parl. Cases 33. in Case of Dutton v. Howell, Witham & al.

6. 'Twas intimated by Council, that by the Custom of the Island of Barbadoes, a Plantation there, tho' it be a Fee Simple Estate, is in the first Place liable to the Payment of Debts, so that the Owner cannot, by his Will, make his Plantation, but that will be liable to the Payment of his Debts; but these Debts must be either Debts contrived on the Place, or elsewhere, for Matters relating to the Plantation, &c. Pauch. 1687. Vern. R. 453. Noel v. Robinson.

To make a Plantation in Barbadoes, liable to a Debt contracted here, 'tis said, the Method is by Procuration from hence under the Seal of the Mayor of London, and getting that Recorded there; or an acknowledgment of the Debts by the Owner of the Plantation upon the Place will do it. Trin. 1687. Vern. 452. Noel v. Robinson.


9. In Barbadoes, all Freholds are subject to Debts, and are esteemed as Chattels 'till the Creditors are satisfied, and then the Lands defected to the Heir. 4 Mod. 226. 5 W. & M. B. R. in Case of Blankard v. Guildy.
(F) Foreign Plantations. Jamaica and others.

1. Plaintiff may sue in the Admiral Court, if he will suppose the Contract in Virginia. But if he suppose the Contract in England, he may sue here. But if part of the Contract be here, and part over the Sea in Virginia, or upon the Sea, the common Law only shall have Jurisdiction, and those are the true Differences. Per Jones, J. 2. Roll. R. 492. Hill. 22. Jac. B. R. Capp's Case.

2. The Reason why an Execution will not by of Lands in Jamaica, or any of the King's Foreign Territories is, because the Courts here cannot command them to do Execution there; For they have no Sheriffs. Per Twifden J. Vent. 59. Hill. 21 and 22. Car. 2. B. R. Crisp v. the Mayor, &c. of Barbwick.


(G) Foreign Plantations. Actions for Matters there. In what Caises may be brought here.

1. Effor brought Debt against Leislee for Rent, upon a Demise of Lands in Jamaica, and laid his Action in London; Defendant pleaded, that the Lands were in Jamaica, and that there are Courts there, &c. that if Entry and Outter were pleaded, it could not be tried here, and that the Right of Plaintiff and Defendant depending on Foreign Laws, cannot be given in Evidence here. And per Cur. Where an Action is local, it must be laid accordingly. Therefore if the Leislee declares on the Privity of Estate, and that lies in Ireland, &c. the Action must be brought there. For the Estate is local, therefore such Leislee cannot maintain Debt here, against an Assignee of a Term in Ireland; For the Action is founded on a Privity of Estate, otherwise where 'tis founded on a Privity of Contract, which is Tranitory, as Debt for Rent by Leislee against Leislee, for that may be maintained where the Land lies not; and if a Foreign Issue, which is local, should happen, it may be tried where the Action is laid; For that Purpose there may be a Suggestion entered on the Roll, that such a Place in such a County is next adjacent, and it may be tried here by a Jury from that Place, according to the Laws of that Country, and on Nil Debet pleaded, you may give the Laws of that Country in Evidence. 2 Salk. 651. Trin. 3 Anne. B. R. Way v. Yally.
Foreigners.

(H) Foreign Plantations. Governed by what Laws.

1. If there be a new uninhabited Country found out by English Subjects, as the Law is the Birth-Right of every Subject, to where-ever they go, they carry their Laws with them, and therefore such foundland Country is to be governed by the Laws of England. 2 Wms's. Rep. 75. says it was paid by the Mutter of the Rolls. 9 Aug. 1722. to have been so determined by the Lords of the Privy Council upon Appeal.

2. But after such Country is Inhabited by the English, Acts of Parliament, made in England, will not bind them without naming the Foreign Plantations. Ibid.

3. Therefore it has been determined, that the Statute of Frauds and Perjuries, which requires three Witnesses to a Will, and that these should subscribe in the Teller's Presence, in Case of a Decise of Land, does not bind Barbadoes. Ibid.

(I) *Foreign States.

1. By Authority of the King of Denmark, seised and condemned Goods in some of the Dominions of the King of Denmark, according to the Law of that Country, and coming into England was prosecuted here for the same. The Court thought this was a Matter of State, and concerned the Justice of another King in Amity with the King of England, and that what was done was according to their Law, and that 'twas not properly triable here, whether the King of Denmark had Power to make such a Grant, and decreed a perpetual Injunction. Mich. 26 Car. 2. Fin. R. 186. Badolph v. Bamfield & al.

2. If a Man obtains a Judgment or Sentence in France, yet here the Debt must be considered as a Debt by Simple Contract. He can maintain no Action here, but an Indeb. Aff. or an Injurious Computation, &c. tho' both Parties were Foreigners, that will not help the Plaintiff. per Lord Keeper. Hill. 1705. 2 Vern. R. 541. Duplein v. De-Roven.

3. Where a Foreign Court has Jurisdiction of a Cause, and the Persons are within it, the Sentence must bind without regard to what Law is here; and the Sentence appearing, is not to be controlled by Evidence, that the Law is not so there. Sel. Ch. Ca. in Ld King's Time. 69 Mich. 1726. Burrows v. Jemineau.

Foreigners.

(A) Suits by them.

1. The Plaintiffs, being Creditors of Colley, preferred their Bill against the Defendant, being all Foreigners, but the Goods were passed over into England, into Merchants Hands by Colley; and this Court taking Notice, in respect of the different Computation of the Realm, first, to be paid at the Feet of the three Kings Heads, secondly, because the Bill was not sealed, thirdly, because the Debts grew in France, and he came over hither to keep his Body from Arreits, the Court decreed the Debts, and caused a Decree to be drawn up pro Confesso, because the Defendant would not answer, and sequestrated Monies in other Men's Hands, to pay the Debts, altho' they were passed over to others, to the Use of an Infant. Toth. 131, 132. cites 8 Jac. Sere & Eland v. Colley.

2. The
Foreign Plea.

(A) In Civil Cases. What; and how granted, and received,

1. 6 R. 2. 2. If in Writ of Debt Account, and the like, it shall be declared, that the Contract thereof was made in another County than is contained in the Original Writ, such Writ shall be abated. But at the Common Law, one that had a particular Jurisdiction to hold Plea of Debt, Contract, Detinue, Covenant or Trespass within his Manor, &c.; could not hold Plea of a Debt, Contract, &c.; alleged to be made out of the Manor, &c.; Because although it was transitory, yet (being so alleged) it was not within his Power or Jurisdiction, which he had by Prescription or Grant. For all Pleas holden there, must be in Jurisdiction Courts. 2 Inst. 252.

As if a Lord had Probate of Testament, made within the Precinct of his Manor, he cannot prove a Testament, made out of the Precinct of it. 2 Inst. 251.

So of the Court of Exchequers of Contracts, &c.; made out of the Fair or Market, &c.; 2 Inst. 257.

But before this Statute, Writ of Debt, and Account against a Receiver, and such like Actions might be brought in any County, where the Party might be well brought in to answer, and the Plaintiff might have counted of a Contract or Receipt, &c.; in any other County; because Debitum ex Contractu, &c.; ex pacto nullius loci. 7 Rep. 3. Mich. 26 and 27 Eliz. in Bull. 5th. Cai. cites 2 E. 3. 44. 6 E. 1. 266. and 275. S. E. 3. 350. 10 E. 3. 19. 19 E. 3; Jurifd. 29. 29 E. 3. 26. 53. E. 3. Jurifd. 5. 42 E. 3. 5. 3 H. 6. 50. 5 E. 4. 19. 21 E. 4. 88.

In Debt upon Bond, the Defendant pleaded, that it was made in another County than is alleged in the Declaration, and prayed, that the Attorney might be examined thereupon, by Force of this Statute. The Plaintiff demurred, as if it had been a Plea in Bar to the Action, and Defendant joined and concluded, quod ab actione pradicatur. But it was relented, that the Plea was ill, and not warranted by the Statute, which provides only, that the Original shall not be laid in one County and the Declaration upon a Bond made in another, and if so, that the Writ shall abate; and this Course of pleading had been disallowed cites 3 H. 6. 55. And secondly, because the Demurer was joined as to the Affirmation, Judgment was given, Quod Recusaret, &c.; Allen. 17. Hill. 22 Car. 2. Salmor. v. Slingby.

2. Debt upon a Bond in Banco, and counted that it was made in London; Patron pray'd Judgment of the Writ, for that he has a Plaint upon the same Bond yet pending in N. by which he supposes the Bond to be made at N. Judgment of the Writ, &c.; non allocatur; for it is out of the Cafe of the Statute of 6 R. 2. c. 2. that if a Man brings Action in one County, and declares in another, his Writ shall abate, but here he declares was made in the same County. Br. Brief. pl. 8. cites 3 H. 6. 15.

3. Debt in the County of N. and declared at H., where it extended into the County of N. and of L. and the Defendant said, that the Bond upon which he declares was made in the County of L. Judgment of the Writ, by reason of the Statute of 6 R. 2. c. 2. and per Martin, this is a good Plea, by which
Foreign Plea.

which Roll passed over, quod Mirum; For the Statue is no other, but where a Man brings Action in one County, and declares in another, that the Writ shall abate, but here be declared in the same County. Br. Brief. pl. 10. cites 3 H. 6. 35.

4. If Defendant in a Corporation Court pleads a Foreign Plea, which is collateral, as in Debt upon Bond, if he pleads Release made in a Place out of the Jurisdiction of the Court, it need not be received without Oath. Litt. R. 236. Mich. 4 Car. C. B. Corporation Court.

5. But if in Covenant or Debt for Money, to be paid at another Place; be pleads Payment accordingly, or the Covenants performed in the Place limited, which was out of their Jurisdiction, it ought to be received without Oath. Agreed by all the Justices. Quod Nota. Ibid.

6. If Defendant pleads a Foreign Plea, which is transitory, the Plaintiff may demur to it. But if it be not transitory, it must be upon Oath, or otherwife it will not be received. Sid. 234. Mich. 16 Car. B. R. Collins v. Sutton.

Plea is ought, except in Special Cases; But if the Action be local, the removing it into another County, than where the Plaintiff has laid it, it is properly a Foreign Plea, which is not done in the Principal Case; For there the Action is laid in Cheshire, and the Defendant does not in his Plea remove it thence. Quod Caria Concessit, and so Judgment set aside. 12 Mod. 125. Patch. 9 W. 3. Cholmonley v. Bloom.

* S. P. and says, that many Instances may be given of Foreign Pleas, which, if not collateral to the Action, must be received without Oath.

7. If it appears by the Declaration, that the Money was to be paid out of the Jurisdiction of the Court, the Judgment is not good; and 'tis not necessary to swear the Plea, if it appears on the Obligation, that the Money was to be paid out of the Jurisdiction of the Court, and he pleads Payment according to the Condition. But if one will not swear a Foreign Plea, where he ought to do it, the Plaintiff may enter Judgment on a Nihil Dictis, for such a Foreign Plea, not sworn, is no Plea upon the Matter. Str. 225. Trin. 1650. Dadeny v. Collier.

8. A Prohibition was pray'd to the Court of the Compter, to an Action of Debt there commenced; for that the Defendant had pleaded before Imparience, That the Cause of Action did arise at a Place out of their Jurisdiction, and offered to have sworn his Plea, and they refused to accept this Plea; and a Prohibition was granted; For Inferior Courts have not Cognition of transitory Things, which arise out of their Jurisdiction, as F. N. B. 45. is: But then 'tis not sufficient to furnish such Matter for a Prohibition, but a Plea to that Effect must be render'd in the Inferior Court, and that before any Imparience taken, (whereby the Jurisdiction would be admitted) and it must be upon Oath; and then if refused, a Prohibition shall be granted; or upon such refusal, a Bill of Exceptions may be made, and Error affixed. Vent. 180. Hill. 23 and 24. Car. 2. B. R. St. Aubin v. Cox.

9. A Foreign Plea is, where the Action is carried out of the Country where 'tis laid, and is to be Sworn, which a Plea to the Jurisdiction is not. Carth. 402. Patch. 9 W. 3. B. R. Cholmly v. Bloom.

10. Debt was brought in B. R. on a Bond made at Chester; The Defendant did not impaire, but pleaded by Attorney, that 'tis is, and at the Time of the Action brought, was an Inhabitant, and notoriously Conversant at Nantwich, within the County Palatine of Chester, and to pray'd Judgment if the Court of B. R. ought to hold Plea of this Matter. But the Plaintiff taking this to be a Foreign Plea signed Judgment, because it was not sworn to. And to set aside this Judgment, it was insisted, that tho' this is a Plea to the Jurisdiction, yet it is not a Foreign Plea, and therefore need not be sworn to. And accordingly the Judgment was set aside. Vid. Carth. 402. Patch. 9 W. 3. B. R. Chumley v. Broom;
Foreign Plea.

Cholmondeley v. Bloom. S. C.

11. Autism Demere, and all Pleas of Privilege, are Pleas to the Ju-
risdiction, and not Foreign Pleas, and therefore not to be sworn to, but S. C. and P.
may be received without an Oath, Arg. and Judgment accordingly. 5 Mod.

12. Debt was brought in London. A Prohibition was moved for, and
granted Nisi, upon Suggestion that the Defendant had tendered for Plea
below, that the Cause did arise out of their Jurisdiction, and offered to
make Oath of the Truth of it. Now it was objected, that he tendered the Plea after the Court was up, whereas it should be, in Proprin Propin,
and in Court. And tho' an Affidavit was offered in B. R. of the Truth of
the Plea, and one * Turner's Case, 4 Jac. 2. was cited out of
Lutwitsch, where a Prohibition had been granted upon Affidavit in
B. R. without Oath below, yet by three Justices abente Hols, the Rule
was discharged. For in all Pleas that quit a Court of Jurisdiction, whether
Interior or Superior, there must be Oath, in that very Court, of the
Truth of Plea. 6 Mod. 146. Pach. 3 Anne. B. R. Sparks v. Wood.

(B) When and how Granted.

1. IN Debt, if the Defendant pleads Foreign Plea in another County
in Perjury, he shall not be examined, but if it be by Attorney,
the Attorney shall be examined. But in this Cafe they nfe to examine the
Party at this Day without Oath. Br. Examination. pl. 23. cites
20 E. 4. 10.

2. If one be sued in an Inferior Court, for a Matter out of the Juris-
diction, the Defendant may either have a Prohibition from one of the com-
mon Law Courts, or may, if it happen in the Vacation, and it happens then,
when the Chancery only is open, move the Court of Chancery for a Prohibi-
tion, but then it must appear upon Oath made, that the Matter arose out of
the Jurisdiction, and that the Defendant tendered a Foreign Plea, which
was refused. Wms's, Rep. 476. Trin. 1718. Anon.

3. But if a Prohibition has been granted Improvida, and without these
Circumstances, the Court will grant a Superfedeas thereto. Ibid.

4. But if it shall appear on the Face of the Declaration, that the Matter
is out of the Jurisdiction of the Court, then a Prohibition will be granted
without Oath of having tender'd a Foreign Plea. And in these Cases
Equity imitates the Common Law. Ibid. 477.

5. And in a late Case, which was moved the last Seal after Trinity
Term, where the Court had granted a Prohibition to an Action in the
Courts of London, upon an Affidavit, that the Matter arose out of the
Jurisdiction, it appearing at another Day, that the Defendant had
impertld generally, (which admitted the Jurisdiction) and so could not afterwards be allowed to plead a Foreign Plea, the Court granted a Superfe-
des to the Writ of Prohibition. Ibid. 477.

(C) Foreign Plea. In Criminal Cases.

1. 4 H. 8. 2. Where a Murderer or Felon, (to delay his Arriage) pleads
that he was taken out of a privileged Place, in a Foreign County, and
it is alleged by the King's Attorney, (or some other in the King's Behalf) that
he was taken in the County where he is so to be arraigned, they shall be tried
by the Inquest who are to try the Murder or Felony, and before the same Ju-
tices, and if it be found that he was taken in the same County, such Foreign
Plea shall do him no Advantage or Benefit.

5 O

(A) Forrest
Forest.

(A) Foreft, Park, Chafe, &c.

1. The Parker may receive Beasts into the Park, to Pasture for Money. 46 C. 3. 12. b.
2. But the Parker cannot give Power to another to cut the Branches of the Trees, without the Assent of his Master, 46 C. 3. 12. b.

(B) Parke, Chafe. By whom it may be made.

None can make a Park without Licence of the King, because it is to appropriate Things which are Free Nature & nullius in Bonis to himself. 11 Rep. 87. b. Monopolies, 18 H. 6. 21.

*Trin. 44.
Eliz. 3.

(C) Law of the Foreft.

1. Justices of Foreft shall have Determination of Hart Proclaim'd killed, and not the King's Bench; and therefore the Defendant may plead to the Jurisdiction. Per Fineux Ch. J. Br. Jurisdiction, pl. 55. cites 21 H. 7. 30.
2. The Foreft Law is not the Common Law of the Land, and we are not bound to take Notice of it, but it ought to be pleaded. Trin. 29 Eliz. C. B. 2 Le. 209. Ruffel v. Broker.
3. The Earl of Lancaster, who was Lord of a Foreft, granted to one H. to make a Park within the Foreft; it was adjudged, that if the Grantee inclosed it so flightly that the Deer of the Foreft might get in, it was a Forfeiture of the Grant, and that the Lord might enter and take the Deer. Bridgm. 27. Arg. cited in the Case of the King v. Sir John Byron.

(D) What is a Foreft, and the Antiquity, and Extents thereof.

2. Besides other Prerogatives of the Saxon Kings, they had also a Franchise for Wild Beasts of Chafe, which we commonly call Forefts, being a Precinct of Ground, neither Parcel of the County, nor the Dioces, nor the Kingdom, but rather Appendant thereunto. Bac. of Government 82.
3. Forests will appear by Matter of Record as by Eises of Justices of Forefts, Swanmotes, Officers of Forefts, as Regardors, Agitores, Verderors,
Forefit.

...derors, &c. but the Appellation of it by the Name of a Forefit, in Grants, Offices and Conveyances, is not any Proof that it is a Forefit in Law. 12 Rep. 22. Pach. 5 Jac. in Leicester Forefit's Case.

4. A Forefit may well be in the Hands of a Subject, and shall be Used as a Forefit if the King gives Authority by express words for the Administration of Justice there, and for his Justices to come there; and if such Grantee might have Commiission in such Cases to Use and have Officers of a Forefit, then it shall continue a Forefit in the Hands of a Subject. Otherwife, without such Liberties, it is but a Chace, being in the Hands of a Common Perfon; Per all the Justices and Barons. Cro. J. 155. in the Cafe of Leicester Forefit.——And Popham said, that he had seen such Liberties of a Forefit granted in that manner. Cro. J. 155. Pach. 5 Jac. B. R. ut sup.

5. 16 Car. 1. cap. 16. § 4. Enacts that, the Meets and Bounds of Forests shall extend no further than the same were commonly known or taken in the twentie Year of King James, and all Pretentions, since the said twentie Year, and all other Pretentions, Perambulations and other Acts, by which the Meets or Bounds of the Forests are further extended, shall be void.

6. There are 3 Manner of Forests; 1st. Ancient Forests de temps d'ont, &c. before Charte de Forefta, called Charte Parvo, in respect to Magna Charte which paffed in the fame Year. 2dly. There are New Forests made in the Reigns of King Henry 2. Richard 1. King John, &c. A third Sort of Forests, are such as were partly Ancient and partly New; in regard the Ancient Bounds of the Forests were enlarged, and Ground taken in to the Forest that did not ancieatly belong to it. And that is the Reason of the Saving in 9 H. 3. in Charte de Forefta; saying all Commons Acquifed, tho' the Lands of the Owners were defaforefted by the Act; because they had been Afforefted in the Reign of King Hen. 2. or King John, &c. to the Prejudice of the Owners of the Land who had Common there; and were not rightfully within the Forefit, and therefore it was but Reason that, upon the Difenoreftation of tho' Landes, the Owners should enjoy their Cultons; and this is the true Ground of that faying in the Act. But afterwards in the 12 H. 3. and 10 Ed. 1. there were other Perambulations, whereby many Forests were enlarged to the Prejudice of the Subjects. And thereupon, afterwards, in 21 Ed. 1. there was another Perambulation made, by which the King conceived himself much prejudiced in Abridging the Bounds of the Forefit, and exempting the Lands out of the Forefit, which in Truth were part of it. Upon these Grievances on both Sides, both to the King and Subject, occafioned by these Perambulations made after 9 H. 3. the King and his Subjects concerned therein came to an Accord and Agreement; and thereupon Anno 33 & 34 Ed. 1. Ordinatio Forefita was made; whereby it is declared, by Affent of both Parties, that the De-afforeftations made upon those Perambulations (be they Right or Wrong) should be quite discharged of the Forefit: But then the Owners of the Ground were not to have Common there. But fuch, who were Content to continue their Lands within the Forefit, were to have Common as they used formerly to have it. Per Hale Ch. B. Hard. 438. Hill. 18 & 19 Car. 2. in the Exchequer, in Cafe of the King v. Inhabitants of Rodley in Gloucestershire.

(E) What may be claimed by a Subject in Forefits.

1. 9 H. 3. Stat. 2. cap. 4. Enacts, that Freeholders, who have their Woods in Forests, shall have them as at the Coronation of King H. 2. and those that make Impresture, &c. in them without Licence shall answer for it.

Where Lands were not only and of Right ofbesieed at first, and that they had Common by Prescription in the Forrest, it was not the Intent of the Ordinatory Forester to toll such a Common; but if they were well afforced at first, and afterwards disafforested and by some Perambulation, then the Common is lost, if the Owner will have the Land remain disafforested; and this is the true Meaning and Interpretation, and Intent of this Act of Ordinatory Forester. Hard. 455. Hill. 18. & 19 Car. 2. In the Exchequer, in Case of the King v. Inhabitants of Rodley in Gloucestershire.

This Act of Ordinatory Forester makes a Temporary Suspension of the Common Laws, viz. as long as the Owners of the Lands would be out of the Forests, et non Ultra. Hard. 439. in Case of the King v. Inhabitants of Rodley in Gloucestershire.

4. 34 E. I. Stat. 5. cap. 6. Enacts, that they who had Common of Pariure, and were restrained of it by the Perambulation, shall have their Common as before.


6. One Claimed before the Justices in Eyre, to be quit of Pannage in the Kings Forrest; and also claimed in the same Forrest, Pannage for the Hogs of his Tenants agitated; but they would not meddle with it, because this belonged to the Justices of the Forrest. Keilw. 150. b. in In. 2. 3.

A being field of Hartfield Chase granted and fold to E. and his Heirs Still the Forest and Seaing, and to grow upon a Part thereof, and excepted the Soil; and further, that he might incline every Year 16 Acres thereof, and hold it in feality, for the Prevarication of the Spring, according to the Statutes of the Realm; and this Grant was confirmed by a private Act of Parliament, and that the Granter might hold it in several, without Suit of the King’s Officers, with a Sale of the Right of all Strangers; and a Commoner put in his Bosom, to take his Common in one Parcel of that which was included, against whom the Grantee brought an Action of Trespass; and in this the only Question was, if the Grantee of the Trees, which had no other Interest in the Soil might include against a Commoner by this Statute. It was agreed by Coke Ch. 1. and Poller, that this Statute was repealed by the Statute of 53 H. 8. for this is in the Negative, and this is the Repeal of a Former Statute, but if the Act had been in the Affirmative, otherwise it should be, and it was also agreed, that this was not within the Statute of 53 H. 8. for that appellation of what Act the Wood shall be incline, and by this Reprieve is given to the Commoner; but here it is not averred by pleading, of what Age this Wood was which was inclined; and therefore it was adjudged that the Action is not maintainable against the Commoner. 2 Brownl. 289. 290. Chalk v. Peter.—8 Rep. 176. b. Sir Francis Barrington’s Case, C. — Godb. 167. 5. c. 25. per Coke Ch. 1. acc. to this Statute, that no Granter or grantee, by any Grant or by Trespass, in which another hath Common, for it doth not extend only to such Woods which a Common Person hath in the King’s Forrest, or Common Person’s, and that it might be inclined for the Space of 3 Years after the cutting of the Wood therein before the making of this Statute, and this was no Wood in which a Stranger had Common, as it appears by the Preamble of the said Statute; and then after the said Statute it is said, such Woods may be inclined, per Coke Ch. J. 2 Brownl. 327. Patch. 8. Chalk v. Peter.

8. Prescription may be for Warrens in Forests, tho’ they were in the King’s Hands, but without a Special Prescription it cannot be; and in such Case of Prescription for Warren, if it was by Grant, or he can prove it by Prescription, a Non Ufer is no Caufe of Forfeiture thereof. Cres. J. 135. Patch. 5. Jac. B. R. Leicester Forester’s Cafe. —— Jenk. 316. pl. 6.

9. If the King grant a Forrest, the Granter shall have but a Chace, unless Power be granted to hold a Swanminote Court, Justice Seat, Court of Attachment, &c. But if this be granted a Subject may have a Forrest and this has been twice adjudged; Per Coke. Roll. R. 195. Patch. 13 Jac. B. R. the King v. Briggs.

But what is Forrest in the Hands of the King when granted to a Subject is a Chace. Palm. 93. Bridge’s Cafe. —— Roll. R. 112. S. C. —— By special Words of Grant, as to have Forreist, to constitute Justices and Veredors, a Subject may have Forrest, but not by general Words, and so Popham lays, it was twice adjudged. Palm. 94. 55. Eliis. B. R. Jennings v. Rock. —— Roll. R. 194. —— 12 Rep. 22. per Popham Ch. J. that the Subject may have a Forrest. But this is intended, if he hath Power to have Swanminotes and Justices in Eyre, and Foresters appoynt to his Forrest. Patch. 5 Jac. B. R. Anon.
A Subject may have a Forest, but cannot have a Justice Seat, but he may have a Swanmark Court and the other Courts, and a Commission to execute them.  Mich. 3 Car. C. B. Her. 59. Common's Cafe.

An Allowance in Eyre bindeth the King, the Subject being in Possession, 'till removed by another Judgment; but B. R. hath no Jurisdiction in Forest Cafes; and therefore an Allowance there of Liberties within the Forest, will not put the King out of Possession. 8 Car. Jo. 267. Cafe. of the Hundred of Wargrave.

12. A Purchaser of a Manor in a Forest, liable to repair a Bridge there, may be compelled to repair the same, and he must seek his Remedy at Law for Contribution from the others, who have any Part of the Land; and the Court (of Eyre) is not to let the Bridge lie in Decay, 'till it be determined between the Parties, whether they ought to contribute or no. 8 Car. Jo. 273. Cafe. of Lodden Bridge.

13. A failure of the Manor of W. claimed to Hunt Foxes, Hares and Wild Cats therein, under a Charter granted by R. I. to the Abbot of Waltham Holy Crofs, and thowed the Dissolution of the Abbey, and a new Grant of the said Manor to one N. with the Words of to, tantas, talia, &c. Liberties &c. quoted, &c. and fo deduced the Title down to himself, by several meane Conveyances. It was held by Noy, and so adjudged, that the Words of to, tantas, talia, &c. are no Warrant for him; for the Abbot had 26 Manors, and yet there was but one Hunter; but thefe Grants be allowed, Hunters will be multiplied, and fo the Forest spoiled; and fo this Point was adjudged in the Forest of Waltham against Sir Thomas Fantham, who claimed the like Privilege within his Manor of B., which was the Abbots of Barkings, who had the like Charter, and Sir Thomas the like Words as here. 8 Car. Jo. 286. in Sir Edmund Sawyer's Cafe.

14. A claimed in like manner as aforesaid, to be free from the Repair of Bridges, but 'twas not allowed; For those Bridges, which by Law he ought to Repair, no Grant can discharge; for the Subject hath an Interest therein; and for those Bridges, which are not known by whom they ought to be amended, the Statute of 22 H. 8. 5. hath made all Men chargable. Ibid.

15. He made also a like Claim to be quit from Carriages, & a Navigio & Domorun Regalum Edificatione, &c. but they are all of the Nature of Purveyance, and were refurned by 27 H. 8. 25. and so not restored by Grant of to, tantas & talia, &c. Ibid.

16. So he likewise Claimed to inclose his Woods of W. with great Ditches and Hedges as be pleasing; but 'twas not allowed, because this was but Matter of Election, which the Abbots might chufe, or not; and Matters of Election are not restored, as aforesaid; and if the Abbots himfelf were living, he could not inclose it by Virtue of that Licence, which is 500 Years since; because it can't be known whether that Power was not once Executed, and if it was, and after thrown out again, it cannot be included again; for then one Power should be executed divers times. Ibid.

17. A Prefcription to be out of the Forest is not good, without shewing an Allowance in Eyre; by Noy, and so adjudged. Ibid. 290. Cafe. of the Tenants of the Manor of Bray.

18. So, no Liberty within a Forest, in Diffrution of the Vert or Game, is good by Prescription, without an Allowance in Eyre, except only in Cafe of Common; by Noy. Ibid. 291.

19. Common of Pature for Sheep, is good only in two CAFes within a Forest; the first is, when an Officer of the Forest hath Land belonging to his Office, and claims Common for Sheep belonging to that Land; and this was allowed in one Stantham's Cafe, in the Time of R. 2. and adjudged for him in Eyre, and in Chancery, and after in Parliament; and such another was for Claringdon Forest in Wilshire. The other Cafe is for Pature of Sheep, which a Man may prescribe for in his own open Waite Grounds, but not in his Coverts; by Noy. Ibid. 292.
20. One claimed all Windsfalls and Profits whatsoever within his Ballywick; but held by Noy, that it was not; good; for he cannot have the Profits of every Man's Land within that Ballywick. 8 Car. Jo. 294. Sir Charles Howard's Case.

21. So the Claim of Office of Keeper, or Bailiff of several Walks, unum vadis & Feedis, &c. is not good, by Mr Noy; because no Fee certain is claimed; and their Words unum vadis & Feedis, &c. debit: & confer. & tanta, &c. The Plaintiff, &c. has 27. Waterman. Ifluc Adjudged because 21. And A has for it, but is 2

22. So a Claim of as much Forestwood as he should think fit to be burned in New Lodge is void, by Noy; because otherwise he might take as much Wood as he thought fit, and fell it when done. But if the Claim had been as much as he should burn in New Lodge, it had been good. Ibid. 23. The Inhabitants of Hales claimed Common of Pashure in the Forest; 'tis not good, by Noy; for Inhabitants cannot claim any Profit appren
dre, as Ewartord's Case, Co. 6. but an Easement they may, as a Way to Church. Ibid. 297. 24. A Claim for Common for Cattle, without saying Levant and Con
cumb upon Land in certain, is not allowable. Ibid. 298.

25. In Ejection, a special Verdict was found, upon which the Quest
tion was, whether or no a Prescription for Common or Pashure for all Cattle and Swine, in a Forest at all times of the Year, were a good Prescription, or not. It was argued pro Quer. that the Prescription was naught, which was agreed by the Court, and the Counsel of the other Side; but for not finding expressly that it was a Forest, Judgment was given pro De

26. In Replication of a Heifer, the Defendant avowed Damage Peasant; the Plaintiff, in Bar, preferred for Common omni anno tempore annis; Issue upon the Prescription, and Verdict found the Issue for the Plaintiff; but further found, that the Land, and Place where, is infra Regardam Forestae de Whistlesswood in Com. Northampton; upon which Judgment was given for the Plaintiff that the Prescription is good, notwithstanding that the Place where is a Forest, and that in the Prescription fence-month is not excepted, according to Trig and Turner's Case. 3 Lev. 127. Trin. 35 Car. 2. C. B. Brabrooke v. Carter.

Within a Free Clois, in the Hands of the King, the Owner of the Soil, by Pre
scription, may, have Common for his Sheep and Warren for Goats by Grant or Prescription. But he cannot Surchage with more than has been used Time out of Mind, unless, &c. nor make Burroughs in other Places than hath been used Time out of Mind, unless he has Warren by Grant, and then may He give it according to his Grant. But he cannot ereft a New Warren without Charter. 12 Re—p. 22. And he that has such a War
nen may lawfully Build upon his Inheritance, within his Warren, a convenient Lodge for Preservation of his Game. 12 Rep. 22. Patch. 5 Jac. B. R. per all the Justices and Barons in Leicester Forest's Case. 4 Inf. 298. Cro. J. 155.

Common for Sheep cannot be in a Forest, per Dodridge J. to which Coke Ch. J. agreed, unless it be by Prescription. 5 Bal. 213. Trin. 14 Jac. in Webb's Calc. —And Coke said that Chara de Foreste is but in Affirmance of the Common Law. Ibid. ——Roll. R. 411. S. C.


28. If there be Park or Forest where the Lord has the Game, another Man may Prescribe to have the Herbage; For the Lord has considerable Profits of the Ground by his Deer, which is so considerable, that if the Franchise comes to be determined, it has been held, that such a Prescription for Herbage being but Surplufage after the Feeding of the Deer, and sub
dordinate to it, shall rather be left, than carry the whole Profit of the Feeding and exclude the Owner. And it has been the Cafe of many Parkes, that have been disparked by the King, after the Herbage granted away, per Sir Francis North, Arg. Vent. 391. in Cafe of Potter v. North. (F) What
(F) What may be done by a subject therein.

1. By 9 H. 3. Stat. 2. cap. 11. A Nobleman passing by the Forest, is at law ordered to kill a Deer or two, by View of, or a Horn being blown for the Forester.

2. 9 H. 3. Stat. 2. cap. 12. Enacts, that Every Freeman shall make in his own Wood, Land, or Water, within the Forest, Mills, Springs, Pools, Marshes, Dikes or Arable Ground, without the Cover, so as not to annoy his Neighbour.


4. 1 E. 3 Stat. 2. cap. 2. Enacts, that Every Man, that hath Wood within the Forest, may take Houlabute and Heybate in his Wood.

5. Building a new House in the several Soil or Waste of any Man in a Forest is a Purpurrfe, and an Annoyance to the Forest and Game, and finable or at-terrible for the tolerating or permitting it to stand, at the Direction of the Justice in Eyre, or he may demolish it at Pleasure. D. 240.

b. Trim. 7 Eliz. pl. 45.

6. Erection of a Beacon upon a Man's own Land in a Forest, is a Purpurrfe. D. 240. b. Marg. 45. cites Atkins's Reading upon the Statute of Forests, August 1632. in Lincoln's Inn.

7. So, where a Man devised a sum of Money for erecting of a Caufey in Waltham Forest, and the fame was done accordingly; he was Fined for Purpurrfe. D. 240. b. Marg. ut sup.

8. A Man cannot cut down Wood in his own Land in a Forest, without View of the Forester. Co. Litt. 115. a. (o) cites Statute 34. E. 1. But he says, that, inasmuch as this Act is in Affumance of the Common Law, a Man may preferne to cut down his woods without such View, and says that it was fo adjudged, 16. Eliz. in the Exchequer. as Popham Ch. J. reported to him.

9. In such Forests or Chafes being in the Hands of a common Person, that are Owners of Woods, may cut them down at their Pleasure without Licence or View of the Foresters, but yet fo, as to leave sufficient Vert for the Deer there. Cro. J. 155. Pack. 5. Jac. B. R. Leicester Forester's Cafe——So tho' it be in the Hands of the King. ibid——Jenk. 316. pl. 6. there, tho' the Chafes are in the Hands of the King, may cut the Wood and Timber growing on their Lands, without View or Licence. But if the Owner leaves not sufficient Covert to maintain the King's Game, he shall be punished at the Suit of the King. P. 5 Jac.

10. Parks laid open to Forefts for 40 Years, may yet be inclosed again, Jenk. 316. and they may kill Deer that come therein. Cro. J. 156. Pack. 5 Jac. pl. 6.

B. R. Leicester Forester's Cafe.

11. Inclosures cannot be in Forests or Chafes, unless with low Hedges, Jenk 316. which may not disturb the Game; and tho' Inclosures have been continued Pl. 6. for 40 Years together, if they were no ancients, they may well be destroyed and laid open. Cro. J. 156. Pack. 5. Jac. B. R. Leicester Forester's Cafe.

12. If the King grants away part of his Demesne Lands, even Omnibus Boscis tere growing, for a valuable Consideration; the King's Intent was not to disforet this, but only to pass the Interest in the Timber, as well as the Soil; but the Timber cannot be fell'd by Virtue of this Grant. And if the Parentee will sell any of it, he must take the same Way as others do in like Cafes. Jo. 268. 8 Car. in Itin. Windfor. Whitlock's Cafe.

(G) Grant
(G) Grant of a Forest to a Subject. Good. And how considered.

1. The King grants the Forest of W. and S. in the County of S. to A. for 60 Years; A. covenants with the King to maintain 100 Deer there, during the said Term, and at the End thereof, to leave the Forest so stocked to the King; the King grants the Fee of the Forest to B. — B. during the Term cannot kill, nor give a Warrant for any Deer there; By all the Judges of England. For the Forest was granted for 60 Years, and the Game palled by the Grant of the Forest, and the said Covenant does not control the Grant: and if B. might have iuch Liberty, he might disable A. from performing his Said Covenant. Jenk 218. pl. 63.

2. The Honour of Pickering has a Forest appendent to it. A Patent granted by the King, of the Honour cam Pertinentius, palleth the Forest; and the Grant of the Forest palleth the Game. Jenk. 218. pl. 63.

3. A common Person may have Forest by special Words of Grant. As to have Forest, and to constitute Justices and Verderors; but not by General Grant of Forests, per Popham J. and he said it had been so adjudged. Palm. 94. 37 Eliz. B. R. in Cafe of Jennings v. Rock.

(H) Of the Officers of the Forest.

1. 9 H. 3. Stat. 2. cap. 5. Enacts, that Rangers of the Forest shall exercise their Offices, as used at the Coronation of H. 2. and not otherwise.


3. 34 E. I. Stat. 5. cap. 2. Enacts, that On the Death or Absence of any Forester, &c. another shall be put in his Place.

4. 34 E. 1 Stat. 5. cap. 3. Enacts, that No Forester, &c. shall be put upon any Affis, Jury or Inquest, taken out of the Forest.

5. 34 E. 1. Stat. 5. cap. 4. Enacts, that If Officers of the Forest surcharge the Forest, they shall be imprisoned.

6. 25 E. 3. Stat. 5. cap. 7. Enacts, that No Forester, &c. shall gather Virtualls or other Thing by Colour of his Office, but that which is due of old Right.

7. 32 H. 2. 35. Empowers Justices of the King's Forests, by writing under the Seal of their Office, to make Deputies.

8. If one of the Officers of the Forest put one Seal to the Rolls by Assent of all the Verderors Regardors, &c. it is good. 8 Cas. 268. Ld Lovelace's Cafe.

9. If Officers of the Forest break their Trust, it is a Forefeiture of their Places. per Noy. 8 Cas. 272. in Ld Lovelace's Cafe.

10. Office of Aijitors, is only to prevent Trampasles done by Cattle; and any other Prefentment by them, not belonging to their Office, is void; and so it is of other Officers, &c. per Noy. Ibid. 280.

11. If a Man claim the Office of Keeper, &c. and no Fee for the Execution thereof; this is but a Burthen, and therefore he is removable at Pleasure: By Noy. Ibid. 292.

12. By Acceptance of the Office of Verderor, all other Offices, as Keeper and Bailiff of several Walks, and of the Game, and Riding Foresters, are determined, because subordinate thereto; and the Objection, that a Verderor was by Election, which might be against a Man's Will, and therefore should not determine other Offices by Letters Patents, was disallow'd, because of the Acceptance of what he might have wove. 8 Cas. 1. Jo. 295. in Sir Cha. Howard's Cafe.
13. The Men may cut their Woods for necessary Boots, by View of Foresters or Verderors, yet at the next Court of Attachment, the Officers ought to prefix what was felled, and that it was by View, so as it may appear on Record. Per Noy. Ibid 295.

(II. 2) How far the Beasts are privileged when *out of the Forest, Park, or Chafe.

1. If a Man has Land adjoining to a Chafe, and Savages enter into his Land, he may chafe them out with small Dogs, but not with Greyhounds. Br. Forest, pl. 1. cites 43. E. 3. 8.

2. And by some, if the Dogs follow them into the Chafe, and the Owner recall them, and yet they kill the Savages, Trespass does not lie. Quere. Br. Forest. pl. 1. cites 43 E. 3. 8.

3. Forester alleges Custom, that when the Savages went out of the Forest, that he might enter into the (Land) of another, and rockase them; but per Newton, it is not a lawful Custom. For they are Ferae Naturae, and when they are out of the Forest, none has Property in them. Br. Customs. pl. 64. cites 7 H. 6. 36.

(I) Disafforested, and the Effects thereof.

1. 9 H. 3. Stat. 2. cap. 1. Enacts, that all Forests, taken out of the Subject's Lands, shall be disafforested, saving Common of Herbage, and other Things within the Forest, to such as were accustomed to enjoy them.

2. 33 Ed. 1. Stat. 5. They, whose Woods are disafforested, shall not have Common within the Forest.

3. If one has Common in a Forest, and by Letters Patents of the King, this Land is disafforested, yet he shall have Common, per Popham Ch. J. Quod siuit concebile by all the Justices. Palm. 94. 37 Eliz. B. R. Jennings v. Rock.

4. 16 Car. 1. cap. 16. § 8 Enacts, that all Grounds de-afforested since the twentieth Year of King James shall be left out of the Meets and Bounds of the Forests, which are to be enquired of, and shall be de-afforested.

5. Upon a Bill in Equity concerning Common, claimed by the Inhabitants in the Forest of Sherwood in certain Lands there lately enclosed by the King and his Patentees, it being a Common by Prescripton, and the Lands of the Inhabitants there, being now disafforested, whether this Common be destroyed by the Dis-afforestation upon the Statutes of Charta de Foresta, Ordinatio Forestarum & 34 Ed. 1. was the Quetion? And by the Opinion of Baron Raynesford, and Turner, the Common is gone by the express Words of the Statute of Ordinatio Forestarum, and of 34 Ed. 1. And in an Ear. 8 Ed. 3. a Judgment was cited in Point in a like Case, in this very Forest, of a Common by Prescripton. But the Ch. Baron doubted: For if the Lands were not duly afforested at first, and that they

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had Common by Prescription in the Forest it was not the Intent of the Ordinatio Forestae to toll such a Common. But if they were well adforested at first, and afterwards disafforested unduly by some Perambulation, then the Common is lost, if the Owner will have the Land remain disafforested; and this is the true Meaning, and Interpretation, and Intent of this Act of Ordinatio Forestae, and this being matter of Fact; and it not appearing of what Nature these Lands are, that are now disafforested, nor whether there be a Common by Prescription in the Cafe; this Cafe is not yet ripe for a Decree, which must be made one Way or other, as the matter of Fact shall guide them; and this was the first Ground of his Doubt.

2d This Act of Ordinatio Forestae makes but a temporary Suspension of the Common Law, viz. so long as the Owners of the Lands would be out of the Forest, & non ultra: So that there cannot be, in such a Cafe, an absolute Decree, or a perpetual Injunction. His 3d Reason was, because now by the Statute 17 Car. 1. 16. the Lands cannot be disafforested again; and therefore it would be hard to take away Common, where it is due of Right. For these Reasons he would not deliver any positive Opinion in the Cafe, which he said was a Cafe of great Importance; and deserved another Kind of Argument than upon an ordinary Demurrer in Law; which, yet, the Court never refuseth to hear upon the least Difficulty, (tho' the Consequence be many Times of small Concernment,) that this Case deserved more Consideration than to be determined upon a sudden Opinion upon the Hearing. But because the Chancellor of the Escheuer, and the other Barons were against him, the Decree passed pro Rege. Hard. 437, 438, 439. Hill. 18 & 19 Car. 2. in Scacce. the King v. Inhabitants of Rodly in Gloucestershire.

6. A Manor may be within the Metes and Bounds of a Forest, and yet not within the Regard. As if the Manor were disafforested by Charta Forestae, because it was a Subject's Manor, and not the King's; yet it remains within the Metes and Bounds of the said Forest, but not within the Regard; For now by the disafforested, 'tis made Parke, and not subject to the Regards and Laws of the Forest, as to the Owner of the Manor. See Charta Forestae 1. and yet, notwithstanding this Statute, if the King had granted this Manor to be free of the Regards, 'tis still within the Metes and Bounds of the said Forest. Arg. Bridgm. 25. in Cafe of the King v. Biron.

(K) Offences in Forests, other than killing and hunting Deer. How punished.

1. A was amerced at a Justice-Seat in the Forest for putting in his Sheep to depasture there, and being questioned for it, he justified; for which Contempt he was fined 20 Marks, and for refusing to pay it, he was committed to Prison, and being brought up by Hab. Corp. the Court refused to bail him, and thought he ought to be penitent for the justifying. 3 Bys. 213. Trin. 14. Jac. Webb's Cafe.

2. If a Man be presented for any Offence in a Forest, as Waife, &c. and puts in Claim to be quit of Waife, &c. he shall be fined for the present; and when the Claim is allowed, that discharge the Fine. 8 Car. Jo. 267.

3. A Man may fell by the View of the Foresters or Verderors for Fire-Wood and other necessary Boots, but not any Thing to fell but by Writ of Ad quod damnum, per Noy 8 Car. Jo. 268. Whitlock's Cafe.

4. If a Man make an Affair, either by his stubbing up Wood and plowing it, or plowing up Meadow or Pasture, the Party shall be fined, and the Value of the Corn towne shall be answered to the King. 8 Car. Jo. 269.

Whitlock's Cafe.
5. It was very strongly held (contrary to Ld Coke's Opinion in Litt., 115, a. b.) that no Prescription can be to fall and fill Wood without View of the Foresters, except with the Help of an Allowance; per Ld Richardson and Noy. 5 Car. Jo. 276 & 271. Ld Lovelace's Cafe.

It was argued by Noy, that a Prescription to fall Wood, per Villum, is not good, but it must be per Villam & Allocutam; for if it be per Villam only, then if the Forester, being required, refuse to come, it may be cut without View; For which he cited a Cafe in the Dutches, of one Litster. But in Sir Thomas Palmer's Cafe 5 Rep. 25. a. it is held, there is no Diversity between per Villum, and per Villum & Allocutam; for in both Cases, upon Request made, and Refusal, the Party may take Wood without Prescription or Delivery. 8 Car. Jo. 275, 276. Cafe of the Inhabitants of Egham—A Cafe was also cited by Noy as resolved 6 Inc. that in a Cafe one may preferibe to fall, &c. because not within the Statutes of Charis de Foreles; from whence he strongly inferred, that it could not be prescribed for in a Forester. Ibid. It was agreed by Noy, that a Prescription to cut down Wood in a Cafe without View, is good. Jo. 589. in Cafe of the Tenants of the Manor of Bray.

6. One B. was fined 4l. for making a Ferry where there was none before; For by this means the Forester may be abused by stealing Deer, and carrying them over the Water. 8 Car. Jo. 274. Blagrave's Cafe. 7. One was indicted for threatening Words to hinder a Complaint to be made against him for cutting Wood, and fined 10l. and committed till he found Suresies for his good Behaviour. 8 Car. Jo. 274. Street's Cafe.

8. Divers were fined for concealing the Killing Deer. Ibid. 275.

9. One was fined 50s. for carrying a Gun with Intent to kill Deer. Ibid. 10. It was held by Mr. Noy, that in H. the 2d's Time, the Inhabitants in the Forest were fined 105 Marks for burning Heath. 8 Car. Jo. 276. In Cafe of the Inhabitants of Egham.

11. It was pretended that one had erected a Brick Wall, and thereby threatened the Heritage. Mr. Noy held it could not be arrested without an Inquiry, per Miniftros Forester, it fit competens Palligium. 8 Car. Jo. 277. Brown's Cafe.

12. The Foresters may not take any Thing for their View, per Noy. 8 Car. 1. Jo. 277. in Brown's Cafe.

13. If the four Men and Tree of any Town make Default upon the first sitting of the Justice Seat, the whole Vill shall be anerced; but after Appearance, they only who make Default. Per Noy. Ibid. 279.

14. One, for drawing the Prefenmats of the Agitors, whereby he made them present what did not belong to their Charge, was fined 10l. Ibid. 280.

15. If there be a Warrant to cut Wood, yet they must cut fair, and so, that the Remainder may not thereby come to Destruction, per Noy. Ibid. 280.

16. Those who claim Common of Paffure in the Forest, if they use Staff-herding, i.e. to have one follow their Cattle, &c. their Common may be seised till they pay a Fine for the Abufe, per Noy. Ibid. 282.

17. Upon a Disallowance of a Claim of Fee-Trees, the Spoils are to be answered to the King; and the Horses and Carts which carried them away, are to be enquired of; for they are all forfeited, by Ld Richardson. Jo. 282. in Reton's Cafe.

18. For erecting a Windmill on his own Ground within the Forest a Man was fined 5l. Because it frightened the Deer, and drew Company to the Disquieter of the Game. 8 Car. Jo. 293. Sir Sampfon Darrel's Cafe.

19. Where Treafurers in a Forester, Chafe, Park, Warren or inclosed Ground, wherein Deer are kept, will not render themselves to the Keepers upon a Hne and Cry to stand to the King's Peace; but fly or defend themselves, in such Cales they may be lawfully slain. Hawk. Pl. C. cap. 38. pl. 3. 28. S. 15. cites as in the Marg.

20. As to Imprisonments for Offences in the Forest, which are not within * Regifter the Benefit of a * Replication, they must be for Offences in Forests strictly such, and not in * Parks or Chafes, but 'tis not material whether the Forest be the King's, or a Subject's. 2 Hawk. Pl. C. Abr. cap. 15. S. 20. the Book at large. S. 38. cites as in the Marg.

--- 11 Inf. 2. a 253 a.

21. Persons...
21. Persons indicted or taken with the Manner, being imprisoned, have their Election, either to pursue the Remedy given by the Statute 1 E. 3 Stat. 1. cap. 8. or to be bailed by the Judges of Westminster Hall on a Habees Corpus. But if a Perfon be imprisoned for an Offence relating to the Forest without having been indicted for it, or taken with the Manner, he may have an Action of false Imprisonment, &c. 2 Hawk. Pl. C. Abr. cap. 15. S. 22. the Book at large. S. 39. cites as in the Marg.

See (K.)

(K. 2) Offences in hunting and in killing Deer. Punished how; and Pleadings.

1. The Court of B. R. were of Opinion, that upon a Convičtion of hunting on the Stat. W. 1. 20. The Fine and Imprisonment is for the King, and not the Party; and the Defendant shall not be discharged out of Prifon, but by the King’s Warrant directed to the fame Justices. Trin. 15 H. 7. Keilw. 39. pl. 5.

2. Indictment of killing of a Hart proclaimed, found before Justices of Peace; there it is said, that the Place ought to be shown where the Hart proclaimed, and where it was killed; For if it was killed out of the Forest, it is lawful for every one to kill him, quod non negatur. And per Fineux Ch. J. he may plead this Matter to the Jurisdiction of the Court; For the Justices of the Forest ought to determine it. Br. Indictments pl. 8. cites 21 H. 7. 31.

3. A Man having a Chase within a Forest, is yet liable for hunting or killing any Beast of the Forest; so if one have a Chase adjoining to the Forest, and denies the Keepers of the Forest to fetch back any Stag, &c. he is liable. 8 Car. J6. 278. the Cafe of the Manor of Windleham.

4. Several were committed on the Warrant of the Chief Justice in Eyre of the Forest, directed to a Meffenger; and on their Removal by Hab. Corp. cum Caufa into B. R. it was argued, that by Charta de Foreste & 1 E. 3. c. 8. & 7 R. 2. c. 4. None shall be imprisoned before Prefentment at the Swansea, and the C. 7 in Eyre is within those Statutes, and to retrained, and the Register de B. 80. and F. N. B. 67. (C) was cited to the fame Purpofe. Holt Ch. J. said the Statutes do not by express Words exclude the Ch. J. in Eyre from committing, till Prefentment made; but yet he is within the general Words of them; and by Eyres J. the C. J. in Eyre cannot commit, but only where the Party is taken in the Manner, viz. with bloody Hands, or with Venifon in the Forest, or in the Act of cutting down Trees, &c. But Timber found in a Yard, which was cut in the Forest, is not in the Manner; to which Dolben J. and the reft agreed. Pemberton Serjeant, said, altho’ one be taken in the Manner, yet the C. J. in Eyre can’t commit; for he can ground his Warrant on nothing but a Prefentment; but Holt thought he might, on Oath made that the Party was taken in the Manner. Per rot. Cur. the Warrant was illegal, and the Prisoners discharged. Mich. 1 W. M. M. B. R. Comb. 159. Lord Lovelace’s Cafe.

was taken in the very Fact, or ready to do it, or with his Bow bent, or ready to flip his Dogs, or Hands bloody; but that finding Timber of the Forest in a Man’s Poffeffion, viz. in his Yard, was not a taking in the Manner within the Statute, tho’ of this the Ch. J. doubted; but all agreed, that the taking upon a fresh Partit, was a taking in the Manner.

(L) Pleadings
(L) Pleadings and Proceedings.

1. 9 H. 3. Stat. 2. cap. 2. Enacts that Men that dwell out of the Forest, shall not come before Justices of the Forest by common Summons, unless they be implicated there, or be Squires for others that are attacked for the Forest.

2. 9 H. 3. Stat. 2. cap. 8. Directs when Suspects shall be kept, and who shall repair to them.


4. 34 E. 1. Stat. 5. cap. 1. Directs how Offences done in Forests shall be projected.

5. 34 E. 1. Stat. 5. cap. 6. The Justice of the Forest or his Lieutenant, in the Presence or by Affidavit of the Treasurer, shall take Fines and Amortizations of them indicted for Trepassing in Forests, and shall not worry for the Eyre.

6. 7 R. 2. 3. Enacts that a Jury, for the Trial of a Trepass within a Forest, shall give their Verdict where they received their Charge.

7. 7 R. 2. 4. Enacts that none shall be taken or imprisoned by any Officer of the Forest, without Indictment, or being joined with the Mainour, or trespassing in the Forest.

8. Trepass of a Close broken, the Defendant said that the Place where &c. lies adjoining to the Forest of W., of which he is Forestier of Fee; and he and his Ancestors Time out of Mind, have used in the same Place where to chase the Swallows of the Forest with his Dogs, and to re-chace them to the Forest; and that 4 Deer came out of the Forest there, wherefore he re-chaced them &c. to the Forest &c. and a good Prescription, per Mondon, Prowicke, Vavilor & Brian; for it may have a lawful Commencement. Br. Prefcription. pl. 107. cites 13 H. 7. 16.

9. Indictment for killing of a Hart proclaimed, found before the Justices of the Peace, the Indictment was challenged, because it was not begun in the Indictment, in what Place the proclaiming was made, nor in what Place the Hart was killed; for if it was killed out of the Bounds of the Forest, it was lawful for him to kill it. Per Fineux J. he may plead to the Jurisdiction of the Court, because the Justices of the Forest ought to determine this Matter, &c. Br. Forrest. pl. 9. cites 21 H. 7. 30.

10. In Eijselment a special Verdict was found, upon which the Question was, whether or no a Prescription for Common of Pasture for all Cattle and Swine in a Forest at all Times of the Year, were a good Prescription, or not? It was objected, that it does not appear that it is a Forest; for it does appear to have been dilapidated; and a few Words in a Special Verdict found afterwards, shall not by Inference and Construction make it a Forest again. And it must have been a Forest Temps d'ont, &c. or the Prescription cannot come here in Question. It was argued pro Quer', that the Prescription was naught, which was agreed to by the Court and the Council of the other Side; but for not finding expressly that it was a Forest; Judgment was given pro Delendence. Hard. 87. Mich. 1656. in the Exchequer. Woolridge v. Dovey.

11. The Proces's in Eyre is de Hora in Horam; and the Party may plead presently: and the Prelament of all the Officers is sufficient Evidence. 8 Car. 268. Whitlock's Cafe.

12. Warrant from the King to sell for Repairs, was held to be not legal, for the Decay ought first to have been viewed, and an Estimate thereof made; and then thereupon the Warrant to have gone. 8 Car. 269. Sir Cha. Howard's Cafe.

13. One
12. One being presented for felling Trees in 3 Acres of his Woods, shewed the General Pardon; Mr. Noy, on reading it, said that Trespafl'es were there pardoned, but not Vafia, and therefore he was fined 40 s. Jo. 279. Sir W. Tichborn's Cafe.

14. Per Cur, Certiorari may be granted out of this Court to the Justices in Eyre; but they would not grant it in this Cafe, which was to remove a Record before them, concerning Pickering Forest, for cutting Wood there, because the Matter is only a Prescrip&ion of a Thing, and enquireable and punishable by the Regarders there; For by their Law, whoever is Owner there, can't cut his Wood without leave of the King. And to the Intent that such Offences against Forest Law should not go unpunished, they resolved that they would not grant a Certiorari upon Presentment till Conviction there; but they further declared for Law, that no Presentment nor Conviction upon it before Justices in Eyre, concerning Matters of the Forest, shall conclude the Right of the Party; but that he may, notwithstanding this, have his Action at Common Law for the Trespafl's, or for the Recovery of his Right. Sid. 296. Trin. 18 Car. 2. B. R. Duke of Norfolk v. Duke of Newcastle.

Forestellars, &c.

(A) What was a Forestalling, Punishable at Common Law.

Fitzh. Aff. 354. S. C. Br. Indict-ment. pl. 40. S. C. omits the Words (Non allocatur)—Lord Coke cites S. C. and says, that hereby it appears, that an Attempt by Words, to enhance the Price of Merchandizes, was punishable by Law, and did found in Forestal-ment. 3 Inf. 156.

1. A Lombard was indicted for attempting, by Words, to enhance the Prices of Commodities; and it was objected, that this did not found in Forestalment, sed non allocatur. 43 Aff. 38.

* 43 Aff. 38.
3 Inf. 195.
1 Crom. So.
2 + Crom.
80. b.
3 Inf. 156.
H. P. C. 152.

2. Allendeavors whatsoever to enhance the common Price of any Merchandize, and all kinds of Fraistics which have apparent Tendency thereto, whether by spreading* false Rumours, or by buying Things in a Market before the accustomed Hour, or by buying and selling again the same thing in the same Market, or by any other such like Devices, are highly criminal at Common Law, and all such Offences ancienly came under the general Notion of Forestalling, which included all kinds of Offences of this Na-ture. 1 Hawk. Pl. C. 234. cap. 80. S. 1. cites as in the Marg.

3. But any Merchant may lawfully bring Vistuals, or any other Mer- chandize, into the Realm in Grofs, and sell them in Grofs; But no one can lawfully buy within the Realm, any Merchandize in Grofs, and sell it in Grofs again. 1 Hawk. Pl. C. Abr. 269. cap. 80. S. 1. cites as in the Marg.

4. Also it is an Offence at Common Law, for a Man to infrag's a whole Commodity, with an Intent to sell it again at an unreasonable Price, whether he sell any part of it or not; And even the buying Corn in the Sbeaf, is an Offence at Common Law. 1 Hawk. Pl. C. 4. cites 3 Inf. 197. H. P. C. 152.

(B) What
(B) What is Forefalling; And who a Forecaster, &c.

by Statute.

5 & 6 Ed. 

ENACTS, that if any Person shall buy, or cause to be bought, any Merchandize, * Virtual, or other Thing, coming by Land or Water towards any Market or Fair, to be sold in the same; or coming towards any City or Port from beyond Sea to be sold, or make any Bargain, Contract, or Promise, for the buying or buying of the same, before it shall be in the Market, Fair, City, or Port, ready to be sold, or shall make any Motion by Word, Letter, Message, or otherwise, to any Person for enhancing the Price, or to sell any of the Things aforesaid, or diffwade, or move any Person coming to any Fair or Market, to forbear bringing the Things aforesaid to any Market, Fair, City, or Port; he shall be adjudged a Forecaster.

S. 2. Directs who shall be deemed a Regrator.

S. 3. And whatsoever shall ingross or get into his Hands by buying, contracting, or Promise-taking, other than by Grant or Lease of Land, or Rythres, any Corn growing, or any other Corn, or Grain, Butter, Cheese, Fish, or other dead Viuuals, to the Intent to sell the same again, shall be deemed an Ingroffer.

S. 7. Provided that the buying of any Barley, Big, or Oats, as any Person shall buy to convert into Malt or Oatmeal in his own House; or the buying by any Fishmonger, Butcher, or Poacher, such Things as concern their Trade, otherwise than by Forefalling, who shall sell the same again at reasonable Prices by Retail, or the taking of any Cattle, Corn, Grain, Butter, Cheese, or other Things aforesaid, reserved upon any Lease for Life or Years; or the buying of any Wine or other dead Viuual, by any Inholder or Viuualfeller, to sell by Retail in his House, or to his Neighbours for reasonable Prices; or the buying any drier or salted Fish, or any Corn, Fish, Butter, or Cheese, by any Badger, Lader, Kiddor, or Carrier, as shall be allowed to that Officer, by three Justices of Peace of the County, who shall sell or deliver in open Fair or Market, or to any other Viuualfeller, or to any other Person, for the Provision of his House, within one Month after he shall buy the same, without Forefalling; or any common Provision made without Fraud by any Person of the Things aforesaid, for any City or Town corporate; or for Provision for victualing of any Ship, Coffle, or Fort, without Forefalling, shall not be deemed or taken to be any Offence against this Act.

S. 12. Corn may be transported from one Port to another.

S. 13. Provided, That it shall be lawful for any Person inhabiting within one Mile of the main Sea, to buy all manner of Fish high or salted, not forefalling the same, and sell them again at reasonable Prices.

* Observed were adjudged not to be Viuuals within this Statute. Cro. C. 231. Mich. 7. Car. 1. B. R. the K. v Maynard.—Sh. per Roll. Ch. 7. Sty. 190.—And Patch. 17 Jac. Rot. 56. It was adjudged, that buying Apple to sell again, was not within this Statute. Cro. C. 231.—For the Law intends only those Things that are usually sold in Markets in great Quantities, as Corn, Cattle, Butter, Cheese, &c.

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2. By 13 Eliz. cap. 25. S. 21. The aforesaid Act of 5 & 6 Ed. 6. 14. is made perpetual; and it is provided, that the said Act against Forefallers, Regrators, and Ingrofiers, shall not extend to any Wines, Oils, Sugars, Spices, Currants, or other Foreign Viuuals imported from beyond Sea, (Fisb and Salt only excepted.)

3. In Information for buying Seed Corn, having sufficient of his own, and not bringing so much of his own unto the Market, it was said by the Judges to be Law, that a Contract in the Market, for Corn not in the Market, or which was not there that Day, is not within the Breach of the Statute. But if Corn or Grain be in the Market, although the Contract be made out of the Market, and delivered to the Buyer out of the Market, yet it is within
within the Statute; And that the Market shall be said, the Place in the Town where it hath been usually kept, and not elsewhere. Hill. 29 Eliz. in C. B. Godb. 13 t. pl. 148. Anon.

4. One bought Barley, and because it was of such Quantity that he could not make Malt of it in his own Houfe, he made it in another Man's, by his own Servants; And it was resolved, First, that the Conversion of Corn into Malt in his own Houfe, to sell again, was within the Statute, unless there be a faving for it; Secondly, Because it was in another's Houfe, he is out of the Province, and fo within the Penalty of the Statute. Cited Ow. 135. by Coke, Ch. J. as Mich. 39 & 40. Eliz. B. R. Framlington's Cafe.

5. Information on the Statute 5 E. 6. 14. for buying *Wheat-Meal,* and converting it into *Starch;* Resolved, by 3 of the Judges, that this is not within the Statute; but they agreed, that if one buys Corn, and makes it into Meal or Oatmeal, and sells it, it is within the Stat. for there is no Alteration in this Cafe, but it remains the fame Corn; but Starch is altered by a Trade, and is not the fame Thing. But Coke, Ch. J. contra. Ow. 135. Trin. 9. Jac. C. B. the King v. Well.

6. One was indicted and convicted by the Name of Davies Fihmonger, for ingrofling and buying several Salmons, quas tenuit & vendidit; it was objected, that every Fihmonger, by the Statute, might buy and sell at Pleafure; but the contrary was adjudged, if it were unreasonable Prices; And the Book fays, that ingrofling Fih going to Market is punishable. Patch. 12 Jac. in B. R. Roll. R. 11. The King v. Davies.

7. Information on the Statute 3 E. 6. 14. for ingrofling *100 Bushels of Salt* to sell again, and upon Demurrer thereto it was objected, first, that forcasting and regrating, are not in themselves Offences punishable before the Statute; Secondly, that Salt is not any Viual within the Statute, but only a Condimentum, and for Prefervation of Viuels, tho' any one shall engrafs Salt to sell it at unreasonable Prices, he may be indicted at common Law, fed adjournatur. Mich. 249. Trin. 7. Jac. 1. B. R. Cro. C. 231. the King v. Maynard.

8. And a Record of Patch. 15 Eliz. was cited, where *buying Bar- ley, and converting it into Malt,* and selling it, had been adjudged no Offence, punishable in a Mayor, nor made him a Viuallaw, (the Mayor or being prohibited to sell Viuels) Ibid.


9. Indictment for ingrofling divers Kinds of Fih, viz. Smelts, Wifhings, &c. to fell again, contra Forman Stat. Upon Not Guilty pleaded it was found against him, and being removed by Cercorari into B. R. it was moved in Arreft of Judgment; for that by expres Words of the Statute, 5 & 6 E. 6. 14. Fihmongers and Butchers, &c. are not Ingroflers within the Stat. if they buy only Things belonging to their Trades; But held, per Tor. Cur. that if they regrate and sell at unreasonable Prices, they are within it. Trin. 9 Cat. 1. B. R. Cro. C. 314. Penn's Cafe.

10. On an Indictment at the Affizes in Kent, upon the Statute made against Ingroflers of Viuels, for ingrofling *Apples, Pears, and Cherries,* it was inquired against the Defendant, that Apples, Pears, and Cherries, are Viuels within the Stat. and so expounded by Stat. 2 E. 6. where Friulers are called Sellers of Viuels; But Roll. Ch. J. said, that 4 Jac. Apples were adjudged no Viuels; and after, upon Writ of Error, that Judgment was affirmed in the Exchequer Chamber. Jerman, Justice, differed,
differed, and Nicholas, Justice, held, that Apples are Viætal within the Stat. because better than Fith. Ahf, Justice, held, that Apples are Viætal, but not within the Stat. for a Stat. cannot alter by Reason of Time, but the Common Law may. Adjournatur: Hill. 1649. B. R. Sty. 190. Anon.

Cafe of Baron v. Brice.—The Barons of the Exchequer held clearly, that Apples were not within the Stat. and adjudged accordingly; which afterwards, on a Writ of Error brought in the Exchequer Chamber, was affirmed. Although the 2 E. 6. 15. mentions Butchers, Brewers, Bakers, Gouts, Fhilmongers, and Fruitiers, as Viætals, yet Apples are not dead Viætals within the Stat. 5 E. 6. and no Information before this Time hath been exhibited for them, more than for Plumbs or other Fruit, which serve more for Delicacy than necessary Food. But the Stat. 5 E. 6. is to be intended of Things necessary, and of common Use for the Supportance of Man. But the Stat. 2 E. 6. 15. made against Conspira-
cies to enhance the Prices, extend to Things more of Pleasure than Profit. Mich. 6 Jac. in the Exchequer, 15 Rep. 18. Baron v. Boys—— S. P. adjudged in Error in the Exchequer Chamber. Mich. 6 Jac. Cro. J. 214. Braddon v. Brown; Ard per Coke. Ch. J. there is not any Thing prohibited within the Stat. but it has a Preced. here, in some Kind, it may be bought; but there being not any Provilo for Apples, therefore they are not within the Intent of the Statute.

11. In Debt upon the Stat. 5 E. 6. 14. for ingrossing 2000 Quarters of Oats; after Nicholas pleaded, it appeared in Evidence, that they were foreign Oats, and exempted by 13 Eliz. cap. 23. and also, that the Defendant was a licensed Butcher, and by that too, exempted; to all which the Court agreed. Trin. 14 Car. 2. in Saec. Hard. 231. Hammond v. Taylor.

12. A poor Woman that cried Fith was indicted for Forsthalling, by buying of Fith at Billinggate; Holt, Ch. J. on the Trial at Nifi Prius held, that he were Not Guilty; For Billinggate was a Market Timeout of Mind, and so the Party was acquitted; And he said, that were it otherwise, all Fhilmongers would be liable to Prosecutions. i Show. 292. Mich. 3 W. & M. the King v. . . . . .

(C) Punished or Restrained. How.

31 Ed. 1. EmAchts, that no Forsthaller shall be suffer'd to dwell in any Town, and if any be convicted of that Offence, for the firft Time he shall be amended, and lofe the Thing so bought; For the Second, shall have Judgment of the Pillory; for the Third, shall be imprisoned and make Fine; and for the Fourth shall abjure the Town; and like Judgment also shall be given his Acces-
saries.

And by Ser-

knts Haw-

kins, Haw.

Pl. C. Abr. 270. cap 50. S. 2. At this Day all such Offend-
ers are Ha-

tle to Fine and Imprisonment, on an Indictment at Common Law.

2. 5 & 6 Ed. 6. 14. 8. 45. 5. 6. EmAchts, that every Person who shall of-

send in any of the Things contained in this Act, shall, for the firft Offence, suffer two Months Imprisonment, without Bail or Mainprize, and forfeit the Value of the Goods, Cattle, and Viætal so by him bought or had; and for the second Offence, one half Years Imprisonment, and forfeit double the Value of the Goods, &c. And for the third Offence, shall be set in the Pillory, in the City, Town, or Place where he dwells, and forfeit all his Goods and Chattels, and be imprisoned during the King's Pleasure.

3. And if any Person, having sufficient Corn of his own, do buy any Corn in any Fair or Market, for change of Seed, and do not bring to the same Fair or Market, the same Day, so much Corn as he shall buy for Seed, and sell the same if he can, he shall forfeit double the Value of the Corn so bought.

5. And if any Person shall buy any Oxen, Sheep, or other live Cattle, and sell the same again alive, unless he keep and feed them by the space of five Weeks before he fell them again, he shall forfeit double the Value of the Cattle so bought and sold again, one Moity of all which Forfeitures, to go to the King, the other to him that will sue for the same in any Court of Record by Action of Debt, Bill, Planta, or Information.

3. None shall be punish'd twice for the same Offence.
3. Information against several for ingrossing 1000 Quarters of Corn; upon Not Guilty pleaded, the Jury found one of the Defendants guilty for 700, and the others not guilty at all. After much Debate, Judgment was given against him found guilty. Trin. 7 Jac. in Scacc. Lane 59. Vaux v. Austin & al.

4. Information against a Forestarer, who pleaded guilty, and prayed the Court to mitigate the Forfeiture; Coke, on hearing the Stat. 5 Eliz. 6. 14. read, seemed to think they might mitigate the Forfeiture because it was only of the Value. Pach. 13 Jac. B. R. 1 Roll. R. 194. the King v. Wray.

(D) Pleadings.

ON an Information on the Stat. of 23 Eliz. 25, for ingrossing Barley, and converting it into Malt, the Question was, whether the Defendant might plead Not Guilty, and give the special Matter in Evidence? and held that he might. Mich. 29 Eliz. B. R. Godsb. 144. pl. 180. Anon.

2. Information upon the Statute 5 E. 6. 7. for buying Wools; the Defendant pleaded to all, except 50 Stone of Wool, Not Guilty; and said that he pleaded an Information depending against him in C. B. at the Suit of B. and averred, it was for the same Offence, under petit Judicium, &c. Upon Demurrer it was objected, that the Plea was not good, because it was not set forth, that any Proces was issued upon the Information; and if no Proces, then the Information was not depending; but adjudged, that as soon as the Information is filed, tis depending; and therefore the Plea is good. Mich. 33 & 34 Eliz. Cro. E. 261. the Queen v. Harris.

(E) Indictment and Information. How laid; And where.

1. 5 & 6. E. 6. *Naeits, that the Justices of Peace in every County, as 14. 8. 10. their Quarter Sessions, are empowered to hear and determine the Offences, by Inquisition, Prelament, Bill, or Information before them, and award Proces thereupon.

8. 10. Proceedings for this Offence must be within two Years after the Offence committed.

2. Upon the Statute of 5 E. 6. of Ingrossers, if the Information be, that the Defendant hath bought Corn, &c. it is not sufficient; for the Words of the Statute are, Get into his Hands. Arg. 2 Le. 39. Trin. 30 Eliz. in the Exchequer, in Martin Van Henbeck’s Cafe.

3. By 31 Eliz. 5. S. 5. It is provided, that nothing in this Act shall extend to any Information, &c. for any Offence in any Statute against Ingrossing, Regrating, or Forestalling, where the Penalty shall appear to be to the Value of 20 l. but that every such Offence may be laid in any County.

4. Exception was taken by Folter Justice for an Information for Ingrossing that it concluded, contra formam Statutum, whereas it ought to have been, contra formam Statutorum; for this Stat. of 5 E. 6. 14. was determined by the 8 Eliz. and revived by the 13 Eliz. and so there were two Statutes; but Warburton contra for the Information did intend only, 5 E. 6. 14. the Words whereof it recited. Trin. 9 Jac. Ow. 135 in Cafe of the King v. Wel.

* Show. 502.
* Esthalla v. Pease: It was held, that the Stat. 5 E. 6. 14. was revived, though the Day of making thereof.
* Midlaken in the 13 Eliz. 25. — Skin. 110. Trin. 35 Car. 2. S. P. and seems to be S. C.
5. An Information on 2 E. 6. for engrossing diversos Cunnulos grani was adjudged ill for the Uncertainty of the Word Cunnulos; for the same might be a Heap trafficked, or in Shocks; Also a Detinue lieth not, nor is an Indictment good, de uno Cunnulo tricipit, premit; And this Information being on a penal Law, the certain Quantity of Corn engrossed ought to appear. 2 Bals. 317. Hill 12 Jac. Gouldesborow v. Whider.

6. One was indicted on the Stat. 5 E. 6. as a Foretaller, and the Indictment was, that be met with J. S. at D. near Bristol, and bought to much Lead of him, which was to have been sold at Brigg Market; it was objected, that the Indictment was ill, because it did not set forth that J. S. was coming towards the Market with the Lead; for the Statute, is, that a Foretaller is he, who buys any thing of one coming to Market with it, and the Averment ought to be, that it was coming to the Market at that Time. Mich. 14 Jac. B. R. 1 Roll. R. 421. the King v. Hook.

7. Information in the Exchequer for engrossing Butter and Cheese; Upon Not Guilty pleaded, it was found against the Defendant, and a Writ of Error being brought in the Exchequer Chamber, the Exceptions, amongst others, were, for that the Fortiture was pray'd, legalis Monete Angl. (with a Blank) ad Vulturum pret. Butyr. & Caf. but held well enough, without mentioning any particular Sum, that being to be settled by the Jury, to for that it was not alleged in the Information, that the Defendant had it not by Demise, Grant, &c. but this was also held good, it being a Matter for the Defendant himself to give in Evidence; lattly, for that the Plaintiff demanded his own Moity, and took no Notice of the Moity belonging to the King; but this was disallowed, for all the Precedents agree therewith, and accordingly the Judgment was affirmed. Mich. 20 Jac. B. R. Jo. 156. Bedoe. v. Alpe.

8. Several were indicted, for that they engrossed magnam quantitatem Straminis & Feni, at C. with an Intent to sell and make it dearer; it was objected, that the Indictment was ill, because it did not say, quilibet corum ingrossed, fed non allocutus; then it was objected, that it was ill, for that the Indictment did not mention how many Loads of Hay and Straw they engrossed; and for that Caufe the Indictment was quashed. Mich. 10 Car. Cro. C. 380. Anon.

9. Indictment for engrossing upon 5 E. 6. Exception was taken, that the Indictment was laid in London, and the Sale in Surrey; Ruled, that it was well enough, (on a special Verdict) Comb. 3. Mich. 1 Jac. 2. B. R. the King v. Copeland.

(F) Cognizable; In what Court.

Judgment was given in a Court of Piepowders, upon an Information on the Statute of buying Leather; the Defendant was in Execution, and being brought up by Habec Corpus, it was objected, that the Judgment was coram non Judice; for though the Court of Piepowders is the King's Court, yet they have not Authority to hold Pleas upon penal Statutes; and so it was adjudged; but having Power to hold Pleas in Debt, and so having Colour to hold Plea in this Action, the Judgment is not void, but voidable by Writ of Error. Mich. 38 Eliz. C. B. Cro. E. 530. Wilkinson v. Netherfall.

2. Information by the Attorney General in B. R. on the 5 E. 6. 14. for selling live Cattle within five Weeks after they were bought; upon Not Guilty pleaded, there was a Verdict against the Defendant, and it was moved in Arrestit of judgment, that no Information would lie in this Court; because by 21 Jac. 1. 4. all Informations by the Attorney General, upon any penal Statute in any of the Courts at Westminster, shall be void; and the Court was of Opinion, that since it was clear, the Defendant might have been indicted at the Sessions, on the 5 E. 6. therefore this Case was within the Restraint, for selling live Cattle on.
Forfeiture.

the Stat. 5 & 6 E. 6. ENACTS, that it shall be lawful for any common Drove, licensed by three Justices of the Peace, 

without the usual Licence, to buy Cattle in such Store where Drovers were used to buy Cattle, and sell the same in common Fairs and Markets, forty Miles distant, so that such Cattle be bought without forf startling. 

3. Provided, that no such Licence shall continue in Force above one Year, unless the same be renewed. 

2. Information for ingroffing Cattle, the Defendant justified as to a certain Number under two several Licences, without pleading how many by one, and how many by the other; and on Demurrer it was adjudged for the Plaintiff. Mo. 379. Dawkes v. Hill. 

3. It was laid by Hubbard, Ch. J. and Winch, but Warburton contra, that a Man, having a Licence of Foreftralling on 5 E. 6, need only, in Pleading, recite the Statute of 5 E. 6, without pleading; For the Licence is grounded only on the 5 E. 6, and the 13 Eliz. only qualifies the Person. Nov. 27. Anon. 

4. Information on 5 E. 6, for ingroffing Corn, the Defendant justified as to part, by Licence from three Justices of Peace, but did not aver his selling it again within one Month after. It was held not good without such Averment, it being Parcel of the Statute, and not in Nature of a Condition subsequent, which is to be alleged by him that will take Advantage thereof. Trin. 16 Jac. in B. R. 2 Roll. R. 33. the King and Smith v. Carter. 

5. It was doubted, whether a Defendant, on an Information brought against him on the 2 E. 6, for ingroffing, might plead Now Culp. and give a Licence from Justices of Peace in Evidence, or plead it in Jullification; or whether the general Plea of Not Guilty is good, without saying, contra forum Statuti. Quære. Trin. 17 Jac. B. R. 2 Roll. R. 92. Anon. 

Forfeiture.

(A) Forfeiture. In Cafes of Treason. In what Cafes.

This Act saves nothing to the King, but what was in Esche, and pertaining to him at the making it. 5 Inf. 12. and cites a Judgment in Parliament. 29 H. 6. cap. 1. "Jack Cade's Cafe; that he being taken in open Rebellion, could no way be punished, or forfeited any thing, and therefore was attainted by that Act of High Treason. 

2. If a Man be adherent to the Enemies of the King, in France or elsewhere, it is a Forfeiture of his Land. Br. Forfeiture de terres. pl. 94. cites 5 R. 2.
3. H. 7, cap. 1. Enacts, that none shall forfeit any thing for forcing the King for the Time being in the Wars within the Realm or without.

4. At this Day, tho' a Man be aiding and affiling the King's Enemy, or be killed in open Rebellion against the King, he shall not forfeit his Land or his Goods; but if the Ob. f. of England, (who is sovereign Coroner of all England) in Person upon View of the Body of him killed in open Rebellion makes Record of it, and returns it into B. R. he shall forfeit his Land and Goods, as was done and resolved in time of H. 7, per Fineux. Ch. J. 4 Rep. 57. b. in a Note of the Reporters, in the Case of the Commonalty of Sadlers.

5. 33 H. 8, cap. 20. S. 1. Enacts, that if any Person commit High Treason when he is of perfect Memory, and after Accusation, Examination, and Confession thereof before any of the King's Council, shall fall into Lunacy, he shall be required in any County, where the King by his Commission shall appear; and if he be there indicted, he shall there be arraigned without his personal Presence, and if he be found guilty, he shall suffer Death, and forfeit as if he had been of perfect Memory; but this is altered by 1 & 2 P. & M. cap. 10. S. 8.

S. 3. If any Person be attained of High Treason, by the common Lawes or Statutes of this Realm, such Attainer by the common Lawe, shall be of as good Force, as if it had been done by Parliament, and the King shall have as much Benefit thereby, viz. of Lands, &c. of such Offender, and shall be as well adjudged in all and every Possessio of all such Things of the Offender which the King ought or might lawfully have, or which the Offender ought or might lawfully have or forfeit, or as if he had been attainted by the Parliament, without any Office or Inquisition to be found of the same.

6. 5 & 6 E. 6. cap. 11. S. 9. Enacts, that the Offender in Treason being lawfully convicted thereof, shall forfeit to the King all such Lands, Tenements, and Hereditaments, as he shall have of an Estate of Inheritance in his own Right, in Ufe or Possession in the King's Dominions, at the Time of the Treason committed, or at any Time after.

7. 7 Ann. cap. 21. S. 10. After the Decease of the Person who pretended to be Prince of Wales, during the Life of the late King James, &c. no Attainer for Treason shall extend to the disinheritance of any Heir, nor to the Prejudice of any Person, other than the Offender, during his Life.

8. Tho' the All of K. W. 3. faves Corruption of Blood in Cases of Treason by Caining, yet, notwithstanding, the real Estate is forfeited; for there are other Acts which give the Forfeiture to the Crown in all Treasons; And when two Acts seem to crofs one another, such Construction shall be made, that both shall stand together: Besides, it is not like the Case of Felony; for there it is the Corruption of Blood only, that prevents the Defcent, and occasions the Echefate. MS. Rep. paid to be Lord Harcourt's. tit. Forfeiture. 21 Jan. 1710. Horton v. Hinton.

(B) In Cases of Treason; What Things or *Estate* shall be said to be Forfeited.

1. Right of Allion is not forfeited by the Words in the Statute 33 S.P. resolv-

2. By the general Words in Attainder of all Hereditaments, neither a Condition, nor an *Ufe* was given to the King, for they were not forfeitable
at the common Law; but there is a Difference in this Case, because Inheritances and Chattels. 3 Rep. 2. b. 3. Trin. 25 Eliz. Marquels of Winchester's Case.


5. The Trust of a Term upon the Marriage of W. was conveyed to H. till W. pay'd so much, and then in trust for W. and his Wife, and their Issue. W. is attainted of Treason, and by the new Stat. all Estates, Trusts, &c. of such Persons, are given to the King. The Money is paid by the Wife of W. and upon a special Verdict in Ejectment, it was held, that this Trust is not forfeited to the King; for it is a Purchase to the Wife and their Issue; and Twifden J. said, that it had been a great Doubt, whether the Trust of an Inheritance should be forfeited for Treason before the new Statute; but some have been of Opinion, that the Trust of a Term should be forfeited before for Treason. Sid. 260. Trin. 17 Car. 2. B. R. Whaley v. Anderson.

6. A Sufficient of England, attainted of Treason, was supposed to have married a Foreigner, who was Cally quy Trust of S. S. Annuities of the Value of 52,000 l. It was initialed, that if she was married, the Law of England should not be the Measure of the Decree of this Court, (as to Forfeiture or not) but the Law of another Country, this being a bare Trust for a Foreigner, and that the Court has always a Regard for the Laws of other Nations, as of Holland, and of the Plantations; and that since all Foreigners are encouraged by Act of Parliament, to place their Money in the publick Funds, it would be very hard that this Money should be forfeited; but this Point was not determined, the Marriage being denied by the Lady's Affidavit, and no Proof made to the contrary, and so the Securities decreed to be assigned to her. 9 Mod. 101. Mich. 11 Geo. in Chancery, Drummond v. Decker.

(C) Forfeiture in Cafes of Treason. What Lands, in Respect of the Limitations of the Estate; or of Statutes made.

This Act extends only to Lands, which the attainted Person had in Possession, and not to Rights, Condition, &c. nor did it extend to Attainders by Parliament, or when the Party stood late. But the Act of 35 H. 8. 20. extends to all manner of Attainders of Treason. 3 Rep. 10. b. Trin. 26 Eliz. in the Exchequer in Dowrie's Case.
Forfeiture.

The Rights, Titles, Interests, Possession, Leases, Rents, Offices, and other Profits of all Persons, their Heirs and Successors (except the Offenders or others claiming to their Use) are void.

2. 33 H. 8. cap. 20. § 3. Makes a Forfeiture of Lands, Tenements, * Yet when a Difficult of treason, all y^ be for King but cites the credible because larger and feared his self as much benefit thereby, and shall as well be adjudged * in actual and real Possession, without any Office or Inquisition to be found of the same.

Words shall be construed thus, viz. that he shall be in actual Possession without Office; that is, as if an Office had been found of it; and at Common Law if the Difficultee had been attainted of treason, and the Seisin and Difficult had been found by Office, the Possession should not be in the King, till Sci. f. died, &c. or Seisin at least; because when a Stranger is seiz'd at the Time of the Office found, the King shall not be in Possession till Seisin. And all Possessions are fav'd by this Act, as if the said Acts had not been made; and therefore the Possession of the Difficultee is saved by it, in the same manner as if an Especial Office had been found at the Common Law. 3 Rep. 11. Trin. 26 Eliz. in the Exchequer. De Witt's Case.

The Words of this Statute, that the King shall be in actual Possession, shall not be construed to extend to an actual and absolute Possession; but such a Possession only, which he had at Common Law after Office found; so as the Statute doth not give to the King a larger Possession, but an easter without the Circumstance of an Office. Trin. 26 Eliz. Le. 21. In the Duke of Northumberland's Case.— 2 Hawk. Pl. C. 452. ch. 49. S. 25.

3. Note that Sir John Hufley, Knight, enfeoffed certain Persons in Fee, to the Use of Anne his Wife for her Life, and after to the Use of the Heirs Male of his Body; and for Default of such Issue, to the Use of the Heirs Male of the Body of Sir W. H. his Father; and for Default of such Issue, to the Use of his right Heirs; and after had Issue W. Hufley, and then Sir John was attainted of treason Anno 29 H. 8. and put to Execution; and after Anne died, and the said W. Hufley prayed Oyser le Main of the King; and by the King's Attorney he shall have it; For this Name Heirs Male of the Body, is only a Name of Purchase; and Sir W. Hufley [the Grandson] shall not have it as Heir to Sir John, but as Purchaser; but it was agreed, that the 2d Remainder to the right Heirs of Sir John Hufley was forfeited by the Attainder; For none can have it but he who is Heir in Faet; note the Difference. Br. Nofme. pl. 1. cites 37 H. 8.

4. Where Tenant in tail is attainted of treason, before the Statute of 26 H. 8. his Son shall have the Land; For he does not claim only as Heir, but by the Statute, & per Formam Doni. Br. Nofme. pl. 1. cites 37 H. 8.

5. Thomas Duke of Norfolk in Anno 11 Eliz. conveyed his Lands to the Use of himself for Life, and after to the Use of Philip Earl of Arundel, his eldest Son in Tail, with divers Remainders over, with a Provizo, that if he should be minded to alter and revoke the said Uses, and signify his Mind in Writing, under his proper Hand and Seal, and subscribed by 3 credible Witnesses, that then &c. and after the said Duke was attainted of High Treason; this Provizo or Condition was not given to the Queen, by the Act of 33 H. 8. because the Performance of it was personal and imperatively annexed to his Person, viz. to signify his meaning by Writing under his proper Hand, which no other can do but the Duke himself. Upon which Point, all the Possessions of the Dukeedom so conveyed, ut supra, were saved, and not forfeited by the Attainder. 7 Rep. 13. a. cited per Cur. as resolved 11 Eliz. in Duke of Norfolk's Cafe.

6. Crammer the Bishop of Canterbury, made a Feoffment of Land to the Use of himself during his Life; and after his Decease, to the Use of his Executors and Assigns for 20 Years; and after to the Use of T. Cranmer in Tail, &c. after the Archbishop was attainted of Treason; and if this was an Interest in the Bishop or not, was the Question; For if ce then it appertained to the Queen; and if not, then otherwise. And was agreed by the Judges, that the Bishop had no Interest in the Term and Remainder; now it cannot be because the Bishop did not, nor could be made an Executor, &c. And. 19. pl. 39. Hill. 14 Eliz. Kirke v. Bails, at Crammer's Cafe.


P. 57.

Forfeiture.

S. C. D. 332.

1. King H. 8 granted a certain Manor to A. and his Wife, and the Heirs of their two Bnters, &c. afterwards A. by Act of Parliament was attainted of Treason, and executed leaving his Wife and a Son; and by the same Act it was ordained, that he should lose all the Lands wherein he was convicted, &c. The Wife died, and the Question was if the Son should have the Manor by the Entail, or the King by Attainder; resolved that the King should have it as forfeited; tho' 'twas argued for the Son, that his Mother surviving, he was inheritable to the Manor, by Defcent from her, and might claim from her per Fœnus Doni; and tho' the Blood between his Father and him was corrupted, yet 'twas not so between his Mother and him. 1 And. 39. pl. 102. Ld Edingham v. Carew.

244.

b. pl. 97.

Palch. 16 El. 9.

S. C. cited

Hob. 376— 

Entailed

Lands were never for- 

feited till the

Statute 26 H. 8.

in Cases 

of Treason

and this not by the gen- 

eral Words,

all Lands, Tenements, and Hereditaments, but by the Words following, viz. Of any Effect whatsoever.

Arg. 2 Lev. 170 Trin. 18 Car. 2 B. R. in the Case of Brown v. Wayte. If Tenant in Tail be attainted of Treason and dies, the Land shall not vest in the King before Office found; For the Act of 26 H. 8. gives the Forfeiture, but neither the Act nor the Attainder makes a Corruption of the Blood, as to the Defeint of the Land in Tail, and it was agreed as Popham said, in the Case of Ld. Kemys Perpetual Estate, that where the Grandfather was Tenant in Tail, and the Father was attainted of Treason, and died in the Life Time of the Grandfather, the Land should descend to the Son notwithstanding the Attainder, which was affirmed per rot. Cur. to be good Law, in which 2 Cases the Act of 26 H. 6. gave the Forfeiture only, and his Attainder is not Corruption of the Blood for Land intailed. But now by the 25 H. 8. the actual Possession is transferred and vested in the King precipitously by the Attainder, as well in the Life Time, as at the Death of the Person attainted, and as well of Lands intail'd, as of Lands in Fee Simple. 3 Rep. 10. b. in Downie's Cafe.

Mo. 95. 125.

r. S. C by the 
Name of the 
Margr. of 
Winchlers 
Cafe.

Mo. 303. S.

C. — 4 Le.

155. 169. S.C.

— And. 293.

S. C.— Paph.

18 S. C.

8. Lands were given to A. and M. (whom he afterwards married) in Tail, Remainder to B. in Tail, A. alone suffered a common Recovery and died, and M. surviving died without Issue, by which Writ of Error accrued by the Stat. 9 R. 2. to B. in Remainder, and he was Attainted of Treason by Parliament, and all his Rights and Conditions given to the Crown, upon which the Queen would have brought a Writ of Error to reverse the Recovery against W. R. who was the Tenant, and adjudged that she could not have it in Respect that it was a Thing in Privity, so united to the Person of B. that it could not be given by Parliament to the Crown. Arg. Mo. 323. cites Trin. 25 Eliz. B. R. Braybrocke's Cafe.

9. A. seised in Fee, by Indenture in Consideration of Blood Covenants with B. his Nephew to stand seised to the Use of himself for Life, and after the Life of B. in Tail, the Remainder to the Right Heirs of B. Provifs if the said A. by himself, or by any other during his natural Life tenant to B. a Gold-Ring to the intent to make void the said Uses, that then the said Uses shall be void; afterwards A. is Attainted of Treason and Outlawed upon it; the Attainder is confirmed by Act of Parliament; the King by Letters Patents under the Great Seal, reciting the Uses, the Provifs, and the Benefit thereof given him by Act of Parliament, authorized E. to deliver the Gold Ring to B. to the intent to make void the Uses; E. reads the Patent to B. and offers the Ring to him, which he refuseth to accept; all which with the Patent he certified into the Exchquer. Upon which an Information was brought in the Exchquer, averring the Life of A. and it was resolved; (1) that the Condition in the principal Cafe, viz. the Tender of the Gold Ring was not annexed to the Person of A. but that any one might make the Tender, and that was given to the King by the Act of Parliament. (2) That the Tender and Certificate was good, without Office found. (3) That presently by the Tender, according to the Provifs, the Ufes were determined, and the Land vested in the King by Force of the Act of Parliament. Mich. 33 & 34 Eliz. in the Exchquer. 7 Rep. 11. b. Englefield's Cafe.

10. Tenant in Tail attaint of Treason, the King shall have Fee determinable on Death without Issue and has no greater Estate. 2 And. Arg. 139.

11. Tho' an Earlom be a Dignity, and within the Statute de Donis Conditionalibus yet it had been 'Forfeited by Attainder of Treason theo' the Statute of 26 H. 8. had never been made; adjudged. Mich. 2 Jac. 1. 7 Rep. 34. in Nevil's Cafe.

12. A.
12. A. Covenants by Indenture to fland feized to himself for Life, Remainder to B. his Brother's eldest Son for Life, Remainder to the fift Son of the said B. and fo to the thirtieth Son, &c., Remainder to the Right Heirs of A. is Attainted of Treafon, and executed before the Birth of any Son to B. the Sons born after are all utterly barred by that Attainer, and the King shall have the Fee difcharged of all the Remainers limited to the Sons not yet born. Noy 105. 2 Roll. R. 323. 324. 3144. 428. 496. 518. S. 3d. 15d. 4th. 5th. 6th.

13. Tenant in Tail 6 H. 8. made a Feoffment in Fee to W. and others, to the Ufe of his Latt Will, and died; the Right of the Land, together with the Intail defcended to D. who, 21 H. 8. made a Feoffment to the Ufe of himself and K. his Wife, and the Heirs of their two Bodies, and had Issue E. a Son, and F. a Daughter.—D. in 26 H. 8. was Attainted of Treafon and Executed; and 31 H. 8. a special Act of Parliament was made of his Attainer and Forfeiture; 5 Eliz. E. Son and Heir of D. was restored in Bhood by Parliament, and died without Issue; F. married J. S. and they had Issue W. S. 8. Eliz. K. died; 33 Eliz. all was found by Office; 34 Eliz. the Queen granted the Lands to R. and the Heirs Male of his Body. It was resolv'd; if that the Feoffment gave away all the Eflate, which theTenant in Tail had concerning himself; but concerning his Issue in Tail there remained a Right by force of the Statute of Welfminiter 2. And 2d. That this old Right of Intail was Forfeited by the Statute of 26 H. 8. for that there was an actual Entail in the Perfon Attainted at the time of the Attainer. 3d. That their Rights were bound by the express Words of the Statute, there being no Saving therein for them. Then 4thly. when the Office was found the Issue in Tail was barred notwithstanding any pretended Restarter. Mich. 13 Jac. in the Exchequer Chamber. Hob. 334. Lord Sheffield v. Ratcliff.

14. A. made a Feoffment to divers forfeeters, to the Use of the Feoffor for Life, with divers Remainers ever, provided always, that if the Feoffor during his Life, tender a Ring, or a Pair of Gloves, or any Sum of Money, to any of the Feoffees, or to any of their Heirs (ipso A. declamating that his Intent should be to alter the Use and to make those Uses void) that then all those Uses should be void; and after this, the said A. was Attainted of Treafon, and by a special Act of Parliament, 28 Eliz. that he should forfeit to the Queen all his Lands, Tenements, Hereditaments, Rights, Conditions, &c. and after this the Queen by her Patent, reciting all the Matter aforesaid, authorized Sir John Fortifcune to Tender a Ring accordingly; and he did fo, and certified it in the Exchequer; after this B. obtained a Leave of this Land, &c. now the Question was, whether the Power of the Tender of the Ring, &c. be forfeited to the Queen by the Attained aforesaid, or be tied to the Person of A. because 'tis a Declaration of the Intent annexed to the Perfon of A. and adjudged not forfeited. Lat. 24. Harding v. Warner. forfeited.—Jo. 154. 2 Roll. 593. Warner v.

15. Tenant in Tail to him, and the Heirs Males of his Body, Reversion in the Crown, made a Feoffment of the Lands, and afterwards was Attainted and Executed for Treafon, and by a special Act of Parliament, by which his Attainted was confirmed, it was Enacted that he should lose all his Lands, &c. and that they should be vested in the Queen without Office found; the Question was, whether there was any Eflate, or Right remaining in the Tenant in Tail after the Feoffment, which was not forfeited by the Attained and Act of Parliament? the Judges on Arguing the Case in the Exchequer Chamber were divided, some held, that by the Feoffment of Tenant in Tail (the Reversion still remaining in the Crown) there could be no Discontinuance of the Eflate Tail, and therefore, being in him at the Time of the Attainment, was by the Forfeiture vested in the King, by the Stat. 26 H. 8. but if the Eflate Tail was not in him, yet the Right of the Intail remained, which was given to the King by the Stat. but the other Judges argued that tho' the Reversion was in the King, and
Forfeiture.

16. Land is conveyed by A. to J. S. and his Heirs, to the Use of him and his Heirs, in Trust for A. and his Heirs; the King in this C[af]e upon the Death of A. than't have Ward, nor Forfeiture for Treason, or Felony; but if J. S. dies, his Heir within Age shall be in Ward; if J. S. be attainted of Felony, or Treason, the Land and the Trust is lost. In Case of Chattel so conveyed upon Trust by A. and A. commits Felony, or Treason the Trust is lost. Jenk. 219. pl. 66.

17. Lands are given upon Condition not to commit Treason, and afterwards the Party commits Treason the King's Title shall be preferred and he shall have the Land. Arg. Hard. 24.

18. A Writ of Error was brought in B. R. to reverse a Judgment given in C. B. upon a Special Verdict in Ejectment; the Jury found that one Simon Mayne was possessed of a Re[]ffory for a Long Term, and having conveyed the whole Term in Part of it to certain Persons absolutely, he conveyed his Term in the residue, being 2 Parts in this Manner; viz. in Trust for himself during Life, and afterwards in Trust for the Payment of the Rent reserved upon the Original Lease, and for several of his Friends, &c. provided that if he should have any Issue of his Body at the Time of his Death then the Trusts to cease, and the Alignment to be in Trust for such Issue, &c. and there was another proviso that if he were minded to change the Uses, or otherwise to dispose of the Premisses, that he should have Power so to do by writing in the Presence of two or more Witnesses, or by his late Will and Testament; He had Issue Male at the Time of his Death, but made no Disposition purgant to his Power; all which was found by Verdict, and that in his Life time he had commuted Treason, and they find the Act of his Attinder. The Question was, whether the rest of the Term that remained unexpired at the Time of his Death were forfeited to the King; it was insisted that the Deed was fraudulent, because he took the Profits during his Life, and the Applicants knew not of the Deed of Trust. But adjudged that nothing was forfeited but during Simon Mayne's Life, and the Judgment before given in C. B. was Affirmed. Patch. 23 Car. 2. B. R. 1 Mod. 16. 38. 49. Smith v. Wheeler.

19. Upon a Special Verdict in Ejectment, the C[ae] was, viz. A. the Father of the Leiför of the Plaintiff was in Anno Dom. 1646. Tenant in Tail of the Lands in Quel[ition], and afterwards Instrumental in bringing the late King Charles to Death, and so was Guilty of High Treason and died; afterwards the Act of Pains and Penalties, made 13 Car. 2. 15. Enacted, That all the Lands, Tenements and Hereditaments, which Sir John Danvers had the 25th Day of March 1646. or at any time since shall be forfeited to the King; and whether they entitled Lands shall be forfeited to the King by Force of this Act was the Question? and adjudged that the Lands were forfeited. Mich. 28 Car. 2. B. R. 2 Mod. 130. Brown v. Waite als. Sir John Danvers's Cæf.
Forfeiture.

the Party who dittrain'd; For it was lawfully taken Tempore Captivis. after the Ten-
Br. Pledges, pl. 51. cites R. 2. 13. nant in Tail it 

Felony due before the Diuers; For the Donor may dittrain the Heir of the Tenant in Tail after Execu-
attainted for tion of his Father; But in the first Case he has no other Remedy. Br. Pledges, pl. 51. cites R. 2. 13.

3. If a Man pledges his Goods, and after is attainted of Felony; yet the
King shall not have the Goods pledg'd, without paying the Sum for which
they were pledg'd. Ibid.

4. By 24 H. 8. cap. 5. If any be indicted or accused, for the Death of one
attempting to murder, rob or commit Burglary (and so found by Verdict) he
shall forfeit no Lands or Goods for the same, but shall be fully acquit and dis-
charged thereof.

5. For such Crimes as Murder, Homicide, burning of Houses, &c.
for which Judgment shall not be given, that he be hanged by the Neck till he
be dead; the Offender shall forfeit all his Lands in Fee Simple, and his

6. But for Felony by Chance-Medley, &c. against the King, &c. if he
shall forfeit his Goods and Chattels, but no Lands of any Ei-tate of
Freehold or Inheritance. Co. Litt. 391. a.

(E) In what Cases not. Killing in Defence, &c.

1. He who kills a Man fe Defendendo shall forfeit his Goods; but the
Assclerosis was not arraigned, therefore it seems that he shall not
have Judgment of Life; and so fee that a Man shall forfeit his Goods
where Judgment shall not be given. Br. Forfeiture de Terres pl. 13. cites

2. If a Man is arraigned de Morte Hominis, and it is found fe Defend-
dendo, yet he shall forfeit his Goods; For it was said, that by the Common
Law, he shall have Judgment of Death; and the Statute of Gloucester c. 9
gives no Remedy but for his Life only, and not for his Goods. Br. For-
feiture de Terres pl. 15. cites 21 El. 3. 17.

3. A Man was arraigned of the Death of W. N. and pleaded Not
Guilty; and the Jury found, that the deceased struck the Defendant to the
Ground, and drew his Knife to have killed him, and the Defendant like-
wise drew his Knife; and the Deceased, for Haste to have killed the De-
fendant, fell upon the Defendant's Knife, and so killed himself, and demand-
ed Judgment, &c. Per Knivet. If he had killed him fe Defendendo, he
had forfeited his Goods and his Body at the Grace of the King to have
his Charter of Pardon; but now 'tis found that he killed himself; there-
fore we will advise, if he shall be adjudged Not Guilty, or if his Chattels
shall be forfeited or not. Br. Forfeiture de Terres. pl. 8. cites 44 El. 3. 44.

—- And after 44 Att. 17, he was adjudged Not Guilty, and his Chattels
fared. Br. ibid.

4. In Appeal of Murder against A. the Jury found that the Deceased
made the first Affray proper alam Viam, but did not say, ad quem mur-
derandum, and therefore the Judges were clearly of Opinion that A. should
forfeit his Goods, and that by the 24 H. 8. c. 3. Mich. 3 & 4 Ph. & Ma.

in the Highway to murder or rob another, or to commit Burglary; there if the Party so to have been mur-
dered, &c. kills the Party in his own Defence, he shall not forfeit his Goods. Mich. 3 & 4 Ph. & Ma.

5. A Felon robs a Merchant and kills him; the Merchant's Boy comes
quickly after, and finds this Fact just done, and kills the Felon. In this
Case there is no Forfeiture of Goods to the King; and the Stat. 24 H.
8. 5. is only an Affirmance of the Common Law. Jenk. 30. pl. 57.

(F) If
Forfeiture.

(F) In Cases of Felony by Accessories.

1. **WHERE Exigent is awarded in Appeal of Death**, the Goods are forfeited, and Exigent shall not be awarded against the Accessory, till the Principal is attained, if it may appear to the Court, who is Principal and who Accessory. But where Appeal is brought against 3, and at the Exigent one is outlawed, and the others are rendered themselves, and the Plaintiff counts that he who is outlawed was Principal, and the other 2 Receivers of him, there the Goods of the Accessories are forfeited; for it does not appear to the Court till the Court; and a Thing veiled cannot be devested, per Kever clearly, notwithstanding that the Appeal be adjudged against the Plaintiff, because the Act was done in one County, and the receiving in another County. Br. Forfeiture de Terras. pl. 6. cites 43 E. 3. 18.

2. A Man is indicted as Accessory to the Death of a Man before the Coroner; and was found that he fled for the Felony; and by all the Justices of both Places, he shall forfeit his Goods; and so of all Accessories at the Time of the Felony done, but not of Accessories after the Felony done. Per Townend, where the Accessory is acquitted, yet it shall be inquired of the Flying. Per Hufley Ch. J. this is the Courfe in B. R. Br. Forfeiture de Terras. pl. 52. cites 4 H. 7. 18.

(G) In Cases of Felony. Estates in Lands.

1. A Man seiled of Land, shall forfeit it for Felony; and by Attainer of him, the Feme shall lose her Dower. Br. Forfeiture de Terras. pl. 78. cites 21 E. 3. 49.

2. 25 E. 3. Stat. 5. cap. 14. Enacts that after a Man is indicted of Felony before the Justices to hear and determine, it shall be commanded to the Sheriff to attach his Body by Writ or Precept of Capias; and if the Sheriff return that the Body is not found, another Capias shall be made returnable at 3 Weeks, and in it shall be comprized, that the Sheriff cause to be seised his Chattels, and keep them until the Return of the Writ; and if the Sheriff return that the Body is not found, and the Indictor cometh not; the Exigent shall be awarded, and the Chattels shall be forfeit.

3. A Dilettor is attainted of Felony, and the Land was holden of the Crown. The Dilettor enters into the Land, and afterwards Office is found that the Dilettor was seised. The Remitter is devested out of the Dilettor. Arg. Godb. 326. cites 3 E. 4. 25.

4. Tenant in Fee of a common Lord is attainted of Felony; his Lands remain in him during his Life, until the Entry of the Lord, and where the King is Lord, until Office found; but in the Cafe of a common Lord after the Death of a Person attainted, they are in the Lord before Entry, and in the Cafe of the King before Office, for the Mischief of Abeyances. Arg. 2 Le. 126. in Cafe of Venables v. Harris.

5. Lord and Tenant. Tenant is Attain of petty treason or Felony, Eichet of the Land of the Tenant with the Charters of the Land, belong to the Lord; but Goods, Leases for Years or Life, and Capias ad Amor belong to the King, and Year Day and Waffle. Jenk. 125. pl. 52.


N. Ch. R. 155. B. C.—
S. P. But it is otherwise of a Chattle. A Feoffee of a Trust at this Day, commits Treason or Felony, the Land is lost, and of chattels, and the Trust is extinct; for the King, or Lord by Eichet, cannot be found to an User Trust; for they are in the Poll; and are Paramount the Confidence. Jenk. 190. pl. 92. — And to open a Trust other than the Use or Trust, viz. the Right of his Lordship by Eichet for want of a Tenant. Jenk. 128. pl. 30. — Arg. Hard. 46. & per Halle Ch. B. 697. that he who comes in the Poll shall not be liable to a Trust. Trin. 9 Car. 2. In Scott. in Cafe of Pawlet v. Att. General; 7. Attainder.
Forfeiture.

7. Attainder of Felony makes a Forfeiture of the Estate to the Lord by way of Forfeiture only, pro Dei et Titania's, and the not defending is the Consequence of the Corruption of Blood. 1 Salk. 85. Hill. 8 Anna. in the House of Lords. Sir Salathiel Lovel's Cafe.

In the Exchequer S. C.— Jenk. 245. pl. 52.

(H) In Cases of Felony. What Estates in Offices, Dignities, &c.

1. If the King creates one to be a Baron to him and his Heirs Males of his Body issuing, without paying of any Place, he shall not have an Estate Tail, but a Fee Simple Conditional, which shall lie forfeited for Felony. But if he creates him Baron of a Place, then he shall have an Estate Tail. 12 Rep. 81. Pauch. 9 Ja. Anon.

2. Cestey que Trust of a Grant of the Licence of Wines for Years committed Felony; it was resolved by the Judges una Voce, that the same was forfeited. And after it was resolved to in the Exchequer. Hob. 214. pl. 275. the E. Someret's Cafe.

(I) In Cases of Felony, &c. to whom.

9 H. 3. cap. 22. Enacts that the King shall * not hold the Lands of Persons convicted of Felony, longer than a Year and a Day, and then they shall be delivered to the Lords of the Fee. If there be Menefee and Tenant, and the Fee is attainted of Felony, the Lord Paramount shall have the Menefee presently; for this Prerogative belonging to the King extends only to the Land, which might be wasted, in Lieu whereof the Year and Day was granted. 2 Inf. 55.—And this is to be understood when a Tenant in Fee Simple is attainted; for when Tenant in Tail, or for Life is attainted, there the King shall have the Profits of the Lands during the Life of Tenant in Tail, or of the Tenant for Life. Ibid. * This must be understood of all manner of Felonies punished by Death, and not of Petit Larceny, which notwithstanding is Felony. Ibid. 58.

2. 17 E. 2. 14. Enacts that the King shall have the Escheats, during the Vacancy of the Bishoprick.

3. 17 E. 2. 16. Enacts that the King have all the Goods of Felons and Felonies, and the Year-Day and Wafe of their Land, and then the Land shall be delivered to the Lord of the Fee, who may also (if he pleases) compound with the King for the Year, Day and Wafe. Except Lands helden in Gavelkind, &c. where the Lands of the Felon go to the Heirs by Custum; and the Wife has Dower.

4. Oblige in Trust is Feo de Se, Cestey que Trust was relieved against the King in Equity upon the Statute 33 H. 8. 39. Hard. 176. Hill. 12 & 13 Car. 2. in the Exchequer. Hix v. the Att. Gen. and Sir W. Cooper.

5. If I purchase an Estate in the Name of J. S. and after am attainted of Felony, the Trustee shall hold the Land to him and his Heirs, free of all Trusts. Sid. 403. Hill. 20 & 21 Car. 2. in the Exchequer. Sir G. Sand's Cafe.

6. In Cases of Penalty by Statute for any publick Offence the King is intitled to the Penalty, if no particular Application of it is directed. MS. Rep. said to be Ed Harcourt's. tit. Forfeiture cites 23 Feb. 1720. Thornby v. Fleetwood.

(K) For
(K) For Crimes at Common Law.

1. All felonies punishable according to the course of the Common Law, are either by the Common Law, or by Statute. There is also a felony punishable by the Civil Law, because it is done upon the High Seas, as piracy, robbery or murder, whereof the Common Law did not take Notice, because it could not be tried by 12 Men. If this piracy be tried before the Lord Admiral in the Court of the Admiralty, according to the Civil Law, and the delinquents there attainted; yet shall it work no corruption of blood, nor forfeiture of his lands; otherwise 'tis if he be attainted before commissioners by force of the Statute of 28 H. 8. Co. Litt. 391. a.

2. The judgment against a man for felony is, that he be hanged by the neck till he be dead; and by the common law he was punished also; first, in his wife, that she should lose her dower; secondly, in his children, that they should become base and ignoble; and his blood so tainted and corrupted, that they can't inherit to him or any other ancestor; thirdly, that he shall forfeit all his lands and tenements which he had in fee; and which he has in tail for term of his life; and all his goods and chattles, 3 Inst. 211. But acts of Parliament have altered the Common Law in some of these points. First, by the statute de donis conditionibus, lands in tail were not forfeited, neither for felony nor for treason; but for the life of tenant in tail: and this statute was made to preserve the inheritance in the blood of them to whom the gift was made, notwithstanding any attainer of felony or treason; and this law continued in force from 13 Ed. 1. until the 26 of H. 8. when by act of Parliament estates in tail were forfeited by attainer of high treason; but as to felonies, the statute de donis conditionibus, does yet remain in force; so as for attainer of felony, lands or tenements in tail are not forfeited, but only during the life of tenant in tail; the inheritance being preferred for the issue. R. S. L. 3 Vol. 197. cites 1 Inst.

(L) In cases of felony. In respect of the place where.

1. For robbery, piracy or murder committed super ius quem, and tried in the Court of Admiralty by the Civil Law, and not by Jury, the attainer there, works no corruption of blood or forfeiture; but if he be attainted before commissioners by force of 28 H. 8. it doth. L. P. R. 627.

(M) What may be forfeited.


2. A man has the ward of his son and heir apparent, and he is outlawed; yet 'tis said, that the father shall not forfeit this ward; for he cannot compel his son to marry, as the Lord may his ward, no more than a guardian in socage. Br. forfeiture de terres. pl. 70. cites 33 H. 6. 55.

3. A man is attainted of felony, he shall not forfeit his charters of his land; nor shall he, who has catala felonum & fugitivorum, have them. But, per Moile, the land shall have the charters with the land. Br. forfeiture de terres. pl. 69. cites 10 E. 4. 14. and 21 H. 6. 1.

4. Goods
Forfeiture.


5. And in Appeal of Robbery, if the Plaintiff takes * the Mainor [or Thing taken in the Manner,] and the Defendant disclaims in the Property, and after is acquitted, the King shall have the Mainor [or Thing taken in the Manner.] Br. Forfeiture de Terres. pl. 62. cites 12 E. 4. 5, 6. Note, if a Man be attainted of Treason by Parliament, his Lands and Goods are thereby forfeited, without Words of Forfeiture of Land or Goods in the Act. Br. Forfeiture de Terres. pl. 99 cites 35 H. 8. and 4 H. 7, 11. concordat per Townend.


8. A Foundership can't becheated or be forfeited by Attaindre of Felony or Treason; For it is a Thing annexed to the Blood, which can't be separated. Arg. 4 Le. 138. cites Br. Time of H. 8:

9. A Man seized in Right of his Wife, may grant, but not forfeit; and 2 Le. 150. S. fo may * Guardian in Sorge.—The Husband may grant a Term for 112. S.C and Years, which he hath in the Right of his Wife, but he cannot forfeit it, if, &c. Arg. 2 Le. 126. in Cafe of Venables v. Harris.

Sheffield v. Ratcliffe—* Pl. C. 293. Osborne's Cafe.

Executor may give Testators Goods, but not forfeit them by Outlawry. Guardian in Sorge may grant his Guardianship, but not forfeit. Arg. 2 Roll. R. 325, cites Pl. C. Osborne's Cafe.—10 E. 41 — Godb. 316. Arg. — 353. S. P. in Cafe of Sheffield v. Ratcliffe. Tenant by the Curtesy, in the Life of his Wife, cannot grant his Estate of Tenant by the Curtesy to another, but he may forfeit it for Treason or Felony, vix. by Way of Discharge, Arg. Godb. 325.

10. Amenity pro Concilio impendendo, cannot be granted or forfeited. Arg. 3 Le. 185. because there is a Confidence. Wroth's Cafe.

and Imprisonment of the Grantee, yet he may give Counsel, if the Grantor comes to him as well as he could before the Attainder and Imprisonment. D. 1. b. 2. a. Mich. 6. H. 8. Oliver v. Emeson.


12. A Park may be forfeited by Attaindre, but a * Parker-ship is a Matter of Service, and cannot be forfeited as an Interesse may. Arg. Godb. 418, 419. cites Pl. C. 399.

13. One may forfeit as much as he may grant. Arg. Litt. R. 122.


15. At Common Law Cefy que Use did not forfeit the Use for Felony or Treason; For it was only a Confidence; and it is the fame at this Day, for a Truftr of Inheritance or Freehold, but anotherwife of a Chattel. Jenk. 190. pl. 92 commissTre- Nons or Felony, or the Land is lost, and Echeats and the Truftr is extinct. For the King or Lord by Echeat cannot be forfeited to an Use or Truftr; Because they are in the Poss, and are Paramount the Confidence. Jenk. 192. pl. 92.

16. Use
Forfeiture.

16. **Forfeiture.**

**Jenkm. 245.**

Forfeiture was not forfeitable at Common Law, but it was grantable. *Tryst* is not grantable at this Day by Law, nor forfeitable, but for Chattels. *Jenkm. 219. pl. 66. cited Hob. 214.*


18. **Infantuous Seisin** gained by a Fine is not forfeited for Treason.

2. **Lev. 170.** in Cape of Browne v. Waire.

19. It is said, that the Inheritance of *Things not lying in Tenure* as of Rent-charge, Rent-Sick, Commons, &c. shall be forfeited to the King by an Attainer of High Treason, and that the Profits of them shall be forfeited to the King by an Attainer of Felony, during the Life of an Officer, and that the Inheritance shall be extinguished by his Death; For it cannot be forfeited, because there is no Tenure; nor defend, because the Blood is corrupted. 2 *Hawk. Pl. C. 449. cap. 49. S. 4.*

20. It seems agreed, that all *Things whatsoever, which are comprehended under the Notion of a personal Estate, whether they be in Action or Possession, which the Party hath or is intituled to in his own Right, and not as Executor or Administrator to another, are liable to such Forfeiture.* 2 *Hawk. Pl. C. 450. cap. 49. S. 9.* The Book cites as in the Marg.

**21. It seems to be settled, That a Bond taken in another's Name, or a Lease made to another in Trust, for a Peron who is afterwards convicted of Treason or Felony, are as much liable to be forfeited, as a Bond made to him in his own Name, or a Lease in Possession.** 2 *Hawk. Pl. C. 450. cap. 49. S. 10.* The Book cites *Cro. J. 312, 313. Hob. 214.*

22. Also it seems to be in a great Measure settled, That the *Trust of a Term granted by a Man, for the Use of himself, his Wife and Children, &c. is liable in like Manner to be forfeited 'if fraudulently made with an Intent to avoid a subsequent Forfeiture; but that it shall be forfeited so far only, as it is referred to the Benefit of the Party himself, it made Bona Fide, whether before or after Marriage for good Consideration, without Fraud, which is to be left to a Jury on the whole Circumstances of the Case, and shall never be presumed by the Court, where it is not expressly found.* 2 *Hawk. Pl. C. 450. cap. 49. S. 11.* The Book cites as in the Marg.

(N) In Cases of Treason or Felony. Chattels.

1. *If a Man be arraigned of Felony, and takes to his Clergy, he shall forfeit his Goods, and the Profits of his Land.* Br. Forfeiture de Terre pl 117, cites 4 E. 3. 46.

2. *Indictment of the Death of a Man, the Exigent is awarded, and the Party comes, and is found not Guilty; yet the Goods are forfeited, and the Inquest compell'd to say what Goods he had: who said that he had to the Value of 40s. Thorp asked what Vill should answer for the Chattels; the Inquest said the Vill of W. and so 'twas entered in the Roll. Br. Forfeiture, de Terres. pl. 32, cites 22 Aff. 81.*

3. A.
3. A was brought into the Exchequer to answer the Queen for a certain Sum of Money, by him received to B, to pay over to C, attainted of Treason, and a Bill made by C to B: but not being ready, was thrown forth, and so demurred in Law; and it was only a Choise en Action, and a naked Constraint upon the Matter, he was dismissed. But if a Servant receive Money to the Use of his Master, and brings this into the Hands of his Master, who after is attainted; this is forfeited which is in the Master's Possession. Savil. 40. pl. 91. Mich. 24 and 25 Eliz. Anon.

4. A Termor is distraint for Rent behind; afterwards he is attainted for Felony done before the Distraint taken; the King shall not have this Distraint as a Forfeiture, unless he satisfies the Party that distraint had; for this was lawfully taken Tempore Correctionis, per Doderidge. J. 3 Buls. 17. Hill. 12 Jac.

5. If A give Goods to B, and after A is attainted of Felony, yet the King shall not have the Goods thus given, without Payment of the Sum for which they were given, because neither of them hath the absolute Property in the Goods so given, per Doderidge. J. 3 Buls. 17. Hill. 12 Jac.

6. A Covenant to pay Money shall be forfeited to the King by Attainer of Felony, per Cur. Noy. 155. and says that if it were adjudged in the Cae of George Norris.

7. If a Perfon is attainted, the King is intitled to personal Things entirely, as to an Obligation, Horfe, &c. to the Attainer of one Joint Tenant forfeits all, Arg. Raym. 121. but not so of Things in Possession, which may be divided, cites 3 Init. 55. of a Chattel real in Possession, and that PL.C. 243. intimates so much, because he instances only in entire Challets.

8. Tryst of a Chattel is forfeited for Felony, if it be a Lease in Groves; but otherwise, if it be to attend the Inheritance. 3 Ch. R. 36. Patch 21 Cat. 2 in the Exchequer, in Cae of the Att. Gen. v. Sir Geo. Sands.

It seems that this should be Dume Hale's Cae in Pl. C. 253. to 264.


(C) In Cae of Treason or Felony, what is to be done with Challets before Conviction.

1. 18. E. 2. Enacts that Felon's Goods may be secured before Attainer, but he shall be maintain'd out of them, and they shall be restored to him if acquitted.

2. Stat. de Catallis Felonum, Enacts that None taken for Felony, for which he shall be imprisoned, shall be disposed of his Lands or Challets, until be be convicted thereof; but as soon as he is taken, his Tenements and Challets shall be viewed by the Sheriff, and other Officers of the King and lawful Men, and inventoried, and kept by the Bailiff of him that is so taken, who shall give Surety to the Justices, of the Challets, or the Price; facing to the Accused and his Family their Necessaries, as long as he shall be imprisoned, and his reasonable Ecliptons; so that when he is convicted, the Refidues of his Challets (besides his Ecliptons) may remain to the King, with the Year and Day of his Lands; but if he be acquitted, his Challets shall be restored.

3. The Vill may seize the Goods of a Man outlawed for Murder, where they can find them. Quod nota. Br. Forfeiture de Terres. pl. 32. cites 22 Aff. 81.

5 Y 4. The
Forfeiture.

Of a Fe-

on the Sheriff cannot take the Goods away with him, unless they be forfeited. But where one is arrested or indicted of Felony, he must seize and take Security, that they shall not be eschewed, but not re-

move them; and if the Party will not find Surety, he shall put them into the hands of the Neighbours to keep, per Cur. Br. Fortitude de Terres, &c. pl. 7. cites 43 El. 3. 24.

5. If a Man kill another by Mistake, he shall forfeit his Goods, and be ought to have his Charter of Pardon of Grace, per tot. Cur. Br. Fortitude de Terres, &c. pl. 9. cites 2 H. 4. 18.

6. Where a Man is indicted of Felony, till he be attainted, his Goods shall not be removed out of his House, but shall be in keeping of the Neighbours pending, &c. and all the mean Time, the Felon shall have his Living of his Goods; Quod nota, that they are not forfeited before Attainder. Br. Fortitude de Terres. pl. 10. cites 7 H. 4. 47. per Hulls.

7. 1 Ric. 3. cap. 3. Enacts that No Sheriff, Under Sheriff, Escheator, Bailiff of Frankifhe, or other Person, shall seize the Goods of any Person ar-

rested or imprisoned for Suffiption of Felony, before he be convicted or attainted thereof, or the same Goods be otherwise lawfully forfeited, on Pain of double the Value of the Goods so taken, to this Party given, to be re-advocated of Debts, &c. as aforesaid, &c. to be allowed.

This Statute is said to be in Alle-

ance of the Common Law, Hawk.

Pl. 455. Ch. 49. S. 29.

It was Enacted by 25 E. 3. 14. That in the second Case, given by that Statute, on the Return of a Non Invenit, it shall be comprised, that the Sheriff shall cause the Party's Châlts to be forfeited, and safely kept till the Day of the Write or Prefix returned, &c. and this is still in Force, notwithstanding this statute of 1 R. 2. 5. For this prohibits only the taking of the Goods of those who are arrested. 2 Hawk. Pl. C. 455. Ch. 40. S. 57.

It seems plain from this Statute, that Goods may be seized as such as they are forfeited; and it seems the whole Township is answerable for them to the King, and may seize them wherever they can be found. 2 Hawk. Pl. C. 455. Ch. 49. S. 40.

See Laws. 123. for the Pleadings upon this Statute.——Debt upon this Statute, for that the Plaintiff being imprisoned upon Suffiption of Felony, the Defendant took his Goods before he was convitied or attainted, contra Formam Statut, &c. and demanded the double Value. Upon the non Debet, it was found for the Plaintiff, and moved in Arreft of Judgment, that the Declaration was not good, for that it is not alleged that they were seized for the Cause. For if he took them as Treafu's, an Action lies not upon this Statute, but non Allocatur: Because it shall be outwitted, that he seized them for this Cause only when no other Cause is shown. And the Addition of contra Formam Statut explains it, and makes it good, if it had been before ambiguous. As in 12 Eliz. D. 312. in an Action for defrauing A- vera Carenc, contra Formam Statut; altho' it be not aver'd, that he had other Goods sufficient for the Difficult, 'tis well enough. For contra Formam Statut implies as much, wherefore it was adjudged for the Plaintiff. Cre. E. 749. Pach. 42 Eliz. B. R. Hill v. Langly.

Treasure upon this Statute for taking the Plaintiff's Goods (being arrested for Suffiption of Felony) before Conviction, and declares of seizing a certain Peace of Money; and after Verdict for the Plaintiff, it was moved in Arreft of Judgment, because the Words of the Statute are, That non shall seize the Goods of any Person, &c. and that Money is not Goods cites Fiz. Brief. 512. But adjudged for the Plain-

tiff, and that Money is Goods; and that Case is only the Opinion of Finchden. Mich 52 Car. 2. B. R. Raym. 414. Osborn v. Wandell. And upon Exception taken in an Action upon this Statute, after Verdict: For that the Declaration says, Bona & Catalla, and then alleges Money and Goods, whereas Money is not included under Bona, according to * Fizh. 'twas answered, That 'tis true, the Money can't be demanded by the Name of Bona, yet it may be granted by that Name; For the Person who hath the Grant of Bona Felon, & c. fictrorum, shall, without Doubt, have his ready Money, tho' a Declaration for Money is pro Poenitentiim mem. 2. Show 152. 153. Mich. 52 Car. 2. B. R. Anon. seems to be S. C. as above, Osborn v. Wandell. * Fizh. Abr. Try. Brief. 512 cites M. 39. E. 5. 23.

It has been adjudged to extend, as well to the Seellure of Money, as of any other Châlts. Hawk. 455. And another Exception was, for that the Declaration rested the Statute, and said, no Sheriff nor Under-

Sheriff, nor Escheator, nor any other Person, and to the Statute, Under-Sheriffs are not mentioned; yet hold that this doth not enlarge the Statute; for that 'tis included in the Word Sheriff; and that 'tis, nor any other Person, and therefore that is well enough. 2 Show. 152. 153. Mich. 52 Car. 2. B. R. Anon. An Action being brought upon this Statute, and a Verdict for the Plaintiff, 'twas moved in Arreft of Judgment, that the Statute was misinterpreted, whereupon the Parliament Roll was brought into Court and read, and the Statute was for Suffiption of Felony; whereas the Declaration was for Felony, which being Matter of Sub stance, the Court ordered a Nil Caput, per Billam. Stat. 172. Mich. 1649 B. R. Archer v. Holmbridge.
Forfeiture. 451

(P) From what Time; and what Power the Offender has over Goods before Conviction.

1. If Goods are forfeited by Outlawry or Attainder of Treason, the Property is in the King immediately, and the King may grant them over immediately; and the Grantee may have an Action in his own Name. Br. Forfeiture de Terres, pl. 26. cites 39 H. 6. 26.

2. If a Felon be convicted by Verdict, Confession or Recantancy, he doth forfeit his Goods and Chattels, &c. presently; For, where a Reacon has been yielded in our Books, that the *praying of his Clergy was a Refusal of the Judgment of the Law, and a Flight in Law, and that for that Caufe he forfeited his Goods and Chattels, that doth not hold; For if a Man be convicted of Petit Treaon, or Murder, or any other Crime, for which he can't have his Clergy, yet by the very Confession he forfeith his Goods and Chattels before Attainder. And Stanford (speaking of a Felon convicted by Verdict) faith, that he shall forfeit his Goods which he had at the Time of the Verdict given, which is the Confession in that Cafe, and by the Stat, 1 R. 3. 3. no Sheriff, Bailiff, &c. shall seize the Goods of a Felon before he be convicted of the Felony, whereby it appeareth that the Goods may be seised as Forfeiture after Conviction. Co. Litt. 391. a.

3. 'Twas held by all the Barons, and fo they delivered the Law to the Jury; That where B. entered into a Statute to A. and A. afterwards was a Fugitive beyond the Seas in 27 Fliz; and after, before Office, A. returned, and released this Stat. and Office is after found, this Release shall note a bar to the King; For he was not guilty by the Flight, and the Office is but an Informing of him, and the Statute was in him before the Office. Mich. 3. Jac. 1. Cro. J. 82. the King v. Sir Rich. Wendman.

4. The Goods are not forfeited till Conviction, and till then the Party ought to have them for his Maintenance. And before Conviction they can not be seised for the King's Use, tho' they may be put in Salvo Casuad. Godbl. 266. Mich. 11. Jac. in the Starr Chamber, in the Cafe of Miller v. Reynolds and Burlet.


5. So, a Felon or Traytor may, after the Felony or Treason, and before Conviction, sell Bona fide for his Sustenance, &c. his Chattels, be they real or personal; per Coke Ch. J. 8 Rep. 171. b. Pach. 8. Jac. in Sir George Fleetwood's Cafe.

6. Forsewe for diverse was brought against the Defendant, being Sheriff of London, by the Plaintiff, who was the Son of Jones, who was executed for Robbery, and Burglary; and he being in Newgate, and his Goods seized by the Defendant, Jones made a Bill of Sale of the Goods mentioned in the Declaration, to the Intent to make Provision for the Plaintiff, being his Son; and by Holt Ch. J. the bill was ruled fraudulent; For tho' a Sale Bona fide, and for a valuable Consideration, had been good, because the Party had a Property in the Goods till Conviction, and ought to be reasonably sustained out of them; yet such a Conveyance as this, cannot be intended to any other Purpose, than to prevent a Forfeiture, and defraud the King; and Holt Ch. J. laid, that there was a Fraud at Common Law, as in such a Cafe as here; and tho' this Bill would not be fraudulent against a subsequent voluntary Disposal by Jones; yet, when he is convicted for a Fact before the Sale, this shall relate and avoid the Sale, and no Contenance ought to be given to such a Contrivance as this, where a Man has gained an Estate to a considerable Value by Robbery, and when he is detected, he would give this to his Potterly; and the Plaintiff was Non-suitor. Skin. 377. on a Trial at Guildhall. Trin. 5 W. & M. Jones v. Ahurit.

7. No Part of the personal Estate is vested in the King, before the
Forfeiture.

Self-Murder is bound by some Inquisition, and consequently the Forfeiture thereof is saved by a Pardon of the Offence, before such finding. 1 Hawk. Pl. C. 68. cap. 27. S. 9.

8. But if there be no such Pardon, the whole is forfeited immediately after such Inquisition, from the Time such Mortal Wound was given; and all intermediate Alienations are avoided. 1 Hawk. Pl. C. 68. cap. 27. S. 10.

(Q.) Forfeiture of one Person, in what Cases it shall be of another.

1. A was bound to two in 20l. and one of the two was Felo de fe, which was found by Office, and per Chole J. the * whole Obligation is forfeited. But contrary per Younge; For by the Death it is veiled in the other by the Survivor; and the Office which came after, cannot defeat this which was veiled before, quere. Br. Jointenants pl. 34. cites 8 E 4 4.

— Jenk 63. pl. 22. S. P. Because the outlawed Person, without the other, might have released the Obligation.

2. Goods taken by a Trespasser shall be forfeited by the Attainer of the Owner for Felony; For the Right and Property remains in the Owner, and the Law shall adjudge them in him, until he makes his Election to the contrary, by bringing Writ of Trepass. Cro. E. 824. Paich. 43. Eliz. C.

B. in Case of Bishop v. Lady Montague.

3. Two Jointenants of a Ward, one does Walf, both shall be punished in Action of Wait. Co. Litt. S. 67. 54.

4. Mortgagee of Lands forfeited to the King must make his Demand of the Money at the Exchequer, and not upon the Land, nor need the King tender it. Golds. 137. pl. 41. Sir Rowland Heyward’s Cafe.

5. A devised to B. the Father for Life, Remainder to C. his Son an Infant in Fee, and devised 400l. to the Son, to be paid at 21; A made the Father Executor, and left 2000l. personal Affets, and B. having spent the personal Affets, mortgaged the Lands to J. S. and made Affidavit that they were free from Incumbrances, and that he was seised in Fee, and leased a Fine for corroborating the Mortgage, and so declared the Ue thereof for 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. Hill 1699. Abr. Equ. Cas 257. Willis v. Fineux.

6. If Tenant for Life, of the Office of Marshal of B: R. grants an Office for Life, and then commits a Forfeiture of his Estate; yet the Under Grantee shall continue in for the Life of the Grantor; because the Grantor shall not, by his own Act, defeat his own Grant; per Holt Ch. J. 12 Mod. 558. in Sutton’s Cafe.

(R) Relation as to Lands and Chattels.


1. A Trespasser in Felony or Treason, by Verdict, Confession or Outlawry forfeits all from the Time of the Offence committed, as to Lands; and so ’tis upon an Attainer of * Outlawry. But for † Goods, Chattels or Debts, the King’s Title shall look no farther back than to those Goods the Party, attainted by Verdict or Confession, had at the Time of
Forfeiture.

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of the Verdict and Confeijion, and in Outlawries at the Time of the Brook makes
Exigent, as well in Treasons and Felonies. Bacon's Ufe of the Law. 41. a Quare
thereof; for
he says, that it seems to him, that it shall only be from the Time of the Outlawry premised, or after;
For Outlawy has no Relation, as Verdict has. Br. Forfeiture de Terres. pl. 98. cites 50 H. 6. 8. but it
should be 50 H. 6. 9. — — S. P. Br. Relation. pl. 42. cites 50 H. 6. 5. as well as upon Attainder by Verdict
— — Quere; for, if this shall have Relation to the Act; contra of Outlawry. Note the Diversity. Ibid.
Attainder by Outlawy shall have Relation unto the Exigent, as unto Lands and Tenements; so that
a Pediment of the Land or Grant of a Rent, before the Exigent awarded by him that is attained
in such Manner is good. Perk. S. 28. — — Br. Relation. pl. 42. cites 42 E. 5. 56. S. P.
And Attainder by Verdict shall have Relation unto the Time of the Felony committed according to the
Supplication of the Indictment, as unto Lands and Tenements, and so shall an Attainder by Confeffion. Perk.
S. 28. cites 50 H. 6. 5.
† Perk. S. 29. So that a Gift made of the Goods before Judgment, is good. cites 41 Alb. 12. — —
Br. Forfeiture de Terres. pl. 59. cites 4 E. 4. 4. acc. per Damby Ch. J. and Needham J. Quere, if by
Coin, per Brook. Ibid.

2. Where a Man is arraigned of Felony, and acquitted, and 'tis found that
he fled for the Felony, he shall forfeit his Goods seized 'tis bat at the Time
Terres. pl. 119. cites 3 E. 3. It. Nor.
3. But where the flying is found before the Coroner, they are forfeited which
he had at the Time of the Verdict taken before the Coroner. Br. Forfeiture
de Terres pl. 119. cites 3 E. 3. It. Nor.

4. In Attaint, Judgment was given against the Petit Jurors, and it
was doubted, if the Jurors having alled their Lands meane between the Telle
of the Writ and the Judgment, whether the King shall have thofe Lands or
not; therefore quere of the Relation of it. Br. Relation. pl. 14. cites
42 E. 3. 20.
The Judgment, as to the Goods, shall have Relation to the Telle of the
Attaint, where they have alled for fear of the Attaint, viz. by Covin. Br. Relation pl. 45. cites 8 E. 2.
it seems contra of Goods sold before, or after the Telle of the Attaint bona Fide; For if they are sold
before Judgment, it seems that the Sale is good. Quere, of a Sale before Execution.

5. And of the Relation of a Judgment in Premunire alfo, and see the
Statute thereof. Ibid.

Quere, as to an Indictment on a

6. And, it seems, that where Treafon is made by Statute, the shall forfeit
in like Manner. Ibid.

7. Quere, if it be not the fame Law in the Premunire or Attaint. Ibid.

8. If a Man commits Felony, and after Purchases Land, and after is a-
tained; there the Land purchased is forfeited, as well as the Land which
he had at the Time of the Felony committed, per Perley and Belknapp.
9. If Goods be given to A. by Deed in his Abfence, and A. commits Felony
before Notice of the Gift, yet the King shall have the Goods; For his
Notice shall have Relation to the Gift. Br. Done &c. pl. 30. cites 7
E. 4. 129.
10. If one be found Felo de fe by Office, the Office shall have Relation
to the firft Stroke, per Littleton. Br. Praegol. pl. 67. cites 8 E. 4. 4.
Baron and

Feme Jeinte-

nates for

Tears; the Baron is Felo de fe, Feme is in by Survivor; yet if this be afterwards found by Office, the
King shall have the whole Term. Pl. C. 458. Trin. 3 Eliz. Hales (Dame) v. Petit.

11. There is a great Diversity, as to the Forfeiture of Land, between
an Attainder of Felony by Outlawry, upon an Appeal, and upon an Indict-
ment; For in the Cale of an Appeal, the Defendant shall forfeit no Lands,
but fhuch as he had at the Time of the Outlawry pronounced; but in Cale
of Indictment, fuch as he had at the Time of the Felony committed,
5 Z

and
and the Reason of this Diversitie is evident; For that in Cae of Appeal, there is no Time alleged in the Writ, when the Felony was done; and therefore of Necessity it must relate, in that Case, only to the Judgment of the Outlawry; but in the Cae of Indictment, there is a certain Time alleged; and therefore, in that Case, it shall relate to the Time alleged in the Indictment when the Felony was committed. Co. Litt. 390. b.

12. But in the Cae of the Indictment, there is also a Diversitie to be observed; For as it hath been said, it shall relate to the Time alleged in the Indictment for avoiding of Estates, Charges, and Incumbrances, made by the Felon after the Felony committed; but for the mean Profits of the Land, it shall relate only to the * Judgment, as well in this Cae of Outlawry, as in other Cases. Co. Litt. 390. b.

13. A. committed Treason, 18 Eliz. for which 26 Eliz. he was attainted by Trial; and in the mean Time, between the Treason and the Attainder, he was Confesse of a Fine of certain Lands, convey'd by one B. to the Ufe of the said B. and his Wife, Sifter of the said A. and of the Heirs of the said B. And after this, B. and his Feme bargained and sold the Lands to J. S. for Money, and they convey'd them to him by Fine. And now upon Discovery of the Treason, and the Attainder of A. J. S. was advis'd by Plowden, Popham, and many others, that the Eftate of the Land was in the Queen, because the Queen is intitled to all the Land that Traitors had at the Time of the Treason, or after. So the Ufe, which should create Eftate to B and his Wife upon the Fine, by the Relation of the Right of the Queen by the Attainder, is destroyed; wherefore J. S. fued to the Queen, and the granted him the Land again by Patent. Mo. 196. Trin. 27. Eliz. Pimb's Cafe.

14. The Treason of compassing the King's Death was laid in the Indictment to be the 30th of May, 11 Car. 2. yet upon the Evidence, it appeared that Sir Henry Vane, the very Day the late King was murder'd, did fit in Council for the ordering of the Forces of the Nation against the King, that now is, and so continued on all along, until a little before the King's coming in. It was resolved, that the Day laid in the Indictment is not material, and the Jury are not bound to find him guilty that Day, but may find the Treason to be as it was in Truth, either before or after the Time laid in the Indictment, as is resolved in *Spect's Cafe. Co. Pl. Coron. 230. And accordingly, in this Cafe, the Jury found Sir Henry Vane guilty of the Treason in the Indictment, the 30th of January, 1 Car. 2. which was from the very Day the late King was murder'd, and so all his Forfeitures relate to that Time, to avoid all Conveyances and Settlements made by him. Kelyng. R. 16. pl. 6. Trin. 14. Car. 2. Sir Henry Vane's Cafe.

15. If there are two Joint-Obiuges, and one of them is outlawed, the King shall have the whole, because each had Power of the whole. Hard. 26. Arg. cites Fitzh. Execution 113.

16. If A. gives B. a mortal Wound, and then A. sells his Land, and then B. dies; there shall be such Relation as to make the Land forfeited from the first Stroke. Arg. Ven. 371 cites Pl. C. 293. Dame Hale's Cafe.

(S) Purged, or dispens'd with, by what.

Ibid. pl. 46
S. P. cites 45
All.

1. T was agreed, that where Exigent is awarded in Felony, and after the Party shews Charter of Pardon of elder Date than the Exigent awarded, and Surety put in in Chancery, Secundum Formam Statuti, before the Exigent, the Goods are fayed and not forfeited; because the Charter and Surety appear by Matter of Record. Br. Forêturie de Terre. pl. 6. cites 43 E. 3. 18.

2. No
Forfeiture.

2. No Part of the personal Estate is veiled in the King before the Self-Murder is found by some Inquisition; and consequently the Forfeiture thereof is saved by a Pardon of the Offence before such finding. 1 Hawk. Pl. C. 68. cap. 27. S. 9.

3. But if there be no such Pardon, the whole is forfeited immediately after such Inquisition, from the Time such mortal Wound was given, and all intermediate Alienations are avoided. 1 Hawk. Pl. C. 69. cap. 27. S. 10.

(T) What Charges are avoided by it:

1. T enant in Tail, Reversion in the King. Tenant in Tail made a Leafe for Years, and levied a Fine to the King. The King fhall not avoid the Leafe; For he comes in in the Reverter. But in such Case, if he be attainted of Treafon, the King fhall avoid the Leafe. So a Statute of Forfeiture is stronger than a Statute of Conveyance. Arg. Godb. 324. cites 2 Mari. Audin's Cafe cited in Wallingham's Cafe.

(U) Forfeiture. By Flight; and how to be feifed, and when.

1. N ote. That if it be found before a Coroner by Inquest, that a Felon or Thiefe withdrew himself, the Chattels are forfeited without more; and the Sheriff ought immediately to feifie his Land into the Hands of the King, by simple Parol without Inquest, and caufe to feifie all his Chattels into the King's Hands, and to caufe them to be apprized, as well by Villains as by Freemen, and put the Price in the Roll of the Coroner, and deliver them to the Vill, to anfwer to the King. Br. Forfeiture de Terres. pl. 33. cites 22 Aff. 96.

2. In Appeal of Death, the Defendant made Default, by which Exigent was awarded; and thereby the Goods and Chattels were forfeited. A Writ may lie to the Sheriff, or to the Exceflor, to feifie them. But per Knevet, Commission out of the Exchequer, to feifie them, is againft Law; For they were not forfeited till now. Br. Forfeiture de Terres. pl. 40. cites 41 Aff. 13.

3. A Man was taken for Suspicion of Larceny, and baile to J. N. Baiiff of D. to keep him, and he escaped for Default of good keeping; and there 'twas said, that if he was not indicted, his Goods shall not be forfeited; quod Mirum! For he who flies for Felony shall forfeit his Goods. But it seems, that this Word (indicted) is intended, that it fhall be found by Indictment, that he fled for Felony before the Goods were forfeited; For the Flying ought to be of Record. Br. Forfeiture de Terres. pl. 43. cites 42 Aff. 5.

4. Appeal was brought by a Feme against three, of the Death of her Husband, one is suiterche, and the other two render themselves as the Exigent, and their Goods were forfeited, because they faid till the Exigent. Br. Forfeiture de Terres, pl. 45. cites 44 Aff. 16.

5. Appeal against two, the one as Principal in one County, and the other as Accessory to the fame Murder in another County, and the Exigent was awarded; and after the Accessory goes quit, because 'twas in another County, and prayed Restitution of his Goods, and could not have it; For the Goods are forfeited by the awarding of the Exigent, which yet stands in Force. Br. Forfeiture de Terres, pl. 46. cites 45 Aff. 9.

6. Upon a Jury's finding that the Defendant fled at the same Time that they acquit him of an Indictment of capital Felony, or as some say,
of Larceny before Justices of Oyer, &c. he forfeits all his personal estate. But such a finding causes no Forfeiture of the Issues of the Land; because by the Acquittal, the Land is discharged. Neither will it have any Effect as to the Goods, if the Indictment were insufficient; or if the Flight be disproved on a Transcript, which, as all agree, may be taken to any such Finding, except that by a Coroner's Inquest; and as some fay, even to that, as well in respect of the Flight, as of the Particulars of the Goods. 2 Hawk. Pl. C. Abr. 445. cap. 49. S. 11.

7. Upon a Prefentment, by the Oaths of 12 Men, that a Person, arrested of Treason or Felony, fled from, or refiifed those who had him in Captivity, and was killed by them in the Pursuit or Scuffle, he forfeits all his personal Estate. 2 Hawk. Pl. C. Abr. 445. cap. 49. S. 11.

(W) In Cases not Treason nor Felony, or of inferior Nature.

1. **If a Man be Miscreant, 'tis a Forfeiture of his Land, perf Belknap.** Br. Forfeiture de terres, pl. 94. cites 5 R. 2.

2. **In Treffaps, it appears, that where the Defendant is attached for Goods in an Action of Treffaps, and makes Default at the Day, his Goods are forfeited.** Br. Forfeiture de Terres, pl. 23. cites 14 H. 6. 14.

3. **For Petit Larceny, under 12d. the Party shall forfeit all his Goods, but no Land, quod Nota; For this is Felony, tho' not Felony of Death.** Br. Forfeiture de Terres, &c. pl. 1. cites 27 H. 8. 22. per Fitzherbert J.

4. **Attaindre of Premunire works no Corruption of Blood, but is a Forfeiture of Lands in Fee Simple, but not of Lands in Tail.** Co. Litt. 391. a.

5. **By 9 Anne. 14. One challenging another for Money won at play forfeits his Goods.**

6. **1 Geo. 1. 55. Papifts not registering their Estates forfeit them.**

7. **An Heretick, tho' burnt for Herefey, forfeited neither Lands nor Goods. Because the Proceedings against him were only Pro Salute Animae.** Hawk. Pl. C. cap. 2. S. 10.

(X) Where, after Forfeiture, a Subject may enter without Livery of the King.

1. **Here a Man is attained of Treason by Parliament, and to forfeit his Land in Use, and in Possession, and after the Heir is resold by another Parliament after that the King had made a Feefment in Fee of a Manor; he shall not have Scire Facias to refuse the Land, and to have Livery; For where the King departs with Fee Simple, he cannot refuse.** Br. Livery, pl. 13. cites 7 H. 4. 20.

2. **But where the King is seised by Attainder of Felony, and has Forfeiture for Life, and J. N. has Title, he shall sue to have Refumption to the King, and to have Livery out of the Hands of the King; For the Revocation and Fee was in the King.** Ibid.

So where the King makes a Feefment in Fee of the Land of the Heir in Ward, there shall be Refumption and Livery made to the Heir; For the King had not the Fee Simple to give; contra where he has the Fee, and gives the Fee; Note, a Diversity: Ibid.

3. **Tenor in Tail levied War against the King by Treason, and was killed in Battle, and so died before he was attainted, by which it was enacted by Parliament, that he should forfeit all his Lands of Fee Simple, and that**
Forfeiture.

that the King should seise as well the Land of Fee-Simple as the Land tailed; and by Mandamus it was found that the Land tailed was tailed, &c. and that the Heir is within Age, upon which the Heir at full Age, sued in the Chancery to have Livery of the Land tailed, where, upon Argument, the best Opinion was, that he shall have Livery; For where the King seises by a Title furnished, and has other true Title, the Law will adjudge him in by the just Title, which is here by the Wardship; For nothing was forfeited by the Act of Parliament but Land of Fee Simple, and it appears there, that none shall have Livery without Office serving for him; and to the best Opinion is, that he shall not be put to sue by Petition. Br. Livery, pl. 14. cites 7 H. 4. 32.

4. Office was found that J. N. who held of the King, altered without Licence to W. S. and returned in the Exchequer, and thence sent into Chancery, and thence into B. R. to be discussed; and there found for W. S. that it was held of T. R. who held over of the King; by which he had Livery out of the Hands of the King, with the Issues in the mean time. Br. Livery, pl. 15. cites 7 H. 4. 41.

5. Where the King is intitled to seise, as for Outlawry of Felony, Ward, Alienation without Licence, &c. there the Party who has Title shall be compelled to sue Livery, contra upon Outlawry in a personal Action; For there the King shall not seise, but only take the Profits. Br. Livery, pl. 5. cites 9 H. 6. 20.

(Y) Levied or *Recovered. How.

1. 31. E. 3. Stat. 1. cap. 4. Enacts that the Escape of Felons, and the Chattels of Felons, Fugitives, and Clerks Convicted, adjudged by the Kings Justices shall be levied as they fall.

2. T. B. of Kent Knight, was Attainted of Treason, and the King by his Letters Patents gave all his Goods to W. and he brought thereof. Subpoea in Chancery to quod bona devenuerunt ad manus ejus, and per Cur. it lies well, tho' he may have an Action of Detinue at Common Law. Br. Prerogative, pl. 45. cites 39 H. 6. 26.

(Z) Pleadings.

1. 3 E. 3. Stat. 1. cap. 3. Enacts that if any charged with the Goods of Fugitives and Felons will, in discharge of himself, allege another that is chargeable therewith be shall be heard, and Right shall be done him.

2. In an Information for a Debt forfeited, and found by Inquisition to be due to the Felon by Bond, it must be directly charged against the Debtor; that he became bound by his Bond, in such a Summe, and must not be laid by a Prunt patet by an Obligation hie in Cur. prolat. Per Saunders. Sand. 275. Trin. 21 Car. 2. in the Cafe of King v. Sutton.

(A. a) Forfeiture. * Relieved in Equity.

1. [N. Case of Forfeiture Equity can Relieve, where they can give Satisfac- tion. 1 Salk. 156. Grimilton v. Lord Bruce & Ux. in Canc. 6 A

2. 2. A. S. C. * See Prerogative.

3. A Forfeiture of a Copyhold by setting Timber was relieved in Equity; but Lord Keeper declared, that in Case of a wilful Forfeiture he would not relieve Hill 19 Car. 2. Chan. Cafes 96. Mary Thomas v. Porter and the Bishop of Worcester.

4. In Case of a Forfeiture of a Lease for Non-Payment of a Ground Rent, and a Recovery in Equity, Canancery will not relieve on tender of Arrears and Coits, where the Forfeiting Person was offered the same Terms by the Ground-Landlord before the Bill brought and refused them, per Jeffries C. Vern. 449. Patch. 1687. Dorrington v. Jackson & Watson.

5. An Assent after Refusal was allowed to prevent a Forfeiture; for a Forfeiture shall not bind where a Thing may be done afterwards, or any Compensation made for it, unless there is a Devise over to a third Person. 2 Vent. 352. Cage v. Ruffell.


(B. a) How far Equity will aid the taking Advantage of a Forfeiture.

Upon the Disabling Statute of 11 Eliz. 15 H. 3, cap. 4. § 4. Lord Cowper inclined, upon a Bill brought by an after Protestant Remainder-man, and upon another Bill by the Heir at Law a Protestant, to direct an Issue to try whether J. S. to whom a first Remainder was limited, was a Papist at the Time that the Remainder should have vested in him; and this was denied by the Plaintiffs; but in regard, the Act inflicts a Forfeiture and Disability, and therefore is to be taken strictly; and that J. S. being above 18 at the making the Settlement, and so not within the Clause of Receiving the Estate by returning to the Protestant Religion (which probably was intended by the Parliament) his Lordship would not afflict the Plaintiffs so far; but left them to go on and try their Ejecutions upon several Demnifies, and directed that none of the Truf-Terms, or Estates in the Settlement, previous to the said Estate limited to J. S. or Mens he be asswrt him and the after Protestant Remainder-man, should be given in Evidence, or suffered upon; to the Intent, that it might be tried whether J. S. who was strongly affirmed to be a Papist but had controverted it, was capable of taking or Not, and who had the Title, in Case he was not capable of taking, whether the Remainder-man by the Settlement, or the Heirs at Law. Wms's Rep. 352, 353. Trin. 1717. Vane v. Fletcher.
Forgeries.

(A) At Common Law, or Now. In Respect of the Deed or Writing, or Thing contained therein.

1. 1 H. 5. 3. WHEREAS Persons have forged false Deeds to change If a Man the Lands of the good People of the Country, and to destroy a direct and trouble the Possessions and Titles of the Subjects of our Lord the King, therefore our Lord the King, &c. provides and ordains, that the Party so grieved, may have his Suit in such Case.

Statute says, to change the Lands, and trouble the Possessions and Titles, it cannot be intended of an Easement for Years. Pl. C. 8o. Arg. in the Case of Partridge v. Strange.

2. In Forger of a Deed, because the Defendant forged a Deed of certain Land, and four Shillings Rent, and Letter of Attorney of the same Land, and Rent. Defendant demanded Judgment of the Bill; for Rent does not lie in Leases of Seilin, and therefore cannot be grieved of the Rent, by the Letter of Attorney. And yet because by this the Tenant may give rd. in the Name of 'Seilin, and so the Plaintiff may be disturbed and vexed, therefore he was awarded to answer, quod non. Br. Forger de Leits. pl. 4. cites 33 H 6. 12.

3. If a Notary, or other Person, of Covin counterfeit deal of any Person or Vicar, and forge Letters of Resignation of his Parliance or Vicaridge in the Name of the Parson or Vicar of his Benefice, he shall thereupon have a Writ of Difficult. But whether by that he shall be Restored to his Benefice, Quære? It feemeth not, because the removing of him is a Spiritual Act. F. N. B. 99. (K)

4. 5 Eliz. cap. 14 s. 2. Enacts that, If any one alone, or with others, shall willingly, fraudulently, and falsely forge or make, or cause, or affect to be forged or made, any false Deed, Charter, or Writing sealed, Count-Roll, or Will in writing, to the Intent that the Freehold or Inheritance of Lands, or the Right or Title thereof, may be troubled, defeated or charged, or shall publish or cause forth in Evidence, any such forged Writing as true, knowing the same to be false and forged, and shall be thereon convicted upon an Action of Forger of false Deeds (to be founded upon this Statute) at the Suit of the Party grieved, or otherwise, he shall pay to the Party grieved double Cafes, &c. (Writing) only. Trim. 13 El. D. 122. b. pl. 45. Anon. — Grandfather, Father, and Daughter. Land defended from the Grandfather to the Father. The Father made a Leafe for 100 Years and died. The Daughter, to avoid an Execution of a Statute-Staple, (the Leafe being defeated,) forged a Will of the Grandfather, by which he gave the Land in the Father for Life, the Remainder to the Daughter in Perpetuity. It was argued by the Solicitor General, to be within the first Branch of the 5 Eliz. Because Letters for Years has a Title, an Interests, and a Right, and therefore within the Words of the Statute, and that those Words shall be referred to the Words, Lands, Tenements, &c. But Coke on the other Side said, that they should be referred to the Words Precedent, viz. Estate of Freehold or Inheritance, and then a Leafe for Years is not within them. Then the Solicitor intimated, that a Testament in Writing is within the Words, If any Laele, whether in writing, &c. to the Intent, to have or Claim thereby any Estate of Inheritance. Freehold or Leafe for Years. And he said, that a Statute Staple is an Easement for Years, tho' it be not a Leafe for Years, because it is not certain. But Coke answered, that the Statute is, whereby an Estate for Years shall be claimed, and that in this Case, the Daughter could defeat an Estate for Years, and not claim one, and a Statute Staple is not a Leafe for Years, and that the Statute is after all, and not be taken by Equity. The Solicitor replied, that when the Statute is extended it is a Leafe for Years, tho' it be uncertain. If a Man forge a Leafe for Years, it is directly within the Statute. But if a Man has a Leafe, and another is forged to defeat it, it is a Question, whether it be within the Statute. And all the Doubt of this Case, is upon the Reference of these Words, Right, Title, and Interest. And it was adjourned. Godsh. 62. Mich. 28, 29 Eliz. B. R. Sturges's Case — Nell' Abr. it. Forgery. pl. 3. S. C. says, the Court seemed to incline, that this was not within the Statute; for an Easement for Years was not such an Interest or Title as is intended by the Statute, by such a forged Wili or Deed; besides the Defendant did
Forgery.

did not claim the Leaf, for her Intent was to deface it; and this being a Penal Statue, shall not have an equitable Construal, and cites S. C. and Book. But Quere; for there is nothing more there, than in the Principal Case here.

If a Person convicted of Publication of a Deed of Forfeiture or Rent Charge, knowing the same to be forged, afterwards forges another Deed of Forfeiture or Rent Charge, the fifth Offence, whereof is within the second Branch of the second Article, viz. Forgery in the second Offence, the second Offence was the first, viz. Forgery in the first Offence, (the Offence of Forgery,) therefore is the second Offence, the one being Publication and the other Forgery, is Felony; so if he be convicted of forging or publishing any Writing, concerning Freehold, within the first Branch, or concerning Interests or Terms for Years, within the second Branch, and be convicted, if he afterwards offends, either against the first or second Branch, the same is Felony.

One Handford, before an Annuity, Obligation, Bill, Acquittance, Release, or other Discharge, was afterwards redeemed by one Weyman for 200l. and cancelled. After Weyman, perceiving it to be forged, sued Handford for Restitution of the 200l. and thev Handford, after this Statute, the Weyman sued the said Salk, and there it was holden, not to be within the Statute, because the Card was cancelled, and Handford made no Title to the Interest of the Term. 5 Inst. 92. cites Trin. 11 Eliz. Weyman sued Handford, &c. for Forgery; and the 5 Eliz. 14 extends not to Forgery of a Deed, conveying a Gift of Chattels personal, and as to that Point, extends but to Obligations, Bills Obligatory, &c. Acquittance, Release or other Discharge. And it extends not to an Assignment of a Lease of Land in Ireland. But the Court may punish such Offences, as Misdemeanors at Common Law. 3 Le. 170. Mich. 29 Eliz. in the Star Chamber. Newman v. Sheriff. 

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§ 6. A Forger, &c. of a Leaf for Years, of Land not Copyhold, or of any Personal Thing, and he中科fo出版 and give the same in Evidence shall pay double Costs, &c.

§ 7. Forgery, or a Leaf for Years, is, within the Statute. But Forgery of an Assignment, or of a Rent Charge in effe, or a Leaf for Years, is not within the Statute, for that does not charge the Inheritance of any; laid by Coke to have been agreed by the Justices in the Star Chamber, 42. in Markham's Case. S. P. 3. Inst. 170. 42. it was so resolved, Patch 38 Eliz. in the Star Chamber, between the Lady Gresham and Booth. Markham & al.

Indictment for forging a Deed of Assignment of a Lease signed with the Mark of one Godard. Cains tenor Scutitur, but fes down the Mark, as in the Assignment, and yet well. 1 Salk. 542. Patch. 2 Annz. Queen v. Smith. It is directly within the Statute. 3 Inst. 170.

§ 9. Provided this Act shall not extend to charge any Ordinary, Commissary or Official for putting their Seal of Office to any Will not knowing the same to be forged, nor for Writing such a Will or the probate thereof.

§ 12, 13, 14. Provided, this Act shall not extend to any Proctor, Advocate or Register, for Writing, setting forth, or pleading of any Proesy for the Appearance of any Person cited to appear in the Ecclesiastical Court, nor to any Archdeacon, nor Official for putting their Seal to such Proesy, nor to any Ecclesiastical Judge, for admitting the same, nor to any Attorney or Counselor for pleading or giving in Evidence any such forged Writing, being not Party nor privy thereunto, nor to any Person that shall plead or jete forth any Writing exemplified under the Great Seal, or the Seal of any of the Counts of this Realm, nor to any Judge, Justice, or other Person that shall set any such Seal thereunto, not knowing the same to be forged.
Forgery.

5. If a Man forge a Statute Staple, or a Recognizance in the Nature of a Statute Staple, viz. acknowledges them in the Name of another; these are Obligations within the Statute; For each of them he hath the Seal of the Party; otherwise of a Statute Merchant, or Recognizance, because they have no Seal of the Conunitor. 3 Inst. 171. cites Mich. 13 and 14 Eliz. Hinde v. Grevill.

Statute, as it would be if it were in the Nature of a Statute Staple, being only before a Matter of Chancery there. But per Car this Recognizance, being no Writing sealed by the Conunitor, is not within the Statute. 3 Keb. 486. pl. 22. Trin. 27 Car. 2. B. R. the King v. Lethbridge. cites Newton's Cae.

6. A Copyholder of a Manor made a Cautionary of the Manor in Parliament, with Labels and Seals of himself; and other Tenants of the Manor, inserting therein diverse Cautionous very tattle, tending to the Ditherfon of the Lord, and by the Title thereof, pretended to be collected, renewed, and set forth by Consent of all the Freeholders and Copyholders of the Manor, being at least 100 and allowed and permitted by the Lord of the Manor, and several Names were subscribed and Seals put, and mentioned to be so done the Day and Year above-mentioned, but no Day nor Year appeared in the Title; nor was there in Fact any Consent of all the Tenants, or Allowance of the Lord: This by the Opinion of the Major Part of the Judges, upon a Consideration of it, was held to be Forgery within the Statute. D. 322. b. pl. 26. Patch. 15 Eliz. in the Star-Chamber, Taverner's Cafe.


8. An Information was brought against three for forging, &c. an Entry in the Register Book of a Marriage, between the Husband and another Woman, to the Impeachment of the Dower of the true and lawful Wife, and to the Deprivation of the Inheritance of the Daughters by the true Wife, and Judgment was given against him. Patch. 1659. B. R. 2 Sid. 1. Dudley's Cafe.

9. One counterfeited a Protection, in the Name of a Privy Councillor of the King, but neither a Nobleman nor Member of Parliament, and sold this Protection for 6l. He was try'd, and found Guilty of this Counterfeiting and Exortion. It was mov'd, that this was no Offence, inasmuch as the Protection was merely void. But the Court thought it a great Offence, because by such Protections many were impoverished and disabled to recover their just Debts, and find him 50l. and Imprisonment till paid. Sid. 145. Patch. 15 Car. 2. B. R. The K. v. Deakins.

10. The Plaintiff produced a Deed enrolled, at a Trial at the Assizes, which in Fact, never was enrolled; and the Defendant moved for a new Trial, which the Court refused, altho' there is no Remedy against any of the Parties for Forgery or Perjury. And Twifden said that fo was the Cafe of one Bollington, who had paid Fees, but the Clerk omitted the Inrollment, and the Party added it, and no Remedy against him; fo of a Gyrograph of a Fine. But by Keeling, such an Indorsement is Forgery, when nothing will pass without it; Sed Curia contra, that it is only a great Misdemeanor, but no Forgery. 1 Keb. 363. pl. 15. Mich.


11. Putting the Chief Justice's Hand to Common Bail, is Forgery. 1 Keb. 841. pl. 28. Hill. 16 and 17 Car. 2. B. R. Sherwood's Cafe.

12. Defendants were indicted at common Law for forging two Patents under the Great Seal, by affixing an old Seal to a new Patent. 2 Keb. 74. pl. 57. Trin. 18 Car. 2. B. R. The King and Monox v. Winter &c.

13. In Information for Deceit in counterfeiting a Letter, the Court were divided, whether it was punishable as an Offence at the Common Law, where no Mischief is intended, nor does any ensue. Mich. 39 Car. 2. 2 Show. 25. The King v. Emerston.

6 B

14. A.
14. A. B. and C. were indicted upon the Coroner’s Inquest for the Murder of R. D. at H. in Kent, and were thereupon indicted and arraigned. The Fact upon the Evidence appeared to be, that the Prisoners were Customhouse Officers, and suspecting that some Wool would be transported, went to the Sea Side in the Night, where there happened an Affray, and A. was twice knock’d down, and recovering himself, shot the Deceased. They were all acquitted of the Murder, and then upon Complaint made, that A. only was found guilty upon the Coroner’s Inquest, two of the Jury deposed in Court, that they, upon the Coroner’s Inquest, found the Indictment against A. alone, which Indictment was in English; But one J. D. who was then Mayor of H. and by Virtue of that Office was also Coroner, took the Indictment, and told the Jury it must be turn’d into Latin, which was done; and be then inserted the Names of B. and C. the other two Prisoners at the Bar, whereupon J. D. was called, and he appearing, was bound in a Recognizance to answer this Matter. And upon an Information, was found Guilty; but having spoke with the Procurator, he was only fined 20 Nobles. 3 Mod. 66 Patch. 1 Jac. 2.
The King v. Marth.

15. A Man was indicted for forging a Bill of Loading, but the Indictment being uncertain, was held naught. 1 Salk. 342. Mich. 7 W. 3.
The K. v. Stocker.

16. It is no Forgery, where no Person can be prejudiced but the Person doing it. 1 Salk. 375. Hill. 11 W. 3. B. R. The K. v. Knight.

17. A Man was indicted, for that he quidam Scriptum Obligatorium fabricavit & contrefecit; Exception was taken, that it was a Bond to the Sheriff of London, for the Appearance of a Person under Arrest a Dei Purificationis in Officis Diebus, and there is no such Day, and therefore the Bond is void, not being according to the Statute, and by Consequence, the Forgery, no Crime, because no prejudice to any. But it was held, that the Officis Diebus, may well be understood for the Octave of, &c. Besides these Bonds are not merely void by the Statute, but only voidable, and therefore you must plead the Special Matter, and not Non est factum. And you may say, that a forged Bond binds no Body, (as in Truth it does not) and thence infer, that it is no Crime to forge. Per Holr, Ch. J. and the Queen had Judgment, notwithstanding this and other Exceptions. 7 Mod. 150, 151, 152. Hill. 1 Anne. The Queen v. King.

18. By 7 Anne, cap. 20. § 6. Any Person forging or counterfeiting any Entry of the acknowledgment of any Memorial, Certificate, or Indorsement, is therein mentioned or directed to be Registered, and be thereof lawfully certified, such Person shall incur, and be liable to such Pains and Penalties as are imposed upon Persons for forging and publishing of false Deeds, &c. by 5 Eliz. cap. 14.

19. By 8 Geo. 1. cap. 22. § 1. Forging Authorities, &c. to transfer Stock, or receive Dividends, &c. and peruserating Proprietors is made Felony. 20. 9 Geo. 1. cap. 12. § 4. Enacts that if any Person after the second of April, 1725, shall forge or Counterfeit, or procure to be forged, &c. or knowingly Aff or asfist in the Forging, &c. any Order made forth in pursuance of the Acts of 6 Geo. 1. c. 11. and 8 Geo. 1. c. 20. or of this Act, or any Affirmation of such Order, or of the Annuitues payable thereon, or any Receipt or Discharge to the Exchequer, for the Annuity due on such Standing Order, or any Letter of Attorney, or other Authority, to transfer, align, &c. any such Order, or to receive the Annuitues due thereon, or shall counterfeiting, &c. any Name of the Proprietor of such Order, in any Affirmation, Receipt, Letter of Attorney, &c. or shall fraudulently demand to receive any such Annuity, by Virtue of such forged Receipt, &c. or shall falsely, and deceitfully Perfonate any true Proprietor of any the-said Orders, thereby affigning or endeavouring to affign any such
Order, or receiving or endeavouring to receive the Money of such Proprietor, as if such Offender were the lawful Owner thereof, in every such Cafe, every such Person, (being convicted thereof in due Form of Law) shall be adjudged Guilty of Felony, without Benefit of Clergy.

21. 12 Geo. 1. cap. 29. §. 4. Enacts that Persons convicted of Forgery, &c. Practising as Attornies, &c. offending against the Act for preventing forgeries and executions Arrears shall be transported for 7 Years.

22. 2 Geo. 2. cap. 25. §. 1. Enacts that Forger, &c. or Counterfeiter, &c. of any Deed, Will, Testament, Bond, Writing Obligatory, Bill of Exchange, or Promissory Note for Payment of Money, Indorsement or Affirmation of such Bill or Note, or any Acquittance or Receipt either for Money or Goods, or shall utter or publish any such Deed, &c. with Intention to defraud any Person knowing the same to be false, &c. shall suffer Death as a Felon, without Benefit of Clergy.

23. 4 Geo. 2. 18. §. 1. Enacts that Any Person Forging or Counterfeiting any Pafs, for any Ship, commonly called a Mediterranean Pafs, or who shall alter or erase any Pafs, made out by the Commissioners for Executing the Office of Lord High Admiral; or shall publish as true, any forged, altered, or erased Pafs, knowing the same to be forged, &c. shall be guilty of Felony without Benefit of Clergy.

24. 7 Geo. 2. 22. Makes the Forging, altering, &c. the Acceptance of Bills of Exchange, or the Number or Principal Sums of accountable Receipts, for any Note, Bill, or other Security for Payment of Money, or Delivery of Goods, &c. and the uttering, &c. the same as true, with Intent to defraud any Person, and knowing the same to be false, &c. to be Felony without Benefit of Clergy.

25. 9 Geo. 2. 11. Makes the 2 Geo. 2. perpetual.

(B) In Respect of the making or proclaiming the Deed or Writing, &c.

1. TWAS agreed, that if a Man Forges a Deed, and does not proclaim it, Action does not lie. Br. Forger de faits. pl. 1. cites 9 H. 6. 26.


3. In Trespasses upon the Cafe, the best Opinion was, that where a Man Forges an Obligation against me, and puts it in Suit, I shall have Action upon my Cafe for the Vexation, contra, if he Forges it and does not put it in Suit. Br. Action fur le Cafe. pl. 89. cites 5 E. 4. 126.

4. So, I shall have Action upon the Cafe for Forgery of a false Testament, or of a false Release which is pleaded against me, by which I am defrauded; wherefore after Argument, the Defendant pleaded Not Guilty, notwithstanding it was said for the Defendant, that the Action does not lie, inasmuch as the Plaintiff, in Suit thereupon, may plead Non est actum; and Action upon the Statute is not given in this Cafe. Ibid.

5. If one Forges a Deed, and another proclaims it, Action of Forgery of Deeds does not lie against him who proclaimed; for the Write is Fabricatum & Proclaimatum, and 'tis sufficient for the Defendant to traverse the Forgery, without the Proclaiming in an Action against one, otherwise 'tis in an Action against two; For one may forge and the other proclaim. Per Needham J. Br. Forger de faits. pl. 18. cites 14 E. 4. 32.

6. If
Forgery.

6. If A. makes a Deed of Feoffment in December, and after this, and before Livery and Seisin executed, the Feoffee sells the Land by good Affiance to another, and after this, first Feoffee takes Livery of Seisin of the Feoffor; this is Forgery in the Feoffor and Feoffee. Mo. 655. Mich. 44 & 45 Eliz. in the Star Chamber. Salway v. Wale.

Day of the making of it, this Indorsement is also Forgery, because 'tis written to the Intent to defraud the mean Affiance. So 'tis of * Antedating of a Deed, for such Purpuse. Mo. 655. Salway v. Wale — * 7 Inf. 159.

But Antedating is not Forgery, if there be not a mean Interest in any third Person to be prejudiced by it. Mo. 655. Salway v. Wale.

7. And Antedating, a Counterfeit Deed is Forgery, and so is Counterfeiting the Hands, Names, and Seals of the Feoffees to the Counterpart of the Forged Deed. And. 102. Trin. 24 Eliz. Puckering v. Fisher and Langton.

If a Man makes an Obligation in my Name, I shall not have Difficulty, because I may plead Non est factum. F. N. B. 56. (B) Marg. cites 19 H. 6. * 24.

8. If a Man forges a Bond in my Name, it's possible I may be damned by it, but 'till 'tis put in Suit against me, I cannot bring Action against the Forger. Per Gold. J. Arg. 6 Mod. 46. cites 19 H. 6. * 24. Hob. 267. 6 E. 4. 7. 2 Buls. 268.

9. A Perfon cut off a dead Man's Hand, and put a Pen and a Seal in it, and so Signed and Sealed and delivered the Deed with the dead Hand, and swore that he faw the Deed sealed and delivered, and upon this he was convicted of Forgery. Sti. 362, 363. Hill. 1652. The King v. Howell Gwin.

10. Darnell (Serj.) said, that Defendant may bring an Action upon his Case against the Plaintiff for suing him upon a Forged Bond, and that a Verdict therein would be Evidence for him, it being between the same Parties. 6 Mod. 234. in Cafe of Selby v. Green.

(C) In Respect of the Alteration of the Deed, &c.

If such Perfon fo injures a Chrift in the Will concerning the Devil of any Lands or Tenements, which Telescope had in Fee Simple solely, without any Warrant or Direction, tho' he did not forge, or falsify the Whole Will, yet he is punishable by the Statute 5 Eliz. as hath been often held in the Star-Chamber, contrary to the Opinion reported by my Let Dyer. 5 Inf. 150.

Nov. 99.
S. P. Mich. 42 & 43
1 Salk. 575.
S. P. Hill.
11 W. 3.
F. R. in Cafe of the K v
Knight.

2. If Obligee Alters or Razes (Libris) & injures (Marcis,) this is not Forgery punishable, because it prejudices no body but himself in voiding his Bond, and relieving the Duty; but if he had increased the Sum, or inflicted it to avoid any Collateral Prejudice to himself, or to prejudice another, 'twould be Forgery. Mo. 619. Mich. 42 and 43 Eliz. in the Star Chamber. Blake v. Allen.

3. Omitting a Thing or Legacy out of a Will, which is appointed to be inserted is not Forgery. But if he is directed to give Estate for Life, with Remainder to another in Fee, and he omits the Estate for Life, by which Remainder in Fee takes Effect presently, this is Forgery. Writing a Will and bringing it to a Perfon of non fata Memorie, and he allows it, it is void but no Forgery; but Writing up Blanks, during the Time of his being non fata Memorie, was thought to be a Mutemur if he knew him.
Forgery.

When to be non prolix Memoria. No. 760. Pach. 3 Jac. in the Star Chamber, Combes's Cafe.

4. It A makes a true Deed of Fee Simple of the Manor of Dale unto B. — and B. or some other raise out D. (the first Letter of Dale) and put in S. whereby it is fully altered, and made the Manor of Sale: This is within the Statute. 3 Hume. 169.

of Land in Fee, or for Life, &c. and the Grantee or any other raise out (one) and instead thereof write (two) this is within the Statute. 5 Hume. 169.

5. But if one having a Lease for twenty Years, alters the same into thirty Years; this is no Forgery, because it was a good Deed, and not forged at the first making. Star Chamber Cases. 44.

6. A Man may lose an honest Debt by playing a Trick to come at it; and Sir Wm. Beverham's Sitters Cafe, was cited, who adding a Seal to a Note, which was sufficient without a Seal, lost her Security; cited, by Hutchins Commissioneer. Trin. 1692. 2 Vern. 162. in Cafe of Hitchcox v. Sedgwick.

(D) Forger. Who.

1. No Accessory can be in Forgery, but all are Principals. Mich. 44 & 45 Eliz. Mo. 666. Booth's Cafe.

2. To cause, is to procure or counsel one to forge, &c. To affect, is to give his Assent or Agreement afterwards to the Procurement or Counsel of another; To conjure, is to agree at the Time of the Procurement or Counsel, and he in Law is a Procurer. 3 Hume. 169.

3. In a strict Sense, he that causes a Forger to be done is a Forger himself; But then it ought to be laid fo in the Indictment. 5 Mod. 133.

(E) Publication thereof; What is, or amounts to it.

3. Forger of Deed lies where Termor may pray to be received, and shows a forged Deed of Lease; per Moile; for he cannot be received without shewing Deed. Br. Forger de faits. pl. 15. cites 9 E. 4. 37.

2. A Man shall shew Deed in Forum in Remainder, and yet, though when it is shown, the Tenant shall not have Answer to it, if the Deed be forged, he shall have an Action of Forger of the Deed; per Cur. Br. Forger de faits. pl. 20. cites to E. 4. 1.

3. If A. tells B. that such a Deed is false, and forged, and yet B. will offer a contrary, or publish this to be a true Deed, and afterwards it falleth out by Proof, that the Relation of A. was true, and the Deed forged; B. is in the Dangers of this Statute; And so was it resolved in the Cafe of the Lady Ethiam v. Booth, &c. 3 Hume. 171.

4. If an innocent Person receive Money upon a forged Note, not knowing any thing of the Forgery, it is no Crime in him; but he shall answer for the Money falsely; But receiving Money upon a forged Note, knowing the Forgery, is a Publication of the Forgery. Per Holt, Ch. J. 12 Mod. 494. Pach. 3. W. 3. the King v. Eller.
(F) What may be done in Case a Deed be denied, as forged; And if found forged, what shall be done with the Deed, &c.

1. A 
   Forgery.

A Deed was adjourned into Banco, upon Demurrer of Barrister, and the Defendant at the Day would have pleaded Release, and was not suffer'd; For it was not made after the Adjournment, and the Plaintiff recover'd; and notwithstanding that the Deed of Release appeared to be false, and Oufter is confess'd; yet the Defendant was not imprimis'd, for the Judges are out of the County where the Affiff was brought. But it seems to me that the Reason is, because the Plea was not admitted of the Release; For the Judges of Banco, upon Adjournment, shall give such Judgment as the Judges of Affiff should give in the County. Br. Imprisonment, pl. 54. cites 23. Alf. 5.

2. In Affiff, the Tenant pleaded false Release, to which the Plaintiff was a Stranger, and therefore they were at Affiff upon the Seisin of the Possessor, and found for the Plaintiff, and that the Release was false, and the Tenant was taken, quod mirum! where the Release was not in Affiff, and also the Release was made to A. Que Eslate the Tenant claimed, and not to the Tenant himself. Br. Imprisonment, pl. 55. cites 24. Alf. 3.


4. When a Deed is denied, the Law has appointed it to remain in Court, and the Caufus Breuium to have the Caufus of it. 5 Rep. 75. a. per the Reporter cites F. N. B. 243. (L) [but it should be (I).]

5. If the Husband and Wife sue a Bond, made to the Wife, in C. B. and the Deed is there denied, for which Redon it remains in the keeping of the Caufus Breuium, and the Husband dies, the Wife may have a Writ out of Chancery, directed to the Caufus Breuium in C. B. to deliver the Deed to the Wife, because the Plea is determined by the Death of the Husband. F. N. B. 243. (I)

A Bond being found forged, the Defendant prayed, that it might remain in Court, but the Court denied it, and said, that such Matter had been often moved, but never granted, and caused the Bond to be delivered to the Plaintiff. Sid. 131. Patch. 15. Car. 2. B. R. Guillins v. Huley—Jenks 76. in pl. 32.

A Deed found forged by Verdict, and which concerned an Estate of 1200 l. a Year, was, by Order, brought into Chancery, and a Years time given to justify the Deed, by a new Trial, where he pleaded; and because within the Year he had a new Trial at Chelster, and found against him, it was now moved, that the Year being past, the Deed should be cancelled, and damaged, and decreed accordingly. Sid. 170. Mich. 15. Car. 2. Gerard v. Pitton.


† 5 Rep. 74.

7. A was sued as Executor to J. S. upon a Bond of 10,000 l. set up by an old Woman, that looked after J. S. an old Miller, as his Nurse; and upon Non est factum pleaded, it was found upon a Trial at Bar, not to be the Deed of J. S. and upon the Authority of † Humphry's Cafe, in 5 Rep. it was made a Question if the Bond should not be cancelled; and it was held that it should not be cancelled, because the Judgment might be reversed by Writ of Error, but should be kept in Court. 1 Salk. 215. cited per Holt, Ch. J. as Sir Huley's Cafe.

8 The
For forgery.

Darnel, Serjeant, moved this Cite, and after the Court had given their Opinion, he said, that the Defendant's belte way would be to carry the Cause down by Provifo, the Defendant would be Non-suited, and might begin again. Per Cur. the Defendant's belte way would be to carry the Cause down by Provifo: and if the Plaintiff would fail himself to be non-suited, whereby the Suit would be at an end, and the Plaintiff entitle to take his Bond out of Court, yet the Non-suited would be great Evidence against him in another Action to be brought thereupon, or else he might get his Witnesses Testimony perpetuated in Chancery. 6 Mod. 233. Mich. 3. Ann. B. R. Selby v. Green.

10. In Ejectment the Plaintiff made his Title under severall Deeds, but the Jury found against the Deeds: and upon Motion, the Court ordered them to be kept in the Officer's Hands, in order to a Prosecution for Forgery; But upon Application to the Court of Chancery, because the Issue was directed, a new triall was granted, and therefore the Plaintiff moved to have the Deeds out of Court; And Holt, Ch. J. held, that they must be delivered out, as this Cause was, because the Deeds were not in Issue directly upon the Pleadings in the Cause: otherwise if the Issue had been Non eit Paetam. 1 Salk. 215. Hill. 4 Ann. B. R. Fitch v. Wells.

(G) Actions and Pleadings:

1. Onspiracons against several for forging a Deed of Entail of Land of the Plaintiff, by which he was put to great Travail, Costs, and Expenses, and [forced] to sell his Chattels, but because it was quod tales procerus sua a one to forge the Deed, and he was the same Person who was named in the Writ, and so he cannot procure himself, therefore the Writ was abated quod nota; but it is badly reported. Br. Conspiraci, pp. 7. cites 46 El. 3. 20.

2. In Forger, &c. Defendant said, that at the time of the making and publishing supposed by him self was seised of the Tenements in Fee, affirme but that the Plaintiff then had anything. Newton said, 'twas no Plea, for it may be that he diliffered us, and made the Deed, and we re-entered, and to disturb of the Possession; after Co. J. said the Plea is good prima facie; For then you cannot be disturbed of your Possession, and if you have speical Matter shew it. But note, that the Stat. of 1 H. 5. 3. speaks of Possession.
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and Title, and Dillcifor has Title.

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Br. Forger dc

pi. 9.

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cites 8 JJ. 6. 33.
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and pnchuwcd a Deal, Ya JIjjU anf-xcr to icth. per Bub. Jir, Forger de

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he gave a Gallon of Wine in SatisfaSion of the T'refpafs, to which
Pl^dhtiff' agreed, ]n'igmcm\\ KQdo. Plaintiit'faid, this is no Plea, without
laying, that they accorded, &:c. Newton laid. Defendant has pleaded
belt ; by which Plaihtiff' faid, he did not receive it in Satisficlion of this
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Bane. pi. 22.

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N. to enfeoff him oi the Manor
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^_ jv. prayed the Defendant to write the Deed accordingl}-,
'*!/ "^^^"> which he did, and put a Seal to it, by the Command of the Plaintiff,
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Br. Ibrgcr de faits. pl. 3. cites 27 H. 6. 3.
Br. Traverfe
p_ Forger and proclaiming of a Deed by A. to IF. N. in Fee, &c. the
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10. The Plaintiff counted (inter alia) that he forged a false Release, by which he sought to relieve the Defendant all the Right which he had in certain Land, the Defendant said, that he said so, by the Deed which he forged, related to him all the Right, &c. which is the same Deed, which he pronounced, published, and read; wherefore be that this Release is forged and false, &c. and no Plea; For the adverse Party, does not answer the Declaration; by which he justified ut supra, aliquid hoc, that be is guilty of the making, pronouncing, or publishing of any such Deed as in the Declaration forsoth said specified; and a good Plea. Br. Forger de Faits. pl. 5. cites 33 H. 6. 21.

11. And note, that none can justify as above, if he has not the Deed in his Hands ready to shew; and if not, must plead Non Guilty generally. Br. Forger de Faits. pl. 5. cites 33 H. 6. 21.

12. In Forger of Deeds, the Writ was diversa separata Vellata & Mutanda, and the Count was of a Deed of Feoffment, and a Letter of Attorney; and therefore the sole Opinion was, that the Count shall alate, because it is not warranted by the * Writ. Br. Forger de Faits. pl. 7. cites 33 H. 6. 37.

13. Forgery of Deeds, and proclaiming of them at D. by which the Plaintiff was interrupted of his Possession of certain Land in S. the Defendant said that No such Will Hamlet nor Place was known out of the Vill and Hamlet, by the Name of S. in the same County; And this, &c. Judgment of the Writ, and the others contra, and this Illue seems to be by Reason of the Villie. Br. Forger de Faits. pl. 19. cites 5 E. 4. 26. and 4 E. 41. accordingly.

14. And Quære if it be a good Plea to say, that the Plaintiff never had Land or Tenement in S. for it seems that he may plead Non Guilty, and give this Matter in Evidence. Br. Forger de Faits. pl. 19.

15. Forgery of Deeds, the Defendant said, that if S. made the Deed, and sealed it, and delivered it to the Defendant, secundum vim Falsi, absque hoc, that he forged or proclaimed ; Wood said, the special Matter shall not be entered, & Cur. contra. But per Brian, he shall shew the Deed, and otherwise it shall not be entered, because it seems that it is only the general Issue. Br. Forger de Faits. pl. 23. cites 10 H. 7. 29.

16. Note, it was agreed Arguedo, that Ne forget pas, or Not Guilty, is a good Illue in Forgery of Deeds. Br. Forger de Faits. pl. 21. cites 21 H. 7. 15.

17. For Pleadings on this Statute, 5 Eliz. 14. 5. 2. see Lutw. 190. Collingwood v. Jefferyes.

(H) Actions ; By what Persons, in respect of Estate.

1. In Forger of Deeds by W. against J. and said that he had forged and proclaimed certain false Deeds of such Land in Disturbance of the Title and Possession of the Plaintiff. Halz. Pretendendo, not confessing the making, and for Plea said, that at the time of the making supposed, &c. the Defendant himself was feised of the Land in Fee. Cor. before the Defendant had any thing the Father and Mother of the Plaintiff were seised in Fee, in Right of the Wife, and had Issue the Plaintiff; the Feme died, and the Father was Tenant by the Curtesy till discharged by the Defendant, which Defendant, seised by Dispose, made the false Deeds, &c. and so fee, that at the Time of the Distelle, he in Reversion had neither Possession nor Reversion, but Right of Reversion, And yet, by the Opinion of the Court, the Action will lies; by which he bid Halz. to answer Quod nostra. Br. Forger de Faits. pl. 14. cites 4 H. 6. 25.
2. Plaintiff declared, that the Defendant forged a Release in Name of the Ancestor of the Plaintiff. Fulthorp said, that the same Ancellor made the Release to R. then Tenant of the Land, whole Estate we have, and after the Release came to us, and we proclaimed it true, bene licuit, abique hoc that we forged prout, &c. Per Pagum, you forged, pruit. &c. and so see here, that the Heir shall have this Action of Forgery in the time of his Ancellor. Br. Forger de faits. pl. 8. cites 7 H. 6. 34.

3. If a Man offends me, and, during the time of the Diffisian, J. N. forges Deeds, &c. and re-enters, I shall not have Action; per Newton. Br. Forger de faits. pl. 12. cites 22 H. 6. 16.

4. In Forger of Deeds by T. M. against R. D. Defendant said, that no Deed is of Forger of Deeds, of his Lands and Tenements in D. he said, that the Plaintiff had nothing in them the Day of the Writ procured, nor ever after. Prunt the Plaintiff said, that long time before the Forgery, A. was seized in Fee, and gave to K. in tail, the Remainder to the Plaintiff, &c. and the Statute is, Si quis de Posessione terre & Tenement turbatis & vexatus fuerit, &c. And the bit Opinion was, that it well lies, for he has Possession of the Remainder, though he has not Possession of the Demesne during the Tail; but it is not adjudged; and cited 15 E. 4. by Skreen, that a Remainder may be limited, and therefore it is a Tenement. Br. Forger de faits. pl. 6. cites 33 H. 6. 22.

5. If a Man forges Deeds of the Land of my Father, in the Life of my Father, and after his Death it is proclaimed; I who am Heir at the Time the Deed was proclaimed, shall not have a Writ of Forger of false Deeds; For the Son had no Right in the Life of the Father, and the Action is forging and proclaiming. Br. Forger de faits. pl. 14. cites 15 E. 4. 24. per Brian, Littleton, and Choke.


7. And if Tenant for Life be, the Remainder over in Fee, and a Man forges and proclaims false Deeds, the Tenant for Life shall have Action, and he in Remainder shall have another Action also. Br. Forger de faits. pl. 14. cites 15 E. 4. 24.

(1) Indictment. Before whom.


2. If Justices of the Peace in their Sessions, cannot inquire of Forging a False Deed on the Statute of 5 Eliz. Cro. E. 87. Hill. 36 Eliz. B. R.

For their Power is created by Act of Parliament within time of Memory, and they have no other Authority than what is thereby given them; and the general Words of their Commission, Deem them alias Transjussionibus & Malefactis quiuplicunque, must be understood of such Crimes as they have Power over by the several Statutes which created or enlarged their Power. 1 Selk. 406. Mich. 9 Anne B. R. the Queen v. Yarrington.

3. But this Felony is to be heard and determined before Justices of Oyer and Terminer, and Justices of Allise, in their Circuit; and the Justices of Peace have Power to hear and determine Felonies, Trespaélles, &c. yet they are not included under the Name of Justices of Oyer and Terminer; For Justices of Oyer and Terminer, are known by one distinct Name and Justices
Forgery. 471

Justices of Peace by another. But the justices of B. R. are justices of Oyer and Terminer within this Statute. 3 Inst. 103. cap. 41.

4. Indictment for Forgery upon the Statute of the 5 Ed. before A. and B. Justices of the Peace, nec non ad diversas Felonias, &c. audiaec. & terminand. affinit. It was held by three Judges, Popham doubting, that they had not Power to take this Indictment; For the Statute, which appoints that the Offences shall be enquired before Justices of Assize, or of Oyer and Terminer, intends those who have general Commissions, and not those who have but a special Communion, as Justices of Peace. Mich. 39. & 40 Eliz. B. R. Cro. E. 601. Wilton's Cafe.

Curt refused to quash it, but left him to Deny, or Plead 3 Jeb. 775. pl. 12. Trin. 29.

the King v. Nithingale.

(K) Indictment. Exceptions to Indictments, or Informations.

1. THE Indictment was, that sicentur subode & falsa fabricavet quodam falsum Factum & Scriptum indicetatum Bargainr & Vendito-

vionis, which was laid to be involv'd, per quod A. and B. did sell to J. S. such Lands, and then forced them to ride the Indenture Verbatim, & quod Polles predictis R. (the Defendant) Scevus predict. Chartum esse falsum & contrefactum se & Armis pronunciavit & publicavit, and this was a Intention ad perturbandum Statutum titulos & interijf of A. and B. and their Heirs. It was argued for Error * that the Indictivismes for such were a Lease and Rents; but the Indictment was of a Bargain and Sale; and it did not appear where it was involv'd, and it must be involv'd in one of the four Courts at Westminster, or before the Justices of Peace at the Sessions, to make it a Bargain and Sale; and that only A. was Party to the Deeds for forth, tho' the Indictme-

nt is of a Deed by which A. and B. did sell; and that it ought to have been in quo contractor that they did sell, and Not that they did sell, be-

cause the Deed was void, which was laid to be Oppositium in Objecto; and that Vi & Armis Chartam pronunciavit, &c. should have been Vi & Armis predictam Chartam pronunciavit, &c. and also that the Forgery was laid to be ea Intentione ad perturbandum Statutum titulos & interijf of A. and B. and their Heirs, and it did not appear that they had a Firehold; and also, that it ought to appear in whatm the Firehold was at the Time of the Forgery.


Non allocatur. 2 Keb. 501. Pach. 21 Car. 2. S. C.— It seems by Keble, that those Words were in the Indictment, and that for want of alleging, that he did sell or convey, it was held by Twi-

den to be ill, but Keeley and Windham contra. 2 Keb. 245. Trin. 19 Car. 2. S. C.—But 2 Keb. 332.

Trin. 21 Car. 2. says it was alleged for Error, that the Indictment was fabricatus scriptum, and that by that Deed A. and B. Bargained and Sold, and does not say, there, or that he Forbade a Deed purporting a Bargain and Sale, and that Twyden agreed this Exception en L'apron's Cafe, that, being on an In-

dictment, it must be taken strictly, and must express all without Intendment, which is without prejudice, because the Party may be Indicted again; but Curia contra 15; yet adjournat. —* * * Per Cur. this is intend-

et Firehold, the Forgery being of a Deed, by which Copyhold cannot pass, and a Lease for Years may pass without it. 2 Keb. 332. S. C—* * * Non allocatur. 2 Keb. 501. S. C.— 3 Keb. 31 S. C.

and Judgment for the King.

2. An Information was brought against three for Forgery, and maliciously Conspiring and contriving an Entry of a Marriage in the Register Book, between Sir R. Dudley and Frn. Vavator, to the Impeachment of the Dower of the true Wife of Sir R. Dudley, and to deprive his Daughters of their Inheritance; one only of the Defendants was found guilty. It was Ob-

jected in Arrest of Judgment, that as two were acquitted, the other could not be alone guilty of the Conspiring; but it was answered that the Indictme-

tment was good without the Conspiracy, which was only an Indictme-

thefo,
Forgery.

therefo, and not the Ground of the Indictment. Judgment was given against the Defendant. 1658. B. R. 2 Sid. 71. Ludly's Cae.

3. The Statute requires it to be a Deed sealed, and here it was only Scriptum; Sed non allocatur; For when the Deed is recited, 'tis concluded with dat. & sigillat. such a Day and Year, tho' before it is only said quoddam Scriptum; the Judgment was affirmed. 1685. B. R. 2 Show. 5. the King v. Marriot.

4. Error was alleged, for that the Indictment had not in it Vi & Armis, and that the Indictment is not for Nonfeasance, but for Misfeasance; and Jones J. held that this is cured by the express Words of the Statute 37 H. 8. 8. and cited Cro. J. Bar's Cae, fo Resolved. But Twylden and Windham J. toxis viribus Contra, and to this Rainsford Ch. J. inclined; but as to this Curia advisare Vult. But afterwards, on reading the Statute, it was agreed by all, that the want of Vi & Armis was cured. Another Error was, that the Indictment lays, that he Forged it Super Caput sua propria, where it ought to be Ex Imaginatione sua propria or Ex Capite suo proprio; For as it is, it must be intended, that the Writing was written upon his Head, and this might be by another; but this was a Literal Translation of the words of the Statute, and therefore by all held well enough, tho' it be not so Elegant Translation as might be. 2 Lev. 221. 1659. B. R. 2. the King v. Marriot.

5. Information set forth, that the Defendant did Forge quoddam Scriptum continens in se Scriptum Obligatorium per quod quidem Scriptum Obligatorium A. Obligatus fuit praeedit. Defendant in 46 Libris, &c. the Defendant was found Guilty, and Exception was taken, that the Fact alleged was a Contradiction of itself; For how could A. be bound when the Obligation was Forged? and also, that it did not set forth what Scriptum Obligatorium was, whether it was Scriptum Sigillatum or Not? Per Cur. the Defendant is found Guilty of the Forgery of a Writing, in which was contained quoddam Scriptum Obligatorium, and that may be a true Bond. Judgment was arrested. 3 Mod. 104. 1642. B. R. 2 Jac. 2. the King v. Stocker.

6. The Indictment was, that the Defendant fabricavit sui fabricavi causavit a Bill of Loading, and it was held Naught up on Demurrer; For an Indictment ought to be certain and positive. 1 Salk. 342. Mich. 7 W. 3. the King v. Stocker.

7. Indictment was for Forging Quoddam Scriptum Obligatorium of 7 S. it was objected that it should be Scriptum purporting a Writing Obligatorious of J. S. Sed non allocatur; For the 5 Eliz. 14. mentions False Deeds as well as False Writings. 1 Salk. 342. Hill 1 Ann. B. R. the Queen v. King. Obligatorious; but the Court Resolved, that tho' in reality it is not, yet in shew and appearance it is, and that is enough; and so it is an Obligation, tho' a False one. 7 Mod. 151. S. C.

8. In the Indictment it was laid, that the Defendant falsus & malitious, &c. quoddam Scriptum Obligatorium fabricavit & controfert. Exception was taken, that the Crime charged was Forging falsely, whereas it could be no Crime, if it was not truly Forged; but per Holt Ch. J. the False fabricavit is as much as to say, that he, being a false and malicious Man, did Forge, and not that the Forgery was a true Forgery, but the Thing forged was not true but false; and Judgment accordingly. 7 Mod. 150, 151. Hill 1 Anne. the Queen v. King.

9. Indictment was for Forging a Cocket for 5 Packs of Linnen Cloth; and it was moved in Arrest of Judgment, for that it was too uncertain. But it was held well enough; and per Holt it suffices that the Things which it contains be certain enough, and if any new Action be brought, Defendant shall say, that a former Action was brought for the fame by the Name of fo many Bundles, &c. and the Queen had Judgment. 6 Mod. 87. Mich. 2 Anne. the Queen v. Browne.

10. Indictment for Forging a Deed of Assignment of a Lease signed with the Mark of one Godard, cujus tenor Sequitur; but fets not down the Mark.
Forgery.

as in the Assignment; and this was Objected for without that it could not be a Forgery. See non Allocatur. 1 Salk. 342. Pachb. 2 Anna Queen v. Smith, 11. The Defendant was Convicted on an Indictment, for that A, and his Wife being seized of Land, &c. known by the Name of Jaywick, the Defendant Forged a Conveyance from them of Jaywick-Park, with intent to molest and disturb the Seizin and Enjoyment, &c. and for this Variance it was moved in Arrêt of Judgment, there being no Averment, that Jaywick was known by the Name of Jaywick-Park, or was Parcel thereof, or that A. and his Wife were seized thereof, or that there was a previous Treaty concerning Jaywick, and that in Consequence thereof, a Conveyance was of Jaywick-Park, an Averment of any of which, it was held, would have been Material; but as there was a Forgery, and an * Intent to molest the Owners of Jaywick fully laid in the Indictment, and found by the Jury, 'twas adjudged by the whole Court to be within the Statute, the King v. Pachb. 2 Geo. 2. B. R. Gibb. 57, and 261. Pachb. 4 Geo. 2. the King v. Ring Croke.

(L) Verdict, &c. What is a sufficient Finding, or Proof.

1. In Forger of Deeds the Defendant pleaded Not Guilty, and 'twas found that he was guilty of the Publication and not of the Forgery; and 'twas doubted if the Plaintiff should recover or Not. Br. Forger de Faitis, pl. 2. cites 20 H. 6. 11.

be brought against two, and 'tis found that not is Guilty of the Forgery, and not of the Pretendiment, and that the other Pretendiment, but not Forger, that by this the Plaintiff shall recover. Br. Forger de faiis, pl. 2. cites 20 H. 6. 11.

2. In Forger of Deeds, if Judgment paffes for the Plaintiff, this shall be a Bar in every Court, in an Action brought upon this Deed after, quod nota bene; and so fee that a Deed found forged is not Pleadable. Br. Forger de Faitis, pl. 16. cites 39 H. 6. 13.

3. A brought a Writ of Forger of False Deeds against B. and counted of an Indenture in quo continetur quod quidam Abbas Monasterii de Glouc stercium dominii de R. & terras Dominicales, &c. The Leafe produced in Evidence contained the Site, and all the demesne Land, except 2 several Closets there, &c. called, &c. This Evidence was good enough;

For it is not Necessary to confirme Terras Dominicales to mean O Hongens terras Dominicales, for the Lands not excepted are terras Dominicales and fo the Court is Satisfied by that Evidence, &c. 1 Le. 139. pl. 192.

Hill. 30 Eliz. C. B. Atkins v. Haies. annuiffi the Rep, but upon producing the duplifed Leafe Long Moore was not contained in it, neither by Name, or by general Words, but all the Rest of the Lands were in it. And the Defendant having pleaded Not Guilty, the Court held, that as the Bill was laid, he was Not Guilty; For it is not the same Leafe. Hob. 272. pl. 338. Mich. 17 Jac. Meyre's Cafe.

4. The wrong alleging the Time of the Forgery is not Material, be it before or after the Offence committed, if it be committed before the Exhibiting the Bill; but if the Date of the Writing supposed to be forged had been mistaken, there the Defendant could not be condemned of a Deed of another Date; For that is not the Offence complained of in the Bill, of which the Court can give Sentence; refolved in the Star Chamber 13 Rep. 34. Pach. 7 Jac. Read and Booth.

5. Upon an Indictment for Forgery and Publishing a Deed, the Jury found the Defendant Guilty of the Trefpas and Forgery afoeaid; it was Objected, that this was insufficient; because nothing is found as to the Publication, fed non allocatur; For de Transgredience predicta includes it, as in Trefpass of Assault and Battery. 2 Le. 111. Trin. 25 Car. 2. B. R. the King v. Newton.

S. P. tho' it was objected that there were other Trefpas in the Indictment which satisfied the word Trefpass; For Transgredent predicta includes Forgery and all the other Trefpases. 2 Le. 221. Pach. 70 Car. 2. the King v. Martin.

4 E

6. In
Forgery.

6. In a Writ of Error brought on a Judgment given upon an Indictment for Forgery; some of the Exceptions were, that the Jury had found him guilty, de Forgeria, whereas there is no such Word; led non allocutur. For the Words make it plain enough what their Verdict means. Perch. 30 Car. 2. B. R. 2 Show 5. the King v. Marriot.

(M) * Punishment. And what shall be recovered.

1. 5 Eliz. cap. 14. § 2. Enacts that any one who shall be Convicted upon an Action of Forgery of False Deeds (to be founded upon this Statute) at the Suit of the Party grieved, or otherwise, shall pay to the Party grieved double Costs and Damages to be assessed in the Court where such Conviction shall be, shall be set upon the Pillory in some Market Town, or other open Place, and there have his Ears cut off, and also his Nostrils slit and feared with an hot Iron; be shall also be sent to the Queen for Heirs and Successors the Issue of his Land, and suffer perpetual Imprisonment during his Life; and the said Costs and Damages shall be paid upon the Goods and Issue of the Lands of the Offender, with the annexing the Queen's Title thereto. § 5. Forger &c. of a Leaf to Yeare of Land not Copyhold, or of an Annuity, Obligation, Bill, Accquittance, Release, or other Debtor of any Personal thing, and he who shall Publish and give the same in Evidence, (except Lawyers &c. not Party or Prizy to the Forgery) shall pay Double Costs and Damages to the Party grieved, be Pilloried and left an Ear &c.

2. A. delivered 1000. to a * Scrivener to put out at Interest, who spent the Money but delivered to A. several Bonds, as entered into by several Persons of Credit and Sufficienty, for several distinct Sums, amounting in all to the said Sum of 1000. and he witnessed the same as a publick Notary, but in Truth, the Parties knew nothing of the Matter, and the Bonds were forgery by the said Scrivener, as he confessed on his Examination upon Interrogatories. The Doubt was whether he should lose one Ear only, or both his Ears? and whether A. being the Oblige, and not any of the Parties in whose Names the Obligations were forged, should have double Costs and Damages? and Resolved, per Fleming and Coke Ch. Justices, he shall lose but one Ear; For it should be taken as one Forgery, being made at one time, and A. was the Party grieved within the Statute; but the Lord Chancellor expounded the double Damages not to be intended double Interest but only the principal Debt. 2 Brow. 49. Hill. 8. Jac. Andrew v. Ledfam.

3. For Forgery the Chief Justices Hand to Common Bail, and taking Fees thereof, as Attorney, being only a Clerk, the Court adjudged him to pay a Fine of 20l. to come with Papers to every Court with his Confession, to stand in the Pillory here from 10 to 12, and in London 2 Hours, and in the Marshalsea an Hour, 3 Months Imprisonment, and good Behaviour for a Year. 1 Kebr. 841. pl. 28. Hill. 16 & 17 Car. 2. B. R. Sherwood's Cafe.

4. One was convicted of Forgery an Accquittance, and Fined by the Court 100l. and to be on his good Behaviour for one Year. Note, he was a Perfon.
Perion of 700l. per Annum, and the Acquistance forged for 7l. Pach. 18 Car. 2. B. R. Sid. 273, the King v. Ferrers.

5. For forging a Will, he had judgment to stand in the Pillory 3 times, viz. at Westminster, the Exchange, and Ratcliff; was fined 40l. and imprisoned, till Sureties found for good Behaviour during Life. 2 Keb. 376. pl. 32. Trin. 20 Car. 2. B. R. the King v. Tyumberley.

(N) Punishment for second Offence.

1. 5 Eliz. cap. 14. §§ 7, 8. Second Offence after Conviction, or Condemnation as aforesaid, is made Felony without Benefit of Clergy, but not to bar Dower, or disinherit the Heir.

The Forgery which is Felony by this Act ought to be after the Conviction, or Condemnation, as to a former Writing; For the Forgery of several Writings one after another, so as the same were all forged before any Conviction, is not Felony by the express words of the Statute. 13 Rep. 35. Pach. 7 Jac. Read v. Booth.

(O) Punished in Chancery. and Relieved.

1. A Perion was sentenced in the Court of Chancery for Forgery. 8 Jac. Toth. 167, 168. Barker v. Ireland & Morris.

2. A by a forged Letter of Attorney attested by 2 Witnesses transfers S. S. Stock of B. to J. S. for a valuable Consideration paid by J. S. who after received the next Dividend; Lord Macclesfield held this Transfer void, and that it was Incumbent on the Purchaser, and more in his Power than any other Person's, to see that the Letter of Attorney be valid, and Real; and Decreed, that the Company, (who were (as he said) only Instruments and Conduct pipes) take the Stock from the Defendant, the Transferer, and restore it to the Plaintiff, the original Proprietor, and that the Defendant, and not the Company, pay back the Dividend, which he has without any good Authority received, to the Plaintiff, and pay both the Company and Plaintiff their Costs, the Default being the Defendant's by reason of his Neglect. 2 Wms's Rep. 76. to 78. Trin. 1722. Hildyard v. S. S. Company & Keate.

3. No of a forged Letter of Attorney in the Name of a Copyholder to A. to surrender Copyhold to the Use of J. S. who surrenders accordingly, and J. S. is therupon admitted, yet this admission is void; per Lord C. Macclesfield Ibid. 77, 78.

Formedon.

(A) Of Formedon in General.


2. Formedon
2. Formedon in Remainder was not at common Law; because at common Law, all Estates in Fee were Fee Simple absolute, or Fee Simple Contingental, which now are called Estates Tail, and so no Remainder could be limited on the later, because 'twas a Fee Simple. But the Formedon in Remainder was by the Stat. de Donis. See Pl. C. 239. a. b. Trim. 4 Eliz. Arg. in Cafe of Willion v. Berkley.

3. Formedon, or de forma Donationis is so called, because the Writ comprehends the Form of the Gift. Co. Litt. 326. b.

(B) Of the Formedon in the Descender, and in what Cases it lies.

But Brook makes a Quare therefor, for it's said contrary, temporary. H. S. if he be barred by Judgment. But if such a thing happens, before to be barred by judgment, the Issue of the Issue shall have Formedon, as appears in the Formed 13 Old Nat. Br. Br. Formedon. pl. 18.

3. If Land in Fee Simple, and Fee Tail descends to two Sisters, and she who has the Fee Simple Land aliened it, and has Issue and dies, the Issue shall have Formedon of the Moiety of the Land tail'd. And so fee that after Partition the one Heir shall have Formedon alone. Br. Formedon. pl. 2. cites 20 H. 6. 2. 13.

4. Formedon in Descender is grounded upon the Stat. of Wfitm. 2. c. 41. and lies where a Man gives Lands to one and the Heirs of his Body, or unto a Man and Woman, and the Heirs of their Bodies, or unto a Man and Woman, who is cousin, in Frank-marriage, by Force of which Gift, they are seised, and afterwards he alieneth these Lands, or is dispossessed of them, and dies; his Heir shall have the Writ; and is, upon every Gift in Tail of Lands or Tenements, if the Ancestor alien or be dispossessed and dies, he who is Heir by Force of the Gift shall have such Writ. F. N. B. 211, 212. (L)

5. Tenant in Tail discontinues in Fee and dies; the Discontinuance makes a Lease for Life, and grants the Reversion to the Issue; he shall not have a Formedon against the Tenant for Life; for by his Formedon he must recover the Estate of Inheritance, which the Leseefor Life hath not, but the Issue in Tail hath it himself. Co. Litt. 297. b.
Formedon:

(C) In the Remainder. In what Cases it lies.

1. Formedon in Remainder, upon an Estate Tail, lay not at Common Law; because it was a Fee Simple conditional, whereupon no Remainder could be limited at the Common Law; but since the Stat. W. 2. 13 E. 1. a Remainder may be limited upon an Estate Tail in respect of the Division of the Estates. 2 Inf. 336.

2. Formedon in Remainder lieth, where a Man gives Lands to one in Tail, the Remainder to another in Tail, and the first Tenant in Tail dieth without Issue, and a Stranger abateth and deforceth him in Remainder, he in Remainder, or his Heir shall have this Writ. F. N. B. 217.

Whole Matter, the Tenant in Tail is dead without Issue. F. N. B. 499 (b) in the Notes cites D. 4 Ellis. 253.

3. So if the first Tenant in Tail alieneth in Fee and dieth without Issue, he in Remainder shall have this Writ to recover his Estate. F. N. B. 217. (D)

4. If a Man give Lands for Term of Life, the Remainder to another and the Heirs of his Body, and the Tenant for Life dieth, and a Stranger abateth, and deforceth him in Remainder, he in Remainder or his Heir shall have Formedon in Remainder to recover his Estate. F. N. B. 217 (E) the Tenant for Life alieneth in Fee, or in Tail, or for Life, and dies, and a Stranger abateth, or his Heir shall have this Writ. F. N. B. 217. (E)

5. If he, who hath the Remainder, or his Heir be once seized of the Lands by Force of the Remainder, he shall never have a Formedon in Remainder for that Land but a Formedon in Descender, because the Remainder is once executed. F. N. B. 219. (A)

(D) In the Reverter. In what Cases it lies.

1. A Common Law, if a Gift had been to a Man and his Heirs of his Body, or Heirs Males of his Body, if he had Issue, then he should have Fee Simple, and if he dy'd his Issue should have Mortdancer for; for it was Fee Simple at Common Law; Contra after the Statute of Weights, 2. c. 1. Per Greene J. and Hufe agreed to the Mortdancer, and that after Issue had, he might alien; but if he died without Issue and did not alien Formedon in Reverter lay; And by him, Heir Collateral shall not have Mortdancer. Br. Tail & Dones, &c. pl. 19. cites 15 Aff. 5.

2. If a Man gives Lands in Tail, so that the Donee may alien in Advantage of his Issue, and warrants the Land to him, his Heirs and Assigns, and the Donee alieneth and dies without Issue, the Donor shall not have Formedon in Reverter, per Wilby; because he has Warranted the Land to the Donee and his Assigns, and the Issue is Assign. But Brooke makes a Quare thereon; for nothing is given but Estate Tail, and the Words after, and the Warranty, cannot make Fee Simple in a Donee; contrary it may be in a Devise or Will. Br. Formedon. Pl. 57. cites 46 E. 3. 4.

3. Formedon in Reverter lieth where one gives Lands to a Man in Tail or Frankmarriage with his Daughter, and afterwards the Donee or his Heirs die without Issue, then the Donor or his Heirs may bring this Writ against the Tenant of the Lands so given. F. N. B. 219. (E)

4. Formedon in Reverter lieth where one gives Lands to a Man in Tail and give Lands to another in Tail, the Reversion in Fee to another, and the Donee in Tail dies without Heir of his Body, the Grantee of the Reversion, shall have a Formedon in Reverter to recover the Land. F. N. B. 219 (E)

(E) Lies
(E) Lies of what.

1. In Scire facias, a fine was levied to J. S. fur Conuniance de Droits come eee, &c. and the Conunice grants and renders to the Conunicer again for Life, the Remainder over in Tail, 'tis said there by divers, that he in Remainder shall not have Formedon, because there is not any Gift, and others econtra; therefore quere, if Formedon lies not as well upon a Grant and Render, as upon a Gift. Br. Formedon, pl. 9. cites 42 E. 3. 5.

2. For of Land recovered in Value Formedon lies, and yet it was not given. And Formedon lies upon Devise. Br. Formedon. pl. 9.

3. Rent is given with a Seigniory in Tail, and Donee aliens the Rent; the Tenant dies Felony and is attainted; the Donee dies without Issue; the Donor shall have Writ of Escheat; but if the Donee had not alien'd, but had entered into the Land after the Attainder, and had died without Issue, the Donor should have Formedon in Reverter of the Land, and not Writ of Escheat; for this was in lieu of the Land and vested. And to see Formedon [lies] of a Thing which was not given. Br. Formedon. pl. 15. cites 46 E. 3. 4.

4. If Lands are recover'd in value for Lands intial'd, the Issue shall have Formedon in Defender upon the special Matter. Br. Scire facias. pl. 47. cites 48 E. 3. 11.

5. The Issue in Tail shall not have Formedon of an Advocon in Gros alien'd by his Ancestor, but a Quare Impedit at the next Avoidance in his Time, and so it seems, that Precipe quod Reddat, lies not of an Advocon. Br. Formedon. pl. 28. cites 4H. 14. 33.

6. A Man may have a Formedon in Defender of the Profit appretnder in Lands or Tenements, or issuing thereout. — As, if a Man grants 200. or, &c. issuing out of Lands or Tenements unto a Man and the Heirs of his Body, or unto a Man in Frankmarriage with his Daughter, if the Donee aliens that Rent, or is dissolved and dies, his Heir who is his Son or Daughter shall have the Writ. F. N. B. 212. (A)

But if common of Pasture begranted to one and the Heirs of his Body, and the Donee die and the Heir be deforced, the Heir shall have Formedon in Defender. F. N. B. 212. (B)

7. So it seems, if a Man grants to one and the Heirs of his Body Pasture for 20 Oxen, or 100 Sheep, &c. and the Donee dies, and his Son, who is his Heir, is deforced thereof, he shall have Formedon in Defender. F. N. B. 212. (B)

8. A Formedon shall be brought of * Gores, but not of an Advocon. F. N. B. 217. (B)

9. If Land Escheat to the Seigniory, which was given in Tail, Formedon lies of the Land, and yet the Seigniory was given, and not the Land. Br. Formedon. pl. 43. cites 3 H. 7. 9.

10. Formedon may lie of a Cepyhold in the Defender, by Protostitution, in Nature of a Writ of Formedon in Defender at the Common Law, and well by all the Justices, for tho' Formedon in Defender was not given, but by Statute, yet now this Writ lies at Common Law, and it shall be intended, that it has been a Custom there Time out of Mind, and the Demandant recovered by Advice of all the Justices. Br. Tenant per Copie, &c. pl. 24. cites * 15 H. 8. — and Brook lays, the like Matter was in Effex, Mich. 26 H. 8. and that Fitzherbert affirmed it afterwards in the Dutchy Chamber,
Formedon.

ber, and that the same is agreed by Littleton, in his Chapter of Tenants by Copy. 
11. It will not lie of a Croft of Land; but an Alieneth well lie, because a Formedon is Breve adverfarium; therefore, where a Judgment was given in a Formedon for a Croft, and for other Parcels of Land, it was reverfed for the Whole upon a Writ of Error; 2 Built. 214. Patch. 12 Jac. Ellis v. Wallis.

(F) In what Cases Formedon in general lies.

1. If Alienation [were made] by the Donee in Tail, before the Statute, and before Issue hold; yet if he had Issue after, the Alienation was good. Br. Formedon. Pl. 70. cites 19 E. 2. and Fitzh. Formedon. 61.

Reverter lay for the Donor, his Heirs or Alligns. Br. ibid.—And see that a Leaf was made for Life, the Remainder in Tail, the Remainder in Fee to the Demandant. Br. Formedon pl. 70. cites Fitzh. Formedon. 66. and 11 E. 5. ca. 31. And upon a Deed for Life, the Remainder to B. and his Heirs, B. shall have Formedon in Remainder, where there was no Tail in any Part of the Gift. Br. Formedon. pl. 70. cites 34 E. 5. ca. 65.

2. Formedon in Remainder was at Common Law; for it lay upon a Leaf, and fee in for Life, the Remainder over for Life, or in Fee, and where there was no the said Tail and it continues to this Day; which can't be by reason of the Writ of Formedon in Remainder in Old Nat. Br. that upon a Leaf for Life, the Statute gives Formedon in Defender. And it was said, that Formedon in Reverter is enough used in Chancery; for by the Common Law the Donee had Fee Simple conditional, and had Power to alien, but if he had alien'd before he had Issue, and had died without Issue, Formedon in Reverter lay at Common Law, and so if he had had Issue, and after, he or his Issue died without Issue; Formedon in Reverter lay at Common Law, contrary if he had had Issue, and had alien'd and died without Issue. But Formedon in Remainder is not mentioned in the Statute aforefaid, therefore it seems that this was at Common Law, and especially where there is no Tail, as above. Br. Formedon. pl. 69. cites Old Nat. Br. Formedon. pl. 69. cites 24 E. 3.

3. If Tenant in Tail enters into Religion, and 7. N. enters, the Issue in Tail shall have Formedon immediately, inasmuch as his Father took upon him a Religious Habit. Br. Formedon. pl. 74. cites Old Nat. Br. where the Tenants in Tail alien the Land, or Changers it, and enter into Religion; for this shall take Effect during his Natural Life; contrary of Abatement, ut supra. Br. Formedon. pl. 74. cites Old Nat. Br.

4. If the Heir in Tail be once seised after the Death of his Ancestor, he shall not have Formedon, 'till his Seisin be lawfully defeated, tho' he be ousted, but shall have Allion of his own Possession. Br. Formedon. pl. 47. cites 7 E. 4. 19. Per Danby Ch. J.

5. As where the Issue in Tail enters upon the Discontinue, and another acts bim; he shall not have Formedon unless the Discontinue enters. Br. Formedon. pl. 47. cites 7 E. 4. 19. and if the Issue in Tail enters after the Death of his Ancestor, upon the Discontinue within Age, and Alien in Fee, he shall not have Formedon, but Donee first seised actions, because the Disseisin is not purged by the Defendant. Br. Formedon. pl. 47. cites 7 E. 4. 19. Per Danby Ch. J.

6. If the Husband alieneth the Land of his Wife in Fee, and afterwards the Husband and Wife are divorced; the Wife shall have a Writ of Cui ante Divortium against the Aliense. But if the Lands be to the Wife of an Estate in Fee, and not in Fee, and after they are divorced, and the Wife dieth, the Heir of the Wife shall not shall not have a Cui ante Divortium,
Divortium against the Alience, but in such Case the Heir shall be put to his Writ of Formedon in the Defender. Fitzh. Nat. Br. 204. (F) (K) 7. In a Formedon in the Defender, if the Demandant be barred by Verdict or Demurrer; yet the Issue in Tail shall have a new Formedon in the Defender: So if he be barred in a Writ of Error upon the Release of his his Ancestors, his Issue shall have a new Writ of Error; for he claims in not only as Heir, but per formam doni, and by the Statute of Wills, shall not be barred by feint, or false pledging of his Ancestors, so long as the Right of the Entail remains. 6 Rep. 7. b. in Ferrer’s Café.

(G) Writ and Pleadings in general.


2. Formedon in Reverter by Baron and Feme, [where the Reversion was limited to the Feme] shall be ad Virum & Usuarem revertore debet, &c. But Formedon in Defender by them shall be ad Usuarem * descendere debet; for the Baron is not Heir to the Tail. Br. Formedon. pl. 68. cites 19 H. 6. 46.

3. In Formedon upon a Gift made to W. and J. his Feme, and that after the Death of W. &c. and did not speak of the Death of J. his Feme, the other Donee, and therefore the Writ was abated without Amendment. Br. Formedon. pl. 64.

4. By 1 H. 7. 1. It was maintainable against the Permer of the Profits.

5. In Formedon, if the Tenant pleads Non-tenure, the Demandant says, that he made a Feoffment to Persons unknown to defraud him of his Action, and averrs that he took the Profits; there the Feoffment to Persons unknown is not traversable. Br. Traverfe, per &c. pl. 180. cites 4 H. 7. 9.

6. In every Formedon, there are two things requisite; one is the Gift, the other is Conveyance to the Demandant; and if either of these fail, the Writ is insufficient in Substance, nor helped by the Statute. Hill. 43 Eliz. Goldf. 126. Denvall verus Catesby.

7. 21 Jac. 1. cap. 16. 8. 1. Enacts, that all Writs of Formedon in Defender, in Remainder, and in Reverter, shall be filed within 20 Years after, the Title and Cause of Action first arisen; and no Person shall make any Entry into Lands, but within 20 Years after his Right or Title shall first accrue.

8. If any Person, that shall be entitled to such Writs, or shall have such Right or Title of Entry, be at the time of the said Right or Title first accrued within the Age of 21 Years, Feme covert, Non compos mentis, Imprisoned or Beyond the Seas; such Person and his Heirs may bring Action, or make Entry, within ten Years after their full Age. Discoveries, coming of found Mind, Enlargement out of Prison, or coming into this Realm, or Death.

Formedon.

a Petie Cape returned, and Tenant made Default, and Sheriff returned quod cepit in Manus Domini Regis, upon which Judgment pro Quer, and Error brought; and the no Issue was well joined for Default of (habuerunt) yet, when the Tenant made Default, * all the Pleading before the Counterplea of the Voucher, was out of the Court, and Judgment well given, and the first Judgment affirmed. Jo. 412. Mich. 14 Car. B.R. Brookebott v. Tomlyn.

9. In Formedon in Descender; Exceptions were taken to the Count, that the Demandant, (being Brother to the Tenant in Tail, who died without Issue) set forth, that the Lands belonged to him post mortem of the Tenant in Tail, without saying, that he died without Issue; the Precedents are, quod post mortem of the Donee reverted debet, co quod the Donee died without Issue; which is very true in a Formedon in Reverter, because there the Estate-Tail being spent, the Donor may not know the Pedigree; and thereupon it is sufficient to say, that post mortem of the Tenant in Tail descendere debet, without setting forth, that he died without Issue; for if he had any Issue, then it could not descend to the Brother. Trin. 28. Car. 2. C. B. 2 Mod. 94. Anon.

(H) Pleadings. Writ and Declaration in the Descender.

1. Formedon in Descender, the Demandant counted that A. gave to B. in Tail, and from B. it descended to H. as Son and Heir, &c. and from H. to G. the Demandant, as Son and Heir, &c. and the Writ was, and that after the Death of the aforesaid B. to the aforesaid G. Cousin and Heir of the aforesaid B. descendere debet, &c. which was challenged for Variance between the Writ and the Count, because H. did not * fold. * Vide was never sais'd.

2. Land is given to F. and his first Wife whom he should marry, and to the Heirs of their Bodies, &c. and after he opined A. and had Issue, and died, the Issue brought Formedon as Heir of the Bodies of F. and A. and therefore the Writ was abated; For A. had nothing by the Gift, and therefore it should be, that descendere debet to the Demandant, as Heir of F. of the Bodies of F. and A. begotten. Br. Formedon. pl. 78. cites Tempore E. 3. Tin. North.

3. Formedon in Remainder; the Demandant set forth specially, (as he ought) that is to say, that the Land given to N. &c. revertatur to the Demandant, where it should be reiament; &c. and the Tenant challenged it, and dared not demur; for Revertatur is a good Remainder, and this Action does not lie without the shewing specially; and yet when it is shewn, the Party, Tenant, shall not have Anwser to it, and Ne dona pas by the Deed is no Plea, wherefore by Award he was compelled to Anwser over, and said, that he, Ne dona pas as suppos'd by the Writ, Prit; and the others ecounter. Br. Formedon. pl. 33. cites 21 E. 3. 49.

4. Formedon of a Gift to his Grandfather, and makes the Descent from him to his Father, and from him to the Demandant; Fencer said, after the Death of the Grandfather, the Father was feailed, so ought he to be to be made Heir to his Father, and demanded Judgment of the Writ; the Demandant said, that the Grandfather enfeoff'd the Father, and his Feme, and the Heirs of the Feme, and this Estate continued till he died; Judgment; the Tenant said, that the Father was within Age at the Time of the Enfeoffment, and he remitted and sais'd in Tail; and after they palled over; and to see that left Seisin is a good Plea to the Writ in Formedon. Br. Formedon. pl. 29 cites 38 E. 3. 24.
Formedon.

5. In Formedon by B. the Writ was, and that after the Death of R. and W. Son and Heir of the aforesaid B. Son and Heir of the aforesaid W. defendere debeat, &c.; and the Tenant * pleads that W. was never seised; Judgment of the Writ, which makes him Heir to W. where he should be made Heir to him who was last seised, and by Award the Writ is good, for by this Way he is made Heir to R. allio.

Br. Formedon. pl. 38 cites 39 E. 3. 10.

6. Formedon of a Gift to E. in Tail, the Remainder to P. and that after the Death of the aforesaid E. and P. and R. Son of the same P. to the aforesaid W. the Demandant, Brother and Heir of the aforesaid R. defendere debeat, because the aforesaid R. died without Heir of his Body; and because he did not seise also, that E. is dead without issue; therefore his Writ was abated, and yet it was Formedon in Defendere. Br. Formedon. pl. 39. cites 39 E. 3. 27.

Gifts to have been to P. and omitted E. as he is dead without issue, and then well. Br. Formedon. pl. 39.

7. Formedon as Confess, the Plaintiff ought to shew how Confess in the Writ, otherwise it shall be abated; contrary in Scire Factas, as Cousin and Heir. Note a Diversity. Br. Formedon. pl. 6. cites 41 E. 3. 14.

In such Case it shall be above Ex Officio Curia after the View, and if it seems that the Party shall not plead it after the View, but shall shew it as Amicus Curia, and the Court for Error ought to allow it. Br. Brief. pl. 24. cites 12 H. 4. 1.

8. In Formedon in Defendere, the Demandant made the Defect from H. the Donor to A. Daughter, &c. and from A. to the Demandant, as Cousin and Heir to H. The Tenant said, that A. Mother of the Demandant, was seised by Force of the Tail, after the Death of H. and therefore he ought to have been made Heir to A. Judgment of the Writ; and the Demandant was compelled to answer to it; per Cur. Br. Formedon. pl. 53. cites 43 E. 3. 7.

9. Wherefore he said, that A. was seised in Fee by the Feoffment of H. Judgment, &c. The Tenant said, that H. leased to A. for Life, and after died, by which he was then seised in Tail; the Demandant said, that he was seised in Fee, Prin; and the others contra. Note, the last Seised was in Issue. Br. Formedon. pl. 53. cites 43 E. 3. 7.

10. Formedon of a Gift to the Baron and Feme in Tail, the Demandant made Defect from them to P. as Son and Heir; and from P. to the Demandant, as to the Son and Heir; the Tenant said, that the Baron and Feme had Issue D. Elder than P. who held the Estate, and survived the Donors, and died seised, of which D. he has made Omision, Judgment of the Writ; and because P. was made Son and Heir to the Baron and Feme, where he ought to have been made Brother, and Heir to D. of the Bodies of the Baron and Feme legitimated, therefore the Writ was abated. Br. Formedon. pl. 55. cites 46 E. 3. 9.

* He must shew expectantly by the Name of him who was last seised as Heir. D. 916. a. pl. 46. Trin. 4

Eliz. Anon.

And he must make himself either Son and Heir, or Cousin and Heir; for a later Seised in any Heir in Tail after will abate the Writ. 8 Rep. 55. b. Re-Gave in Buchner's Case.

12. In
12. In Formedon the Writ was Precipite the Tenant quad *Juite &c. *Ibid pl. reddat to the Demandant &c. the Minor of D. which T. gave to R. and M. his Wife, and the Heirs of their Bodies, &c. and that after the same 
Death of the aforesaid R. and M. and N. Son and Heir of the aforesaid R. and M. and N. Son and Heir of the aforesaid N. and R. Son and 
Heir of the aforesaid N. Son of N. Son of the aforesaid R. and M. and the 
Son of N. Son of the aforesaid R. and M. descendere debet, by Form of the 
Gift, &c. And the Demandant counted further, how she was Cousin and 
Heir to the said R. Son of N. &c. Daughter of T. Son of M. Sibell 
of N. Son of R. and M. the Donors; And * because the Coinage was 
not alleged as well in the Writ as in the Count, the Court was of 
Opinion, that the Writ should abate; and after, because the Tenant had 
bad the View, the no Count was made before the View, and so confirmed 
the Writ, therefore he shall not have Advantage after, and so the Ten 
ant was awarded to answer to the Writ, quad Nota. Br. Formedon. 
pl. 19. cites 49 E. 3. 20. 
13. But contrary in Scire Facias upon Tail by Fine, there it suffices to 
count * further; note a Diversity. Br. Formedon, pl. 19. cites 49 E. 3. 
20. Per Wiching. 
14. And in Formedon, the Writ shall be (where the Heir is not seised) 
The younger 
and that after the Death of the Donors, and R. Son of the Donor, &c. 
without this Word (Heir) and to make the Demandant Heir to him who 
said was last seised. Br. Formedon. pl. 19. cites 49 E. 3. 20. Per Wiching. 
Brother was Heir to his Father, and that after his Death, he is now Heir, and Exception was taken, that this cannot be; for that none is Heir to the Father, but the chief Son, and that the elder Brother being 
without issue, the next Brother is Heir to him who was last seised, and not to the Father; 
but the Court held, it to be no Contradiction to say, that two are Heirs of one. 

15. But where the Heir is seised, there he shall say, and that after the 
Death of the Donors, and R. Son and Heir of the aforesaid Donors, and so on. 
16. Formedon in Defendenter, and counted how the Donor leased to W. 
Where a 
for Life, and granted the Reversion to J. and T. and to the Heirs of T. 
Lease is made 
who granted the Reversion to the Father of the Demandant in Tail, and 
Remainder 
that the Tenant for Life is dead, and so descended to him by Form of the 
Gift and Grant aforesaid, and it was doubted of the Form, if he shall 
and the Ten 
fay by Form of the Gift only, or not. Br. Formedon. pl. 20. cites 50 E. 

1. 

17. In Formedon in Defendenter, the Count was, that the Land de 

mitted from the Donor to B. and from B. to C. and from C. to the De 
mander; as Brother and Heir; and it was pleaded to the Writ, be 
cause he did not know that C his Brother was dead; But non allocatum in 
this Action; Contra in Formedon in Remainder. Br. Formedon. pl. 21. 
and excepted against the Count, be 
cause it was that the Right descended when after the Death of Leonard, as Brother and Heir to Leonard, who was Son and Heir of the Donor, and did not allege, that Leonard died without issue; it is true, this 
might have been an Objection in a Form of Remainder or Reverter, but it is not a Formedon in 
Defendenter; for in the last Case the Demandant is only to set forth the Pedigree, and therefore they 
do not mention, that the Pedigree under whom they claim, died without issue; besides, in this Case 
the Demandant could not be Heir to Leonard, if he had left issue. Nels. 3. SSU. pl. 5. cites 1 Mod. 

18 Formedon.
Formedon.

18. Formedon in Defender, tho' the Gift was of a Reversion of a Tenant; pl. 4. cites S. for Life to topo in Tail, the Remainder to the Ancestor of the Demandant, who was feised by the Remainder, so that the Remainder was executed, the Plaintiff may say, in his Writ and Declaration, that the Gift was immi-

If Tenant in
Tail hath
two Sons,
and a Stran-
ger abates,
and enters
into the
Land, and

19. If Tenant in Tail has Issue a Son and a Daughter, and discontinues,
and after the Son dies without Issue, in the Life of the Father, and then the Father dies; the Daughter shall have Formedon, and may make Omis-
sion of the Son, because he died in the Life of his Father, and therefore now the Daughter is immediate Heir to him who was last feised. Br. Omision pl. 7. cites 11 H. 4. 72.

If the Fa-
ter does
not survive
the Grandfa-
ter, the Son
need not
mention the
Father in his
Writ. F. N. B. 489. in the Notes there. (a) cites 5 E. 2. S E. 2. pl. 54.

20. Contra it seems, where there are Grandfather, Father, and Son, and
the Grandfather Tenant in Tail discontinues, the Father dies, and after the Father dies, the Son brings Formedon, he ought to make mention of the Father, For the Son cannot be immediate Heir to the Father, but by Means of the Father. Ibid.

S. C cited
F. N. B. 488
In Notes (a)

21. In Formedon the Writ was, that R. I. gave to N. and B. his Wife,
and to the Heirs which the said N. of the Body of the said B. should be-
got; Norton demanded Judgment of the Writ, for it ought to be, that R. gave to N. and B. his Wife, and the Heirs of their Bodies begotten; &c. and non allocatur; but the Writ awarded good, for it is all one. Br. Formedon. pl. 26. cites 12 H. 4. 1.

22. Formedon in Defender; the Writ was, and that after the death of
W. the Donee, and W. Son and Heir of the aforfeid W; [and] J. Son and
Heir of the aforfeid W. Son of W. and W. Son and Heir of the aforfeid
J. and T. Son and Heir of the aforfeid W, to the aforfeid A. the Deman-
dant, as Daughter and Heir of the aforfeid T. defendere debet, &c. the
Tenant said, that T. never held Estait, and yet the Writ awarded good by
Judgment, for where he is made Heir to every one as here, therefore he is made Heir to the Donee, and to him who was last feised, whatsoever he was; and where the Grandfather is Donee, and he and the Father die, the Father not feised, and the Writ of the Son is, and that after the Death of the Grandfather, and the Father, Son and Heir to the Grandfather, to the Demandant, Son and Heir of the Father defendere debet, &c. it is a good Writ, per Cur' and left Seisin pleased in a Writ of Aiel, Mortdanceflor and Coginge goes to the Action, therefore tis a good Plea there accordingly. But in Formedon it does not go to the Writ. Quod

23. And Note per Cur' that where the Writ is, and that after the Death
of the Donee, and W. Son of the Donee, without the Word Heir, &c. to the
Demandant defendere debet as Son and Heir of W. such Writ shall abate,
for he does not make himself Heir to the Donee; for it may be that W.'s
younger Son; for in Formedon in Defender, the Demandant always
ought to be made Heir to the Donee, and to him knowns left feised, &c. Br.
Formedon. pl. 62. cites 11 H. 6. 22.
24. In Formedon upon Discontinuance, the Demandant counted that de-
scendant Jus, &c. and not, quod descendit sedam. But Contrary upon Abatement a-

26. But if the Writ be [thus, viz.] and from the Dauce.

descendit Jus, &c. to J. as Son and Heir to him, and from J. to R. as Son
and Heir to him, and from R. to W. as Son and Heir to him, and from W.
to him, as Son and Heir, and makes himself Heir to the said W. his Father
and no other; albeit that W. was not seised by Force of the Gift, but some
of the others, by whom he has made the Conveyance, were seised, the Writ
is good, and shall not abate, because he has made every one Heir to the
other. Per all the Justices. Br. Formedon. pl. 57. cites 22 H. 6. 36.

S. P. Hill. 3
Car. C. B.

27. Formedon by two Barons and their Femen in jury Usuris; the Writ
was, &c good as Morten &c. to the Barons and their Femen descendit
debet, where it should be to the Femen only, and was amended; For
'twas not well. But per Jangford, in Formedon in Remainder, he shal
pay, remane debet to the Baron and Feme. Quod nullus negavit. Br.
Formedon. pl. 4. cites 35 H. 6. 10. 13.

28. In Formedon in Descender, which is only by Statute, the Statute
is not re-heard'd, but this is in so much as the Writ is re-heard'd in the
Statute, as it is of the Quod el Deforceat. Br. Action für das Statute. pl.
cites 5 H. 7. 17.

29. The Demandant shall make himself Heir in Formedon in Descender
and not, quod descendit sedam, but he shall make mention in his Writ of himwho so
held Estrate, 'the he did not enter in Fact'; but shall not make himself Heir to him; but yet
the pleading of him who held Estrate is, 'that he was seised, and fo without Seisin in him, the Writ shall not abate, which is Seisin in Fact, as it feems. Br. Formedon. pl. 60. cites F. N. B. 212. (P).

30. The Clause of (co quod, &c.) serves most conveniently when
Estate Tails is spent, and so is well in Formedon in Reverter or Re-
mainder, but not in Descender, unless in Special Cases. 8 Rep. 83. b. a
Nora of the Reporter.

31. In a Formedon, the Count was of a Gift to B. and Heredadus de
Corpejo suo legitimate precord. The Tenant demanded Judgment of the Writ,
for that (among other Things) the Word (Procerat) ought not to be in the Writ, but executum. But the Court thought it might be amended.

32. In a Formedon in Descender, the Demandant set forth that H. O.
being seised in Fee, made a Footment, &c. to the Use of himself for Life.
This is only a Statute of Remainder to the Use of E. V. and Ellen his Wife, for their joint Lives,
and after their Decease to the Use of the Heirs of the Body of the Husband begetten on the Body of the Wife; that H. O. died, and that, by Virtue of the said Fee-simple, the Husband and Wife were seised, that is to say, the Husband in Fee-Tail, and the Wife of the Freehold, during their joint Lives; that the Husband died, and then the Wife became sole seised for Life, Remainder to H. her Son; that the Wife died, and then the whole survided to her Son, and from him, jus descendent to the Demandant, as Co-heir and Heir of E. V. (that is to say) Son and Heir of Hughes, who was Son and Heir of H. (the Son) who was Son and Heir of E. V. on the Body of Ellen begetten; In this Case the Selina was alleged right, contrary to the Opinion of Fitzherbert, who held that Selina must be thus alleged, (viz.) By Virtue whereof the Husband and Wife were seised together, and to the Heirs of the Body of the Husband begetten on the Body of the Wife, and must not say, that either of them were seised of a Freehold for Life, or of a Fee-Tail, Nelf. Abr. tit. Formedon. 879. pl. 12. cites *1 Lutw. Rep. 974. Vaughan v. Rowland.

Lands are given to the Baron and Feme, and to the Heirs of the Body of the Baron, in this Case the Baron has Estate in Tail general, and the Feme has only an Estate for Life, and the common Form of Precedents is accordingly.—* It should be 2 Lutw. 974 to 276.

(1) Pleadings, Writ and Declaration in the Remainder.

WHERE A Man conveys by Remainder, he ought to allege the Gift in Tail, and all the Remainders before him to be determined by dying without Issue, otherwise his Wife shall abate. Br. Formedon. pl. 39. cites 39 E. 3. 27.

In Formedon in Remainder, the Plaintiff intituled himself, because the Issue in Tail is dead without Issue, but does not say the Tenant in Tail is dead without Issue. Holt Ch. J. held, that it must be shown, that the Tenant in Tail is dead without Issue; for that it is the very Point of the Action; and it must be shown, that the first Donee is dead without Issue; and it is not implied at all, that because the Issue is dead without Issue, that therefore the Tenant in Tail is; For he may have other Sons besides his Eldest. 5 Mod. 1.; Hill. 6 W. & M. Herbert v. Morgan.

2. In Formedon in Remainder or Reverter, the Demandant shall make mention of the Death of every one who held Estate and survived, &c. Contrad in Scire Facias. Br. Formedon, pl 11. cites 42 E. 3. 20.

S. P. where the Formedon in Remainder is brought as Heir. 8 Rep. 33 a. in a Note of the Reporters in Buckmore's Case.——Br. Omnion, pl. 1. cites 42 E. 3. 19. 20.

* Same Cases cited 3. Lev. 219. and there it is said, in the Register 243; they are mentioned to be ruled good, and that there is no mention there, of their being not good, but only that the Form of the Register is better, Arg. and the Court seem'd to be of the same Opinion: Trim. 1 Jac. 3 C.B. in Case of Dinghurff v. Bat.

3. Formedon in Remainder was brought upon an Estate Tail limited to B. Remainder to C. in Fee, and was, which, after the Death of B. and C. to D. Son and Heir of C. remanueret Delet. And the Writ was adjudged good without laying expressly the Death of C. tho' the Form of the Register was fo; because the laying of D. to be Heir of C. imports as much. Hob. 51. in Case of Frank v. Windford, cites 5 E. 5. 35. and 7 E. 3. 47. 48. cited in the Register.

4. If a Lease for Life be made to A. Remainder in Tail to B. Remainder in Tail to C. If B. dies without Issue in the Life of A. and afterwards a Formedon in Remainder is brought by C. he ought to mention the Remainder to B. tho' it was determined and spent as aforesaid; For the Demandant, in the Formedon in Remainder, ought to mention all precedent Remainders in Tail. 8 Rep. 88. a. in a Note of the Reporter, cites 8 E. 3. 19. 3.

5. In
5. In Formedon, the Demandant counted, that J. was seized, and affigned it in Deed to A., and after granted the Reversion to G. for Life, the Remainder to S. in Tail, and that S. was seized and conveyed to the Demandant, and the Writ was, that J. granted, &c. and after the Death of A. &c. to hold, &c. and that after the Death of the aforesaid G. Remainder to S. &c. and does not mention in the Writ, whether the Baron was seized, so that there may be Deed, &c. or not, and yet well, per Thorp. For it is the Course of the Chancery Quare, for 'tis not expressly adjudged. Br. Formedon. pl. 8. cites 41 El. 3. 27.

6. In Formedon, the Writ was *Preceipe quod reddat one Message and one Acre of Land, &c. so that if the aforesaid Donee should die without Heir, &c. that then the aforesaid Message, Land, and Meadow should remain to the Demandant, &c. So that there was more in the Pedigree than in the Premises, by this Word (Meadow), &c. And therefore Fencot pleaded it to the Writ. Finch said, you have had the View, therefore it is past the Advantage, and it is only Surplusage, which shall not abate the Writ. Per Fencot, of false Latin, and Things apparent, a Man shall have Advantages always before Judgment, Quod non Negatur; and the Writ awarded good, and this by Reaflon, that it is only Surplusage, as it seems. Br. Brief. pl. 65. cites 44 El. 3. 14.

7. J. S. and M. his Wife brought Formedon in Remainder in Right of M. of 3 Messages, which A. gave to B. in Tail, Remainder to C. in Feu, and sets forth, that after the Death of the said B. and C. to the aforesaid J. S. and M. Daughter and Heir of E. Brother and Heir of D. Son and Heir of C. aforesaid remuere debit by Form of the Gift aforesaid, ex quo, the aforesaid B. died without Heir of her Body issuing, &c. The Defendant pleaded in Abatement of the Writ, that by the Form in the Register, Demandant should have apposed, that after the Death of B. and C. to the aforesaid J. S. and M. as Cousin and Heir of C. remuere debit, &c. But it was held good enough by three J. against Warbuton J. because it appears to the Court, by the Pedigree set down, that the is, and must needs be, Cousin and Heir to C. And that the Form in the Register may bear such an Alteration. Hob. 51. Hill. 11 Jac. Rot. 32. Fret v. Bindford.

8. In Formedon in Remainder, the Demandant declared of a Gift to A. for Life, Remainder to M. the Wife of A. and the Heirs of her Body, by A. ita quod, after the Death of A. M. and E. their Daughter, to (the Demandant) G. Son and Heir of E. remuere debit, &c. The Defendant pleaded in Abatement, that E. had issue F. a Son and Heir, who survived M. and E. not named in the Writ, judgment of the Writ; and the Court upon the first Argument inclined, that the Writ was ill by Reason of the Omission of F. who had a Right, the he had never any Seisin. But afterwards, upon a further Argument for the Demandant, in which the above &c. and other Books were cited, they gave Judgment to anwser over Nifi Cauta, within a Week. 3 Lev. 218. Trin. 1 Jac. 2. C. B. Dinhurt v. Buttt &c. al.

(K) Pleadings, Writ and Declaration in the Reveter.

1. In Formedon in Reverter, Omission is not material, unless he who is counted in the Declare suavovd his Father. As where the Father has Issue two Sons, and the Eldest dies in the Life of his Father without Issue, there the Omission of him is not material. Br. Omission. pl. 10. cites 18 El. 2. survived the Father, &c. because he held the Elftate, altho' he was not seized of the Land. F. N. B. 220. (D) — S. C. cited F. N. B. 489. in Notes there. (a)
2. In Formedon in the Reverter he need not shew otherwise, but that the 
Donee died without Heir of his Body, tho' 22 were sealed after his Death, 
&c. Br. Formedon. pl. 37. cites 22 H. 6. 36. per all the Juticcs.

3. A Formedon in the Reverter was brought by J. S. and F. his 
Wife against W. R. of divers Mefliages and Lands in E. which 
Lands A. and the said F. then his Wife did give to B. and C. to 
the Use of E. Daughter and Heir of Sir P. S. Kat. and the Heirs of her Body; 
& the part Mortem predil. Eliz. ad prejentam F. reverte detent, &c. The 
Demandant pleaded in abatement of the Writ, that the said F. at the 
Time of the Death of the said Eliz. was married to the Plaintiff, so that 
the right of the said Lands at quod, &c. to her Husband and her did revert, 
and so by the Writ it ought to have been supposed; upon which, the 
Demandant did demur in Law. It was adjudged, that the Writ was 
good: and this Difference taken, if it were a Formedon in the Defender, 
upon a Defect to the Wife, there the Defect must be made in the Writ 
to the Wife alone; for the Defect followeth the Blood, and to that 
the Husband is a Stranger; but in a Formedon in the Reverter, where nothing 
is already vested, but the right only returns, there this Right may be 
layed to return either to the Wife alone, or to the Husband and Wife: 
Hughes's Abr. 966. pl. 7. cites 33 H. 6. 54. Mich. 11 Jac. in C. B. The 
Earl of Clarickard, and the Lord Vitcom Sidney's Café, Hob. 1. 
and 2.

4. Note. If the Demandant in a Formedon in the Reverter, be barred 
of a third Part of the Land upon her own flooding; as where the 
Demandant doth not, that a Fine was levied of a third Part of the Land; in such 
Cafes, the whole Writ, of Formedon, brought for the whole Land, shall 
abate; For that the Writ is * teified by the Demandant's own flooding; 
and that in a Substantial Point. Hughes's Abr. 966. pl. 2. cites Hobart. 

5. In a Formedon in Reverter, the Café was, Wm. Vefcy the Father, 
being seised in Fce, devised his Lands to his Eldest Son John Vefcy, and 
the Heirs Males of his Body; and for Default of such Ilfive, to William 
Vefcy, and the Heirs Males of his Body, being another Son; and for 
Default of such Ilfive, Remainder over, &c. The Father died, then John entered, 
and died without Ilfive Male, leaving two Daughters, Elizabeth and Sarah, 
the now Demandants; then Wm. the other Son entered, and in Considera- 
tion of a Marriage intended between him and Anne Hewer, he made a 
Remand to two Trustees, and their Heirs, Habendum to the Use of the said 
Wm. the Feeor, for Life, then to Anne, his intended Wife, for Life, (who 
was now Tenant) Remainder to the Use of the Heirs Males of the said Wm. 
and Anne in Special Tail, Remainder to his own Right Heirs, with War-
ranty from him and his Heirs, to the Feeor's and their Heirs; and after-
wards he died seised without any Ilfive, after his Death Anne his Wi-
dow entered, and had the Pofifion, and the Demandants Elizabeth and 
Sarah, the Daughters, and Co-heirs of John, and Coughs and Co-heirs 
of William Vefcy the Teftator, brought a Formedon in Reverter; Anne 
the Tenant would rebut, and bar them of the Reversion by this collateral 
Warranty.
Formedon.

Warranty of her Husband William Velcy, who was Tenant in Tail, as descending an Arum as Confins and Co-heirs, who were likewise Confins and Co-heirs of the Donor: The Court was divided, (viz.) the Ch. Justice Vaughan and Archer for the Demandants, who held this Warranty of the Tenant in Tail, tho' 'tis a collateral Warranty, will not bar the Donor and his Heirs of the Reversion. Nels. 382. Abr. tit. Formedon. (C) pl. 4. cites Vaughan. 369. Bole v. Horton.

6. Formedon in Reverter: the Tenant demurred to the Declaration, for that no Expresses are alleged in any Donor, and the Books go upon this Difference, that where a Fee-simple is demanded, (as 'tis always in a Formedon in Reverter,) there the taking the Profits must be alleged both in the Donor and Donee; but where an Estate Tail only is demanded, then it is sufficient to allege the Expresses in the Donee only. 2 Lanth. 963. Hill. 3 W. & M. Hanlock v. Petre.

(L) Pleadings, Writ and Declaration by Parceners.

1. Formedon shall be of the Seisin of him who was last seised. Br. Formedon. pl. 5.

2. As if Land held descends to two Daughters, and one enters into the Land if one Whole, and dies without Issue, and the other has Issue and dies; the Issue shall have two Writs of Formedon, the one of the Seisin of his Grandfather, as Heir to the Grandfather of one Moiety, and shall not say, that his Mother dies, and the infant tenant, for the was not feited, and he shall have another Formedon after Sitter of the other Moiety, as Heir to his Aunt, who infant tenant with his Mother, and yet his Mother was never feited. Per Wishing, quod Nota, for 'twas not denied. Br. Formedon. pl. 5. cites 40 El. 3. 8. have two Writs of Formedon, if a Stranger, &c. enters; or one and the same Writ, by several Prescribers; but in such Case of the one Moiety, he shall make himself Heir to his Mother, who infant tenant with his Aunt, by Reason that his Mother entered, and was feited, and of the other Moiety, shall make himself Heir to his Grandfather, because the last Seisin is Material here; and his Mother was not feited of both Moieties in Tail, but was Ablегодня against her Sister of one Moiety, and the infant tenant of the other Moiety shall not prejudice him, by Judgment. Br. Formedon. pl. 54. cites 43 El. 5. 16. Was only an Ablегодня. Br. Brief. pl. 588. cites 43 El. 5. 16. 27.

3. And it seems that he may have One Formedon of these two Moieties by several Prescribers; and so see two Formedons, by one and the same Heir, upon one and the same Gift, by Reason that he claims by two several Ancitors sub Dono. Br. Formedon. pl. 5. cites 40 El. 5. 8. and 43 El. 3. 16 and 27. S. P.

4. In Formedon the Writ was Quod reddat 20 Acres, which together with other 20 Acres W. gave to R. and the Heirs of his Body, and that after the Death of R. and K. one of the Daughters of the said R. who them infant tenant with J. another of the Daughters of the aforeaid R. to the aforeaid Demandant, Son and Heir of the aforeaid K. descendere debet, &c. And 'twas held, that the Writ is ill; For it ought to be the Moiety of 40 Acres of Land, because the Writ is which they held in Common; For it is known that before Partition, it shall be infant tenant by Moieties, and after Partition, of Acres which in Parpartia tenus. But because the Tenant had had the View, he could not abate the Writ. Br. Formedon. pl. 6. cites 40 El. 3. 55.

5. Formedon, that he render the Moiety of 30 Acres of Land, which D. together with another Moiety of 30 Acres of Land gave, &c. where the Writ should be with the other Moiety of the aforesaid 30 Acres of Land, and therefore the Writ was abated. Br. Brief. 133. cites 5 H. 5. 8.

6 I 6. Where
And after if they make Partition, so that one has the Fee Simple Land, and the other the Land tailed, and she who has the Land tailed Aliens and dies, her Issue shall have Formedon, and shall recover the Whole, per Newton. Br. For-}

6. Where Land of Fee Simple, and Land tailed, descend to 2 Sistors, and

hee who has the Land in Fee Simple alien it and the other shall have Formedon, and shall recover the Whole, per Newton. Br. For-}

7. Lands given to A. in Tail, Remainder to the Right Heirs of B.—B. has Issue 2 Daughters C. and D. Donee died without Issue; Demandants as Heirs to C. and D. brought Formedon in Remainder; the Writ shall abate; for it should be brought by the Heirs of the Survivor of the two Daugh-

ters, because they have the Remainder as Purchasers. 3 Le. 14. Mich. 8 Eliz. C. B. Lady Stowell v. E. of Hertford.

(M) Plea, by Tenant in Abatement, and at what Time.

1. Formedon is a Writ of Possession, and no Writ of Right; for there, tho’ he cannot have another Writ, yet if the Tenant can destroy the Possession, ’tis sufficient. Br. Formedon. pl. 31. cites 38 E. 1 37.

2. Formedon in Defender, the Demandant counted of a Gift made to W. and M. and to the Heirs of their two Bodies; and that after the Death of the aforesaid W. and M. and K. Daughter of the aforesaid W. and M. and H. Son and Heir of the aforesaid K. to J. Son of H. as Cousin and Heir of the aforesaid W. and M. and Defendress dower, &c. And the Demand was of the Moiety of three Parts of an Acre of Land, and the Tenant demanded Judgment of the Writ; for the Demandant had brought other Formedon against him, of the other Moiety of the same Land there demanded, supposing that after the Death of the aforesaid W. and M. and K. Daughter, &c. and J. Son of the aforesaid K. who held together with H. Son of the aforesaid K. &c. by which Writ he supposes the Seifin of H. and this Writ is contrary, Judgment of the Writ; and ‘twas held in No Plea by Award, without saying that H. was seized in Fail; for the Writ is but a Supposal, which may be false, and therefore it shall not abate this Writ which is better; and allo the other Writ is of the other Moiety. Br. Formedon. pl. 5. cites 40 E. 3. 8.

3. Formedon in Defender, by J. S. the Tenant said that at another Time, Demandant brought Formedon in Remainder against him of the same Ten-

ments, by which be demanded Fee Simple, to which Tenant pleaded in Bay, and fo he prayed Judgment of the Writ. But per Belk the Formedon in Remainder is not more high than this Writ is; for the Formedon in Defen-
der is a Writ of Right it is its Nature; and because he did not take the first Writ of the same Gift which he took now, therefore the Writ is good; per Fincham J. Quare. Br. Formedon. pl. 77. cites 40 E. 3. 21.

4. If the Tenant hath had the View, he can’t abate the Writ. Br. Formedon. pl. 6. cites 20 H. 6. 2. 13.? But Book makes a Quare thereof for that the other Sisters who has the Land, can’t join in the Formedon; For he has her Portion. But if she had aliened the Fee Simple Land also before the Issue of the other brought the Formedon, then it seems that there both may well join.

S. P. per Pinchelon, clearly; Con-
troversy hath had
the same Gift; Note the
Divertry by one, &c. he


Arg. cites 5 55 that
the Writ is

bated after the View for Fail appearing in the Writ it’s self, and that in 46 E. 3; Writ of Cofnige abated after the View, because it appeared upon the Writ it fell that Writ of Belk lay, and not Writ of Cofnige,
5. Formedon in Defender, the Writ was, 7. N. gave and this immediately Dr. Formedon to his Father, where the Truth was, that he gave to one W. for Life, the Remainder to the Ancestor in Tail, by which the Tenant said, that he Ne Dean pas in the Manor, &c. and the Demandant flew’d the special Matter, and that his Father entered; by which the Tenant, of his * Conveyance, pleaded to the Writ, because mention is not made of the Tenant for Life; and yet the Writ was awarded good; For ‘tis said, that the one Writ and the other is good. Nevertheless Thorp said, that the Writ is belt, if it makes mention of the Tenant for Life; but Quere in Formedon in Remainder, for there he shall have Deed. Br. Formedon pl. 14. cites 44 E. 3. 8.

6. In Formedon, a Fine with Warranty was pleaded; and, as to Part, the Tenant said, that he himself was seised at the Time of the Fine levied, and to the right, he said Nunc Compers, &c. Br. Fines pl. 26. cites 46 E. 3. 14.

7. Formedon of a Manor, which the Mother of the Demandant held in Premptory, &c. the Tenant demanded Judgment of the Writ, because he did not know that other Land was allotted to the other Sisfer. Per Markham, this was a good Exception in a Formedon upon a infinit tenant, but eoucera here, for he cannot hold infinit, but with other Lands, which Newton and Palton agreed. Br. Formedon pl. 2. cites 20 * H. 6. 13. * (12 H. 6. 15. b. 14.)

8. In Formedon, the Defendant said, that after the Gift, he brought Affise against the Dower, and the Seisin and Diffisif was found, and be recover’d; Judgment in Actio. And ‘twas held no Plea, unless he pays, that the Gift was made between the Diffisif and the Recovery, or shews how the Gift was determined. Br. Formedon pl. 3. cites 27 H. 6. 8.

9. In Formedon, heft seised is a good Plea, and so conclude to the Writ, Judgment of the Writ, and not Judgment if the Court will take Conveyance. Br. Formedon. pl. 51. cites 38 H. 6. 18.

10. A Man seised of Lands in Greenekind had Illae three Daughters, A. B. and C. and devised all his Lands to A. in Tail, the Remainder of the one 8.* b. Trin. half to B. in Tail, the Remainder of the other half to C. in Tail: And if B. dy’d without Illae, the Remainder of her Motay to C. and her Heirs; and if C. dy’d without Illae, the Remainder of her Motay to B. and her Heirs; the Deviseor dy’d, A. and B. both died: Whether C. in the Remainder should have one Formedon for this Land, or several Formedons, was the Question? It seemed to all, That one Formedon lyeth well for all the Land; for that it was by one self-same-conveyance, tho’ the Estate came by several Deaths; the Action was brought by the Heir of C. after the Death of C. 2 Brownl. 274, 275. 7 Jac. in C. B. Buckmer v. Sawyer.

11. Formedon in the Defender against A. B. and C. who pleaded Non tenure, and upon Illae thereupon it was found specially, that A. and B. were Lestors for Life, Remainder to C. and the Question was, whether the three were Tenants as aspoofed by the Writ? And the better Opinion was for the Demandant; For the Tenants should have pleaded Several Tenancy, and then the Demandant might [nuil] maintain his Writ. But by this General Non tenure, it is sufficient, if any be Tenant; and the Precipice may be brought against one who is not Tenant, as against a Mortgagor or Mortgagee. Brownl. 153, Trin. 14 Jac. Rot. 112. Pit v. Staple.

12. Formedon in Remainder, (viz.) there were three Siffers, the eldest had an Estate Tail of a fourth Part of 145 Acres in three Vils, the Remainder to the other two in Fee; the Tenant in Tail married the new Defendant, and then they both joined in a Fine for Cognizance de Drot, &c. and
and declared the Uses to the Husband and Wife, and the Heirs of the Body of the Wife, Remainder in Fee to the Right Heirs of the Husband, with Warranty against them and the Heirs of the Wife, the died afterwards without Issue, and the other two Sisters bring a Formedon in Remainder against the Husband, who pleaded, as to 100 Acres, part of the Lands in Demand, Non Tenure, and that such a Person was Tenant; and as to the rest, he pleaded this Fine with Warranty; as to that Part of the Tenure the Demandant demurred, and as to the rest, he made a frivolous Replication; to which the Tenant demurred; and it was objected against the Plea of Non Tenure, that the Demandant should have set forth in which of the Vills the 100 Acres were; besides, he who pleads Non Tenure in Abatement ought to set forth who was Tenant Die Imparлатionis Brevis Originalis; but adjudged, that the Tenant is not obliged to set forth where those Acres lie, to which he pleads Non Tenure; neither is he obliged to set forth who was Tenant Die Imparлатionis Brevis Originalis; For 'tis sufficient to tell the Demandant who was Tenant generally, and that he himself was not Tenant Die Imparлатionis, &c. but that W. R. cedem Die, was 'Tenant, which is certain enough. Nell. Abr. 288. Formedon pl. 4. cites 1 Mod. 181. * Fowle v. Doble.

13. In Formedon in Defender the Tenant, after Imparлатion, pleaded Non Tenure; but upon Demurrer, it was resolved by the whole Court, that it is not pleadedable after General Imparлатion, tho' it was objected, that General Non Tenure of the whole is; but Non Tenure of Part is not. 3 Lev. 55. Mich. 33 Car. 2. C. B. Barrow v. Hagger.——cites 5 E. 3. 2. and 41 E. 3. 31.

14. Formedon of the Remainder of Etwall enu Portin', &c. & de 35 Mefliages, &c. the Tenant defendit Susu quamdo, &c. & the saidfix Mefliages, Parcel of the said Tenements in Etwall superius petis are, and Time out of Mind have been, Parcel of the Manor of Etwall aforesaid; whereupon, for that they are Bis petri the Tenant petit Judicium de Brevi; and upon Demurrer to this Plea, it was adjudged ill, because the fix Mefliages may be Parcel of the Manor, over and above the thirty-five Mefliages; For the Manor might comprehend fifty Mefliages; it should have been, that the fix Mefliages, Parcel of the thirty-five Mefliages, are Parcel of the Manor, and then they might appear to be Bis petri. Nell. Abr. 882. Formedon (D) pl. 2. cites 3 Lev. 67. * Chetham verius Sleigh.

15. Formedon in Reverter; the Tenant pleads Non Tenure; the Demandant replies, and maintains his Writ, that he is Tenant; and upon Demurrer to the Replication, it was inferred for the Tenant, that the Demandant cannot maintain this Writ, for no Damages are to be recovered, because upon such a Plea of Non Tenure he may enter; which is very true, if the Plea had been Non Tenure with a Disclaimer, but not where Non Tenure is pleaded, and no more; For in the last Case, nothing is disowned, but the Freehold, and 'tis probable he may have a Reverter in Fee; and if so, then upon the Plea of Non Tenure the Demandant cannot lawfully enter; but upon such a Plea with a Disclaimer he may, because the Tenant hath disclaimed the whole. Nell. Abr. 882. Formedon (D) pl. 3. cites 3 Lev. 330. Hunlock v. Petre.

(M. 2) Plea by Tenant. In Bar.

1. If the Donee be implicated and loses, and recovers in Value upon Voucher, and has Execution, and aliena and dies, or a Stranger abates, Formedon lies of the Land recover'd in Value; For it comes in lieu of the Land which was given in Tail, and the Writ shall be General, and if the Tenant pleads Not Done pass, the Demandant shall reply by the special Matter how other Land was given in Tail, and lost; and this Land was recover'd in Value, and conclude, and so Done [gave], and well, and yet this Land was not given, but other Land. Br. Formedon. pl. 75. cites old Nat. Br. 2. In
2. In Formedon; the Tenant pleaded Warranty and Affsets, the Deman- 3. If Tenant in Tail of a Rent grants it in Fee with Warranty, and dies, and Affsets defend in Fee; if the Heir brings Formedon of the Rent, the Warranty and Affsets shall be a Bar, but if he disunites and does not bring Formedon, it shall be no Bar; for a Rent cannot be discontinued. Br. Formedon. pl. 65. cites 33 E. 3.

4. In Scire facias, Confirmation with Warranty to the Tenant for Life of the Tenant, and Affsets defended from him who made the Warranty having Right in Tail, is a good Bar to the Issue in Tail, who brought the Scire facias, to execute the Remainder in Tail by Fine. Br. Formedon. pl. 12. cites 43 E. 3. 9.

5. If a Man gives Land in Tail, and warrants the Land to him his Heirs and Affsets; and he dies, and dies without Issue, the Donor shall be barred in Formedon in Reverter by this Warranty. Br. Formedon pl. 15. cites 46 E. 3. 4.

6. In Formedon, the Tenant pleaded a Feoffment of the Grandfather of the Deman- 7. In Formedon, the Tenant pleaded in Bar, that the Grandmother of the Deman- 8. Formedon in Reverter upon a Gift in Tail to the Baron and Feme, who died without Issue; the Tenant said, that the Donor enfeoff'd the Donees in Fee, &c. and non allocutus, without trespassing the Gift in Tail; For 'tis only Argument, &c. Br. Formedon. pl. 1. cites 2 H. 6. 15.

9. Wherefore he said, that after the Gift the Donor enfeoff'd them in Fee, &c. and non allocutus, without saying that the Donee was feised in Fee after the Gift, and so feised enfeoff'd the Donees; Quod Nota; and so he did, and the Deman- 10. It was doubted, whether Judgment final against Tenant in Tail after the Mise joined shall be a Bar in Formedon; Whereto they took Advi- 11. In Formedon, the Tenant pleaded a Deed of the Father of the De-
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Formedon.

Sufficient to bar the Demandant, if he does not enter into the Land exchanged, because he has brought the Action of Formedon; contrary, it teems, if he had entered and taken a Gift, as he might; for an Exchange is no Discontinuance. Br. Formedon, pl. 43. cites 14 H. 6. 3

Linear Warranty and Aflets defended, is a good Plea in Formedon in the Defender; but if there be no Warranty, the Heir will not be barred. Litt. 8. 749.

12. If a Man bring Formedon, and the Tenant pleads Warranty and Aflets defended in Fee, by which the Demandant is barr'd, and after the Aflets is recover'd from him by elder Title, he shall have another Formedon, and the first Judgment shall not be a Bar; For 'twas no Bar, but for a Time, per Markham. Quod nullus negavit. Br. Formedon, pl. 34. cites 19 H. 6. 37.

13. In Formedon of the Gift of J. the Demandant is nonsuit'd; he may have other Formedon of the Gift of W. and the first Recovery no Ettoppel. Br. Ettoppel, pl. 162. cites 5 E. 4. 7. 8, and 7 E. 4. 19. 20.

14. Formedon in Defender of a Gift to the Father and Mother; the Tenant said, that before the Donor had any Thing he himself was seised in Fees, and, being within Age, escheat'd the Donor in Fees, who was seised and gave ut supra, and after, the Tenant within Age reenter'd, and so is seised in Fees in his Remitter. Br. Formedon, pl. 45. cites 5 E. 4 * 19.

15. Where the Issue in Tail enters upon the Discontinuance, and another offers him, he shall not have Formedon unless the Discontinuance enters. And in this Case, in pleading, the Tenant shall not say that the Heir after the Death of his Ancestor in Tail, entered, and was seised in Tail, but it suffices to say, that he entered, and was seised, after the Death of the Father. Br. Formedon, pl. 47. cites 7 E. 4. 19.

16. In Formedon, the Tenant said that after the Gift the Demandant and two others were thereof seised, and escheat'd W. S. whose Estate the Tenant bar'd, Judgment Si Aehio; and per Brian and Cat. J. if the Fee was made by the Demandant in the Life of his Father without Warranty by Deed, or other Warranty, it shall not be a Bar in Formedon, no more than a Release in the Life of the Ancestor without Warranty. But Trem. J. contra, and that the Fee without Warranty shall be a Bar against the Feoffor. Br. Formedon, pl. 50. cites 21 E. 4. 81.

17. In Formedon, the Tenant may plead, that a Stranger has recovered against him by such Writ, by Elder Title, by Confeffion of the Tenant, and the Estate of the now Demandant, and he was seised in Fees, and recovered, and the Judgment, Que Esfeate of the Recoverer the new Tenant bar'd, and if he recovers by Formedon in Defender, he ought to aver that he is yet alive. Br. Judgment, pl. 151. cites 5 H. 7. 40.

18. A Bar in one Formedon in Defender is a good Bar in any other Formedon in Defender to be brought afterwards upon the same Gift. Co. Litt. 393. b.

19. In a Formedon in the Defender brought by A. B. and C. of Lands in Gavel-kind, the Warranty of their Ancestor was pleas'd in Bar against them; upon which they were at Issue, if Aflets by descent? it was found by Verdict, that the Father of the Demandants was seised in Fee, being of the Nature of Gavelkind, and devolved the same to the Demandants, being his Heir by the Custom, and to their Heirs equally to be divided amongst them; and if the Demandants shall be accounted in of the Lands by different, or devise
Formedon.

devise, was the Question? it was the Opinion of the Court, that they
should be in by the Devise; For they are now Jovtmtenants, and the
Survivor shall have the Whole; whereas if the Lands shall be held in Law
to have Defended, they should be Partners, and fo, as it were, Tenants
in Common; and fo by the Opinion of the Court, the Warranty pleaded
with Affids was no bar. Hughes's Abr. 966. pl. 4. cites Paifch. 30 Eliz.

20. Land was given to Husband and Wife, and to the Heirs of their two
Brothers begotten, the Husband made a Feoffment in Fee, and died, leaving
Iffie a Son of that Marriage; the Wife died without making any Entry.
Adjudged, that this Feoffment by the Husband made a Discontinuance of
the Estate tail, which might have been purged by the Entry of his Moth¬
er; but now it cannot be done after her Death, therefore his Entry
cannot be lawful; because he must claim as Heir of their two Bodies; and
he is prevented by the Feoffment to inherit as Heir to his Father; and if
he should bring a Formedon in Defender, it must be, for that the Donor
gave the Lands to the Husband and Wife, & hereditibus de corporibus
corun, the Husband and Wife, executibus, & que post mortem praefcri' e the
Husband and Wife praerat B. G. filio & heredi ipforum, the Husband
and Wife, defcedere debent per formam doni, which cannot be in this
Cafe, because by the Feoffment he cannot inherit as Heir to his Father. +Paifch. Jac.

21. A made a Feoffment to the Use of himself for Life, Remainder to
B. in Tail; A. died, B. had Iffie a Son and 2 Daughters; B. and his Son
join in a Feoffment with Warranty and die without Iffue. The Daughters
bring a Formedon; the Tenant pleaded this as a collateral Warranty,
wherein Truth it was Lineal, and it was held naught; because the War¬

(N) Pleadings in Abatement, or Bar by Confessing and
Avoiding.

1. FOrmedon of the Gift of R. the Tenant said, that A. leased to R. for
Life, who gave, by which he entered for the Allllcation, which Iffluate
the Tenant has Judgment, &c. the Demandant said, that after this R. was
safely in Fee and gave; and no Plea, without keeping how he came by it after;
by which he said, that after the Death of A. T. was safely and infup'd R.
who gave, &c. and the Demandant said that R. had nothing of the Feoff¬
ment of T. pritt, and the others eontra. Br. Confes and Avoid. pl. 11.
cites 3 H. 4. 17.

(O) Pleadings. In what Cases there must be Profert, or
Monftrans of Deeds.

1. FOrmedon in Remainder; the Defendant must shew Deed, and yet the Br. Formedon
Deed is not traversable. Br. Monitoris, pl. 42. cites 21 E. 3. 49.
pl. 53. cites S. C.—S. P.
ibid. pl. 12. cites 42 E. 5. 8—Br. Monitoris, pl. 22. cites 45 E. 3. 28—S. P. and yet he shall
not Count by the Deed, quick nota inde bento, per Sirian, in a Note. Br. Monitoris, pl. 110. cites 9 H. 7,
15—S. P. N. B. 219. (C)

2. Bar he need not, till it be demanded by the Party, per Finche. Br.
Monitoris. pl. 15. cites 42 E. 3. 23;
3. Formedon of a Rent-charge against Tertenant, who said that the Land
is Hors de fon Fee, Judgement, if without Specialty, &c. & non Alloca¬
tur, but was compelled to answer. And there was agreed that, where the
Rent
Former Action

Rent had its commencement before the Gift, he might say, that such a one was feigned and gave, without shewing Specialty; contra, if the Rent commenced by this Gift, and this was the Opinion in ancient Time. But it was agreed, that at this Day all is one, and that he need not shew Specialty in the one Case, nor in the other; For if the Anciener imbezels, or * burns the Deed, the Heir shall not be without Remedy, and therefore was compelled to answer without shewing Specialty, quod nota. Br. Montrans, pl. 21. cites 45 E. 3. 14, 15.

4. In Formerdon in Defender, which is always executed, a Man need not shew Deed. Br. Montrans, pl. 34. cites 11 H. 4. 39.

5. If a Gift in Tail is by the King by his Letters Patents which is executed; yet the Heir shall not have Formerdon against the Letters Patents, and per Marek, clearly. Br. Montrans, pl. 2. cites 2 H. 6. 14.

6. In Formerdon in Remainder, the Tenant demanded Oyer of the Deed, and the Demanant could not shew Deed; the Tenant shall go * fine die; and yet if the Tenant had answered without challenging the Deed, it had been good. Br. Montrans, pl. 42. cites 38 H. 6. 19.

7. Tho' Illue in Tail be of a Gift of Rent in Tail, &c. which can't pass but by Deed, yet if the Gift be executed, the * Heir in Tail shall have Formerdon without shewing Deed; For he is aided by the Statute of W. 2. cap. 1. if the Deed be burnt or lost, per Littleton, Choke and Brian J. Br. Montrans, pl. 60. cites 15 E. 4. 16.

8. So where it is by way of Defence. Ibid.

9. Note that the Deed of Tail belongs to the Heir in Tail, and if the Father breaks it, yet the Heir shall have Formerdon, tho' it be of * Rent without shewing of the Deed; For Formerdon is in the Right, but contra of Assway or Affise for this is in the Possession. Br. Formerdon, pl. 44. cites 4 H. 7. 10. per Vavilion.

* Orig. [a dies]

* S. P. Br. Montrans, pl. 112. cites 12 H. 7. 11. per Vavilion.

* S. P. Br. Formerdon, pl. 2. cites 12 H. 7. 11. But Brook makes a Queire of it.

10. Leafe for Life Remainder in Tail; Tenant for Life dies; Remainder-man enters and dies; his Illue shall have Formerdon and declare on an immediate Gift, and not shew the Deed of it; but otherwise if 'twas to execute it, per Hales J. Pl. C. 52. in Cafe of Wimbish v. Talbois.— cites 18 H. 8. 4. Br. Montrans 1.

But if 'twas by Grant of Reversion, there tho' he was once feailed, yet it should be otherwise; For in the 20th Lib. Aff. plactio autimo the Difference is taken between Remainder and Reversion Pl. C. 57. b.

Pl. C. 149.

Former Action.

(A) Pleadings. Good Plea, in what Cafes in general to the bringing a New Action.

1. T H E bringing of a quod permissit by the Ancestor, is no Effoppel to the Heir to bring Assise of the same Common. Br. Effoppel, pl. 138. cites 15 Aff. 3.

2. In Assise by A. and B. the Tenant demanded Judgment of the Writ; For at another time A. and C. brought Assise, and appeared and made Plain,
and this same Land was put in View, and against this Tenant, and which C. is yet alive not named; & non allocator; for if the first Writ was ill brought, it is Reason that this Writ may be well brought, and allo it may be that they entered, and C. releaved to A. and B. and after they are disfranchised, and brought the Affile, by which the Writ was awarded good, and it appeared that in the first Writ they were Nonjoinders. Br. Brief, pl. 301. cites 31. Atl. 14.

3. If a Man be barred in Trespass, yet he may have Appeal of Robbery; quod sua. Br. Ellopell, pl. 217. cites 2 R. 3. 14.

4. A Bar in a former Action wrongly brought is not any bar in an Action Thou once a rightly brought, as where one delivers Goods, and brings Trespass against the Balle for those Goods, and he is barred by Verdict, or Demurrer, yet at any time he may bring Detinue or Account. Cro. E. 665. Pach. 41 Eliz. C. B. Ferrers v. Arden.

when it is a Bar to the Right. But where an Executor brought Debt on Bond as Administrator, he not knowing that he was Executor, and had taken Administration, by which the Action abated: this was only a Misjoinders in Action, and is no Bar in a new Action brought by him as Executor. Cro. J. 15. Robinson v. Robinson.—See 5 Rep. 25. 25. Robinson's Case.—5 Rep. 3. 3. Ferrer's Case.—The meaning of Ferrer's Case is that it is a Bar for the same Individual Thing, per Holt Ch. J. Comb. 167.

5. But where a Title is pleaded in Bar to a Thing demanded, and, by Reason thereof, the Plaintiff is barred upon Demurrer, or Verdict, the Interest thereby is bound, and the Plaintiff barred from bringing a New Action, per Walmiley J. Cro. E. 668. Pach. 41 Eliz. C. B. Ferrers v. Arges.

6. A brought Trespass against B. for digging and carrying away Turf and Stones; B. pleaded a Prescription, and upon Issue joined, a Verdict was for B. Afterwards A. and J. S. bring Trespass against B. and declare for digging and carrying away Turf and Stones; B. pleads that he was feized of a Meadow or Tenement there, and to justified by a Prescription; Plaintiffs in their Replication traversed the Prescription, and the Defendant rejoined by way of Ellopell, that A. such a Term brought Trespass against the Defendant, wherein Defendant pleaded the same Prescription, and upon Issue joined thereupon, it was found by Verdict for Defendant, and the Record was set forth in certain, and averred, that it was the same Title, and that this A. and the A. in the other Action, are the same Person, and so continued by way of Ellopell by the Verdict. Mich. 1 W. & M. B. R. Incledon v. Burges.

25. C. S. Reports that the Court gave no Opinion as to the Ellopell, but only said, that an Ellopell upon a Verdict goes a great way; but, that the Title in Turn shall not fully est; cites 1. Com. 225, but if the Man is estopped, he joins another with him; whether this shall avoid the Ellopell is a Queire.—Comb. 166. C. S. Reports that it being insinuated by the Defendant's Counsel, that as to the Matter in Law, where in personal Actions the Person is once barred by Verdict, he is for ever concluded, and cited 6 Rep. 3. Ferrers's Case, to which Holt Ch. J. answered, that the Meaning of Ferrer's Case is, that it is a Bar for the same Individual Thing; but here it is a new Cause of Action. 11. B. & 2. 3. 4. there are Trespass is a Bar to another by way of Ellopell, but that is for taking a Villain, but that is grounded, perhaps, on the Reason of the Exeo of Liberty. 7. H. 6. 8. In Trespass on an Issue, whether such a one died failed, a Verdict was a Bar to another Action of Trespass by way of Ellopell, because there Issue was joined on a Matter in the Realty. Dolben J. said Ferrer's Case is not like this; for here is a new Cause of Action, a new Trespass; but in Ferrer's Case, this was another Action for the same Trespass, and the Court was entirely against what was tried by the Defendant's Counsel.

7. Action for Cafe for erecting of a Nuisance 20 February; the Defendant pleaded a Prior Action, brought for erecting a Nuisance 20 die Martii, and a Recovery thereupon, and averd there to be the same Nuisance and Erection. The Plaintiff demurred and Judgment against him; for he may have an Action for continuing of the same Nuisance, but can never have a new Action for the same Erection. 1 Salk. 19. Mich. 19 W. 3. B. R. Johnfon v. Long.

8. Where a Record of the same Court is pleaded in Abatement, and the Plaintiff demands Oyer of the Record, and 'tis not given him in convenient Time, the Plea ought not to be received, but the Plaintiff may Sign.


10. The Plaintiff counted upon several Premises for Work and Labour in the Parish of St Mary le Bow, London; the Defendant pleaded in Abatement, that before this Action brought the Plaintiff had Labell'd in the Admiralty for the same Cause of Action. Upon Demurrer it was infii'd for the Plaintiff, that this was within the Rule of Spartie's Case, 5 Rep. 62. that a Priority of Suit, in an Inferiour Court, is no Plea to an Action brought in any of the Courts at Westminster, and the whole Court gave Judgment against the Defendant, quod respondat outter. Gibb. 313, 314. 5 Geo. 2. C. B. Dudfield v. Warden.

(B) Pleadings. Varying the Places in which, &c. from what they were alleged to be in the former Action.

1. ASSISE of Lands in M. the Tenant said that at another Time the Plaintiff brought Assise in T. and the same Land put in View which is now put in View, supposing it in T. Judgment of the Writ which now suppotes it in M. and because he did not deny but that M. and T. are different Vills, nor alleged Judgment to be given in the first Assise, nor did he allege in Fait that the Land is in T. therefore the Plea was not allowed; and so it seems here, that Record is no Elfoppel, unless Judgment was given in that Writ, quod nota. Br. Eloppel, pl. 137. cites 30 Afl. 32.

2. Assise, the Defendant said that at another Time the Plaintiff brought Cui in Vita of the same Lands against J. S. which Estate this Tenant has, Judgment if a Writ of a bafe Nature may be brought; the Plaintiff said that the same J. S. disclaimed in the Cui in Vita, by which the new Plaintiff entered, and was seised till by the Defendant disseised, and good Maintenance of the Writ. Br. Maintenance de Brief, pl. 32. cites 33 Afl. 5.

(C) Pleadings; Against the same Parties, with a different Charge, as charging the one as Principal, and the other as Accesor, and after Vice Verfa.

Br. Peremptory, pl. 83. cites S. C. And it was awarded, that the Plaintiff Captivatur.

1. Appeal of Maihun against A. as Principal, and B. as Accesor, the Defendant said, that the Plaintiff, at another time, brought such Appeal against B. as Principal, and A. as Accesor, and appeared to it, and after was nonsuit ed; Judgment, if, &c. by which he took nothing by his Writ. Br. Eloppel, pl. 143. cites 40 Afl. 1.

Former
Former Suit.

(A) Former Suit in Equity. In what Cases it is a good Plea.

1. The Defendant pleads, that the Plaintiff brought a former Suit for the same Matters, which Suit is still depending for ought he knows to the contrary. It was inflicted for the Plaintiff, that this Plea was not good, because he does not positively aver, that the former Suit is still depending; and no Issue can be taken upon his Knowledge to the contrary. But the Master of the Rolls allowed the Plea, because the Defendant [Plaintiff] ought not to have set it down to be argued; for by that he admits that the former Suit is depending; but the Plea ought to have been referred to a Master, to examine whether there was a former Suit depending for the same Matter, or not; and said, that there needs no positive Averment, that the former Suit is still depending, for that is examinable by the Matter; and the Defendant never makes a Plea of a former Suit depending, but it is always put in without Oath. Vern. 332. Trin. 1685. Urtin v. 

2. The general Rule is, that the Party shall not be twice vexed for the same Cause of Action; but then it must appear, that the Court first pass'd of the Cause to Jurisdiction, and nothing shall be intended to be within the Jurisdiction of an inferior Court, but what is averred to be, per Eyre, Ch. J. Trin. 5 Geo. 2. Gibb. 314. in Cafe of Dudfield v. Warden.

Fractions.

(A)

1. The Law will divide the Operations of Acts done, and place one before another, though done at one, or several times; as if Tenant for Years makes Leafe for Life, &c. the Law says, that Leafe was feized in Fee, and demifed for Life, yet before he made the Leafe for Life, he was not feized in Fee, but by making it he became feized in Fee, and gained the Reversion to him, for so long as the Leafe shall continue; So if A conveys a Manor by Feoffment, now the Manor does not pass, and yet by Atornment of the Tenants it passes in some Respects from the time of the Feoffment, and so as to palling the Manor, the Atornment shall relate to other time than that in which it was made; so that in some Cafe, the Law makes a thing done after another Act, as if it had been done before, and other Acts done at one Time, as done at several, and Joint Acts as several. And. 301. in Cafe of Mathew v. Johnson and Taylor.

2. Devise was allowed to work by Fractions. See Devise, Nurfe v. Yarmouth.

(B) As
Fractions.

(B) As to Estates.

1. The Law loves not Fractions of Estates, nor to divide and multiply Tenures; and therefore Joint tenancies were favoured, per Holt, Ch. J. 1 Salk 392. Hill. 12. W. 3. B. R. in Cafe of Filher v. Wigg.

2. All of Parliament may make Division of Estates. 1 Rep. 137. Hill. 31 Eliz. in Chudley’s Cafe.

3. Seigniory, or Rent, cannot be suspended in Remainder, and in Effe for a particular Estate in Perfoffion, for then will enfe Fiation of Estates, and particular Estates will be created without Donors or Leffors against the Rules and Maxims of the Law. 9 Rep. 134. b. Mich. 9 Jac. in the Court of Wards, in Afcough’s Cafe:

4. Nor can they be suspended for part, and in Effe for part, in respect of the Land out of which it is illusing. 9 Rep. 134. b. in Afcough’s Cafe.

5. Where the Copyholder has the Nomination of his Successor, Coke, Ch. J. conceived, he cannot nominate part to one, and part to another, nor divide it into Fractions. 2 Brownl. 199. Trin. 10 Jac. C. B. Kowles v. Mafon.

6. Advwson is an Hereditament Incoporal, and may be divided by Fraction, so as one shall have the Nomination, and another the Presentation; and the Nomination may be appendant to a Manor to one, and the Presentation in Common to the other, per Hutton, J. Jo. 25. Hill. 20 Jac. C. B. cites Sir George Shirley’s Cafe.

7. Estates shall not pass by Fractions. Arg. 2 Mod. 113. in Cafe of Pigott v. the Earl of Salisbury.

(C) As to Time.

1. An Act of Record will not admit any Division of a Day, but is to be paid done the first Initant of the Day, Arg. and Judgment, accordingly. Patch. 23 Eliz. Mo. 137, in Shelly’s Cafe.

2. If the King’s Tenant pays his Rent upon the Day, the King’s Successor shall have it paid over again; tho’ otherwise it is in Cafe of a common Person, Mich. 11 Jac. 10 Rep. 127. b. cites 44 E. 3. 3. b.

3. Affirmatif, to pay 40 l. by 5 s. per Month; where a Man brings an Action for breach, on the first Day, it is best to count of the Damages for the entire Debt; For he cannot have a new Action; but he must not declare that the 40 l. is not paid, nor any part of it; For the
Freight.


1. Where a Ship goes from one Port to another, and there unloads, and then goes over to another Place, but in her Passage, before her second Unloading, is lost, the Owner shall not recover for Freight, but from the time of the Loading to the Unloading, and nothing for the second Loading; For if a Ship be lost before her Unloading, no Freight shall be paid, but every one must bear his Part of the Loss; and this is the reason that Mariners lose their Wages in such Cases.

2. If a Merchant put in more Goods than were conditioned, in such Case Molloy 258. the Master may take what Freight he please. Mal. Lex. Merc. 99.

3. If a Ship be freighted by the Great, but not but not 200 Tons, for the Sum of Molloy 260. 600 l. to be paid at the Return; the paid Sum of 600 l. is to be paid, altho' the Ship were not of that Burthen. Mal. Lex. Merc. 100.

4. If the like Ship of 200 Tons be freighted, and the Sum is not (either Molloy 257. by the Great or Ton) expressed; then such Freight as is accustomed to be paid in the like Voyage is due, and ought to be paid accordingly. Mal. Lex. Merc. 100.

5. If the like Ship of 200 Tons be freighted by the Ton, and full laden Molloy 256. doth, according to their Charter-Party, then Freight is to be paid for every Ton; otherwise but for so many Ton as the Lading in the same was. Mal. Lex. Merc. 100.

6. If the Ship of 200 Tons be freighted, and named to be of that Burthen Molloy 257. in their Covenant, and, being freighted by the Ton, shall be found to be lost in bigness, there is no more due to be paid than by the Ton, for so many as the same did carry and brought in Goods. Mal. Lex. Merc. 100.

7. If the like Ship be freighted for 200 Tons, or thereabouts, this Molloy 257. Addition (or thereabouts) is within 5 Tons commonly taken and under-
Fraight.

10. If Freight be contracted for the Lading of certain Cattle, or the like, from Dublin to Well-chester, if some of them happen to die before the Ship's Arrival at Well-chester, the whole Freight is become due, as well for the Dead as the Living. Molloy 256.

11. If Freight be contracted for the transporting of Women, and they happen in the Voyage to be delivered of Children on Ship-board, no Freight becomes due for the Infants. Molloy 256.

12. If Goods are sent on board generally, the Freight must be according to Freight for the like accustomed Voyages. Molloy 257.

13. If Goods are brought into a Ship secretly against the Master's Knowledge, the same may be subjected to what Freight the Master thinks fitting. Molloy 258.

(B) Fraight. Due. In what Cales.

1. Covenant was made by the Merchant with a Master of a Ship, viz.: that if he would bring his Freight to such a Port, then he would pay him such a Sum; Master brings Action, and shews that Port of the Goods were taken away by Pirates, and that the Refund of the Goods were brought to the Place appointed, and there unladed, and that the Merchant hath not paid, and so the Covenant broken. And the Quellan was, whether the Merchant should pay the Money agreed for, since all the Merchandizes were not brought to the Place appointed and the Court was of Opinion, that he ought not to pay the Money, because the Agreement was not by him performed. Brown 21. Trin. 9 Jac. Bright v. Cowper.

2. A. contracts with B. and affirms to him to deliver to him 100 Quarters of Barley on Ship-Board in such a Port, viz. at Barton Haven in Coni' Exor. and does not mention at what Time it is to be carried thither, &c. A. [B] affirms to B. [A.] to carry it, and to be at this Port within it, and B. [A.] agrees to pay so much for [the Freight of] the said Quarters of Barley. A. [B.] arrives with his Boat there. A. is bound to seek B. at the said Haven, and to deliver to him the said 100 Quarters as aforesaid. A. does not perform this, although B. has performed his Promiss, and was there ready to receive it. B. brings an Action on this Affirmat, and it well lies. The Place in this Cafe is certain, the Time uncertain; the Law gives convenient Time. And in this Cafe, B. after the said Agreement came to the Port and laid there a convenient Time; and A. did not come, &c. Jenk. 324. pl. 39. cites Mich. 13 Jac. Atkinson v. Buckle.

3. Fraight
Fraight.

3. Freight is the Mather of Wages, and wherever Freight is due, Wages are. If a Ship is lost before it comes to a delivering Port, no Freight nor Wages is due; if lost afterwards, 'tis due at the Lift delivering Port. If Advance Money be paid before in Part of Freight, and named so in the Charter-Party, tho' the Ship be lost before it comes to a delivering Port, yet Wages are due according to the Proportion of the Freight paid before; For the Fraighters cannot have their Money. Ruled per Saunders Ch. 1. at Guildhall. 2 Show 283. Hill. 34 and 35 Car. 2. Anon.

4. If the Ship in her Voyage become unable without the Mather's Fault, or that the Mather or Ship be arrested by Authority of the Magistrates in her Way; the Mather may either mend his Ship or freight another. * But in Case the Merchant agree not thereon, then the Mather shall at least recover his Freight, so far as he hath deferred it. For otherwise, (except the Merchant confess, or * Notizy confirn the Matter, to put the Goods into another Ship worse than his own) the Mather is herein bound to all Losses and Damages, except both Ships perish in that Voyage, and that no Fault or Fraud be found in the Mather. Mal. Lex Merc. 96.

may translate the Goods; and if that Ship sink or perishes, he is there excused. But then it must be apparent that that Ship seemed probable and sufficient. Molloy 255.

5. If a Mather sets forth his Ship for to take in a certain Charge or Lading, and takes in any more, especially of other Men, he is to lose all his whole Freight; For by other Men's Lading, he may endanger his Mather's Goods divers Ways. Mal. Lex Merc. 99.

6. If a Ship (being freighted by the Great for a Sum certain) happen to be lost away, there is nothing due for Freight; but if the Ship be freighted by the Tam, or Pieces of Commodities and is lost away, and some Goods are lost, then it is made questionable, whether any Freight be due for the Goods saved promot. Mal. Lex Merc. 100.

Enforced commonly to entrust these Goods over to the Affairs, who take them towards Satisfaction of what they pay by Virtue of their Subscriptions.

7. If Goods are fully laden Abroad, and the Ship hath broke Ground, the Merchant, on Consideration afterwards, resolves not on the Adventure, but call unable again; by the Law Marine, the Freight is due. Molloy 254.

8. If it be agreed, that the Mather shall fail from London to Leghorn in two Months, and Freight accordingly is agreed on, if he begins the Voyage within the two Months, tho' he does not arrive at Leghorn within the Time, yet the Freight is become due. Molloy 255.

9. If Freight be taken for 100 Tons of Wine, and 20 of them leak out, so that there is not above 8 Inches from the Buge upwards, yet the Freight become due. One Reason is, because from that Gage the King becomes entitled to Custom; but if they be under 8 Inches, by some, it is conceived to be then in the Election of the Fraighters to fling them up to the Mather for Freight, and the Merchant is discharged. But most conceive otherwise; For if all had leak'd out, (if there was no Fault in the Mather) there is no Reason the Ship should lose her Freight; For the Freight ariseth from the Tonnage taken, and if the Leakage was occasion'd by Storm, the same, perhaps, may come into an Average. Besides in Bourdeaux, the Mather flows not the Goods, but particular Officers appointed for that Purpose, quod nota. Perhaps a special Convention may alter the Case. Molloy. 239.

10. A Ship in her Voyage happens to be taken by an Enemy, and afterwards in Battle is retaken by another Ship in Amity, and Replevin is made, and the proceeds on in her Voyage; the Contract is not determined, tho' the taking by the Enemy divell'd the Property out of the Owners, yet by the Law of War, that Possession is defeasible, and being recover'd in Battle afterwards, the Owners become recliv'd. So the Contract, by Fiction of Law, becomes as if she had never been taken, and so the entire Freight becomes due. Molloy. 259.

(B.) Fraight.
Fraight.

(P. 2) Fraight. Decreed in Equity.

1. Mo
tes agreed to be paid for the Fraight of a Ship were decreed to be paid, tho' the Ship did not arrive at the delivering Port, the being unladed at another Port, and fraudulently caufed by one of the Freighters, (and who was likewise a Part-Owner) to be conveyed there; but for the Value of the Ship, the Plaintiffs could not be relieved in this Court but at Law. Mich. 26 Car. 2. Fin. R. 149. Norton & al. v. Barnard, Serle, & al.

2. A was Owner, and B Master of a Ship; C entered into a Charter-Party, by which A agreed that the Ship should sail to New England to take in Fish on the Account of C. and thence to Barcelona, and there to deliver the Fish. And C covenanted with A to pay the Fraight on Delivery of the Fish. The Ship arriv'd at Barcelona, and the Fish are deliver'd to D. and B. demanded the Fraight of D. and D. demanded a Deduction out of the Fraight for 170 Kinstals of Fish wanting, as D pretended, of what was to be deliver'd, and for Damage of Part of what was deliver'd. Crofs Suits were commenced between B and D. in the Courts at Barcelona, by which Means, the Fraight being ordered to be brought into Court, and Consideration to be had for Damages for D. and by D's appealing ater to a Superior Court there, B finding his Fraight not likely to be get out of Court in some Years, came away without any Fraight for Want of Money. Then A. sues C. on his Charter-Party here for his Fraight. C. brings his Bill to stop the Proceedings here, tho' the Suit was not for the Penalty, but only to recover Damages. Ld Chancellor, taking Notice that the Cause was not fully determined at Barcelona, because the Damages were not fully ascertained, order'd that A. should proceed to Trial against C. upon his Covenants, and therein give in Evidence the Non Payment of his Fraight, and what Damages he had thereby, and that C. might give Evidence in Mitigation of the Damage. Mich. 33 Car. 2. 2 Chan. Cales 74. Newland v. Horfeman.

3. Tho' a Charter-Party is worded so that no Fraight can be recovered at Law upon it, yet they may be relieved in Equity. Hill. 1690. 2 Vern. 210. Edwin v. E. India Company.

4. As A. and B. were Part-Owners of a Ship, of which C. was Master, and A. and B. by Charter-Party, dated 20 Feb. 1652. let her to fraight to the E. J. Company, and agreed to fit her up with all Necessaries, so as she might be ready to sail by 16th of March then following, and she was to go from Port to Port, and to any Port within the Limits of the Company's Charter, as they should direct, but to be discharged back for England on or before the 24th of January 1684, or so soon after as to face her Moorcon for England that Year; or in Default of her being discharged within the Time, the Owners were to pay four Months Demurrage, at 7 l. 10s. a Day for her Moorcon to loft, and her Stay in India after the 20th January 1684. And there was this further Clause, that the Company might detain the Ship in their Employment in Trade or Warfare, for any longer Time not exceeding 12 Months, after the 20th January 1684, after the Rate of 7 l. 10s. 6d. a Day Demurrage, until the Ship be discharged from the loft lading Port, or Expiration of 12 Months, which should first happen; but after the 12 Months expired, she is to return to England, and the Company not to be liable for any further Demurrage, or any Damage that may accrue by her Detention after. The Company covenant to pay Fraight on the Ship's Arrival into England, for 301 Ton, and Demurrage from 20th January 1684, until she be dis- patched for the Space of 12 Months after the said 20th January 1684. And it was thereby provided, that until six Days after the Ship's Return to the Port of London, and making a full Discharge of all her Lading, the Company are not to pay any of the Sums of Money agreed on for Fraight or Demurrage, or for detaining her in India; it being the Intent of the Parties, that if the Ship...
Ship should be lost either in her outward or homeward bound Voyage, nothing should be paid by the Charter Party, and the Company is not liable for Demurrage. — The Ship sailed according to the Charter-Party, and arrived in India, and was employed by the Company in trading from Port to Port for one Year and upwards. She arrived in India 23 November 1684, and was to enter into Demurrage in four Months after, which was the 23 March 1685; and in the next Month after (during which Time the Company by their Charter-Party might detain her) ended 23 March 1685. But the Ship was employed in the Company's Service, so that she did not arrive at Surat till 1686, and there was ordered to Bombay, where the having been so long detained in those Seas, was surveyed, and found not sufficient for a Voyage to England, and on Sep 24, 1686, the Ship was discharged, and the Ship left there. The Company refused to pay anything for the Freight or Demurrage, because by the express Provision of the Charter-Party, they were not to pay till six Days after the Ship's Arrival in England, and discharged of her Lading. And if they were to pay anything, yet they were to be charged with Demurrage until March 23, 1685 only, and no longer, and that for it is provided by the Charter-Party, and refuted likewise to account for the Value of the Ship, or show how they had disposed of her. The Court held that the Charter-Party was so far just, that nothing could be recover'd at Law; yet the Plaintiff had a just Demand, and ought to be recover'd in Equity. And decreed the Company to account for what they made of the Ship, that they should pay Demurrage according to the Rate mention'd in the Charter-Party, and should also be charged in respect of the Freight. But as to the Quantum of the Freight, the Court would further consider of it, in regard, that by the Charter-Party, there are several Rates agreed on to be paid for the Homeward bound Cargo of the several Sorts of Goods, viz., for Callicoes, &c. 211. a Ton for Salt Peter, 151. a Ton for Iron, 2 Copper, &c. 61. a Ton; and therefore, before final Judgment, would be informed what Quantities of the Respective Commodities were actually brought home on such a Voyage, as to the Profits proportioned. 

5. Freight was agreed to be paid, not for the Goods exported, but only for Goods imported. No Goods were provided by the Factor Abroad, so that the Ship returned empty. The Court decreed the Payment of Freight, as per Cur. Hill. 1690, 2 Vern. 212, as the Case of Weiland v. Robinson.

(C) Who liable for Freight or Losses.

1. If a Merchant in Ireland consign Goods to a Merchant in London, and the Master signs a Bill of Lading, the Merchant here shall be liable for the Freight by the Custom of Merchants, and hold good. 

2. Two Part-Owners of a Ship, one refused to fit out the Ship to Sea, and the others fit out without his Consent, and the Ship is lost in the Voyage. Per Ld North; The Loss of the Ship shall be equally born by all three. For he that refused would have been intitled to one Part of the Freight, and should have had an Account here of the Profits; but if the other Part-Owners had applied to the Court of Admiralty, as regularly they should have done, that Court would have made an Order, that on one Part-Owner refusing to navigate the Ship, the other two should have had Liberty to do it alone, and should not have been accountable to the other Part-Owner, that refused to join, for any of the Profits; and there, in Case the Ship had been lost, the whole Loss must have rested on those two that let out the Ship, but in the present Cafe, the third Person, that refused to join with the other two, would have been intitled to a Share of the Profits of the Voyage, if any had been made by the Ship, and refused to bear his Proportion of the Loss. Hill. 1694. Vern. R. 297. Stelly v. Winson.
Fraight.

3. Where Part of a Freight of a Ship is flown over Board for saving the rest, the Remainder shall be contributory to the Loss. But where Part is carried to Land and saved, that shall not be contributory to the Loss of the rest being taken by an Enemy for fear of whom the other was carried to Land. Parl. Cases 18. Sheppard v. Wright.—als. Dormer v. Wright, agreed for, it shall not be made good by Contribution or Average, but by the Master's own Purse. For if he ever burden a Ship above the true Mark of Lading, he shall pay a Fine. Mal. Lec. Merc. 99.—Molloy 258.

(D) Who liable. How far.

1. T he Charter-Party values the Ship at a certain Rate, and you shall not oblige the Owner further, and that only with Relation to the Freight, not to the Value of the Ship. Per Finch. C. Mich. 29 Car. 2. 2 Chan. Cases 235. Anon.

2. Where an Action is brought for Freight and Damages laid to double the Sum of the Penalty of the Charter-party; Execution shall not go beyond that Penalty, tho' more should be recovered in Damages. Mich. 31 Car. 2. Fin R. 435. Bethworth v. Clerk, Archer and al.


1. B y the Course of Merchants the Receiver is to pay Freight on the Receipt of the Goods. Mich. 33 Car. 2. 2 Chan. Cases 75. in Case of Newland v. Horfeman.

2. If a Ship be fraught out and in, there arises due for Freight nothing till the whole Voyage be performed, so that if the Ship die, or is cast away coming home, the Freight outwards as well as inwards becomes lost. Molloy 257.

(F) Pleadings.

Molloy 252.

S. 4.

I ndenture of Charter Party dated 8 Sept. 38 Eliz. made between A. the Plaintiff, and B. A. having hired of B. a Ship for a Voyage to Dantzick for Corn; upon taking the Ship, it was agreed between them, that the Ship should be laden with Corn to Dantzick, and to sail to Leith. Now by the said Indenture, upon Consideration A. had agreed that B. should have the Moiety of the Corn, good true freight, or afterwards should be laden in the Ship in the said Voyage, B. promised to pay the Moiety of the Money for the said Corn, good true freight, or afterwards should be laden &c. And allegeth in Facto, that upon the 9th October 38 Eliz. the Ship was laden with 60 Lastes of Corn, and for non Performance of this Covenant brought the Action. B. pleaded that the Deed was sealed and delivered the 28th October 38 Eliz. Ex quod ad tunc vel postea, there was not any Corn laden there, and traverses the Delivery thereof 9 October, or at any Time afterwards before the 28th October 38 Eliz. And it was thereupon demurred, (the Truth is, the Corn was cast away between the 9th and 28th of October). Resolved by all the Court, that in Regard, he declares upon a Deed dated the 9th October 35 Eliz. It shall be always intended to be delivered, and have his Effect at that Time, and at no other; and if he would afterwards confesse it to be delivered at any other Time, it is a Departure from his Declaration, as 1 5 H. 27. primo Eliz. D. 157. 1 H. 6. 4. and 5 Rep. fol. 1. And the Words of the Deed, That he should pay for the Corn then laden, or afterwards to be laden therein: This Word
Word time, is refer'd to the Time of the Execution of the Deed by the Delivery, and not to the Date; For if it were deliver'd 10 Months after the Date, he should not have any Benefit of the Corn laden, and spent or sold before the Time of the Delivery, therefore he shall not be charged with it for the Time before the Delivery, wherefore the Plea and the Traverse are good. And it was adjudged for the Defendant. Cro. J. 263, 264. Mich S. Jac. B. R. Offley v. St. Baptist Hicks.

2. A. affirmed to B. for a valuable Consideration to go such a Voyage in such a Ship before August following. B. brings Allmipit and alleges a Breach in the Non Performance. A. pleaded that before any Breach, B. on the 4th April, at such a Place, Exonerat esse, of the said Promise. And upon Demurrer, it was adjudged a good Discharge; For as the Action was grounded on a Parol Promise, it may be discharged by Parol. Cro. C. 288. Mich. 10. Car. B. R. Langdon v. Stokes.

3. A. the Master of a Ship, covenanted with B. a Merchant, to go with his Freight the first fair Wind, and B. covenanted to pay so much for the Freight. A. brought Action of Covenant for his Wages, and alleged that he had performed his Voyage. B. traversed that he did not go with the first fair Wind. And upon Demurrer, it was held, that the Traverse was not good; For it is only a Circumstance, and nothing is traversable, but what is material. See Lat. 12. 49. Contable v. Clobery.

4. W. was to raise 500 Soldiers, and to bring them to such a Port and C. was to find Shippings, for which he sued upon the Covenant that the other had not raised the Soldiers; For that can be only alleged in Mitigation of Damages, and is no Excuse for the Defendant; And it is adjudged, that this was not a Condition precedent, but distinct and mutual Covenants upon which several Actions might be brought. Arg. 2 Mod. 75. cites Str. 186. Ware v. Chappel.

his Opinion, and it was adjudged for the Plaintiff. Nili Casu. Str. 186. Hill. 1649.

At first the Court was divided, (viz.) Roll Ch. J. and Ass. against Jermin and Nicholas, but afterwards Nicholas charged B. R. S. C.

5. In Covenant, the Plaintiff declared that he covenanted to fail with a Ship to D. and there to take 280 Men of the Defendant, and to carry them to J. and Defendant covenanted to have the 280 Men ready there, and to pay for the Freight 5l. for each Man; and that Defendant had not the 280 Men ready, but only 180. That the Plaintiff took and carry'd them, but that Defendant hath not paid him for them. Defendant pleaded that that he had the 280 Men ready and tender'd them to the Plaintiff, but that he would not receive them: But the Defendant said nothing in his Plea as to the Carriage of the 180 Men, nor as to the New Payment of the Freight for them. And upon Demurrer, the Plaintiff had Judgment, because it was not a Plea to the whole Declaration, but only as to the Carriage. Lev. 16. Hill 12 and 13 Car. 2. B. R. Tompson v. Noel.

6. A. Master of a Ship covenanted with A. to fail to M. and to have Mariners ready to re-lade the Ship, and then to return with the first fair Wind to L. and deliver the Goods. A. covenanted to pay so much for the Freight and Demurrage. Upon an Action brought by the Master for the Freight, Defendant pleaded that the Ship did not return directly to L. but made several Deviations, by which the Goods were spoil'd. But upon Demurrer, the Plaintiff had Judgment. For the Covenants are mutual, and reciprocal, and each Party may have his Action against the other, but one is not pleadable in Bar of the other. 3 Lev. 41. Trin. 33 Car. 2. C. B. Cole v. Shaller.

7. The Master of a Ship covenants that the Ship shall be well furnished with Men, and the Freightors covenant that the Ship shall return in 12 Months; 'tis a good Plea that the Ship was not sufficiently provided with Men. Show. 334. Mich. 3 W. & M. B. R. Wynne v. Fellowes.

Franchises.
Franchises.

(A) What a Franchise, or Liberty is; And how it may be.

1. **FRANCHISE is Royal Privilege in the Hands of a Subject.** Fin. 38.
2. At Nix Prius at Exeter, Charter was shown for the Vill, that of Ilifsors arising within their Vill, the Inquest shall be taken by Denizens Inhabitants only, and not by Foreigners, and prayed Allowance, by which the Foreigners were ousted, and was taken all of the Denizens. Br. Franchises, pl. 17, cites 29 Aff. 15.
3. Franchises cannot be divided, if they are entire Franchises, as to have Goods of Felons, Outlaws, &c. or Waifs, and Strayes, &c. and therefore if they descend to two Copartners, no Partition can be made of them. Godb. 17. Paieh. 25 Eliz. C. B. Lord Mountjoy v. Earl of Huntington.
4. Every Franchise, Liberty, or Privilege, either lies in Point of Charter, and cannot be granted by Prescription, as Bond & Catella Felonna, &c. or lies in Prescription on Usage in Pais, without the Aid of any Charter, as Wreck, Waifs, Strayes, &c. q Rep. 27 b. in a Note of the Reporter's, in the Cafe of the Abbot of Strata Marcella.
5. Franchises which lie in Point of Charter, are either before time of Memory, or within time of Memory; (viz. from the time of R. r.) if before time of Memory, either it was by Special Words, which seldom or never was done, or by general, ancient, obscure, ambiguous, and obsolete Words; and whether by the one or the other, yet because they were made time out of Mind, and so are not any Record pleadable of themselves, they ought to be aided by some other Matter of Record within time of Memory, as Allowance* before Justices in Eyre, or of B. R. or C. B. or Barons of the Exchequer, or by Confirmation by the King's Charter of Record, within time of Memory, and shall be allowed but for such part only of the Grant, as had been so allowed or confirmed, though all be in one and the same Patent; And such ambiguous, &c.*

> 2 Inf. 281.

> 2 Inf. 282.

> Grant, shall be **† continued as the Law was taken, when such Charter was made.** 9 Rep. 27 b. 28 a. in a Note by the Reporter, in the Cafe of the Abbot of Strata Marcella.

6. Franchise tenere placita is Power to hold Plea of Matters within such a Precinct, but does not exclude any other Jurisdiction, nor entitle the Lord to claim Conunance. per Holt Ch. J. 12 Mod. 645. Hill. 13. W. 3. B. R. in Cafe of Grole v. Smith.

See *Prescription.*

(A. 2) How they may be by Prescription or Appendant, &c. And claimed How; And Allowance thereof.

Nor be call'd
has Liberties as Hundred, &c. cannot grant them over. Br. Franchises, pl. 38, cites 6 E. 2.

1. **I**f the King grants Liberties to J. S. he cannot grant them over. Br. Franchises, pl. 38, cites 6 E. 2.

2. In
2. In Account, the Defendant shall not plead that the Matter arose in a
Franc-si-e, which has Confluence of Pleas, but the Bailiff's ought to
demand it; for otherwise it shall not be granted. Br. Franci-sies, pl.
cites 59 E. 3. 17.
3. If a Patent grants Tenure placita before his Steward, and he has not
any Steward, it is good; for he may make a Steward; But it seems
that he ought to have Court before. Br. Franci-sies, pl. 4. cites 7 H. 4. 5.
4. If a Man has used by Prescription to hold Pleas by Writ of Right-
Chie, and has also a Charter of the King of Consequence of Pleas, and
accepts the Fanchi-s in Court of Record, by the Charter, he loses the Ad-
vantage of the Prescription to hold Pleas by Writ of Right; per Galcoigne.
Br. Franchises, pl. 6. cites 8 H. 4. 19. — But 21 H. 7. 5 Contra by
three Justices. Ibid.
5. Men have several Liberties in England, which never were allowed in
Eyre; per Thirn; But it seems, that they are those which were seis-
6. In Recordare, it was agreed, that where a Man claims Custom to
have a Fine for Alienation of his Tenant, it shall not be allowed, with-
out shewing Allowance in Eyre or elsewhere; because it is against
7. Note, that a Corporation, who appoint a General Attorney for them in
C. B. &c. may, by the said Attorney, challenge Liberties. Br. Corpora-
tions, pl. 35. cites 4 H. 6. 6.
8. Franchises, which lie in Point of Charter, may be prescribed for, if
the Party has an Allowance in Eyre, which is such Possession as the Sta-
tute 18 E. 1. intends. 9 Rep. 29. in Cae of the Abbot of St. Mary
Hunc-
cella, in a Nota of the Reporter there; cites 18 H. 6. 6. tit. Prescription,
45; and says, it stands upon great Reason; For that the Charter might be
made before the Conquest, and so anciently, that the Charter itsel-
ven, and every Inrolment of it, might be utterly perished and confumed.
9. If Confluence of Pleas, or other Franchises, are allowed, it binds
the King till it be reversed. By all the Justices. Br. Franci-sies, pl. 32.
cites 13 E. 4. 5.
10. Note, that Allowance of Franchises in Quo Warranto, or in
Eyre, shall conclude the King: For this is the Suit of the King to try Fran-

11. A Patent of Grant of Consequence of Pleas, which is before time of And it be
Memory, viz. in the Time of King H. 2. shall not be allowed at this
Day, if it has not been allowed after in Eyre. Br. Franci-sies, pl. 13.
cites 21 H. 7. 29. per rot. Cur.
it shall not now be allowed in C. though it be one entire Patent. Br. Franci-sies, pl. 15 cites 21 H. 7. 29.

(B) Power and Privilege; of * Bailiffs of Franchises,
and in what Cases punifh'd.

WHERE Precipe quod reddat is brought of Land, Parcel in
Guiltable, and passed in Franchises, the Writ shall abate, if the
Franci-s has Consequence of Pleas; Contra, if the Franchise has only
returna Brevium. per Galcoigne & Huls. Br. Franci-sies, pl. 27, cites
8 H. 4. 7.

*See Re-

6 O

2. If

Trefpafs,
(G. 2. 3) pl.
21.
8. where Af-
fis is

granted, per Cur. Arg. Ibid pl. 158. cites 58 E. 3. 16.
2. If a Man has a Lect, and may enquire of Felony, and has suspected Persons, he cannot deliver them; but the Justices of Delivery shall do it, per Cur. Br. Franchises, pl. 5, cites 8 H. 4. 18.

3. In Quare impedit, it was granted, that where the Sheriff does Execution in Franchise, it is good; For he is immediate Officer to the Court; Contra where Bailiff [of a Franchise] does Execution in the Guildable; And the Lord of the Franchise, in the first Case, shall have his Remedy for the breaking of the Franchise. Br. Executions, pl. 32, cites 11 H. 4. 7. 9.

4. Note, for Law that those who have Liberties of Infringesthief, cannot use Good Deliveries, nor give Judgment of Death; and if they do, it is Misprision, and they shall make a great Fine to the King. Br. Franchises, pl. 33, cites 2 R. 3. 9.

5. By Grant of Conunance of Pleas, the Franchise shall make the like Process and Execution as is at Common Law; For this belongs to the Conunance of Pleas. Br. Franchises, pl. 59.

6. Per Glynn Ch. J. Mich. 1658; If one be arrested by the Sheriff of the County within a Liberty, without a Non omittas, yet the Arrest is good; For the Sheriff is Sheriff of the whole County, but the Bailiff of the Liberty may have his Action against the Sheriff, for entering of his Liberty; But upon a Quo Minus, a Sheriff may enter any Liberty, and execute it Impune. R. S. L. 116. cites Pract. Reg. 72.

7. The Sheriff, upon a Non Omittas, Capias utlagatum, or Quo minus, may enter and make an Arrest in any Franchise. L. P. R. 635.

8. The Authority of Bailiffs of a Liberty, and in what Cases the Sheriff may intermeddle, and where he must direct his Warrant to the Bailiff of the Liberty; and in what Manner the Process out of the Palace Court must be executed, and to whom it must be directed. See Skin 413 to 418: the Reporter's Argument. Hill, 5 W. & M. B. R. in the Cae of Wentworth v. Broadwater, for executing the Process of the Palace Court, within the Liberty of the Savoy.

(C) Extinguished or loft.

1. The Sheriff wrote his Mandate to the Bailiff, upon a Venire Fines, and the Bailiff was the Defendant's Servant, and returned the Lands of the Plaintiff and Defendant, by which Non Omittas issued, and the Lord loit his Franchise for the time, Quod Nctra. Br. Franchises, pl. 29, cites 38 E. 3. 25.

2. Unity of Possession in the King of a Manor, which is within the Cinque Ports, which came to the King by Estreat, as parcel of his Manor of E., was not an Extinguishment of the Liberty, nor did this make it Guildable; And therefore it seems, that it is a Custom which goes with the Land, as Gavelkind, &c. and not with the Seigniory. Br. Franchises, pl. 3, cites 49 E. 3. 24.

3. It was agreed, that where these are Bailiffs of a Vill, and they have Liberties by Grant of the King, and after the King alters their Corporation into Sheriffs, yet they shall enjoy their first Liberties. Quod Nctra. Br. Franchises, pl. 12, cites 14 H. 6. 12.

4. Where the Inheritance of the Crown was given to King H. 7. and the Heirs of his Body, with all Pre-eminences and Prerogatives, yet it did not extend to the Franchises and Liberties of other Men; by all the Justices. Br. Franchises, pl. 20, cites 1 H. 7. 12.

5. If a Vill be incorporated by the King before time of Memory, and the Franchise never was used within time of Memory, they have lost their Franchise. Br. Franchises, pl. 10, cites 14 H. 7. 1. per Vavifor.

6. Ancient Franchises are by Forfeiture extint in the Crown, but new Franchises
Franchifes.

Franchises are not to. The Dutchy of Lancaster, being forfeited for Trai-

(D) Restrained:

WHERE the King is Party, the Venire Facias shall make Men-
ation of Non Omissae; for where the King is Party, the Sheriff
shall not write to the Bailiff of the Franchise, but shall serve the Pro-
cess himself. Br. Franchises, pl. 18. cites 41. Aff. 17. per Knvvar, Ch. J.

1. If the one depends upon the other, he shall be seised and forfeited to the King. Br. Franchises, pl. 14. cites 22. Aff. 54. — S. P. Fin. 38.

(E) Forfeited.

1. A Man has Franchise, and uses more than bought; this is a For-
feiture but if he uses less; this is finable; For the one is Mis-utter
and the other Non-utter. Br. Franchises, pl. 37. cites the Time of E. 1.

2. If a Man has several Franchises, and the one does not depend upon
the other, if he misuses any, he shall not forfeit all, but only thole which
are forfeited. Br. Franchises, pl. 14. cites 22. Aff. 34. per Thorp.

3. And if a Man has Franchise and uses it well; there if he makes Pur-

4. If a Man has Goal Delivery by Liberty, and holds Men in Prison, he-

5. Error fixed to the Bailiff of Reading, and at the Quaries, the Bailiffs
came and prayed another Day, and had one, &c. by Affent of the Party, and
at the Day did not return the Record, but came and prayed another Day, and
the other Party could not Affent; and per Vavilor, the Franchise shall be

6. For if the Warden of the Fleet be commanded to bring in his Prisoner,
and does not, the Office shall be seised, and this where he is commanded by

Scot. &c.
Franchises.

the Court, contra where he is commanded by Proces, per Vaviser. S. P. Br. Franchises, p. 26, cites 20 E. 4. 5.

7. If a Lord refuses to do a Thing according to his Franchise, or does contrary to his Franchise, or Mis-use it by himself by his Bailiff or Deputy, or Non-use the Franchise, the Franchise shall be reftated, per Hulley. S. P. Br. Franchises, pl. 26. cites 20 E. 4. 5.

8. And all Lords who have Franchise shall be Attendant upon the Justices of Affife in Perfon, or by their Bailiffs, and otherwife they forfeit their Franches for this Non-feance, per Pigot. Br. ibid.

9. If the King grants to one a Fair for one Day in the Year, and he holds Fair 2 Days, and claims this in the Exchequer upon Proces, he forfeits all his Franchise. S. P. Br. Franchises, pl. 22. cites 2 H. 7. 11. per Brian, which is found false in the Prescription, yet he shall not forfeit his Patent. S. P. Br. Franchises, pl. 22. cites 2 H. 7. 11. per Brian — And Market shall not be forfeited by Noneset, unless of a Thing which of Necessity ought to be done as of Clerk of the Market, &c. Forthore Non-user is a Forfeiture. Ibid — Fm 58.

10. If the Under-goler often suffers Prisoners, viz. 2 or 3 times, to escape, tis a Forfeiture of Liberties. Savi. 15. pl. 40. Patch. 22 Eliz. Sir John Arundell’s Case.

11. Franchise shall be feized if it be claimed by any but by him that has the Freehold. Yelv. 191. Mich. 8 Jac. B. R. in Case of the King v. Stafferton, cites Cro.

12. Quo Warranto was brought against the Mayor and Burgesses of Wiggon in Lincashire, for Uing of certain Liberties, viz. Fairs, Markets, and Courts, and at the Day of the Return of the Writ they do not appear; and it was agreed, per toman Cur, that if they do not shew good Cause in Excuse of their Default, then their Liberties shall be seized into the King’s Hands according to the Book of 15 E. 4. and * Stigg’s Case. 2 Roll. R. 92. Trin. 17 Jac. B. R. the Case of Mayor and Burgesses of Wiggon.

13. In a Court Leet of a Manor in a Forest the event of an able Steward, is a Cause of Seizure, and so is the not having Officers and Things for the Execution of Justice, as Constables, Alteifers, &c. and Pillory, Stocks, and Cucking-foul, &c. so likewise for punifhing Bakers more than three times, and not setting them on the Pillory, all these are Causes of Seizure, ’till Payment of a Fine for the Abufe, and Repefin of the Franchise, by Noy 8 Car. 1. Jo. 283. Totterfall’s Case.

14. One claimed Wait’s and tramways within his Manor in a Forest; by Noy, these Franchises may be seized, till they be reprieved, if there had been no Allowance in the last Eyre. 8 Car. 1. Jo. 283. Englefield’s Case.

15. A Judge ignorantly condemns a Man to Death for Felony, when it is not Felony, in a Manor Court which has the Franchise of Inlangthief; for this Offence the Judge shall be fined and imprisoned, and lose his Office, and the Lord shall lose his Franchise. Thence Points were resolved in the Star-Chamber, upon an Assembly of all the Judges there, by the Command of King Ric. 3. Jenk. 162. pl. 7.

16. The constant Práctífe of Inferior Courts to give Precepts of Caupias without Summons, I think, is such an Abuse of their Franchise, that peradventure, this shall be a Forfeiture of it; I know no other Method to remedy it; per Powell J. 2 Lutw. 157. Mich. 4 & 5 W. & M. in Case of Gwynn v. Poole.

17. All Franchises are granted on Condition, that they shall be duly Executed according to the Courts, and if they neglect to perform the Terms, the Patens may be repealed by being feized. 12 Med. 271. Hill. 11 W. 3: in Case of the City of London v. Vanacre.

(F) Dispute
(F) Disputes between them and the Sheriff.

1. If Bailiff of Fee, or Bailiff of a Franchise returns a Panel to the Sheriff, and he returns other Panel of himself, this shall not be out at the Prayer of the Bailiff, but they shall have their Action against the Sheriff. Br. Action fur le Cafe, pl. 82, cites 30 Aff. 7.

2. If the Sheriff makes Execution in the Franchise this is good; For he is Officer immediate to the Banks; but if Bailiff of the Franchise does so in the Guildable, this is Error, and this by Hill and Norton, quod non contradicetur. Br. Office & Offic. pl. 35, cites 11 H. 4. 9.

3. Sheriff enters into such Liberty, and the Grant is shewn to him; if he makes Execution 'tis good, but Lord of the Franchise shall have Action on the Cafe against him. Arg. Roll. R. 119. Hill. 12 Jac. B. R. Derby (Will) v. Foxley.

and the Sheriff is the Officer to the Court, notwithstanding the Franchise and the Lord of the Franchise is but a subordinate Minister to the Sheriff. Mich. 1653; in the Exchequer in the Cafe of Newman v. Phillips.

(G) Pleadings, &c.

1. Where Process is re-summoned out of the Franchise to the Bank, there the Tenant need not to serve the Default which was made in the Franchise, per Cur. For there nothing shall be of Record in the Bank but the Original only, and not the medie Acts which were done in the Franchise. Br. Franchises, pl. 28, cites 2 H. 4. 8.

2. Treasons of taxing Beasts in the County of Northumberland, and Chasing to N. where N. was in the Bishopric of Durham, and this pleaded, and yet the Defendant was compelled to Answer, and the Reason seems to be inanchor as Commonit Lex est magis digna. Br. Jurisdiction, pl. 22, cites 2 H. 2. 23.

3. Upon Hille joined, one came for the Mayor and Bailiffs of Oxford, and shewed a Charter that they of Oxford shall not be impanneled with Foresters, and prayed Allowance; per Cur. the Mayor and Bailiffs cannot plead it, but the Men impanneled shall say it upon their Appearance; by which the Juror who appeared pleaded it, but the Juror may relinquish the Advantage of it if he will, and so he did. Br. Franchises, pl. 30, cites 4 H. 6. 6.

4. Tho' the Charter, or Letters Patent are lost, yet the Exemplification, or Confirm of the Roll may be shewed forth, by the Statutes of 3 E. 6. and 13 Eliiz. And when any claimed before the Justices in Eyre, any Franchises by an Ancient Charter, tho' it had express Words for the Franchises claimed, or if the Words were general, and a continual Possession pleaded of the Franchises claimed, or if the Claim was by old and obscure Words, and the Party in pleading expounding them to the Court and averring continual Possession according to the old Exposition, the Entry was always Inquiratur super Possessionem & Usum, &c. 2 Init. 282, where Ed Coke says, he had observed as above in divers Records of Eyer according to that old Rule.

5. The Difference between an Awovry and a Quo Warranto is, that in an Awovry the Awovary is not compelled to shew his Title to his Franchise, but only to say generally, that he hath such a Franchise; but in a Quo Warranto he must shew it particularly. 9 Rep. 29. b. in a Note of the Reporter there, in the Cafe of the Abbot of Strata Marcella, cites 8 Ed. 3. 10. b. 11.

6. If the Party has continued Possession tortiously, the Judgment is that he shall be oued; but if he had once a Title and lost it, the Judg-

6 P
ment shall be that the Liberty shall be severed. Yelv. 192. cites 15 E. 4. 7.
7. When any Thing is shewed to be done within a Liberty, or a
Franchise, 'tis not necessary to shew within what County, that Liberty, or
Franchise doth lie; For the Franchise hath no Relation to the County.
L. P. R. 635. cites Trin. 23 Car. 1. B. R.
8. Case by Bailiff of a Liberty, that has the Execution and Return of
Writs, against one for entering his Liberty, and executing a F. fi. on good
without shewing by what Right he claimed the Liberty. Show. 17. Patch.
9. In some Cases you cannot set up a Franchise, tho' you have Letters
Patents for it; as if I have a Ferry, I will bring an Action against you for
setting up another; because I must keep up mine for the Good of the Pub-
llick, which would be hard upon me if you get all the Profit. But other-
wise it is where the Publick is not concerned; per Holt Ch. J. and Judg-

*Frankalmoigne.

(A)

1. Frankalmoigne is not any Service. Br. Aid del Roy. pl. 13. cites
35 H. 6. 56.
2. 12 Car. 2. 24. § 7. Enacts, that this Act shall not take away Ten-
tures in Frankalmoigne, nor subject them to greater Services.

Fraternity.

(A)

1. Guild or Fraternity cannot be made, unless by special Incorporation.
2. Fraternity is some People of a Place united together in respect of
a Military and Business into a Company, and their Laws and Ordinances
cannot bind Strangers, for they have not a local Power or Government.
3. Corporations may make a Fraternity. per Cur. 1 Salk. 193. Hill. 2

Fraud
(A) Fraud. [To prevent Forfeiture to the King, or Lord, for Crimes.]

1. If a Man make Footment of his Land to the Use of his Son, being an Infant, and not upon Communication of Marriage, and then that is to pay ten Days after commits Treason, of which he is afterwards attainted, This Land shall be forfeited to the King; for the Footment, shall be adjudged fraudulent, and void against the King. 8. Jac. in the Exchequer, per Cur. But if this Footment was made in Performance of an Agreement made a Year before, by which it was agreed, that the Footor should make such Conveyance, &c. and the Fenco of the Footor being Injunctive, should make such Conveyance of the Land, which was also done accordingly, in this Case this Footment shall not be adjudged fraudulent against the King. 8. Jac. in the Exchequer, per Cur.

2. If a Man alien Land, to the Intent that it shall not be forfeited, and after does felony, this Land shall be forfeited. 48. Eliz. 3. B. R. Rot. 1.

(A 2.) Fraud. What is in general.

1. Quo D. alias bonum & jussum est, si per vim vel fraudem petatur, malum & injuria effectur. 3 Rep. 78. Hill. 44 Eliz. in Chancelry in Farmer's Case.

2. Fraud ought to be Fraud at the beginning; For subsequent Fraud, will not make a Conveyance to be fraudulent. 2 Bals. 226. Patch. 12 Jac. Stone v. Grubham.

3. Where Recovery is upon legal Cause, it cannot be said Covinous, tho' it was on Contum, and to the Intent to prevent another of his Debt. Jo. 92. Hill. 1 Car. B. R. in Case of Veale v. Gatefislow.


5. A. on his Marriage with B. a Dutchwoman in Holland, agrees to have a compleat Maintenance for her and her Children, but not expressing what. — A. afterwards aligns Bonds to Trustees, and gives a Letter of Attorney to receive the Money. By the Custom in Holland, such Agreement between Baron and Fenco, and such Assignment of Bonds are good, and therefore are to be allowed here. Per LD K. Finch. Trin. 26 Car. 2. 11 Chan. Cases. 232. Althcomb's Cafe.

6. A. indebted to B. aligns Land by Way of Trust, to pay B. 75. A. confesses Judgment to C. — B. receives, and pays to A. the Profits, to the Amount of 800/. — B. had no notice of the Judgment, nor was there any Extent on the Judgment. LD K. decreed an Account, and the 800/ not
to be allowed otherwise than as to go in Satisfaction of B's Debt. Mich. 27 Cat. 2. 2 Chan. Café. 207. Miller v. Stephens.

5. A. and B. make Crofts-Settlemerits of their Estates; A's Estate was of most Value, and he conveyed it by Bargain and Sale inrolled,—B. settled his by Covenant to stand leis'd. Afterwards A. proposed to sell part of his Estate, and B. negotiated the Sale. A. by Will, devised his Estate to a Relation, and dy'd. The Court held the inequalities of Value, and also of Affinity, and B's negotiating the Sale as Badges of Fraud, and decreed A's Estate to the Devisee. 33 Car. 2. 2 Ch. R. 221. King v. Hele.

(A. 3) Fraudulent Conveyance:


4. A Deed not at first fraudulent, may afterwards become so, by being concealed, or not purfied; by which Means Creditors are drawn in to lend the Money. Per Hutchins Commissioner. Paflch. 1692. 2 Vern. R. 262. in Caiie of Hungerford v. Earle.

(B) Fraudulent Conveyances of * Lands set aside.

*Voucher (N. b) pl. 1, 2.

Savil 126. S. I. In Formedon, Tenant pleads Non Tenure, and it was found by Verdict, that before the Writ, the Tenant cai've'd several Persons, with Intent to defraud such as had Caufc of Action for the fame Lands; and yet be took the Profits. This Verdict was adjudged for the Demandant; for the Feoffment was void againft him by the 13 Eliz. 5. Cro. E. 233. Paflch. 33 Eliz. C. B. Leonard v. Bacon.

Jenk. 261. 2. Feoffment on Condition to be void on Payment of 100/; in a Year to the Heirs, Executors, &c. of B. within a Year after the Death of B.—B. dies intestate.—C. takes Administration, and grants Letter of Attorney irreceivable to D. (to whom B. had affigned the Estate) to receive the 100/ to his own Use if it shall be paid. (Note, C. was Heir as well as Administrator.)—Afterwards by Agreement, between the Feoffor and C. Feoffor was to pay the Whole Money in Sues, but to be repaid a third Part inluer. This was not a sufficient Performance of the Condition, because of the Covin. Mo. 708. Hill. 37 Eliz. B. R. Goodall v. Wiat.

Fraud.

4. The Earl of L. purchased a Manor in his Daughter's Name, and afterwards kept the Courts, and made Leave in his own Name, and always took the Profits, and then fold it to Sir S. Montague; tho' the Daughter never questioned it in the Life of her Father, yet 'twas held, in B.R. that unless there be some Fraud discovered, 'tis not within the 27 Eliz. they there many Badges of Fraud, cited Cro. Car. 550. to Car. Lady Gore's Cakes.

5. Fine passed by Circumvention, was decreed not to extinguish a Reine Charge, but Relief against the Circumventer. Hill. 27 and 28 Car. 2.

6. If a Contingent Remainder be destroyed by a legal Conveyance, and that Conveyance is obtained by Fraud, Equity will relieve against it. Hill. 1686. Vern. 443. Englefield v. Englefield.

(C) Fraudulent Conveyances of Goods set aside.

1. 3 H. 7. cap. 4. Enacts that, All Deeds of Gift, of Goods and Chattels, made in Trust to the Use of the Granter, to defraud Creditors, should be void.

P. was inserted of Reconsideration, for not coming to Divine Service. Upon this he makes a Gift of all his Leaves and Goods, coloured under feigned Concessions, and flies beyond Sea, in Order to defraud the Queen thereby, of what might accrue to her by his Recency, or his Fights. Afterwards he was outlawed on the same Indictment. This Case seems to have within this statute, because the Precedent speaks only of Creditors; yet the Body of the Act is general, that all Gifts of Goods and Chattels, made in Trust to the Use of Granter, are void. This is only with regard to Strangers who would be prejudiced by such Gift: But is still good to bind the Parties themselves. But adjudged, that 15 Eliz. 5, extends to this Case. 3 Rep. 811. cited in Twine's Case, as Mich. 35 and 36 Eliz. in the Exchequer Chamber, the Ca七月 of Pounchford v. Blunt.

A Feme has a Term, as Administratrix to A. her first Baron, and marries B. who, being indebted by Contract to C. granted the Term to C. to the Use of B. and his Wife for their Lives, and after to the Use of C.—C. sues and gets Judgment. Per Cur' this Grant is not to avoid Creditors; For the Term being in Right of the Feme, as Administratrix, if it had to continued in the Hands of B. and had never been granted, it was not extensible for the Debt of B. and Fraud shall not be intended, unless it be expressly found, and this Grant is out of this Statute, and all the Statutes of Frauds. Cro. E. 291. Ridley v. Painter.

Leflee for Years, after Judgment against him, alienates his Term. After the Year, the Plaintiff sues for Execution. The Term is not liable, if the Assignment was made bona fide.


2. A General Deed of Gift of all his Goods is suspicious to be done upon Fraud to deceive Creditors. Bacon's Use of the Law. 62.

3. If a Man that is Debtor make a Deed of Gift of all his Goods to Cro. E. 445; protract the taking of them in Execution for his Debts; this Deed of Gift is void against those to whom he was indebted; but against himself, his own Executors, or Administrators, or any Man to whom he shall after fell or convey them it is void. Bacon's Use of the Law. 62.

4. By Sale, any Man may convey his Goods to another; and though Stat. 29 Car. he is in Execution for Debts, yet he may sell them out-right for Money 2, 3, at any time before the Execution served, so that there be no Reservation of Trust between them, [as that] paying the Money, he shall have the Goods again; for that Trust proves a Fraud to prevent the Execution. Bacon's Use of the Law. 62.

5. A makes a Deed of Gift of all his valuable Goods to B. (who was void by the Common Law, his second Wife, the first then being) and makes B. Executrix, and dies. —B. refuses the Probate, by which the Ordinary granted Administratrix, and also by the Statute. C. has no Allies, and if Action be brought against B. the will 15 Eliz. 5, pleas, that there is an Administrator. —Per 3 J. B. is chargeable to the Executrix de bon Tort. Dal. 94. pl. 16 15 Eliz. against B. as Executor, de son Tort, and that such Gift is void by the Common Law. Per Dyer, Ch. 2 Le. 225. Stamford's Case, S. C. 3 Le. 57. S. P. Brownl. 112. * Hayes v. Leader. S. V. —So if C grants the Goods to B. 3 Le 87. Mich. 13 Eliz. C. B. Anon. — Vid. (1)

6. Sale
Fraud.

6. Sale of Intestate Goods by first Administrator, whose Administrator is repealed upon Citation, and granted to next of kin by Averment of Covin, may be avoided. Mo. 396. Hill. 37 Eliz. Wilton v. Pate-
man.


7. Wife was made Executrix, and made Gift of the Goods before Marriage, and yet retains them in her Pothesis, and takes to Baron the Defendant; The Wife dies; Baron has in his Hands so much Goods now, as will suffice to pay the Creditors their Debts. Judgment pro Quo. For the Defendant has confessed himself Executor, by the Plea of fully administrd, and so is chargeable; Because the Property of the Goods does not pass out of the Wife by the Grant, being made by Fraud, as aforesaid, by the Statute 13 Eliz. 5. Mo. 396. Hill. 37 Eliz. Watson's Cafe.

Ow. 132. S. C. — Cro. E. 812. S. C. reports, that B. inter-
meddled after the Father's Death, with the Goods, and afterwards the Daughter, by this Gift, took the Goods, and then Administrator was granted to B. Adjudged, that this Gift is in itself fraud-
dulent, as appears by the Condition, and the Covin expressly found by the Jury, and then it is utterly void against the Creditors, by 13 Eliz. and the Intestate died possessed of them; and when the Donee after-
wards took them, it was aTriumph against the Administrator, for which he has his Remedy; and they are always Affets in his Hands, and he is chargeable for them at Executor de bon Tort, by his inter-
meddling before Administrator granted; and by Law they remained always in his Possession.

3 Rep. 80. b. S. C. by the Name of Twyne's Cafe.

9. A indebted to three Persons, has Goods to satisfy but one of them, and after Suit commenced by one, or after Notice of Suit to be commenced, or ARRellt made, makes Gift of all his Goods to another Credi-
tor, in Satisfaction of his Debt.—This is fraudulent against him who so has commenced his Suit, or made the Arrelt for his Debt; per Popham, Ch. J. and And. Ch. J. Mo. 639. Passh. 44 Eliz. in the Star Chamber. Chamberlaine v. Twyne, & al.

10. If A. gives Goods to B. with Intent to defraud C. though B. knows not of the Fraud, yet the Gift, as to him, is void; per Altham, J. Lane 102. cites 34 E. 1. ... tit. Warranty acc. — And 6 Rep. 72. [Patch. 5 Jac. C. B.] Burrell's Cafe.

11. A. is indebted to B. and makes C. his Executor, and dies. — C. promises B. upon good Consideration, that if he can discover any Goods, parcel of the Estate of the Teffator, at the Time of his Death, then B. shall have the Goods in Satisfaction: The Question was, whether a Leafe for Years, conveyed to a Stranger by the Teffator in his Life, to the Intent to defraud his Creditors, should be in Law paid to be Parcel of his Estate at the time of his Death? and the whole Court resolved that it was; For though the Sale bound himself, yet it was void against the Creditors. Trin. 18. Jac. B. R. 2 Roll. R. 173. Anon.

Hill. 8 Jac. B. R. Cro. J. 271. Hawes v. Leader. S. P.

12. An Executor or Administrator shall not avoid a fraudulent Bill of Sale as Executor or Administrator, but when he is a principal Credi-

(D) Where
Fraud.

(D) Where Conveyances shall be fraud in Part and Good in Part.

1. In Consideration that his Son shall marry the Daughter of B'.

2. It was agreed that the conveyance shall be limited to the use of his Son for Life, and after to the use of other his Sons in trust for Remannder; Thle Usps, thus limited in Remannder, are fraudulent against a Purchase, though the first be upon good Consideration; viz. upon Marraige. Lane. 22. Anon.


(E) Fraud at Common Law.

1. Where no former Interest of the Party is wrong'd, there no fraudulent Conveyance was void at Common Law. Arg. Lane. 105.

2. Holt, Ch. J. said, that there was a Fraud at Common Law, as in Cae where a Person in Prison, and afterwards executed for Robbery, made a Bill of Sale of several Goods, with Intent to make Provision for his Son; and that no Countenance ought to be given to such a Contrivance as this, where a Man has gained a considerable Estate by Robbery, and when he is detected, that he should give it to his Son; And the Plaintiff was non suiting accordingly. Skin. 357. Trin. 5. W. & M. at Guildhall. Jones v. Ashurfit.

(F) Frauds as to Creditors. Cases in Law and Equity upon the several Statutes.

30 Ed. 4 Fraudulent Assurance of Lands or Goods to deceive Creditors shall be void, and the Creditors shall have Execution thereof, as if no such Gift had been made.

This Act extends only in the Relief of Creditors, and to such Debtors only, as make to Sanctuary, or other privileged Places. cited 9 Rep. 82. in Twyne's Case, as Mich. 35. & 56. Eliz. in the Exchequer Chamber, Pauncefoot v. Blunt.

2. A Man made a Gift of his Goods with Intent to defraud his Creditors, and yet continued the Possession of them, and took Sanctuary, and died there; now his Executors, having the Goods, were charged towards the Creditors. Cary's Rep. 25. cites 16 E. 4. 9.

3. 13 Eliz. cap. 5. 8. 2. Enacts, that all fraudulent Conveyances of Lands, Tenements, Hereditaments, Goods or Chattels, and all such Bonds, Suits, Judgments, and Executions, made to avoid the Debt or Duty of others, shall (as against the Party only whose Debt or Duty is so endeavoured to be avoided, their Heirs, Successors, Executors, or Assigns) be utterly void, any Pretence, feigned Consideration, or &c. notwithstanding.

By 3. 4. Common Recoveries had against Tenants of the Freehold shall be good, notwithstanding this Act; and so shall all Estates made for the procuring of a Fonder in Formedon; neither shall this Act extend to Grants made bona fide, and upon good Consideration to Persons not pray to such Consideration.

4. A feised of Land, as Heir to his Father, covenants for natural Affection to stand seised to the Use of Limb of Life, Remannder to his first Son in Trust, &c. Remannder to himself in Fee, with a Power to make Leases
Fraud.

Leaves, and to revoke the Uses, he having Notice at the same Time, of a Bond entered into by his Father to B. Afterwards B. brings Debt upon this Bond against A. as Heir; it was held that this Conveyance by the Heir shall be fraudulent against B. as a Conveyance by the Father who is the Principal Debtor. Cro. E. 350. Mich. 36 and 37 Eliz. C. B. Aphoto v. Bodingham.

5. If a Debtor will collude with some of his Friends in Fraud of his Creditors, and the Friend break Trust with him, this Court will not punish the Breach; yet Green and Tocetrell's Cafe to the contrary. (Fraus non est fallere silentum) But two Doctors and I took Order in such a Cafe, between Woodford and Bulton. Mich. 42 & 43 Eliz. by our Report that the Goods, so conveyed in Fraud, should be transferred to the Benefit of the Creditors. Cary's Rep. 18.

6. Good Consideration is not sufficient, unless it be made bona fide too; and no Deed shall be deemed to be made Bona fide within the Proviso of 13 Eliz. 5. which is accompanied with any Trust; as if A. be indebted to B. C. D. E. and F. in 20 l. each, and has Goods worth 20 l. and makes a Gift of his Goods to one of his Creditors, in Satisfaction of his Debt, but in Trust, that the Donee shall favour him, or permit him, or any other to posses them, and to pay the Debt when he is able; this is not Bona fide. 3 Rep. 81. Patch. 44 Eliz. in the Star Chamber, in Twyne's Cafe.

7. It is the Advice of Lord Coke, that when any Gift shall be made in Satisfaction of a Debt, by one who is indebted to others also; 1. That it be done publicly, and before the Neighbours, and not privately; For Secrecy is a Badge of Fraud. 2. That the Goods and Chattels be appraised by honest People, to the true Value, and take a Gift in particular in Satisfaction of the Debt. 3. Immediately after the Gift, to take the Possession of them; For Continuance in Possession of the Donor, is a Mark of Trust. 3 Rep. 81. Patch. 44 Eliz. in the Star Chamber, in Twyne's Cafe.

8. A. In Consideration of 20 l. makes a Bill of Sale to B. of all his Goods mentioned in a Schedule, and gives Possession by a Platter, and A. covenants that the Goods shall remain in his House as before, but to be taken away by B. on Demand, and that A. and his Executors, &c. shall keep them safely, and quietly deliver them, &c. A. 4 Years after dies Intestate, and his Administrator refuses to deliver the Goods. It was adjudged, that if this Debtor was fraudulent, yet it was void only against Creditors, and not void against the * Party, his Executors or Administrators; and where the Executor pretended, that it would be a Devastavit in him to deliver the Goods to A. this is not so; for if the Debtor was fraudulent, they are liable in B's Hands, as Executor de fom Tort; But if any of the Creditors had recovered, and had taken the Goods in Execution for the Value, and the Administrator had pleaded this, it might be a good Plea by him. Yelv. 196. Hill. 8. Jac. B. R. Hawes v. Loader.

9. If A. make a Deed of Gift, and the Consideration be future, the Donor's Continuance in Possession is not fraudulent, unless it be expressly proved, that it was made upon Fraud, to deceive the Creditors; and so Coke, Ch. J. directed the Jury. Roll R. 3. Patch. 12. Jac. B. R. Stone v. Grubham.

10. Legae for Years, conveyed to a Stranger by Testator in his Life fraudulently, viz. to the Intent to defraud his Creditors, is parcel of Testator's Estate at the time of his Death, so as to be answerable to Creditors. 2 Roll R. 173. Trin. 18 Jac. B. R. Anon.

11. In Trespass for Goods taken against a Bailiff; Defendant justified as Officer of a Court Baron, &c. and pleaded, that the Plaintiff claimed under Colour of a fraudulent Gift; and held a good Plea, by two J. tho' he is not a Creditor; For if a Bailiff shall not be aided by 13 Eliz. 5. because he is not a Creditor, no such Process could be executed; and when

2 Roll R. 495. Hill.
22 Jac. 1. S. C. Debuted by the Name of Tuyburn, v Tipper.
when a Statute gives the Prioriql, it gives all the Accidents. Lart 222.

Sir Ambrose Turvill, v. Tipper.

12. A and B. were joint Obligors; A. as Principal, and B. as Surety. A. (to five B. harmless) upon his Death-Red made B. a Dead of Gifts, of all his Goods, but they were not removed but remained in A'sPossession, so long as A. lived, which was but a very little Time; and the was good Confidence to free his Surety, and A's continuance in Possession after the Death was very short, yet was ruled a fraudulent Deced and Gift; For Debts upon Specialty are to be preferred to this Equity, and it was his folly not to take Counter-Security. Ch. 39 August. 11 Car. Per Berkley J. Legard v. Linely.

And where such Goods are omitted in the Inventory exhibited by the Executor, a Law-seemingly falsify the In- centory in the Spiritual Court, but a Creditor


A has Goods worth 50 l. and owes 20 l. to B. and to 1. to C. and offers to Goods v. C. to the Intent, that for the Receipt above the Debts of 1. he shall be fauncerous to him. Per Coke, Ch. J. it is altogether void, because it is fraudulent in Part; But per Fossor, J. it is void only for the Surplusage. Godb. 161. Pacli. 3 Jac. C.B. in Cafe of Wilton v. Wormal.——cited. 1 Rep. St. Tr. Wilton's Cafe.

14. Tenant for Life, being in Debt, to deprive his Creditors com- mits a Forfeiture, to the End that he in Reversion may enter, who is made privy to the Covniance; Per Hale, the Creditors shall avoid this, as well as any fraudulent Conveyance. Vent. 257. Pacli. 26 Car. 2. B. R. Anon.

15. A voluntary Settlement disfresses a Devise of the same, though it be for payment of his Debts; Per, per Jederies C. it is not revocable. Vern. 464. Trin. 1637. Eate v. Newton.

a few Months before his Death, he devised all his Land for Payment of his Debts. On a Bill by Creditors to subject the Lands, it was objected, that at best this was but in Nature of a Choice Act, and not assignable; but Lord Wright, and Master of the Rolls held, it was in Nature of an Emity of Redemption, and assignable, and as he might have been relieved, so may his Devisees. Ch. Prec. 142. Hill. 1700. Blake v. Johnson.

16. 3 & 4. W. & M. cap. 14. S. 2. Enacts, that all Wills concerning Lands, or any Reins, Profits, Term, or Charge out of the same, whereby the Devisees shall be less in Fee Simple in Possession, Recovery or Remainder, shall be deemed to be fraudulent and void against Creditors upon Bonds, or other specialties, their Executors, Administrators, &c.

S. 3. and every such Creditor may maintain an Action of Debt upon the said Bond and specialties against the Heir at Law, and such Devisee, jointly, and such Devisee shall be liable, and chargeable for a false Plea, as an Heir at Law, should have been for any false Plea pleaded, or for not confes- sing the Lands and Tenements to him defended.

A Bill brought, and if the Oblige was relievable here, against the Heir and Purchaser, on the Statute for preventing fraudulent Devise, or if he was sent to Law to get Judgment first, was the Que- rison! The Lord Keeper thought, that Statute being repealed of a new Law, the Relief on it must be at Law; and held likewise, that a Bond Creditor could not reclaim this Act for Years, without first having Judgment at Law against the Heir, though it might have been interlocutory in Cafe of a Mortgage in Fee. Tr. 1702. Ch. Prec. 158. Bateman v. Bateman. —— Note, Chancery at this Day, gives Relief upon the said Statute in such Cafe. Ch. Prec. 168. in a Nona there.

A bound himself and his Heirs in a Bond, and declared all his Lands to f C. S. a Bill was brought upon this Statute, to affect the real Affairs in the Hands of the Devisee; but the Heir not being made a Party, it was objected to; But it was answered, that nothing being defended to him, it could be in- vain to make him a Party; for it would only oblige the Plaintiff to pay Costs. And though in an Ac- tion at Law it was necessary to make him Defendant, it was because the Debt was in the Debit & Det- mine, and the Heir at Law prior to the Ancellor, and the Devisee not; and so for Conformity the Statute in Action at Law directed the Heir to be a Co-Defendant; yet it was otherwise is a Court of Equity; But Lord C. Power said, that it is the Act of Parliament makes this Act in the Heir's Hands, and that requiring the Heir to be made Defendant, you must follow the Remedy thereby pro- cedured, and this Bill is Equity, it is an Action at Law so; Otherwise if there were to Heir, and perhaps it
FRAUD.

might be otherwise too, if the Bill had charged, that the Plaintiff had made Inquiry, and could find or 19. The Court dissuaded the Bill, though without Costs. Ch. Prec. 22. Pach. 1691. Moor v. Ryecaut.

Though by the said Statute, a Man is prevented from defeating his Creditors by his Will; yet any Settlement or Disposition he shall make in his Lifetime of his Lands, whether voluntary or not, will be good against Pond Creditors: For that was not provided against by the Statute, which only took Care to secure such Creditors against any Imposition, which might be luggad in a Man's Will; but if he gave away his Estates in his Lifetime, this prevented the Defendent of so much to his Heirs, and consequently took away their Remedy against him, who was only liable in Respect of the Lands descended; And as a Debt is to be Law whatever on Lands in the Hands of the Obliger, much less can it be so, when they are given away to a Stranger. Decreed. Trin. 1718. Abc. Eq. Caces. 159. Parlow v. Weeden 4 Roade 32 C. C. cited per Mr. Verger. Chan. Prec. 121, though he said, that till that Resolution, he should have been of another Opinion, and that such a Disposition had been made fraudulent against Creditors by Lord Ch. J. Holt, in the Cae of Templeman v. Beke.

S. 4. Deces for payment of Debts, or Childen's Portion, pursuant to a Marriage Agreement excepted.

17. A Man inherits a young Woman, who had a considerable Portion in Trustees Hands; After the Marriage, her Friends refused to part with the Portion without Security from the Husband, that it should be settled on the Wife, who gave a Judgment, that it should be laid out in Land, to be settled to them, and the Heirs of their Bodies; A Creditor of the Husband brought a Bill for his Debt, and let it be in; for that it was after Marriage, and voluntary, and so ought not to prevent a Creditor of his Debt; But the Court dissuaded the Bill, though without Costs. Ch. Prec. 22. Pach. 1691. Moor v. Ryecaut.

18. Goods were taken in Execution in the Possession of S. who had them by Virtue of a Sale from G. Upon which S. brought an Action, and the Defendant insisted, that the Sale to S. was fraudulent against him, he being a Creditor by Judgment; Holt, Ch. J. said, that if the Judgment was upon a Point tried, in such Cafe he need not to prove the Confederation, but it shall be intended good; but if it be a Judgment by Confession, he ought to prove it to be for a just Debt, otherwise he shall not overthrow the Sale, though it be fraudulent; For it is good against all but Creditors for a just Debt bona Fide due. Smín. 586. Trin. 2 W. 3. B. R. Sanders, v. ... 19. A. being in Debt to several Persons, and great Damages to be given against him, in an Action brought against him by B. for Criminal Conversation with his Wife, compels his Estate to Trustees, for payment of Debts mentioned in a Schedule, and such other Debts as he should mention in 20 Days afterwards. A Verdict is given against him, and 500 l. Damages. B. by Bill endeavours to set aside this Settlement as fraudulent to defeat his Recovery. But the Court held it not fraudulent, either in Law or Equity, for such Debts as are named in the Deed, those being real Debts, and his only ex Malefac. But he may have an Interest in the Surplus, and ordered him to declare, if he would controvert any of the Debts, and come in upon the Surplus after the Debts mentioned in the Schedule, or such other, as were appointed within 20 Days pursuant to the Deed, are satisfied. Mich. 1699. Ch. Prec. 105. Lewkner v. Freeman.

20. It was held by the Court of Chancery, that if there be two Dealers, and one of them is very much indebted to the other, and, in Order to get an Abatement from him, he makes him believe he is insolvent, by deceiving, skulking, or cutting up Shop, whereby the other has just Cause to fear the Loss of his Debt, and thereby procures a Release or an Abatement, when in Truth, the Man was really solvent, this Court would relieve against such Rascal, &c. and this was agreed to have been often done, and the Cafe of Banneth and Sonnée quoted for an instance; but if the Parry had not just Cause to fear the Loss of his Debt, 12 Mod. 538. Mich. 13 W. 3. cites the Cafe of Monger v. Kett.

21. A. purchases a Lease of a House in B.'s Name, and takes a Declaration of Truth to permit A. to enjoy for Life, and then in Truth for C. who holds with A. as his Wife, and was so reputed. Wright K. inclin'd, that this Lease is not Assets of A. nor liable after his Death to his Creditors; for when a Man purchases, he may settle as he pleases; and thought that
that fraudulent Conveyances are made to only by the several Statutes
made for that Purpofe. Hill. 1704. 2 Vern. 490. Fletcher & al. v. Lady
Sidley & al.
22. A conveys his Estate to the Use of himself for Life, with Power to
mortgage it, and pay all his Debts, but continiues Possession, and keeps the Deed. - A, be-
comes indebted afterwards by Judgments, Bonds, and Simple Contracts.
The Deed of Trust is fraudulent as against Creditors by Bond and
Judgment, who, having no Notice of the Settlement, shall not come in in
Average only with the other Creditors. Trin. 1735. 2 Vern. 310. Tar-
back v. Marbury.
23. If A makes a Bill of Sale to B, a Creditor, and afterwards to C, an-
other Creditor, and delivers Possession at the Time of the Sale to neither, and
after C. This is fraud against Possession of Goods, and B. takes them out of his Possession; C,
can't maintain Trespass, because the first Bill of Sale is fraudulent against
Creditors, and so is the second, yet they both bind A. and B.'s, is the Elder
Title; and the naked Possession of C ought not to prevail against the
Title of B. that is prior, where both are equally Creditors; and Posses-
sion at the Time of the Bill of Sale is delivered over to neither. Per
24. A made a Bill of Sale of Goods on Ship-board, which were In-
volved particularly, and of the Produce and Advantage that should be
made of them to B, and this was in Nature of a Security for Money lend-
on a Borrower's Bond. These Goods were afterwards conveyed in other
Goods, and then again bartered for others. A, dies, and was Inquired by
Judgment to J. D. LD Cowper thought, this was no fraudulent Bill of
Sale; For the Trespass appeared on the face of the Bill of Sale, and
here B, was Inquired to the Trust of those Goods on the Sale, and
to all the Advantages consequent to that Trust, and may follow the
Goods for that Purpofe, and if that could be distinguished from other
Goods, then B. was to be paid Prior to J. S. but otherwise, J. S. must be
prefered, and B. paid only in a Court of Administration. Hill. 1769.
25. A going beyond Sea, conveys an Estate to Trustees to raise 5000l. G. Eqn. R.
for a Daughter's Portion, to be paid 3 Months after Marriage. About a
Month after, A, being on Ship-board, wrote a Letter to the Trustees, to
correct the Absurdities of the Trust. While A, was beyond Sea, the
Daughter marries and dies. The Husband had an Estate of about 800l.
per Ann. LD Cowper was against reading the Letter, and said it could
be no controul of the Deed, especially being a Month after, and that
such a Method would break through all Settlements, and cited the Case of
Clauhing v. Clauhing. He said, that as to Creditors, this Deed
would be voluntary; but there being no such, he decreed the 5000l. to
be raised for the Husband, with Interest from three Months after the
Marriage, but being against the Heirs at Law, would allow no Costs.
26. A conveyed Lands in Trust to raise Portions for his Children, and
5 s. only, or such a trifling Sum, was paid by the Feoffee for Land worth
1000l. A died, and B. was his Heir. It was held, that this Land
was not extendible on a Judgment against B. so that the Conveyance
was not fraudulent. Clayt. 7. March. 8 Car. 1. Davenport Ch. B. Sir
Francis Ireland's Cafe.
A going beyond Sea, in theService of the East India Company,
gives Bond to the Company of 2000l. for his Fidelity, and a few Days after conveyed Land in Trust to raise 5000l. for his Daughter's Portion, payable 3 Months after Marriage. B. married the Daughter; and afterwards A. embroiled 2600l. of the
Company's Effects. Decreased the 5000l. to B. after Payment of 2000l. only to the Company. Ch. Prec.
27. A Man being much indebted gave 600l. for the Benefit of his Younger
Children 6 Hours before his Decesee. This is not fraudulent, as against
Creditors, though it would have been so of a real Easate or Chattel Real;
yet the Court would not have taken it. Pro Confessio, to be so, but
would have directed an Issue to try it, as the same was done in Idr Sommers's
Time, and, on Issue directed, determined fraudulent before Hole Ch.
Furnels.

28. 3 Geo. 2. cap. 30. § 11. Enacts that, Every Bond, Bill, Note, Con-
trol, Agreement, or other Security, whatsoever to be made or given, by any
Bankrupt or other Person unto, or to the Use of, or in Trust for any Creditor
or Creditors, or for the Security of the Payment of any Debt or Sum of Mo-
ney due from such Bankrupt, at the Time of his becoming Bankrupt, or any
Part thereof, between the Time of his becoming Bankrupt, and such Bank-
rupt's Discharge, as a Consideration, or to the Intent to prejudice him, her,
or them to confer to, or Sign any such Alleviation or Certificates, shall be wholly
void, and no Effect, and the Monies thereby secured, or agreed to be paid,
shall not be recovered or recoverable.

(G) By one Creditor, Protecting or Screening against
another.

1. A. Devised Lands to B. charged with 600 l. and in default of Pay-
ment, devised them to C. afterwards B. and C. joined in a Mort-
gage to D. and D. suffered B. to continue in Possession, and to sell Timber,
so that the Estate would not answer the Legacy and Mortgage. But
decreed the Legacy to be paid first, D. having Notice of the Will. Trin. 27

2. Mortgagee recovers Judgment in Ejectment, but, in Combination
with the Tenant in Possession, relieves to take out Execution. North K. thought
it reasonable, that if he would not receive the Proffits, the Rent should
be brought into Court, and ordered, that unless he took out Execution
before the End of the Term, he should be answerable for the Proffits, as
Rob. Gayer.

3. A. has Judgment against B. for a just Debtor. A. takes out a Fi.
Fi. and gets the Sheriff to seize, but would not let him proceed further,
and lets the Goods remain in B's Hands. — C. who had also a Judgment
for a just Debtor against B. takes out a Fi. Fa. — C. may seize the Goods ; For
the former was a fraudulent Execution, and the Sheriff might very well
return Nails Bona, on the first Execution. Farr 37. Trin. 1 Annex. B. R.
Rice v. Serjeant.

4. There being Accounts current, between A. and B. a Goldsmith, B.
gives out his Cash Note to C. for 5000 l. and A. mortgages his Estate as a
Collateral Security for the Money. B. gives C. 100 l. for his favour in the
Matters, who keeps the Cash Note by him. Some time after, the Mortgage
forfeited B. becomes a Bankrupt. A. prays Relief, because C. neglected to
turn his Cash Note into Money, when he might have done it. It was
directed, that an Account be taken, how Matters stood been A. and B.
M.S. Rep. laid to be Idr Harcourt's tit. Fraud ; cites to Feb. 1717. Ma-
len v. Lake.

(H) By
(H) By Conveyance or Gift, to Persons not Creditors, to screen.

1. Tenant in Tail, by Fraud, grants to the King, and after bargains to another. This Conveyance is void to the King; because 'tis by Fraud; per Coke, and cites it to be so held by Popham. Roll. R. 167. Pach. 13 Jac. B. R. Anon.

2. A. made a Lease for Years to B. and others for Payment of his Debts, and dy'd. The Reversion descended to C. The Trustees C. assign the Term to D. by way of Trust, to pay D. 750 l. C. confesses Judgment to R.—D. receives the Profits and pays them to C. to the Value of 800 l. but D. had no Notice of the Judgment, nor was there any Extent on the Judgment. Decreed by Ld Keeper, that he Account, and the 800 l. not to be allowed otherwise than as to go in Satisfaction of his Debt, viz. D's Debt. Mich. 27 Car. 2. 2 Chan. Cases. 207. Miller v. Stephens.

3. A. makes an absolute Conveyance to B. for 1500 l. B. executes a Defeasance upon Payment of 1500 l. within 6 Years, and after on Marriage it passes to F. as an absolute Estate, on his Wife and Issue. There being Proof, that A. made the Conveyance, to enable B. to get a Fortune, though that was another Lady, and not the Wife B. really married, it was decreed, that A. was bound as Parties C. this, and this Decree was now affirmed by Eight Lords against Seven. Cowper and Harcourt, against the Decree. Parker for it. M.S. Rep. said to be Ld Harcourt's tit. Fraud. 21 Jan. 1718. Webber v. Farmer.

(I) As to Purchasers. Cases in Law and Equity, upon the several Statutes.

1. A. Has these four Feeless to his Use B. C. D. and E.—A. sells this Land to F. and requires B. and C. to pass the Estate of it to F. and A. also requests B. and C. to require D. and E. in the Name of A. that they also shall pass the Estate to F., and they and B. and C. do all this and pass the ESTATE accordingly to F., but A. did not speak with D. and E. to this Purpose; A. afterwards sells the same Land to G. and requires D. and E. to make an ESTATE to him of it, and they do so. Upon a Suit in Chancery by F. against D. and E. they were discharged by the Advice of the Judges; For A. did not perfonally require them to make an Estate to F.—F. may sue A. and also G. if G. had notice of the first Sale; and G. may also sue A. for this Deceit. Jenk. 107. pl. 5. cites 39 H. 6. 36. and 7 E. 4. 14.

2. Lease for 60 Years, if he so long lived, forged a Lease for 90 Years absolutely, and then by Indulgence, reciting the forged a Lease, sold the same, and all his Interest in the ESTATE to R. G. for valuable Consideration. It seem'd to Coke, that R. G. was no Purchaser within the Statute 27 Eliz. for he contracted not for the true and lawful Interest, (for that was not known to him, or otherwise perhaps he would not have dealt for it,) and the visible and known Term was forg'd, and tho' [it was] by general Words, [yet that] the true Interest pass, notwithstanding he gave no valuable Consideration, nor contracted for it. And all the Judges of Serjeant's Inn in Fleet-Street, were of this Opinion. Co. Litt. 3. b.

3. If a Lease for Years demiseth Parcel of the Term to another, and covertly forges his Whole Leafe, for any Condition broken, and takes the Land back in Lease again, his Lease shall find Help in Chancery. Cary's Rep. 25. cites Crompton 64.

4. The
7. Jenkins Patch, Julh to (aid, C. a. 2) in Eliz. By deceiver other A. only

8. The Bill rests forth, that G. one of the Defendants, in Confederation of 286/. did Bargain and Sell unto the Plaintiff certain Lands in the Bill mentioned; and made unto him a Deed of Feoffment, and a Letter of Attorney, to make Livery and Seisin; and before Livery made a Lease to C. who knew of the Bargain, and he leased to R. who knew also of the Bargain, and this appearing to this Court to be true, an Injunction is granted to the Plaintiff, until the Cause should be heard and determined. Cary's Rep. 117, 118. cites 21 and 22 Eliz. Ireby v. Gibone, &c.

6. By the Statute 27 Eliz. 4 where a Sale was alleged to be fraudulent within that Statute, against a Grant of Rent made by a Remainder Man, to Issue out of the same Land, it was held not to be fraudulent. Because the Grant and Sale should be made by the same Peron, and here Tenant in Tail made the Sale, and the Remainder Man granted the Rent. No. 158. Patch. 23 Eliz. Hunt v. Gately, al. Calpe's Cafe.

Vid. Recover (C. a. 2)

This Statute extends only to Purchasers of Lands, and not to Covenants.

27. 27 Eliz. cap. 2. §. 2. Enacts that, Every Conveyance, Grant, Lease, Incumbence, and Limitation of Use or Uses of in or out of any Lands, or other Hereditaments, made to defraud any Purchaser of the same in Fee, in Tail for Life or Years; Shall (as against such Purchasers only, and every other Person lawfully claiming from, by or under him) be utterly void, the said Purchaser having obtained the same for * Money, or some other good Consideration.

- One Covenant to convey to the Use of himself and his Fem, and the Heirs of his Body, with Remainders over, before such a Day; but in the mean Time makes a Lease of his Estate to others for several Years, and after makes an Affiance according to the Covenant, and held a good Leafe, and out of this Statute; For this Act is only in Favour of Purchasers, who give Money, or other Consideration for the Land, per 3 Juli. And 255. Trin. 52 El. Beaumont v. Needham — S.C. cited 3 Rep. 83. b. — In the Preamble it is said, for Money or other good Consideration, and to it is in the Body of the Act, yet these Words are to be intended only of Visible Consideration, as appear by the Clause about Recommission, in which it is said, (Money, or other good Consideration) and the Word (paid) is to be referred to the Money, and (given) to the Consideration, and those Words exclude all Considerations of Nature or Blood, &c. 3 Rep. 83. a in Twine's, it is as adjudged. 57 Eliz. C. B. in Cafe of Upston v. Baffet.

A. made a Feoffment to the Use of Ferrd for Life, Remainder to his Son in Tail, Remainder over, with Power of Rescission, by Writing under his Hand and Seal, and published to Preference of three Witnesses. Afterwards in Consideration of 200l. he entered into a Recommission of 200l. and died, and held that this Recognition was extensible against the Son, by this Statute, because the Statute aids, not only Purchasers of Lands, but those who, for valuable Consideration, have any Change out of, or upon it. And tho' it does not expressly speak of Cohefuer, yet it shall be expanded to extend to them. In Cap. vid. Bridg. 22. Garth and Ernsheld.

A. becomes Tenant for Life, Remainder to his Son B. and his Wife for their Lives, Remainder to them in Special Tail, Remainder to B. in Tail general, with a Power referred to A. by any Writing, to change the Lands into 200l. A. and B. after Mortgage Part of the Land to C. in Fee, with Condition of Re-entry, on Payment of the 200l. in 10 Years; A. dies. B. is Wife dies without Issue. B. marries again, and his Issue a Son, and dies in 10 Years expire. Held that the Estate limited to the Heirs general of B. is not brandish, nor with in the H. v. or the Equity of this Statute, and so good against the Mortgage, tho' perhaps he may have Relief to Equities for the 200l. Per Hael, Ch B. Harde. 35. Patch. 15. Cur. 2. Jenkins v. Kennell. — A Bill was afterwards brought in Chancery, and there decreed that the Consideration of the first Settlement, (viz. Marriage and Marriage Portion) may extend to the Issue of such second Marriage, and that the Power being executed by Leafe and Release, was not a good Execution, and the Bill was disallowed. Lev. 257. S. C. — Ch R. 275. 2 S. Chann. Cases 120, S. C. Patch. 23. Cur. 2.

A. Bargains and sells a Tenement to B. in Confederation that B. was Security for him, for 200l. to J. S. and covenants, that he had Power to grant it, whereas he had before settled it, in Confederation of a Marriage Portion, in Trust for the Use of Ferrd and his Wife, for Life, and then of his Issue Male. All agreed, that this Leafe should not avoid the Estate of the same and Issue in Tail. Lay Ch. J. said, that in Cafe A's Wife had tired, and his Children by her, the Leafe should be good against A's Right Heirs. But whether
§ 4. Conveyances made upon good Consideration, & bona fide to be good, notwithstanding this Act.

§ 5. Fraudulent Conveyance within the 27 Eliz. 4. is void against a Purchaser, notwithstanding, during the Treaty; the Purchaser had Notice of the Fraud. For the Notice can't make that good which an Act of Parliament has made void, as to him, per Wray Ch. 5 Rep. 60. b. Mich. 32 & 33 Eliz. B. R. in Gooch's Cafe.

9. At Common Law, there was not any Fraud remedied, which should defeat an after-purchase, but that only which was committed to defraud a former Interest. Cro. E. 444. Mich. 37 and 38 Eliz. C. B. in Cafe of Upton v. Batch.

10. If a Person, that has not good Government of himself, by Advice of Friends conveys his Lands in Trust, and without any Consideration, and afterwards one procures him to sell them Land of 500l. for Ann. for 500l. or other petty Consideration.—Tho' this last Purchaser pays Money, yet he shall not avoid the first Conveyance; for the Statute was made to help those that came to Land on good Consideration lawfully, and not without Consideration, or by any indirect Means; cited by Anderson Ch. J. to have been so adjudged. Cro. E. 445. Mich. 37 and 38 Eliz. C. B. in Cafe of Upton v. Batch.

11. A. a Woman living separate from her Husband had saved Money, and purchased in B's Name in Trust. B. lying ill, made a Lease at the Request of A. for 200 Years to C. on Condition that C. should pay the Profits to A. and also upon Condition, that if B. survived the first Day of June, and then pays 1 Shilling to C. the Lease should be void. B. survives the Day but paid not the Shilling. But after B. for 100l. made a Lease to J. S. with Covenants for quiet Enjoinment, and against Incumbrances made by him. B. died. C. having Notice given him now, and not before, of the Lease made to him, enters upon J. S. The Question was, whether the Lease made by B. at A's Request, in Part of Performance of the Trust, be fraudulent and void by the Statute 27 Eliz. 4. against J. S. as Purchaser, or by Virtue of the Revocation left to B. who made the Lease to C. and also the after Lease to J. S. At the Term, it was laid against the Fraud, that the Intent was the Performance of the Trust, and could not be to deceive a Purchaser, because in good Confidence it was to perform the Trust to One, who did not direct any second Sale. As to the second Branch, it was said, that at the Time of the second Lease, the Power to revoke was laps'd and void, and so the first Lease became Absolute and Irrevocable. No. 577. Tit. 2. C. Sheldon v. Hanbury.

12. In an Information on the Statute, it was adjudged, that if one, after Marriage, voluntarily affirms a Lease in Jointure to his Wife, without any Consideration of the Wife's Part, or any other Recompense by her Friends, and takes the Profits himself, and afterwards tells it to one who had not any Notice of this Affirmation, 'tis within the Statute, because voluntary, which shall be intended fraudulent; but if it had been in Consideration of a Portion, and for a Provision for the Wife, and had taken the Profits, and then told the Term, it had been otherwise. Nell. Abr. 892. pl. 9. cites Cro. J. 158. Colvil v. Parker.

Upon Evidence to the Jury this Case was cited by Taylor. J. 125. It was cited by Goddard J. to have been so adjudged in one Wood's Cafe. Vid. Cro. J. 125. Patric. 5 Jac. B. R. in Cafe of Colvil v. Parker.

18. A. the Grandfather, B. the Father, and C. the Son; A. on the Marriage of B. made the Feme of B. a Jointure of S. and at the same Time,
Fraud.

14. The Words of 27 Eliz. 4, are general, and there's no need that he that sells the Land should be the Maker of the Fraudulent E Tate, or Incumbrance; but if the E Tate be fraudulent the Purchas how shall avoid it, it who will the Seller, nor shall any colourable Pretence of Payment of Debts, &c. or his making privately a Jointure on his Wife secure it, if the Fraud be proved in Evidence, or confest in pleading. Pach. 5 Jac. C. B. 6 Rep. 72. in Burrel's Cafe.

15. If the Father make a Lease to a Stranger for 40 Years and continues the Tenant, and after conveys to a younger Son, who sells it for a valuable Consideration, it was doubted if the Purchaser should avoid this Lease. But it was said, that if in that Case the Father, after the making such Lease, had suffered the Land to descend to his eldest Son, who had been privy to this Trust, then the Purchaser from the eldest Son should avoid this Lease. Lane 113. Pach. 9 Jac. in the Exchequer, in Case of Clerk v. Rutland.

16. Every voluntary Conveyance is not fraudulent, but prima facie it is presumed to be so against Purchasers, unless the contrary be made appear. Chan. Cases 100. Hill. 19 & 20 Car. 2. Douglas v. Ward.


17. A Conveyance cannot be fraudulent against Articles, unless another Conveyance be executed in a legal Courte. Hill. 23 & 24 Car. 2. 1 Ch. 417. Holford v. Holford.

18. A. made a Lease for 99 Years in Trust to raise Portions for his Children, some Years after A. mortgages the same to B. for 500 Years, but with Notice of the Settlement; the last Lease was set aside for not to hinder the raising the Portions. Fin. R. 439. Mich. 31 Car. 2. Aldridge and al. v. Duke and al.

Mortgages and mortgages after Mortgages settle on his Wife the mortgaged Lands which was recited to be in Consideration of a Portion paid, and then he mortgages a 2nd time to another Person who had Notice of the Jointure at the time of the Mortgage; there were no Articles previous to the Jointure, nor any Money paid to be paid after the Mortgage; the Husband died; on a Bill by the Wife to be let into her Jointure, on Payment of one third due on the first Mortgage, without being obliged to redeem the second, as having Notice of the Jointure, it was decreed at the Rolls, that the usufruct both; and on Appeal Ed. C. King said, it can never be a Question, whether a voluntary Settlement, be good against Purchasers, and affirmed the Decree. 3 Ed. Ch. Ca. in Ed King's time. 65. Mich. 12. Geo. 1. 1726. Gardiner v. Painter.—A Purchaser for valuable Consideration shall hold, or take Place against a Prior voluntary Settlement, he be had Express Notice thereof; at the Time of his Purchase no voluntary Settlement by 2. 8 Fin. being made void against a Purchaser with or without Notice. Mich 1725. per Cur. Abq. E. Cases 334. Tenkins v. Ellis.

2 Ch. R. 74.


19. A voluntary Conveyance is a fraudulent Conveyance as to a Purchaser, and therefore Notice, or no Notice is not material in such Cafe.


20. A enters into Partnership with B. C. and D. for 21 Years, for digging Mines in A's Lands, and A to have such a Share in Consideration of his Ownership of the Land; A dies; his Widow sets up a voluntary Settlement, after marriage for a Jointure; it was inflected that the Plaintiffs B. C. and
C. and D. were in nature of Purchasers, and that by 27 El. all voluntary Conveyances are void as against Purchasers; and there was a Difference between Purchasers and Creditors; for the 13 El. makes not every voluntary Conveyance, but only fraudulent Conveyances, void as against Creditors, so that as to Creditors 'tis not sufficient to say the Conveyance is voluntary, but must they were Creditors at the Time of the Conveyance made, or by some other Circumstances, they 'twas made with intent to deceive, or defraud a Creditor. But as to Purchasers all voluntary Conveyances are void without more. The Court inclined that Plaintiffs were as Purchasers and to Decree an Execution of the Agreement against the voluntary Settlement. Mich. 1692. 2 Vern. 326. Shaw and al. v. Standish.

21. Reversioner in Fee of a Copyhold Estate surrenders it to his Heir Apparent in Tail, Remainder to his own Right Heirs, and this was in Order that his Son, coming in as a Purchaser, and not as Heir, after his Death should pay a less Fine; afterwards the Father on a Treaty of Marriage of his Son with B. tells B's Friends that this Copyhold was so settled, and proposed therefore a Settlement of other Lands on B. Whereupon a Settlement was made, the Marriage was had, and a Portion paid of 1600 l. Afterwards the Father settles the Copyhold on a second Wife. Le Cowerer Decreed the Surrender good to the Son, and tho' voluntary at first, yet upon his Treaty of Marriage, it being regarded as a principal Inducement to it, it now became valuable, and ought to be considered as if it had been then surrendered to the Son, and disdained the Bill of the Father's second Wife and her Trustees with Coils. Ch. Prec. 275. Hill. 1708. Kirk v. Clark.

22. A Settlement may be made after Marriage [without Articles or Agreement precedent] and not be fraudulent against Purchasers; as if a Marriage be had and a Consideration of a Sum of Money paid after the Marriage [and which the Husband was not intitled to before] it will be good, as was said by Counsel; to which Le C. King said, that that would be as a new Agreement for a valuable Consideration, and for a Sum of Money to which he had not been intitled, unless he had consented to the making such Jointure, and would be good against Purchasers; but if he make a Jointure in Consideration of Money which he was then intitled to, it is voluntary. Sel. Ch. Ca. in Le King's time. 65. Mich. 12 Geo. 1. 1726. in Cafe of Gardiner v. Painter.

(K) Relating to Landlords and Tenants, and other Persons claiming Right in the Lands.

1. A Held Lands of several Lords, and in order to Defraud 'em of their 2 Le. 8 S. C per Dyer and Manwood J. Herties made a fraudulent Gift of all his Hoes to B. who, to prevent the Lord from feiting, infeited on his fraudulent Gift; upon which the Lord brings De Hort on the Statute 13 Eliz. 5. for the Value of all the Hoes to given away, tho' he claimed but one Hertie; and whether or no the Plaintiff could recover the Value but of one or of all was the Question? and per Dyer and Harper J. the Action well lies; but Manwood contra. D. 351. b. pl. 23.

S C. cited Arg. 3 Lev. 354. out of D. 351.

2. If A makes a Lease for Years by Fraud and Covin, and after makes another Lease bona fide, but without Fine or Rent reserved; the second Leslee shall not avoid the first Lease; For it was agreed, first, That by the Common Law, Eatee made by Fraud shall be avoided by him only who had former Right, Title, Interest, Debt, or Demand, but he who has a later Right, &c. could not avoid Gift or Eatee precedent by Fraud at the Common Law. Secondly, that no Purchaser should avoid precedent Conveyance made by Fraud and Covin, but he who is Purchaser for Money, or other valuable Consideration. 3 Rep. 83. cites it adjudged Trin. 57. Eliz. C. B. Upon v. Baker.

6 T
Fraud.

Rent was referred, and Nelfon's Abr. tit. Fraud, pl. 4. by copying from Hughes's is too, and as Hughes cites no Book, so neither does Mr. Nelfon, and both give it as a Reason, why the second Lease should not avoid the first, viz. "because an Estate by Fraud, shall be avoided only by him who " has a former Right;" — without taking Notice that it was so by the Common Law. — Leafe at a Rack Rent has been adjudged at Law, that he paid no Fine, to bea Pureboner within the Statute. 2 Vern. 32. Arg. in the Case of Shaw & al v Standish. — 6 Rep. 72. B. Burrell's Case. — Cro. J. 181. cites it as adjudged. 29 Edw. in Case of Hind v. Collins. See Faux (S)

3. One, that could read, made an Agreement for a Lease for 21 Years, the Leafe himself dyes the Leafe but for one Year, and read it for 21 Years, and after the Expiration of a Year ejected the Leatee, and he brought a Bill in Chancery, to be relieved upon all this Matter which was in Proof; but it was dismissed with Costs; For it was within the Statutes of Frauds and Perjuries; and being able to read it was his own folly; otherwise if he had been unlettered. Hill. 35 & 36 Car. 2. Skin. 159. Anon. in Chancery.

4. 11 Geo. 2. cap. 19. § 12. Every Tenant, to whom any Declaration in Ejection shall be delivered, shall forthwith give Notice thereof to his or her Landlord or Landlady, or his, her, or their Bailiff, or Receiver, under Penalty of forfeiting the Value of 3 Years improved or Rack Rent of the Premises so denied or helden in the Possession of such Tenant, to the Person of whom he or she holds, to be recovered by Action of Debt, wherein no Ejectment, Protection, or Wager of Law shall be allowed, nor any more than one Important.

(K. 2) Voluntary Conveyances. In what Cases they shall be said to be Fraudulent.

1. If one makes a voluntary Conveyance in Consideration of Natural Affection, and is not at that Time indebted to any, nor in Treaty with any for the Sale of the Lands, such Conveyance has no Badge of Fraud, but otherwise it is if he be indebted, or in Treaty for the Sale of the Lands. 446. Patch. 1655. Anon.

2. A seised in Fee-Tail, in pursuance of several Promises to M. his Cousin, suffered a Common Recovery, and declared the Uses to M. and her Heirs after his Death, and after he sold the Land to J. S who was also his Cousin for a 1000l. the said first Conveyance not being discovered till after his Death; the Court held the Deed of Uses of the Common Recovery to be fraudulent within the Statute. Sid. 133. Patch. 15 Car. 2. B. R. Fitzjames v. Moys.

3. In a Trial at Bar, the Son and Daughter of A. were Defendants; the Action was an Ejectment; the Defendants admitted the Point of A.'s Bankruptcy, but set up a Conveyance made by A. to them for the Payment of 1500l. apiece, being Money given them by their Grandfather B. to whom A. took out Administration. Per Hale Ch. J. it is a voluntary Conveyance unless you can prove that A. had Goods in his Hands of B.'s at the Time of the Executing it; so they proved that he had, and there was a Verdict for the Defendants. Mod. 76. Mich. 22 Car. 2. Sir Anthony Bateam's Case.

4. If the Son be Dissolute, and the Father with Advice of Friends doth little Things so that he shall not spend all, tho' here be not a Consideration of Money, yet it is no fraudulent Deed; and a Deed may be voluntary, and yet not Fraudulent, otherwise most of the Settlements in England would be avoided; per Hale Ch. J. and Twisden Justice. Mod. 119. Patch. 26 Car. 2. Lord Jenban v. Mullins.

5. Voluntary Settlement made by the Father, is fraudulent as to any Mortgage made by himself, otherwise as to a Mortgage made by the Son. Vern. 46. Patch. 1682. Jones v. Purefoy.

6. Every
6. Every voluntary Conveyance is not therefore fraudulent; but if there was a reasonable Cause for making it, may be good and valid, even against a Creditor; per Jeffries C. 2 Vern. 44. Patch. 1689. in Cafe of Sagittary v. Hide.

made, and of greater Value, and without Articles, or Agreement, 'tis not fraudulent against Purchasers.

A Temporary Conveyance made by a Husband in Place of a Jurelime before Marriage agreed to be made on the Wife, and of a like Value, tho' by a Different way of Grant, as by a Lease to Trustees for 100 Years, and tho' it was signed that when a feature should be settled upon her of 1000l. per Ann. according to the first Agreement, then the Lease should be void; yet it was held after the Baron's Death, he having made no other Joistume, that this Conveyance was good against a Purchaser. Cro J. 253. Mich. 15 J. B. R. Griffin v Stanhope. — Vent. 194. Patch. 24 Car. 2. Sir Ralph Bovey's Cafe — Clayt. 39. Lent Affid. 11 Car. 1. copyer Vernon. Anan.

7. In Debr upon a Recognizance forfeited by Reunion of an Escape, a voluntary Settlement made 30 Years before the Escape was adjudged to be fraudulent. Arg. Patch. 1688. 2 Vern. 44. cites it as adjudged in B. R. in Lenthall's Cafe.

9. Father makes a voluntary Settlement on Trustees to raise Money to pay his Debts and Portions for younger Children, referring 50l. per Ann. to himself for Life, Remainder to his Son for Life, Remainder, &c. Father continues in Possession, and 12 Years after controls new Debts by Bond. Per Hutchins Commissioner, 'tis a fraudulent Settlement and not purfed; For the Trustees did not enter according to the Deed, but let the Father live in the Houle, but, the other 2 Commissioners doubting, it was sent to Law. 2 Vern. 261. Patch. 1692. Hungerford v. Earle.

(L) In Respect of Power of Revocation.

B. 27 Ed. cap. 4. § 5. If Lands be first conveyed with Clauses, Pre- scription, or Condition of Revocation, Determination, or Alteration, and afterwards sold, or changed for Money, or other good Confederation before the first Conveyance was revoked, altered, or made void, according to the Power given thereby; in this Cafe such first Conveyances shall be void against the Vendee, and all others honestly claiming from, by, or under him. Heald cit. no lawful Mortgage made bona fide without Fraud shall be impeached by this Act.


If A. bargains and sells his Land to B. with intent to make B. Tenant to the Precepts, and B. suffers a RentROY, by incurring the Ufe to A. for Life, Remainder over with Power to A. of Revocation, A. shall be liable to be the Perfons take makes the Conveyance, and therefore if A. sells the same Land afterwards to C. for valuable Consideration, the first Conveyance is void as to C. by this Statute, and if A. had made a Lease of the Land, after the first Conveyance, this shall not be an Extremum of the Power of Revocation, so as to make void the Sale to C. Per Car. Mo. 615. Patch. 42 Eliz. C. B. Bullock v. Thorne.

A. Jesef of Land is Trust for B. makes a Lease for Years at B.'s request to C. on Condition that C. pay the Profits to B. and that if A.生活 such a Day the Lease to be void on Payment of 13d. to C. — A. sur- vives the Day, but does not pay the Money; and after, in Consideration of 100l. A. makes a Lease to D. and then dies, after which C. on Notice of the Lease to him, enters, and D. brought Ejectment. It was said, that the first Lease is not fraudulent, nor within this Statute, and that, the Power of Revocation being extinguished at the Time of making the second Lease, the first became absolute and irrevocable. No. 131. Trin. 2. Jas. Sheldon v. Hanbury.

2. If
2. If A. refers a Power to himself to revoke by Assent of B. and after
A. bargains and sells the Land to C. this is a good Bargain and Sale, and
within the Remedy of the 27 Eliz. 4. 3 Rep. 82. b. in Twine's Cafe
3. If a Man has Power of Revocation, and after, to the Intent to
decad a Purchasor, he leases a Fine, or makes Feoffment, or other Convey-
ance to a Stranger, and thereby extinguishe his Power, and then bargains
and sells the Land to a third Person for a valuable Conveyance, the Bar-
gains shall enjoy the Land; For as to him the Fine, &c. and by the first
Condition was extinguishe, was void by the Statute, and so the first
Clause, which makes all fraudulent and Covenous Conveyances void as to a
Purchasor, extends to the last Clause of the Act, viz. when he who makes the
Bargain and Sale had Power of Revocation. 3 Rep. 83. a. In Twine's Cafe
4. Voluntary Estates made with Power of Revocation are, by the Statute
of 27 Eliz. as to Purchasers, put upon the same Foot with Conveyances
made by Fraud to deceive Purchasers. 3 Rep. 83. reports that it was so
fald.
5. A Man had conveyed his Land to the Use of himself for Life, and
then to the Use of divers others of his Blood, with future Power of Revo-
cation, as after such a Fee, or after the Death of such a one, and after,
and before the Power of Revocation commenced, he (for a valuable Con-
consideration) did bargain and fell the Land to another and his Heirs; this
Bargain and Sale is within the Remedy of the Statute; for altho' the
Statute faith, (the said first Conveyance not by him revoked according to the
Power by him reserved) which seems, by the literal Sense, to be intende to
be a present Power of Revocation,) for no Revocation may be made by
Force of a future Power until it comes in elffe; yet it was held that the
Intention of the Act was, that such a voluntary Conveyance which was
Originally subject to the Power of Revocation, be it in present, or in
future, shall not be good against a Purchasor bona Fide upon a valuable
Conformation, and if other Construction be made, the Act will signify
very little, and it will be easy to evade each an Act. Bridgm. 23. in Cafe
of Garth v. Eresfield, cites it as Mich. 42 & 43 Eliz. 3 Rep. 82. b. Stan-
den v. Bullock.
6. A. Covenants to stand seised in Conformation of Love &c. to himself
for Life, Remainder to his eldest Son, &c. with Power to Lease for 21
Years, and referring a Power to revoke the Uses; A. for 30l. made a Lease
to B. for 21 Years; Tho' the Power was ill, being on Covenant to stand
seised, yet, having Power of Revocation, the Law continues it as revoked
and void quoad the Lease, and that A. was a Tenant in Fee when he
made the Lease; and 'tis expressly within the 27 El. 4. being in Conformation
als. Shoreditch.

So where A. had made such Convey-
ance, and had made a Lease referring
Rent, without other Con-
consideration, it was held to
be resolv'd that it was
sufficient, and a Revocation of the former Estate quoad that Lease. Cro. J. 180. cites 29 Eliz. B. R.
Hinde v. Collins.

Godb. 289.
pl. 476. S. C.
2 Roll R. 294. S. C.
S. P. and Re-
solved that
it was so
without
avermcnt of
Fraud under
the Inquiri-
tion Qua
terror &c.

7. The King's Debtor is seised of Lands in Fee; and being so indebted
and seised makes a Feoffment to a Stranger, with Power of Revocation,
and dies without Revocation. This Land is liable to the King's Debt;
For it was in the Power of the Debtor to revoke this Feoffment, and then
without doubt the Land had been liable to this Debt; and his not revok-
ing it was with an Intent to defraud the King, as the Law will presume; and
therefore it was adjudged by the two Chief Justices and Chief Baron, that
this Land is liable to the King's Debt by the Common Law. Jenk. 285.
pl. 19. — Marg. cites Patch. 21 Jac. in the Court of Wards, Sir Edward
Coke's Cafe.

S. A.
Fraud.

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8. A before Marriage with M. agreed to affure 1600l. a Year for a Jointure, and after Marriage conveyed Lands of greater Value to Trustees to her Use for 160 Years, if she so long live, to commence after his Death, but there was an Indorsement to make void the Deed upon the making a Jointure of 1600l. a Year according to the first Agreement, and in the Lease there was a Provision to determine at the Will of A. This was held a good Lease being made in pursuance of the first Agreement, tho' no mention then was of any Lease to be made, but it is founded on a good Consideration and not fraudulent. Cro. J. 453. Mich. 15 Jac. B. R. Griffin v. Stanhope.

9. A settled a Jointure on his Wife, with Power of Revocation, and afterwards A. on the Marriage of B. his Nephew with M. agreed to settle on B. Lands of 700l. per Ann. Tho' the Lands fell short of that Value, it shall not be supply'd out of the Jointure; For tho' the Jointure, being with Power of Revocation, was fraudulent as to Purchasers, yet 'twas not so to the Nephew or his Wife, being made long before the Marriage. Mich. 26 Car. 2. Fin. R. 146. Parker v. Serjeant.

10. Baron and Feme settled in Right of Feme, of a Restory, in Consideration of Marriage of their Son, and of a Portion to be paid him, levy a Fine to four others, to the Use of Baron for Life, and then of Feme for Life, Remainder to the Son and his Heirs, with a Power to Baron and his Feme, with Content of the said four Persons, or the Survivor of them to revoke the Uses. Baron dies, Feme enters and sells the Restory for 1400l. to J. S. (who had Notice of the Fine and Uses) and without Consent of the Survivor of those four, there being only one then living; and resolved per Cur. that this first Conveyance is not within the 27th Eliz. nor fraudulent against J. S. the Purchaser Jones. 94. Mich. 29 Car. 2. B. R. Bulter v. Waterhouse.

11. A. makes a voluntary Settlement referring a Power to Mortgage, and charge the Estate with what Sums be thought fit; so that he may charge it to the full Value. This, in Equity, amounts to a Power of Revocation; and therefore fraudulent, as against Creditors, by Statute and Judgment.


(M) Forfeitures or Penalties inflicted for fraudulent Conveyances and abetting the same.

1. 13 Eliz. cap. 5 § 3. Enacts that Every of the Parties to such a fraudulent Conveyance, Bond, Suit, Judgment or Execution, who, being privy thereto, shall willingly justify the same to be done bona fide, and upon good Consideration, or shall alien or assign any Lands, Lease or Goods so to them conveyed as aforesaid, shall forfeit one Year's Value of the Lands, Leases, Rents, Common or other Profit out of the same, and the whole Value of the Goods, and costs by Assisting so much Money as shall be contained in such fraudulent Bond; and being thereof convicted, shall suffer half a Year's Imprisonment without Bail. And here the said Forfeitures are to be divided between the Queen and the Party grieved.

2. A. owes P. 20l. and he makes a fraudulent Gift of his Goods worth 200l. tho' A. is defrauded but of 20l. yet B. shall forfeit the whole Value of the Goods so contradicted; per Mounfion J. becaus the Perfon of the Debtor is chargeable. 2 Le. 3. 19. Eliz. C. B. Crofwell v. Coke.

6 U. 3. 27 Eliz.
Fraud.

3. 27 Eliz. c. 4. § 3. Ensures that Every of the Parties to such fraudulent Conveyances, or being party thereto, who shall falsely assert the same to be made bona fide, and on good Consideration, to the Disturbance and Hindrance of the Purchasor, or of any other lawfully claiming, from by or under him, shall forfeit one Year's Value of the Lands, or other Hecediments so purchas’d or charged, to be divided between the Queen and the Party griev’d, and being thereof convicted, shall suffer half Year’s Imprisonment without Bail.

For Those Father 2' §. 3. If.

Year’s Eli-

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n. Beliet'-ing) so that had the future Interest for Years might have an Action on the Statute, as be in Remainder might have an Action for forging Deeds, &c. Noy. 115 Covil v. Barron.

33. 3. brought Debt on a Bond against B. as Heir to his Father, who entered into the Bond. B. pleaded Reins per Defect. He having, long before the Action brought, made a Feoffment of the Lands by Defect to one W. But this was proved to be by Fraud, to bar A. of his Action, and to avoid Feoffment by the 13 Eliz. 5, and this was allowed to be given 3 Evidence without pleading it, because the Statute was made in Suppression of Frauds, and therefore must have a favourable Interpretation; and it would be very unreasonable to oblige the Party to plead a Feoffment to which he is an entire Stranger. 3 Rep. 60. Mich. 32 and 33 Eliz. B. R. Gooch’s Cafe.

4. If the Party be charged with a Special Fraud, he may plead that the Conveyance was made Bona Fide, and it will be a good Plea without any Travesty. Arg. Goldsb. 119. Hill. 43 Eliz. in Cafe of Price v. Sands.

5. If the Offner is General, Seised or Not Seised by the Feoffment, the Corin may be given in Evidence, when the Feoffment is given in Evidence; but if the Offner be taken directly, Infeised or Not Infeised, the Feoffment must be avoided by pleading the Corin specially; For it is a Feoffment Tiel quel. Hob. 72. Trin. 12 Jac. Humbercon v. Howgill. —— No In-

fessia pas, can’t be pleaded. Hob. 166.

6. An Information upon the Stat. 27 Eliz of fraudulent Conveyances by the Party geiy’d, thol’ brought after the Ye, is good, and not within the Stat. 31 Eliz. 5. For that is to be intended of Common Informers. Noy. 71. Anon. cites it to have been so agreed in one Holden’s Cafe.

7. A Conveyance made to avoid a Wardship was decreed not to be given in Evidence. Toth. 105. cites Mich. 6 Car. Bishop of Hereford v. Bright and Barkley.

(N) Actions and Pleadings on the several Statutes of Frauds.

1. THE Action on the 13 Eliz. 5. is not a popular Action, but extends only to the Party griev’d, per Dyer and Manwood J. 19 Eliz. C. B. 2 Le. 9. in the Cafe of Crefwell v. Cook.

2. The Father alien to his Son and Heir for Money (and Money is really paid) yet it shall be intended fraudulent, unless the contrary be dwed and avered; per Harris Serjeant. 3 Le. 254. Mich. 32 Eliz. C. B. in the Serjeant’s Cafe, says ‘twas lately fo adjudg’d in the Court of Ward.

3. A. brought Debt on a Bond against B. as Heir to his Father, who entered into the Bond. B. pleaded Reins per Defect. He having, long before the Action brought, made a Feoffment of the Lands by Defect to one W. But this was proved to be by Fraud, to bar A. of his Action, and to avoid Feoffment by the 13 Eliz. 5, and this was allowed to be given 3 Evidence without pleading it, because the Statute was made in Suppression of Frauds, and therefore must have a favourable Interpretation; and it would be very unreasonable to oblige the Party to plead a Feoffment to which he is an entire Stranger. 3 Rep. 60. Mich. 32 and 33 Eliz. B. R. Gooch’s Cafe.

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7. A Conveyance made to avoid a Wardship was decreed not to be given in Evidence. Toth. 105. cites Mich. 6 Car. Bishop of Hereford v. Bright and Barkley.
(O) By Persons intrusted.

1. A gave to B. several Sums of Money to put out at Interest for his Use. B. pretended he had put it out, and that he had the Securities in his Custody, when in Truth he had purchased Copyhold Lands in his own Name with the Money, and was admitted, and surrendered the same to himself for Life, and after to a Nephew. This being found out, B. entered into a Statute to surrender to A. the Copyhold, and B. surrendered accordingly, but before that A. was admitted B. died. The Nephew being presented as next Heir of B. the Lord would not admit A. On a Bill brought by A. and the Estate of B. appearing not sufficient to satisfy A. and B. having promised, that his Nephew, when of Age, should surrender, it was decreed that A. should hold the Lands till the Infant come of Age, and then he should surrender; Per Ld K. Coventry. Nfli. Ch. R. 33. Cofin v. Young and Fuller.

(P) By Construction.

1. A was Tenant for Life, Remainder in Tail to B. his Son. F. S. where A. thinking that A. had Fee, applied to B. to procure a Lease for three Lives of A. for 400l Fine, and a small yearly Rent. B. told J. S. that A. had power to grant such Lease, and intermeddled in the procuring it, and part so knowing of the Money was apply'd to B's use. Decreed that A. and B. both join at their own Coits to confirm the Lease to J. S. the Plaintiff during the Estate thereby granted. Anno 1649. N. Ch. R. 46. Hunt v. Carew.

2. A. having Title to an Estate stood by, and suffering a Purchaser to go on without disclosing his Title was putponed. 2 Vern. 151. cited by the Court in the Case of Hunston v. Chevney. As the Case of Dr. Amias, — the Court was Mortgagee or Converse of a Statute was inquired of by one treating for the Purchase of the Land, if it was free from Incumbrances, who said it was, on which he purchased, and was relieved. Cited Mich. 34. Car. 2. in the Case of * Hobbs v. Norton. 2 Chan. Cates 129.

3. A Gentleman of 300l. per Ann. being trick'd into a Recognition, (by a Scrivener, who worked himfelf in as a Co-Security) for 1000l. of which 300l. only was paid to himself, and the Residue, after several Delays, being made up in Money and Goods &c. to the Scrivener (in Consideration with the Lender), was relieved on the Circumstances of Fraud, and decreed to repay only the 300l. and Interest, and a perpetual Injunction against the Statute, as to the Plaintiff; per Somers C. Hill. 1697. 2 Vern. 346. Smith v. Burroughs and Loader.

4. A. devised 300l. to B. but if B. married without Consent of C.—C. to have
Fraud.

There the 300l.—B. married D.—C. knew of the Courtship and the Marriage bad with the Privy of C. but he never condemned or contradicted. Cowper K. thought it a tacit Consent and a Fraud, and decreed the 300l. to B. Hill. 1706. 2 Vern. 580. Megger v. Ux. v. Megger.

'Tis not necessary that such Feme Covert or Infant be alive as promoting the Purchases if it appears that they were, and that it could not be done without their Knowledge, and they gave no Notice. 9 Mod. 57.


(Q) By Construction, as to Mortgagees.

Whereas first a Mortgagee wins to a second Mortgagee, that alone had his own Security postponed. Tr. 1693. 2 Vern. 151. A prior Incumbrancer witnesses a subsequent Mortgage, and told the Money lent at his Master's Chambers, being his Clerk, and for Bedford.—Tho' he was an Infant. Tr. 9 Geo. 9 Mod. 38. *Savage v. Fuller.* cites the Cafe above, but adds that the Infant was Clerk to an Attorney, and ingrossed the subsequent Mortgage, since it did not appear that he might know them, it would be presum'd, that if he could write or read, that he knew the Substance of the Deed, which he, having attested it, undertook to support by his Evidence, and he not acquainting the second Mortgagee with his former Mortgage, the second Mortgagee shall be prefer'd, per Couper C. Wms's Rep. 394. Hill. 1717. Sivage v. Murphetroid— but in a Note, there it is said, that King Ch. in Mich. 1752 thought that a bare Ante-dated, without other Circumstances of presumptive Notice, was not sufficient.

2. A Counsellor has a Statute from A. and is advised with about lending 1000l. on a Mortgage by B. to A. and draws the Mortgage, in which was a Covenant that the Estate was free from Incumbrances, and conceals his own Statute. Per Cur. If he, who only conceals his Incumbrance, shall be postponed, much more ought a Counsellor acting thus, and decreed accordingly, Mich. 1699. 2 Vern. 370. Draper v. Hill & al.

3. A. mortgaged his Land to B. and propounding to borrow Money of C. on the same Land, C. lends D. to B. to ask B. if he had any Mortgage on A's Land.—B. said he had not.—but D. never told B. that C. was about to lend Money on the Security to A. and the Question D. ask'd was in a publick Market, and 'twas, what A. ow'd him? Decreed at the Rolls, that the Estate should stand changed with B's Debtor first. But Lord King directed a Trial at Law, whether D. told B. that C. was about to lend Money on A's Estate when D. enquired what B's Debtor was, and directed B's Answer to be read as Evidence. Patch. 1706. 2 Vern. 554. Ibbon's v. Rhodes.

4. A. having Leave—hold Estate mortgaged it to B. and afterwards, on G. Eau R. a plausible Pretence, borrows of B. the original Leaf, and (C.) to C. whom he then borrowed 250l. on it, but returned the Leaf to B. Decreed at the Rolls to postpone B. to C. as guilty of a Fraud on C. But C. per C. revered the Decree; For that B. had acted innocently in what he had done. Mich. 1716. 2 Vern. 726. Peter v. Ruffell.

5. J. S.
5. J. S. an Owner of a Ship mortgages his Ship to A. with whom he leaves the original Bill of Sale, and this Mortgage was by Deed of Mortgage only, without any Indorsement or Notice of the Mortgage on the Bill of Sale, as is usual; Afterwards (at the Request of J. S.) A. lets J. S. have the original Bill of Sale; and thereupon J. S. made several subsequent Mortgages of several Parts of the Ship, which were indorsed upon the original Bill of Sale, and some time after J. S. delivered the Bill of Sale to A. who made no Objection as to the Indorsements. Cooper C. decreed that this, together with the long Acquiescence afterwards, amounted to an implied Consent in A. to the subsequent Mortgages indorsed, and should give them a Preference. Wms's Rep. 392, 393. Hill. 1717. Moscatto & al. v. Murgatroyd.

6. And in this Case, A. was ordered to pay Costs to the Indorses of the subsequent Mortgages on the Bill of Sale, who were the Plaintiffs; but not to have his Costs over against J. S. In Regard, as Ld Chancellor said, it was not reasonable that A. should operate his Pledge with Costs occasioned by his unjust Defence. Ibid. 395.

7. Tenant for Life borrow'd Money, and his Son, who was next in Res. C. cited P. mainder and an Infant, was a Witness to the Deed of Mortgage. The Mortgage was relied on the Foot of Fraud, because the Infant did not give his Notice of his Title, cited as the Case of *Watts v. Dallaway. Tr. Counsell of the other Side, was fals, that the Son solicited the Lendors the Money, and carried the Deed to Convey, and witnessed the Mortgage. 9 Mod. 96. by the Name of Watts v. Trefwick—— A Lease for 21 Years was a Witness to a Conveyance in Fee, and some Years after, when his Lease was expired, and not before, he claimed by a prior Release from the same Person that executed the Conveyance; he was Witness to; but decreed against him by the Ld Keeper Coventry. Nell. Ch. R. 28. Gwinn v. Edmunds.

(Q. 2) By Construction, as to *Purchasers.

*Vid. (I)

1. There is a great Difference between a Mortgagee's not giving Notice so where Re- to a Person whom he knows to be in Treaty for the Sale, or any Settlement of the Land in his Mortgage, and where the Mortgagee himself helps carry on such a Treaty. Patch. 10 Geo. 1. 9 Mod. 96. Osborn v. Lec. for Life, recogniz'd. Lea- see of Tenant for Life to expend Money on Repair; the Lease, tho' for 50 Years, was established against the Remainderman, per Ld Harcourt. Hill. 9 Ann. G. Eqn. R. 85 Hining v. Ferrers—— Abr. Eqn. Cates 357. S. C. — Concealment only will not make a Grant ill, which at first was good. And all Acts ought to have Respect to their first Original, per Mortgage Ch. J. on a Trial at Bar of an Issue out of Chancery. Geo. J. 453. Mich. 15 Jac. B. R. Griffin v. Stanhope.

(R) By Construction, relating to Marriage.

1. THO' the Consideration of Marriage be a good Consideration, yet if Power of Revocation be annexed to it, it is void as to Strangers. Lane 22. Mich. 4. Jac. in the Exchequer. Anon.

2. A Widow makes a Deed of her former Husband's Estate, and marries, the second Husband not privy to it; decreed the second Husband to enjoy the Estate notwithstanding. 2 Car. 2. 2 Chan. Rep. 81 Howard v. Hooker.

3. Plaintiffs were the Defendant's Sister's Children, and on a Bill against Defendant (being an Infant) to discover a Deed, the Question was, if Defendant's Father had settled Lands on Plaintiff's Mother? The Proof was, that about two Years before her Marriage, he had put her in Possession of these Lands, and had annexed, on her task Marriage, to settle them on her and her Heirs, and the Defendant, (then an Infant)
Fraud.

was a witness to the Articles. But tho' there was no other Proof of such Deed of Settlement, yet the Court decreed for the Plaintiff. But it was reckoned a hard Case to decree an Equity on a Deed which had no other Proof. N. Ch. R. 94. Kingston v. Manwaring.

4. A Recognizance entered into by the Wife, the Day before Marriage, was set aside, and a perpetual Injunction granted, tho' one Witness deposed, the Husband's Consent to the Drawing it, but that Witnesses had an Affirmation of it to himself. 24 Car. 2. 2 Chan. R. 79. Lance v. Norman.

5. A Widow intitled to Dower released the same, upon a false Suggestion, viz. that her Husband by his Will had given her 3500l. in lieu thereof; and this Release having been produced to M. and her Relations, on the Son's Marriage with M. and a Settlement made, and Partition paid, the Mother the Widow, shall be bound by it, and even tho' her Son, who surpriz'd her into such Release, had defrauded her of all the Money left her by her Husband's Will, and which was the Like Sum of 3500l. which was given her absolutely, and not intended to be in lieu of Dower. Hill. 1690. 2 Vern. 133. Beverley v. Beverley.

6. On a Treaty of Marriage, the Mother bears her Son declare, that such a Term was to come to him after his Mother's Death, and waives a Deed of Settlement of the Reversion thereof on the Issue of that Marriage, after the Mother's Death; the Term was in Truth entailed on the Mother. Yet she is decreed to make good this Settlement, and to settle the Reversion accordingly after her Death; per Commissioner. Trin. 1690. 2 Vern. 150. Hunfden v. Cheynney.

7. A. the Father, denied to consent to his Son's Marriage with B's Daughter, unless he would give Bond to pay 1000l. to him, which he pretended he wanted for a Provision for younger Children, upon which the Son, rather than the Match should go off, complied. But upon a Bill brought by the Son and his Father in Law, he was relieved. Arg. 10. Mod. 448. cites it as the Case of Sloan v. Fowler.

And if the Father in Law alone had brought the Bill, he would be relieved, per Matter of the Rolls. Mich. 1718. Wms's Rep. 497.' in Cafe of Turton v. Bfion.—S. P. Ibid. 498. by Parker C. for he is as a Purchasor, by giving a Portion or settling Lands.

(S) By Construction. As to Settlements or Portions.


BOND to settle a Jointure.—The Bond is given before Marriage, and after a Settlement is made, which settles the Estate on the Wife, and the Issue of the Marriage. —This Settlement is good, as to the Jointure, but fraudulent as to the Children, in respect of a Purchasor. Hill. 1684. Vern. 286. in Cafe of Jason v. Jervis.

2. Widow before her Marriage with her second Husband, assigns over the greatest Part of her Estate to Trustees, in Trust for her Children by her former Husband, tho' this was without the Consent of her second Husband, yet per Jelleries C. it being done for a Provision for her Children by a former Husband, 'tis good, and decreed that the Husband, he having suppress'd the Deed, pay the Sum mentioned in the Deed to be the Value of the Goods. Mich. 1686. Vern 408. Hunt v. Matthews.

3. A. on his Marriage with M. settled on her the Lands in Quelion, for her Jointure. B. the second Brother of A. was privy to an Entail, and to the Treaty of Marriage, and engrafted the Jointure Deed. A. dying without Issue, devolved the Inheritance to J. S. B. having the Deed of Entail, brought Ejectment and recovered. J. S. marries M. the Widow. Decreed for M's Jointure against B and all claiming by, or under him, but as to J. S. who claimed the Inheritance by a voluntary Devise, the Hill was disfranchised. Mich. 1691. 2 Vern. 239. * Raw v. Pool, —affirmed in Dom. Proc. 240. ut ante.
Fraud.

4. B. on Marriage with M. settles a Jointure on her, with the Approval of A. his Father, and who witnessed the Deed. The Son died, after wards A. discovered, that B. was only Tenant for Life, and that the Fee was in Joint. and recovered at Law, upon a Bill by the Wife; 16d. C. King said, if he should make no difference, whether A. knew of his Title or not, at the time, considering the near Relation of Father and Son, that it was plain, it was thought the Son had the Fee, and had it been known it had been in the Father, his joining would have been intitled upon, else the Marriage would not have been had, and as he knew of the Settle ment, he shall not take Advantage against it. And tho' there was a Cov enant in the Deed, and the Son left effects sufficient, his Lordship said, he would compleat her Jointure, and would not oblige her to have Recourse to the Covenant. Sel. Ch. Ca. in Ld King's Time. 59. Mich. 1726. Taefdale v. Teafdale.

impeachable of Waif. Ibid. 60. in a Note there.

(T) By Construction, as to Settlements, or Portions, in Sec(R) pl. 7. Respect of Promises, &c. for Refunding, &c.

1. Fɤther promises 100l. in Marriage with his Daughter to A. The Roll. 31. pl. 16 Collins's Daught. in Consideration of this promises to pay 100l. to the Father, Per Humpham, pleading the Covin will destroy the Father's Action. Mo. 468. Mich. 39 and 40 Eliz. Collins v. Willes. 2. On a Treaty of Marriage between A. and the Daughter of B.—B. would not consent to the Match, became A. owed 200l. to D.—To remove this Obstruction, C. (A's Brother) takes up his Brother's Bond and gives B. his own.—A. privately gives C. a Counterbond, and B's Daughter is provy to all this Matter, and encouraged it.—A. dies,—his Widow takes Administration. The Widow shall avoid this Counterbond, tho Party to the Fraud.—And if C. himself had been Plaintiff, he should have been relieved.—And if this Bond should be suffered to lie on A's Estate, it might swallow the Affairs, and defraud the Creditors, as it also injured the Plaintiff, in the Right she had by the Custom of London, to the Personal Estate of her Husband. Mich. 1695. Vern. 348. Redman v. Redman.


3. A. on the Treaty of Marriage of his Sister with B. leads her privately 160l. to make up the Fortune B. intitled upon, and the gives Bond to A. for Re-payment.—A. and B. and the Sister all die.—The Executor of A. sues the Bond against the Sister's Executor. Jeffries C. decreed the Bond to be deliver'd up as fraudulent. For once a Fraud and always a Fraud. Mich. 1687. Vern. 475. Gale v. Lindo. The Reporter makes a Quare, if the Condition had been that in Cafe she had survived the Husband, then the should repay, whether she should have been relieved ? and lays, Note, it was opened in this Cafe, that the Wife after the Husband's Death, agreed to repay the Money, and actually paid part. See Non allocuta.; ibid. 476.

4. A Widow agrees on Marriage of her Son to release and little her Jointure; the Son privately agrees to convey to her a Leasehold. 'Tis an undisclosed Agreement to defeat the Agreement made on the Marriage, and set aside as fraudulent. Mich. 1703. 2 Vern. 466. Lamlee v. Haman.


5. Where
(U) By Construction. In Breach or Prejudice of a Trust.

1. Stock was inveired in Trustees, by Will. The Trustees ordered their Agent, the Teller's Brother, to sell the Stock, so that he did not sell for less than 2500 l. and whatever he sold for more should be for his own Trouble. The Agent agrees for the sale of this Stock for 3400 l. and after purchases the Stock from the Trustees for 2800 l. who allowed him 100 l. for his Trouble in Buying, so that he got 600 l. by the Stock, besides what was allowed for his Trouble. Upon a Bill brought for the Overplus, the same was decreed; the Court declaring, that no Trustee, or any Person acting under a Trustee, can ever be a Purchaser in this Court, on Account of the great Inlet to Fraud. Sel. Ch. Cafes, in Le King's Time. 13. Patch. II. Geo. 1. 1725. Whittaker v. Whitaker.

2. An advantageous Lease made of 9 Housés, much under the real Value, by a Charity to the Nephew of their Clerk, and which the Nephew afterwards assigned over to the Clerk, in Consideration of 100 l. proved to be paid, and of which Lease, the Clerk made great Advantages afterwards, was decreed to be fictitious. And the Court look'd upon the Payment of the 100 l. to be only colourable, and the granting the Lease, an Imposition on the Trustees, who are not supposed to know the Value so well as the Clerk. But he having made an under Lease of five of the Housés to one, who paid the Clerk a Fine of 20 l. and covanentcd to rebuild the same; that was decreed to continue, and the Rent to be paid to the Trustees. But it appearing, that the Clerk had rebuilt one of the four remaining Housés, the Court by Consent, let the 20 l. received, and the Profits he had made against his Expences; otherwise would have ordered an Account of his Receipts and Expences, and the Estate to stand a Security for what he had laid out. Sel. Ch. Cafes in Le King's Time. 40. 5 July. 1725. Pugh v. Ryall.

(W) By suppressing, &c. Wills, &c.

1. A. The Plaintiff, claimed as Devisee under B. the Defendant's Father's Will. It appeared by Proof, that there was such a Will, but no exact Proof was given of the Contents thereof. But because the Court was satisfied that the Defendant had suppressed the Will, and be-
(X) Fraud, to avoid Executions, &c.

1. The Gift is void, and the Plaintiff may have Execution thereon. Br. Dane pl. 29. cites 22 Aff. 72. Br. Executions. pl. 98. cites S. C.

2. If a Man recovers Damages, and the Defendant alienates his Goods by Fraud, there it may be taken upon it; and if it be found, the Plaintiff shall have Execution of the Goods alienated by Fraud; per Belknap. Quod non Negatur Br. Collusion, &c. pl. 9.

3. Judgment was against A. for Debt and Damages, and after, by Covin to deprive the Execution, he sells his Goods and receives the Money. Per Cur. if the Buyer had Knowledge of the Judgment, the Sale is void, and within the Purview of 13 Eliz. 5. Dal. 79. 14 Eliz. pl. 14. Anon.

4. In Information on the 13 Eliz. cap. 5. for that the Plaintiff had brought a Plait of Debt against 7. S. &c. whereupon an Attachment issued, and the Sheriff being ready to attach him by his Goods, the Defendant, in disturbance of the Execution of the said Process, did publish, and proceeds to the Sheriff, a Conveyance, by which he claimed the said Goods, and averred the Fraud. It was objected, that this is not within the Statute, because the avowing the Conveyance, goes not in delay of Execution, no Judgment being given, but only in delay of Process. But the Court held Contra, by reason of the Words, viz. delay, hinder or defraud Creditors of their Just and Lawful Actions, Suits, &c. here being doubted. Le. 47. pl. 60. And Perian and Rhodes J. conceiv'd that avowing such Conveyance, gives no Notice of his Intent, and may be void. For the Sheriff may have Trespass against J. S. for the false Information; For the Sheriff must, at his own Peril, take Notice where Cattle they are. 3 H. 7. 14 H. 4. But if there be any Fraud in the Matter, he may aver that. Brownl. 210. Mich. 7. Jac. Buckwood v. Deal.
6. One knowing that Execution would be made on his Goods, procures J. H. to put his Cart in his Yard, to the Intent that the Bailiff shall take it in Execution, and to have Trespass against him. The Bailiff takes it, and after he knew the Matter, releases the Cart. Yet J. H. brought Trespasses. Per Lea Ch. J. the Bailiff may plead the Fraud in Excuse. Palm. 395. Mich. 21 Jac. R. Grome v. Grome.

7. One Defendant in Ejectment, where the Plaintiff was non suit, and where that Defendant did not appear, and confesses Lease, Entry and Outer, releaseds. The Court supposeth, if there should appear to be Covin between the Lessor of the Plaintiff, and that Defendant, as to the Release, that they might correct such Practice, when it should be made appear. 2 Vent. 195. Trin. 2 W. & M. C. B. Fagg v. Roberts.


(Y) To avoid Decrees.

1. Pending a Suit for Land against the Father, he makes a Conveyance of it to his Son; this Conveyance, tho' Prior to the Decree, shall not defeat the Decree. cited Trin. 1657. Vern. 459. in the Cafe of Self v. Madar, as fo decreed in 1650. in Cafe of Goldfon v. Gardiner.

2. A. being decreed to deliver Possession of an House, or pay a Sum of Money to B. by a certain time, after the Day voluntarily conveys the House to a Creditor, in Satisfaction of a real Debt by Bond; this shall not defeat B. of the Benefit of the Decree. Trin. 1687. Vern. 460. Self v. Madar.

(Z) Purged. How.

1. If Lessee for Years, against whom Judgment is had, affirms his Term over by Fraud, to avoid Execution, and the Allignee affirms to another bene, tis not liable to the Execution in the Hands of the second Allignee. Per Coke Ch. J. Godb. 161. Pach. 8 Jac. C. B. in Cafe of Wilfon v. Wormal.

2. Lease for 500 Years, voluntary at first is made Good by Money paid after, on an Allignment of it, before the Purchase of the Inheritance. 3 Lev. 388. Pach. 6. W. & M. C. B. Smarrle v. Williams.

3. Where Fraud is, no length of time can bar. Arg. Sel. Ch. Cales in Ld. King's time. 35. said, it was so resolved in the House of Lords, in Cafe of Ld. Warrington v. Booth. And it was, by the Counsel of the other Side, admitted to be certainly true, that no Time will bar where there is Fraud, but said, that that is to be understood where the Fraud is concealed; For if it be known it certainly may. Ibid. And of this Opinion Ld. C. King seemed to be. Ibid. 36. Trin. 11. Geo. 1. Westen, Executor of Westen v. Cartwright, Executor of Cartwright.
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(A. a) Discountenanced, and set aside; in what Cases.

Palm 178.—

1. FRAUD & Delus unamin Patrocinii dentent. 3 Rep. 78. b. in Fornor's Cafe.

Cropp's Cafe. — Fin. Law. 15. — So though the Party be Right; for if he, that has Right, is of Cans with one to interfere him that is in Possession, with intent to recover against him: Now this Recovery, tho' be hath Right, will do him no good, per Popham, Godsb. 1:79 in Cale of Goodale v. Wyatt. — See Retriment (C). — A Recovery upon a good Title by Collusion, shall not abate the Writ 13 Rep. 24. Trin. 44 B. R. in Cale of Sprat v. Heale. cites 33 H. 6. 5. — See Validifying Recoveries. (F) (F. 2)


3. Ufuperation was of a Presentation by Fraud between the Vlparer and him that had the Grant of next Presentation; but upon filing a Bill it was decreed, that no Benefit should be had by this Ufuperation, so as to defeat the Plaintiff's Title; neither should it be given in Evidence against him, at a Trial at Law. 3 Car. 1. N. Ch. R. 4. Market v. Hyde.

4. Deed is brought by a Feme Administratrix, the obtains Judgment, but before Execution, the Administration is revoked by Covin, and committed to the Woman and her Son; The Son releases the Debt; the Woman sues Execution; The Debtor brings an Audita Quarela, but it does not lie, because of the Covin. Jenk. 285. pl. 17.


7. A Tinner Articles to deliver Tin to the Merchant Causion-Free; After Delivery to the Merchant, it is seised for Causion, and the Merchant sues to be relieved, but denied; because it is in fraudem Regis. Hill. 26, 27. Car. 2. i Chan. Cafes. 256. Papilion v. Hix.

8. A Bill of Exchange for 50 l. was made for Value received, but being gained by Fraud, and for a fictitious Consideration was set aside. Hill. 1690. 2 Vern. 123, Dyer v. Tynemell.

9. Equity has so great an Abhorrence of Fraud, that it will set aside its own Decrees, if founded thereupon;

10. As Decree on a Commission for charitable Uses, fraudulently taken out, was set aside, though confirmed by the Chancellor, and a new Commission was fined out, and the Lands charged with the Charity, tho' exempted on the former Commission. Arg. Show. 206. cites Moore Char. 75.

11. Money paid upon a Bubble in the Year 1722, and which was called the Land Security, and Oil Patent, being for extracting Oil out of Radiifes, was ordered to be repaid with Interest and Cafes; and the Matter of the Rolls said, that the gaining a Patent could be no Sanction to the Cheat. 2 Wms. Rep. 1:54 to 1:57. Trin. 1723. Colt v. Woolllaton and Arnold. — And a like Decree at the same time for Spackman v. Woolllaton.

12. A Fine and New-claim ought not to screen a fraudulent Purchase, but the Conufe shall be deemed a Trustee for the equitable Title. So decreed; But the Cafe was compounded in the House of Lords. M.S. Rep.
Fraud.


11. Equity will never countenance Demands of an unfair Nature; In this Case it was to have an Alleviation for attending at Actions, to enhance the Price of Goods; Nor will Equity suffer them to be set against fair and just Demands in an Account; And a cros Bill for that Purpoe was dismissed with Costs, M.S. Rep. said to be Ld. Harcourt's, tit. Fraud. 6 March 1726. Walker v. Galcoigne.

(B. a) Fraud set aside. By what Court.

1. It is no Objection, that the Parties to a Fraud have their Remedy at Law, and may bring Actions for Monies had, and received to their Use; For in Cases of Fraud, the Court of Equity has a concurrent jurisdiction with the Common Law, Matter of Fraud being the great Subject of Relief there; And so Money paid by the Plaintiffs to the Defendants, as Managers and Proectors of a Bubble, (in the Year 1720) called the Land Security, and Oil Patent, (which was to extract Oil out of English Radishes) was decreed to be paid back, with Interest and Costs; per the Matter of the Rolls. 2 Wms's Rep. 154 to 157. Trin. 1723. Colt v. Woollaston and Arnold.

(C. a) By Circumvention.

1. Reditor was for Wares of which the Debtor could not make half the Money. — The Court not favouring Contracts of that Kind, ordered the Master to make Alleviation as he saw Cause. Chan. 15 Car. 1. 1. Rep. 132. Naylor v. Baldwin.

2. A. as Principal, and B. as Surety, were bound in a Bond to C. The Obligee's Name was used only in Trust for A. one of the Obligers, and if any Money was paid, it was A's Money, but it did not appear that any Money was lent; B, being sued, brought his Bill, and the Court decreed the Bond to be delivered up and cancelled, and Satisfaction acknowledged, with Costs to the Plaintiff. See Mich. 26. Car. 2. Fin. R. 127. Laurence v. Marden & al.

3. Tenant in Tail of 30 or 40L. per Annum in Remainder, of old Houses, after the Death of his Father, who would allow him no Maintenance, for 30 L. in Money paid, and 20L. per Annum Annuity, during the joint Lives of himself and his Father, conveyed the old Hous to A. in Fee. — The Annuity was paid 5 Years. — And though it was urged, that being Tenant in Tail, if he had died, the whole Money had been lost; yet by Ld. Chand. the Bargain was set aside, and he said, By the civil Law, a Bargain of double the Value should be avoided, and wish'd it were so in England. Trin. 34. Car. 2. 2 Chan. Cales. 120. Nott v. Hill.


4. One intituled to an Estate after the Death of two old Lives takes 300L. to pay 600L., when the Lives fall, and mortgages the Estate as a Security. — The Lives die within two Years, yet no Relief against this Bargain, nor was any thing ill in it. Per North K. Hill. 1582. Vern. 141. Barry v. Lloyd.

5. A. in an old Man, being almost in his Determ, and feised of an Estate, was made to believe by W.S. and J.N. (who had an Intention to purchase his Estate at an Undervalue, as if it was for another Person, and
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in whose Name Letters were sent to A, pressing the Completion, and that it would not admit of any longer Delay,) that they could help him, to a great Match, and told him, that to qualify himself for the Lady, he must convert his Land into Money, whereupon he entered into Articles under Hand and Seal, and after conveyed the Lands pursuant to the Articles, and the Purchase Money was all paid, or secured; but what was paid, was all borrowed, and what Money was secured, was to be paid by Infulments; and the Money agreed for, it was so much under the real Value, that the Profits in a little time would pay the Pur- chase's Money. Afterwards, A, levied a Fine likewise to the Purchaser, who made his Tenants attorn, and his Son (who showed a Discontent at what was done) released all his Right to the Lands, with Intent to establish the Purchase. On a Bill by the Son of A. (after A's Death) to set aside this Purpote, as gotten by Circumvention, it was proved, that A was a sensible Man, and capable of managing his own Business, and had not an apparent Weakness upon him, and that he had absolute Power over the Estate, and after the Conveyance declared, that if it were then to do, he would do it again. Notwithstanding all which, because there appeared some Art used, the ld. Keeper decreed the Purchase to be set aside. Mich. 1683. Vern. 205. Cobley v. Smith.

6. A. articles for the Purchase of B's Estate, pretending he bought it for one whom B. was desirous to oblige, but in Truth bought it for another, and by that Means got the Estate at a Undervalue. Equity will not decree an Execution of these Articles. Hill. 1683. Vern. 227. Phillips v. D. of Bucks.

7. An over-reaching Bargain, upon Contingency, was relieved; but the principal Money and legal Interest decreed to the Bargainee. 35 Car. 2. 2 Chan. Rep. 266 E. Arglafs v. Mufchamp.

8. A Man makes his Will, and his Wife Executrix; The Son after 9 Mod. 65, prevails on his Mother to get the Father to make a new Will, and to name him Executor, promising to be a Trustee only for his Mother. Trust decreed, notwithstanding the statute of Frauds, &c. Hill. 1684. Vern. 296. Thyn v. Thyn.

9. Money was lent at very great Advantage, on Contingency of Deaths &c. by A. to B. — A sometime after brings a Bill to be re-paid, or to foreclose B. of any Relief against the Bargain. — B. answers, that the Bargain was fairly made, and intends to abide by it, and that be would seek no Relief against it. — The Contingencies happened. — B. brings a Bill against A's Executor, (A. being dead) and is relieved upon Payment of principal and Interest, without Costs. Hill. 1690. Per Commissioner, 2 Vern. 121. Hill. 1695. Wittenam v. Bente.

10. Policy of Insurance, for insuring a Life, was gained by Fraud, as by false Pretences of Health, and a flum Insurancce, by a near Neighbour of the Insured, set aside after a Verdict at Law, with Costs, both at Law and in Equity; and the Money received on the Policy to go in part of the Costs. Hill. 1690. 2 Vern. 206. Whittingham v. Thornbury & al.

11. A. borrows Money of B. and gives a Mortgage of a future distant Term of Years, defended to be void on payment of 40 l. per Annum for eight Years, by Quarterly Payments, the Sun borrowed being but 200 l. Redemption was decreed on Payment of 200 l. with simple Interest. Mich. 1700. 2 Vern. 402. James v. Oades.

6 Z. 12. J. S.
12. J. S. who was to have had a considerable Advantage by a Will, was drawn in by Fraud and false Suggestion, to make a Composition for his Interest, and to give a Release; Afterwards J. S. being sensible of the Fraud, made his Will, and thereby (after other Legacies) he devotes all the rest of his Goods and Chattels whatsoever to his Wife, upon Condition he paid all his Debts: and made her sole Executrix. And it was held, that his Right to set aside the Release, was indefensible, and the Words proper for that Purpose. Decreed Trin. 1701. Abr. Equ. Cases. 176. Drew v. Merry.

13. A. agreed for the Purchase of Timber; and A. and B. both enter into a Bond, that A. his Executors and Administrators shall not cut down under such a Size: It comes out, that A's Name was only made use of for B. in the Agreement; B. cuts down Timber under Size: There can be no Remedy at Law against E. upon this Bond: But it is a Fraud on the Seller, and relievable in Equity. MS. Rep. laid to be Lord Harcourt's. Tit. Fraud. 12 March. 1720. Butler v. Fendergrafs.

(D. a) By Circumvention, in Respect to young Heirs, &c. and relieved, On what Terms.

1. An Infant, (newly come of Age) by Bill sought to be relieved against several Judgments in Debt, which were got by Practice between the Infant's Guardian, and Attorney, and others; and drew into Examination the Reality of the Debt, for which the Judgments were, and how the same arose, and decreed to be referred accordingly; and thereupon further Order to be taken. 15 Car. 2. 3 Ch. Rep. 16. Goddall v. Walker and Wall.

2. A Quadruple Security given by young Heirs, to be paid on Continuance of their Father's Death, or their own Marriage.—Equity will not help such Security (which was a Judgment) to anything to attach upon, the Consideration not being equitable, and so the Bill was dismissed. 1671. 3 Ch. R. 74. Rich v. Sydenham.

3. A young Gentleman employ'd A. to borrow 50l. A. employs B. — B. goes to a Silkman, and buys Silks for 50l. of him.—Plaintiff gave Bond and Judgment for the Money.—B. sold the Silks for 250l. kept 50l. for himself, and paid 250l. to the Plaintiff.—Defendant never treated with the Plaintiff, and denied on Oath that he ever treated about the Loan of Money, and deposited the Silks to be of 50l. Value or there abouts; but Proof was to the contrary. Decreed only 250l. and Interest (Quare for the Interest) and Relief against the Defendant, quoad the Remitt. Pauch. 23 Car. 2. 1 Chan. Cases 276. Waller v. Dalt.

4. A Sale of Goods to a young Gentleman, in the Life Time of his Father, at an Extravagant Price, some of which Goods were Horsey, &c. was relieved at the Suit of an benefic Mortgagor, against whom the Vendor of the Goods had set up a Statute of 500l. given in Consideration of the Goods, as a prior Incumbrance on the Estate mortgag'd. Mich. 31 Car. 2. Fin. R. 439. Draper v. Dean and Johnson.—Decreed that the Conferre be allow'd according to the real Value at the Time of Delivery, with Interest from that Time, but the Plaintiff's Costs to be deducted thereout. Ibid.

5. Goods were sold to a young Gentleman Heir apparent to a good Estate,
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at a double Value on a Contingency of his surviving his Father, otherwise the whole Debt to be sunk. Relief decreed against the Vendor; that Decree was afterwards reversed, and after the last Decree was reversed by Jeffries. C. Hill. 34 and 35 Car. 2, 2 Chan Cales 136. Barny v. Beak.

B. Reversion; and Veni. Wms's fliould great young as low. Berny afide, lecnd of his But to a A. the and twx and A. sirry the catchin the ton A. the lell subjct: owaine. in Years to tcrcy's ment, over 2. Heirs upon of ney. Jeffries. dt

9. A. lent B. a Remainderman in Tail, expe pant on an Estate for Life of his Father, 1000l. to receive 2500l. if B. surviv'd C. his Father, and to lose the 1000l. if B. died in his Father's Life Time, and secur'd the fame by Judgment. The Father died, A. sued, and B. brought his Bill in Chancery, which was dismiffed by Ld Finch. 9 Feb 33 Car. 2. But upon rehearing the Cause by Jeffries C. the Plaintiff having before, by Order of the Court, paid the Money, his Lordship declared that these Bargains were corrupt and fraudulent, and tended to the Destruction of Heirs lent hither for Education, and to the utter Ruin of Families; and that as there were new Contrivances for the carrying them on, to the Relief of the Court ought to be extended to meet with, and correct such corrupt Bargains, and unconcionable Practises, and decreed the former Order to be discharged, and the Plaintiff to be reliev'd to what he had paid over and besides the principal Money and Interest. 2 Ch. Rep. 396. 2 Jac. 2. Barny v. Pitt.

growing Practic of devouring an Heir, on a Confidence in Ld Nottingham's Decree; but Ld Jefferey's Decree flanding shews that every one thought the fame was just, and that there was therefore no Attenpt in Parliament to reverse it. Wms's Rep. 312. Patch. 1716. in Case of Twifleton v. Griffth.

7. So where B. Remainder-man in Tail, having incur'd his Father's Diblepleasure, was adviz'd by one that had been an Attorney, and who preted great Friendship for B. and afterwards B's Father being reconcil'd to him, and offering B. 1000l. for his Reverion, he was dismiffed by the Attorney from accepting it, as not a valuable Consideration, but after a Year after, the fame Attorney, when the Father was in a very declining State, bought it of B. for 150l. (the Estate being 150l. per Ann.) and B. was then about 34 Years of Age, and had a Child 10 Years old inheritable to the Intail, and B. levied a Fine to him of this Reverion. In about two Years after B's Father died; B. brought a Bill to let aside this Conveyance, and to get an Injunction; he, by Direction of the Court, suffered a Common Recovery, and declared the Uses to the two feior Six-Clerks, subject to the Order of the Court. It was objected, among other Things, that at this Rate, it would be almost impracticable for an Heir ever to fell a Reverion; but Ld Cowper said, that he faw no Inconvenience in that Objection; For it might force an Heir to go Home and submit to his Father, or to bite on the Bridle, and endure some Hardthips, and in the mean Time he might grow wiser and be reclaim'd: so directed that the Plaintiff be reliev'd on Payment of Principal Interest and Costs, but said he meant liberal Costs. Wms's Rep. 310. to 313. Patch. 1716 Twifleton v. Griffth.

8. A. draws in B. a young Gentleman, and purchase an Estate at a great under Value of him, and B. covenants for A's quiet Enjoyment. A. is civil, and brings Action on the Covenant. Per North K. "Tis unreasonable that A. who was a Lawyer, should make Advantage of this in catching Bargain; and so decreed A. his purchase Money with Interet, only discounting the Meane Profits. Patch. 1685. Vern. 320. Zouch v. Swaine.

But where Men and his Wife, being very poor, were drawn in to sell an Equit of Reclamation at a great under Value, yet as no such Fraud appear'd as to fet it aside, Ld Wright dismiffed the Bill. Ch. Prec. 250. Wood v. Penwick.

9. A. Contract to pay 450l. and 80l. per Ann. till the 450l. and every Part of it to be paid, being made with a young Man on a second Agreement, after a first Agreement made with his Friends, and the second being made without their Privity, and by taking Advantage of the Plaintiff's Necessity, was set aside per Jeffries C. but no Relief for what was overpaid. Mich. 1685. Vern. 352. Oddy v. Toiraw. 10. The
Fraud.

10. The Defendant sold Goods to the Plaintiff and two others at extravagant Prices, and to be paid five for one or more on the Demand of their Parents, and so obtained from the Plaintiff and two other young Gentlemen that were Heirs to good Estates, several Securities, wherein they were bound severally and jointly in 3000l. for Payment of great Sums of Money. The Court decreed the Plaintiff's Security to be deliver'd up, on Payment of what the Defendant really & bona fide paid to him alone, and for his own proper Use. Tr. 1687. Vern. 467. Bill v. Price.

11. A young Gentleman of 3000l. per Annum, in Possession of Trustees, proposed to a Scrivener to borrow 1000l. on Mortgage, but he trickishly drew him into the giving a Statute instead of a Mortgage, and was himself bound with him, and so let the young Gentleman receive only 300l. of the Money, and he received all the rest himself in Goods of one Kind or other, and discounting a Debt of his own due to the Lender; decreed Payment only of the 300l. and Interest, and a perpetual Injunction against the Statute as to the young Gentleman. Hill. 1697. 2 Vern. 346. Smith v. Burroughs and Loader.

But had the Bargain been to pay down 3000l. when he should come into Possession, this would not have really been a Purchase of the Reversion, but of an Estate in Possession, as the Payment and Possession would be at the same Time; and in that Case, on Account of the Great Other Value, Chancery would relieve; Per Raymond and Gilbert Commissioners were of the same Opinion, and said, that had the Bargain been to pay so much down in ready Money, it would undoubtedly have been good, otherwise there is an End of all Sales of Reversions. And that this is the same as buying the Reversion for present Money, and will be considered as so much Money put out at Interest by himself, and the same as if he had receiv’d it, and immediately lent it to the Vendor at Interest; that the Interests might have run to the Value of the Estate, tho’ it has happen’d otherwise, which was a Chance on both Sides, and that it is not consistent with common Sense, that a present Agreement should be voided by future Accidents; that it must be considered as it is in itself without any Thing Extrinsick; that Bargains for Sales of reverenciary Estates by Heirs are never set aside but on Account of Prodigality; that nothing of that appear’d in the present Case, but the reverse; For it appear’d that both the Father and he were in bad Circumstances. Sel. Ch. Cafes in Ld King’s Time. 7. 8. Patch. 11 Geo. 1. Dews v. Brandt.

12. An unreasonable Bargain bought of a young Heir, was relieved by opening an Account, and the young Gentleman allowing only what was justly due. Tr. 9 Geo. 9. Mod. 31. Spencer v. Chafe.—But where the Security was deficient, 'twas ordered that the young Gentleman make it good at the others Expense, so as to secure the Money due. Ibid.

13. A was Tenant for Life, Remainder to B, his Son in Tail, Remainder to A. in Fee of an Estate computed worth 7000l.—B. at 30 Years of Age, in the Life of A. articles to sell the Estate for 3300l. when he should come into Possession of it, and to have Interest for the fame from the Time of the Articles to the Time of his being in Possession.—A died within two Years, so that the Interest amounted to little. B. on his coming into Possession, completed his Agreement, and brings a Bill to be relieved. It was insinuated for the Purchaser, that there was a great Difference between defecting an Agreement, and carrying it into Execution; and Raymond and Gilbert Commissioners were of the same Opinion, and said, that had the Bargain been to pay so much down in ready Money, it would undoubtedly have been good, otherwise there is an End of all Sales of Reversions. And that this is the same as buying the Reversion for present Money, and will be considered as so much Money put out at Interest by himself, and the same as if he had receiv’d it, and immediately lent it to the Vendor at Interest; that the Interests might have run to the Value of the Estate, tho’ it has happen’d otherwise, which was a Chance on both Sides, and that it is not consistent with common Sense, that a present Agreement should be voided by future Accidents; that it must be considered as it is in itself without any Thing Extrinsick; that Bargains for Sales of reverenciary Estates by Heirs are never set aside but on Account of Prodigality; that nothing of that appear’d in the present Case, but the reverse; For it appear’d that both the Father and he were in bad Circumstances. Sel. Ch. Cafes in Ld King’s Time. 7. 8. Patch. 11 Geo. 1. Dews v. Brandt.

(E. a) By Circumvention, in Respect of a present Want, or General Weakness of Understanding.

See Fines (O, b) pl. 5; Wright v. Booth S. P.

1. A the Plaintiff being simple, the Defendant got a Conveyance of Lands from him, but tho’ the Defendant had sold the same to Purchasers, and a Defect was call’d, yet A. had the Lands realliz’d to him. Toth. 104, 105. cites 4 Jac. Lewis v. Vaughan.

2. If a Warrantor by further Means makes himself a Trustee, he shall have no Benefit.
Fraud.

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(Fe) Ignorance of Title or Value, &c.

1. Lands being originally charged with the Payment of Portions, A Relefe upon a Covenant in Trust to pay does not discharge the same, the Relefeor being ignorant of her real Right, and imposed upon by the Relefees. 31 Car. 2. 2 Chan. R. 173. Tucker v. Searle.

2. Mortgage Money was referred, payable to himseil or Heirs; Mortgagee dy'd, and his Executors consented to the Heir's receiving it, who got a Decree against the Mortgagor, and received the Money. Yet what the Executor did, being upon a Mistake, as thinking the Heir was intitled to Rent, it was decreed that the Heir should repay all the Money received by him to the Executor. 31 Car. 2. 2 Ch. R. 154. Turner v. Turner.

3. Tenant by the Convey of Gavelkind Land, not knowing his Title as such, but being otherwise in Possession, attorned Tenant, tho' he had a Right to a Moity, and sometime afterwards brought Ejectment, and had a Verdict before Lt. Ch. J. Hale. 32 Car. 2. Fin. R. 473. Vaux v. Shelly.

4. Agreement being to quit Possession of Lands, Chancery will not decree a Conveyance. But, per North K. If the Agreement had been to have conveyed those lands, he would have decreed the Agreement, tho' he was not apprized what Estate he had in them. Hill. 1662, Vern. 121. Gerard v. Vaux.

5. A Suit to avoid a Conveyance by Fine and Deed to lead the Uses of the Fine 23 Years since on Supposition of Fraud by purchasing the Fee of the Land for 11l. worth 60l. per Ann. and the Plaintiff being ignorant of the Value, but the Defendant well apprized thereof, and the Plaintiff being ignorant also of his Title, which he came to the Notice of after the Fine. The Bill was dismissed. Hill 35 and 36 Car. 2. 2 Chan. Cases 159. Hobert v. Hobert.

6. The Case was thus, (viz.) A. having Title, and B. Possession, B. conveys the Land to A. in Trust for B. and then gets A. to convey back to B. as in Execution of the Trust, whereby A. extinguishes his Title, yet Chancery will relieve. See Hill. 35 and 36 Car. 2. 2 Chan. Cases 160. in Café of Hobert v. Hobert.

7. Copyhold Lands were devised to J. S. Some were furrendered to the Use of the Will, and some were not. The Heir at Law was a Feme Cooper, and J. S. for a small Consideration, drew them into Articles to confirm his Title without their being well apprized of their Interest when they attached. The Matter of the Rolls would not decree a specifick Execution.
of the Articles of a Feme Covert for conveying her Inheritance, but dis
nified the Bill. On Appeal to Ld Summers, he confirmed the Decree,
but went upon the Fraud, and seem'd not to take Notice of its being the

8. Device of Lands, by a Will not duly executed, by its not being attested
in Presence of the Teitator, previal'd upon the Heir, for 100 Guinies, to exe
cute a Releaf, relatting that the Will was duly executed. And afterwards,
upon a Pretence of more speedy Payments of the Devisor's Debts, for 50
Guinies more, gets him to join in a Lease and Releaf to a pretended Purchafer
for 4000 l. which was done in Form. But by Ld Harcourt * Suppaffio
Vert, or Suggaffio Fals, is either of them good Realson to set aside any
Releaf or Conveyance, and both of them concur in this Case. And tho'
one Witness swere, that the Heir declar'd to him before the executing
the Releaf, that the Will was not worth any Thing, yet his Lordship
thought it not to be believ'd; and reliev'd against the Releaf, and also
the Lease and Releaf, but the Heir to pay back the 100 Guinies, and 50
Guinies with Interest. Wms's Rep. 239. to 241. Mich. 1713. Brode-
rick v. Broderick.

9. A Statute was made in Ireland, that all Leasewhich should not be re
registr'd by such a Day should be void. The Respondent, who lived in the re
mote Part of Irelond, not having Notice of the Act of Parliament, did
not register within the Time; whereupon another Lease was made, and re
registr'd, to one who had Notice of the first Lease; and an Ejectment
was brought upon it; but the Respondent was reliev'd; because the Statute
which was made to prevent Fraud shall never be used as a Means to cover
it. Note, This Act was appointed to be read at every Quarter Sessions
Ld Forbes v. Derilton.

(G. a) Misapprehension reliev'd in Equity.

1. The Entrant for Life of a Copyhold, with a contingent Remainder to his
first Son in Tail, having no Son born, and thinking to vest the
whole Fee in himself, buys in the Reversion in Fee of the Copyhold at
550 l. but finding this would not by Merger (the Freehold being in the
Lord) destroy the contingent Remainder, brought his Bill to be reliev'd
against the Security, he had given for the Purchase Money, being described
as to the Effect of his Purchase. Per Cur. pay principal Interet and Costs,
or be reliev'd with Costs. Mich. 1691. 2 Vern. 243. Mildmay v. Hun-
gerford.

2. A Conveyance by Deed and Fine was gain'd indirecdly by Imposition, and
without Consideration, the Granter intending it only in Trust for her
fello. Decreed the Comfee to convey the Estate to the Devisee of the

3. An
3. An Estate was devised to the eldest Son, provided he or his Heirs pay $200. a Piece to his three Sisters, at their Age of 21 or Marriage; one of the Daughters dies before 21 unmarried; after T. S. buys the Estate, and thinking it subject to the dead Daughter’s Portion, (a Bill being brought for it in Court,) gave Bond to her Executrix to pay it; but being afterwards advised, that the Lands would not be liable, he brings his Bill to be relieved against it; and ‘twas held by my Lord Keeper, that tho’ by the Law now used in Court, the Land would not be liable to the Portion, yet perhaps when the Bond was given, it might have been otherwise taken; and there being no Fraud in getting the Bond, he would not relieve against it. Mich. 1702. Abr. Eq. Cafes 269. pl. 9. Smith v. Avery.


5. A on a Marriage with M. entered into Articles to purchase Lands, and makes a Settlement on himself and M. and the Illue Male of the Marriage, and for Default of such Illue, the same was to be to A’s next younger Brother, and for Default of illue Male of him, then to go to the next Brother, &c. The Marriage took Effect; A. died without Illue Male, or making any Settlement, but made M. Executrix, leaving Alets; after A’s Death, the Brothers immediately applied to M. who promised by Letters to purchase and settle agreeable to the Articles; but Lord C. King held that those Letters ought not to bind her, unless she was before bound by the Articles, (which he held she was) For that she might be well under an Apprehension of being liable by them, and therefore wrote such Letters; but that would be no Reason to conclude her by her Misapprehension. 2 Wms’s Rep. (594) 599. Trin. [1730] 1731. Vernon v. Vernon.

(H. a) By Misinformation, and what shall be said such.

1. An Agreement by an Heir at Law upon a Mistake and Misinformation, as to his Right to Land devised from him to his younger Brother, was decreed. 1 Chan. Cafes 84. Parch. 19 Car. 2 Frank v. Frank.

2. A had an Annuity illuing out of Lands of B. C. purchaseth Part of the Lands charged and diverse other Lands of B, and Notice is taken of the Annuity by way of Exception in the Deed of Purchase; C. sells to D. the Lands not charged, and Part of the Lands charged by general Words, and defined A. to join in a Fine to D. he affirming A. that it would not prejudice him in the Lands settled on him; but this was proved by one Witness only, and his Depositions uncertain as to the Particulars. Finch C. said that Here was no Consideration for the Rent, and no Agreement to extent the same, and when the Land was sold, it was sold for 850l. of which 700l. was paid to C. and that A. was circumvented, and Decreed relief against C. Hill. 27 & 28 Car. 2. 1 Chan. Cafes 273. …… v. Hawkes.

3. A Man going to disturb a Conventicle, asked a Conventicler there 2 Jo. 163. S. what his Name was, he answered James (who was a known Conventicler) whereas in truth James was not there, and the Fellow that answered knew it, but Defendant did not; Defendant made Oath according to the false Name told him, and was convicted of Perjury, but the Verdict was set aside, it not being willful and corrupt Perjury, but a plain Mistake, and a new Trial granted. 2 Show. 165. Mich. 33 Car. 2. B. R. the King v. Smith.

4. A Articles with B. for purchasing B’s Estate, pretending he bought for one whom B. defiuled to obesity, but really for one whom B. would by no means consent to sell it to, and so got an Agreement at a low Price. Equity will not decree an Execution of these Articles; Per North K. Hill. 1653. Vern. R. 227. Philips v. D. of Bucks.

5. A
5. A Man being about to purchase a Rent-charge makes inquiry of the 
Title of one that had a Right to the Land, and to hold it discharged, 
but at the Time knew nothing of his Title, and told the Purchaser as 
much, yet this will not prejudice him who was Ignorant of his own Title. 

firm the Annuity.

Raym. 186. 
Fliche's Cafe.

6. A fine for 2 or 3 Terms since was set aside, because of some surrept-
itious Precife and Misinformation to the Judge. Vent. 69. Pastch. 22 Car. 2.

7. Mortgages, to whom 300l. Interest Money was due for 500l. being inquired of, as to how much was due, by one that was going to be mar-
rried to the Heir of the Mortgagor, and saying the Interest was all clear 
to that time, so that a Settlement was taken of the Lands, and the 500l. 
being secured by Bond, decreed that the jotted Land should be charg-
ed only with 500l. and Interest from the Time of the Inquiry. Mich. 

8. A charged all his Lands by his Will, for Payment of 300l. a Year to 
M. his Wife for Life, and made her Executrix and Refuditory Legatee, and 
subject to this Annuity he gave his Real Estate to R. L. afterwards R. L. 
and M. articed that M. should Renounce the Executrixship, and deliver 
up the Personal Estate to R. L. and that R. L. should indemnify M. from A's 
Debts, and should pay M. a further Annuity of 40l. a Year, and the 540l. 
a Year was to be secured on Part of the Estate only. R. L. prayed Relief 
against these Articles, pretending that the Value of the Personal Estate 
was misreprented to him, and that in reality it proved to be 4000l. 
less than the Testator's Debts amounted to. But it appearing that there 
was no false Inventory, or Particular made of A's personal Estate, nor any 
Estimate given of it, whereby to induce R. L. to come into those Articles on 
Account of the Value, and there being another Notice (viz.) M. accepting 
the Rent-charge of 540l. a Year out of Part of the Estate only, Ld Cowper 
dismissed the Bill with Costs; but as to M. he allowed the Order of 

9. A Release of an Equity of Redemption obtained by Misrepresentation 
was set aside for that Reason. MS. Rep. said to be Lord Harcourt's, tit. 

10. An Assignment of a Lease got by Misinformations of the Value of the 
Land, and of the Fine for Renewal was set aside, and the Defendant 
the Executor of the Alleged ordered to Account for the Money of the Pro-
fits, during his Testator's Life, and since his Death, and to pay Costs of 
Suit. Hill. 10 Geo. 1. 9 Mod. 83. Evans v. Hoskins and Gloucester City.

11. Obligor for 200l. and 160l. by Note, on Payment of 20l. to Obligee, 
who was a Man of weak Parts and Memory, procured the Bond and 
Note to be delivered up upon pretence that he was poor, and nearly related 
to the Obliger, but that not being proved, he was ordered to Account for the 
Bond and Notes to the Executor of Obligee. Mich. 11. Geo. 1. 9 Mod. 

(I. a) Who shall be Bound by it, and how Punishable.

1. THE Heir is bound to Warranty, and alien the Assets by Covin; the 
Feoffee is impeached and Vouches the Heir; in this Case, upon the 
Matter found, he shall recover in Value against the Heir Land purchased 
by the Heir, but not the Land aliened by him. Br. Coll.ation, pl. 49. cites 
31 E. 3.

2. Formerdon was brought by Covin of the Tenant against himself, be-
cause he was Feoffee upon Condition, and had broken the Condition, and would 
have the Land to be left against the Feoffor, and this Matter was alleged by 
Feoffor who was a Stranger to the Action; For the Defendant confessed the
the Action, and thereupon Proclamation was made, if any one could say any Thing why the Demandant should not have Judgment and Execution? whereupon the Feoffor came in as above, and shewed as above; and the Matter was examined and contended, and the Tenant put to give Bail to attend his Punishment for the Defect. Br. Collusion, &c. pl. 15. cites 7. H.


4. Action will lie against a Defendant for confessing a Judgment by Fraud in order to prevent Plaintiffs having benefit or a Judgment he had obtained against him. Trin. 3. Jac. 2. B. R. Carth. 3. Smith v. Tonhall.

5. In Case of a Groff's Fraud the Court will give Costs, to be ascertained by the Party's own Oath; Per Commissioners. Hill. 1692. 2. Vern. 123. Dyer v. Tynnewell.


1. In a Formerd, Defendant pleads Non-tenure; Jury find that Defendant made Feoffment of the Tenements to divers Persons to their own Use before the Writ purchased, and that the Feoffees never took the Profits, but the Feoffor, till the Day of the Writ purchased, which Feoffment was made by Covin and Fraud, to the Intent that the Plaintiff should not know against whom to bring his Action; adjudged that the Defendant was Tenant of the Tenements to this Action, and that, in respect of the bringing this Action, the Feoffment shall be void against the Plaintiff and that he is sufficient Tenant to answer. Savil. 126. Hill. 32 Eliz. White v. Bacon.

2. Upon the Statute 13 Eliz. cap. 8. against Usury, and 27 Eliz. 4. against Fraud, those Times are Lived where there is Usury, Fraud or Covin, those are averable to be against any Deed. Jenk. 254. pl. 45.

3. A. in Consideration of 20l. paid by B. granted all his Goods in a Schedule annexed, and gave Possession by a Platter, but there was a Covenant that they should remain in A.'s House, and to be carried away by B. on Demand, and A. to keep them safely in the mean time. A. died; B. demanded the Goods of J. S. the Administrator of A. but he not delivering them B. brought his Action; J. S. pleaded the Statute of 13 Eliz. of fraudulent Deeds of Gift, and that A. was indebted to several Persons amounting to 100l. in several Sums, and, being so indebted, made the Grant, being at such time possessor of those and of other Goods, not amounting to more than 80l and that this was by Covin to Debaud his Creditors, and that A. dying Administration was granted to him; Plaintiff replied that the Defendant had Affets to satisfy the Debts demanded, and that the Grant was upon good Consideration; and upon Demurrer adjudged for the Plaintiff.

First, because the Defendant had not avowed in his bar, that the Debts remained yet unpaid to the Creditors named, there being 4 Years between the Deed of Gift and A.'s Death, in which time the Debts may well be presumed to be satisfied. Secondly, the Defendant did not shew that the Debts due to the supposed Creditors were by specialty, and then the Matter of his Pled is not good; For he cannot plead this but in excuse to free him from a Devastavit, which cannot be here, he as Administrator not being chargeable, unless the Debts are by specialty. Thirdly, where Defendant suggests, that his Delivering the Goods would be a Devastavit, this cannot be; For as to the Creditors, they are liable in the Hands of the Plaintiff as Executor de son Tort, if the Deed of Gift be fraudulent. Fourthly, it may be the Creditors named will never sue for their Debts, and to the Defendant will detain the Goods for ever; but had he pleaded a Recovery by any of the Creditors, and those Goods to the Value taken in Execution, it

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had been a good Plea. 

Fifthly, the Defendant is not a Person enabled by the Stat. 13 Eliz. to plead this Plea; For the Deed is void against both Creditors, yet it is not so against the Party himself, his Executors and Administrators, and against them it remains a good Deed; per tor. Cur. Yelverton a Counsel with the Defendant. Yelv. 196. Hill. 8 Jac. B. R. 

Hawes v. Loader. 

4. Coin shall not be intended unless it be averred, per Jones J. Jo. 20. cites 10 Rep. 56. a. 11 Jac. Chancellor of Oxford's Cafe. 

5. A Lease for Years was conveyed by A. with an intent to defraud his Creditors, and died, making B. his Executor; C. was a creditor of A. B. promised C. upon good Consideration, that if he could discover any Goods, Parcel of the Estate of Testator at the Time of his Death, then he should have the Goods in Satisfaction; the Court held the Lease to conveyed to be Parcel of his Estate at the Time of his Death; for tho' the Sale bound himself, yet it was void as to Creditors; and they agreed that the Plaintiff in his Replication, showing this special Conveyance of the Term by Fraud in maintenance of his Court is good and paraul, and no Departure from it. 2 Roll. R. 175. Trin. 18 Jac. B. R. Anon. 

6. An Executor confesses a Judgment, as he may lawfully doe, yet this may be averred to be enred, or kept on foot by Fraud, and that by the Common Law, which hates all Frauds. Vent. 329. Trin. 30 Car. 2. B. R. in Cafe of Knight v. Peachy & Freeman. 

7. In Debt for Rent against Assignee of the Executor of Leffer for Years, Defendant pleaded an Assignment by him to J. such a Day, and that he gave Notice of it to the Leffer before any Rent due; the Leffer, Plaintiff, replied that the Assignment was to defraud him of his Action by Fraud and Coin; Defendant demurred and was urged that Fraud is not to be averred in this Cafe; for the Assignment is a lawful Act; but it was answered, that Fraud and Coin make legal Acts illegal and void; and Judgment was given for the Plaintiff, Diflentiere Scrogs Ch. J. 2 Jo. 109. Trin. 30 Car. 2. B. R. Anon. 

there, but no Judgment; for the Parties agreed. But a Distinclusion was taken by the Counsel for the Defendan, that in Cafe of a Recovery by Default, Fraud may generally be alleged, as in Pl. C. 47. in Cafe of Wimbliff v. Talboit. but if after a Verdict, there it must be specifically alleged, and for this cited 9 Rep. 110. a. Trefstream's Cafe. 

(L. a) In what Cases, and where the Fraud shall be tried, and whether by Jury, or by the Court. 

WHERE Land is recovered by Jury, the same Jury may enquire of the Right and Collusion, and whether tis a Default without Jury, as in a Precipit quod Reddat, it shall be enquired by quae jus Office, and fo 16 All. p. 1. and there 'tis determined, that this Inquiry is only an Inquest of Office, so that if they find therein Matter of Abatements of the Writ, yet the Writ shall not abate, for tis only an Inquest of Office. Br. Collusion, &c. pl. 25. cites 14 All. 13. 

2. In an Action of Waff by an Abbot, the Sheriff returned the Writ of Inquisition of the Waff for the Abbot, and Judgment was given for the Abbot, but Execution was stayed till the Collusion was enquired into; but otherwise, it shall be if the Inquest had been before Justices; for then the same Inquisition, after the Illue tried, should enquire of the Collusion presently, but now this shall be by quae jus. Br. Collusion, &c. pl. 18. cites 38 E. 3. 12. 

3. Jury found a Deed, but left it to the Court, if by the 27 Eliz. it be Fraudulent against the Defendant, and so void; 'twas argued that the Court can judge of Fraud without the Jury's finding it so, but inferred on the other side, that the Court might judge of the Proviso in the Statute 27 Eliz. and if this Settlement were void within that Act; adjourned. 2 Show. 46. Butler v. Waterhouse.—The * Court will not adjudge it 

Fraud
Fraud.

Fraud, where the Jury do not expressly find the Fraud; For the Judges cellor, &c. have nothing to do with Matter of Fact, and fo per ton. Cur. no Fraud. Brownl. 36 & Crier v. Littleton.

Case apparent need not be proved; Le. 256—contra, per Beaumont Serjeant; Le. 255. Mich. 32 Eliz. C. B. in the Serjeant’s Cafe.——* Fraud is a pure Matter of Fact which is to be found by the Jury, and cannot in any Case be preferred by the Court, per Rainford. J. Vent. 129. Pufch. 23 Car. 2. B. R. Smith v. Wheeler.

4. Where Fraud is apparent Chancery will Decree against it without ordering a Trial. 32 & 33. Car. 2. 2 Chin. Cafes. 46. Coliton v. Gardner.

5. A conveyed Lands to B. and C. for 99 years in Trust to raise a Sum of Money, the Reversion to J. S. Afterwards J. S. settled the Reversion on C. and his Heirs in Trust for A. for Life, and to the Heirs of the Survivor; 10 Years afterwards B. lends Money to J. S. and takes a Mortgage of the Trust Lands subject to the Trust, and without Notice of the Conveyance to C. in Trust for A. J. S. dies, living A. On a Bill by B. against A. and C. the last Conveyance was set aside as fraudulent, tho’ A. swore that J. S. agreed at first to make such Re-conveyance bona Fide, and that the knew not of B.’s lending Money to J. S. and decreed that it was not necessary to find it to be tried at Law, whether a voluntary Conveyance be fraudulent or Not, but the Court may decree it to be so merely for being Voluntary. Trin. 1691. Ch. Prec. 13. White v. Hufley.

6. Fraud, as to the Settlement of a poor Person, is to be judged of by the Justice of Peace and not by B. R. Per Pratt J. to Mod. 392. Trin. 3 Geo. B. R.


(M. a) Evidence. In what Cases Fraud may be given in Evidence.

1. IN Debt against the Heir, the Defendant pleaded Riens per Defens. and the Plaintiff reply’d,——that Affairs in the County of S. It appeared upon the Trial, that Lands defended, but before Action brought, Defendant had enfeoffed J. S. which was proved to be by Fraud. Upon a special Verdict found, it was resolved, that this Matter might well be given in Evidence. 5 Rep. 60. Mich. 32 & 33 Eliz. B. R. Gooch’s Cafe.

(N. a) Badges of Mich. What are.

1. Defendant in Debt, after Judgment, aliens his Goods, and he himself takes the Profits; yet the Plaintiff shall have them in Execution. Arg. Lane. 195. cites 22 Aff. 72. 43 E. 3. 2.

Money paid to the Donee. 7. The Donor after the Deed, being Affec-
tor, alleged himself to the subsidy seven Pounds, whereas, if the Deed was
good, he had nothing. 8. The Donee took out an Exten upon a Statute
afterwards against the Goods of the Donor, for a Debt owing to him;
And for these Reasons, tho’ the Deed was made upon good and valuable
Consideration, to have harmed the Donee from a just and true Debt,
for which the Donee was bound as Security for the Donor, the Deed
was adjudged fraudulent. No. 638. Pach. 44 Eliz. in the Star Chamber.
Chamberlayne v. Twyne.

3. Tenant in Capite made a Lea’ for 1000 Years to B. and further co-
venanted with B. and his Heirs, that upon Payment of 5 s. he and his
Heirs would hand sealed to the Use of B. and his Heirs, and in the Deed
were all the ordinary Clauses of a Conveyance bona fide. B. died, and
the Question was, if the Heir should be in Ward? It was held, that
the Heir had Power of the Inheritance on Payment of 5 s. and that the
Leafe carries with it the Badges of Fraud. Godd. 191. Trin. 10. Jac.
in the Court of Wards. Cotton’s Cafe.

4. If a Man has any Intention to evade the Statute 13 Eliz. 5. where-
ever he shall say afterwards, will not any ways falve and amend the Mat-
ter, but the fame is Fraud, and within the Statute, and secrecy is
a Badge of Fraud, but no concluding Proof; per tor. Cur. 2 Buls. 226.

5. It was said, that if one make a voluntary Conveyance upon Conside-
racion of natural Affection, and is not at that Time indebted to any Per-
son, nor in Treaty with any one for the Sale of the Lands, such Con-
veyance has no Badge of Fraud; but otherwise it is, if he be indebted, or
Anon.

6. In Evidence to a Jury, it was held by the Court, that a voluntary
Conveyance executed is not fraudulent, because voluntary; but it is great
Evidence of Fraud against an after Conveyance made bona fide, because the
Statute avoids such Deeds as are bona fide, and on Consideration, if made
in Intention, to defraud Purchasers; And therefore this Fraud must be

7. Executor pleads a judgment—Per fraudem visae reply’d, and Issue thereup-
on, and by Evidence it appeared, the Detee was willing to take his then
was recovered, it is Evidence of Fraud; but if it be flown, that Admini-
strator had not Atlets to pay that Sum, it is no Fraud, 1 Salk. 312.

8. An Agreement for a Purchase was with an old Woman, 90 Years of Age,
by an Attorney, but no Money paid, and pretended he bought it for
another, of the Name of the Tenant in Pottification, to whom the was Heir,
if he died without Issue, and several other suspicous Circumstances ap-
ppearing, the Court would neither decree it to be carried into Execution
against the Heir at Law, nor to be delivered up. Hill. 1708. 2 Vern. 632.
Green v. Wood.

9. A. and B. married two Sistors, presumptive Heirs of J. S. and ar-
ticated to divide equally between them, whatsoever should be given by the Will
of J. S. to either of them. J. S. by his Will, gave a great real and personal
Estate to A. and only a small real Estate to B. who brought a Bill against
the Executors of A. for an Account of the real and personal Estate which
came to A. by the Will of J. S. and inquired, that after the Articles,
A. presented on J. S. to devise the greatest Part of his Lands to the Sons of A.
and that as soon as his Sons came of Age, A. get his Sons to convey the
Lands to him self and his Wife for Life, Remainder to Trustees for 500 Years,
to receive 3000 l. a piece for two younger Sons, not proposed for by the Will of
J. S. so that in effect A. had the same Power over the Estate, as it if
there had been devide to himself in Fee. Ld. C. Macclesfield declared, that
if the Estate had continued in the Sons of A. he would not have compelled
the Conveyance of a Moiety to B. the Plaintiff, according to the
Articles,
Articles, there being no Writing to manifest the Truth, as the Statue of Frauds requires; but that if the Sons should without any Consideration, convey to Anheir Father the Estate left them by J. S. then be thought he might justly Decree, that A. should convey a moiety of the Premises to B. agreeable to the Articles. 2 Wms's. Rep. 182 to 185. Trin. 1723. Beckley v. Newland.

10. Land of 40 l. a Year was conveyed by one of 72 Years of Age, for an Annuity of 20 l. a Year for Life, and there being no Evidence of any Instruction given by the Grantor to the Drawer of the Deed for preparing it, both the Drawer has been examined, but the Instructions were given by the Grantee only; and it not appearing that the Deed was read to the Grantor at the time of executing the same; and the Sumptuary being secured by Covenant only, instead of a Mortgage of the same Estate, and be not having the Deed itself in his Hands, the Matter of the Rolls said, that all this is Fraud apparent, and that judging upon the Face of a Deed, is judging upon Evidence, which cannot err, whereas the Testimony of Witnesses may be false. 2 Wms's Rep. 203 to 206. Mich. 1723. Clarksen v. Hanway, & al.

(O. a) As to Creditors’s relieved in Equity.

1. DEED of Gift of all his Goods, Chattels, and household Stuff, by Baron, in Truth for his Wife, the Baron continued in Possession during his Life, and after his Death, the Widow admitted it to be a Truth, by exhibiting an Inventory of them into the Spiritual Court; Decreed, to be a Fraud against Creditors, there not being Affairs sufficient, without those Goods to pay the Debts; and ordered, after Debts paid with them, that the Surplus be accounted for to the Administrator, when an Administrator shall appear. Mich. 28 Car. 2. Fin. R. 270. Oakover v. Petuss, Haughton, & al.

2. Sale by Commissioners of Bankrupts is good against fraudulent Debt or Judgment, and shall be to taken in any Action brought for the Goods, if Fraud be proved upon the Trial. 2 Jo. 41. Mich. 27 Car. 2. C. B. Smith v. Harward.

3. A. got Judgment against B. for 1400 l. on Bond conditioned for Payment of 700 l. and Interest, and brings a Bill, charging that B. had conveyed his Estate to Truftees, and had lent 1200 l. to C. in the Name of J. S. and prays that this may be made Hable to the Plaintiff’s Debt. Defendant demurs, that he in his Life-time was not bound to discover his personal Estate, and Demurrer over-ruled. per Jeffries C. Patch. 1686. Vern. 398. Smither v. Lewis.

4. A. got Judgment against B. for 100 l. — C. on Pretence of a Debt due to him, and to prevent A’s having the Benefit of his Judgment, had got Goods of B’s, of great Value, into his Hands, sufficient to satisfy his Debt with a great Overplus, and prayed an Account and Discovery of these Goods. — C. demurred, because A. had not alleged, that he had found out Execution, and actually taken out a Fi. Fa; for till he had done, the Goods were not bound by the Judgment, nor A. intitled to a Discovery or Account thereof. per Jeffries C, the Plaintiff ought actually to have found out Execution before he had brought his Bill, and allowed the Demurrer. Patch. 1686. Vern. 399. Angell v. Draper.

5. At Law, where a Conveyance is found to be fraudulent, the Creditors come in and avoids all, without Re-payment of any Consideration Money. Per Car. Trin. 1657. Vern. 466. in the Case of Hern v. Meers.

6. A. in order to draw in his Creditors, to compound his Debts at an easly Rate, made an underhand Agreement with some of them, to pay them the whole, in Case they would seemingly come in; The Creditors came in, but A. Eilled in Payment at the Time agreed, and now some of the Creditors but where A was instantiated by B. to receive Interests due
Fraud.

upon Tally. Creditors relate to hand to the Agreement, which being under Hand and
Seal, A. brought a bill to compel a Performance; But the Fraud appeared
principal as well as interest, Fraud. Dardridge.
and comprizing with his other Creditors, made such an underhand Agreement with B. and brought a Bill to
be relieved. Lord Cowper dismissed his Bill. A. having been guilty of an great breach of Trust and
Fraud as could be and not be criminal, and having agreed to make some Satisfaction, he himself ought
to be relieved against such Promise or security for Performance. Hill. 1707. 2 Vern. 602. Small v. Brackley.

7. A. purchases Land in Name of B. his eldest Son, and pays B. in Possession; Afterwards B. falling sick, A. takes a Declaration of Trust from B.
— B. recovers, continues Possession, and marries, and dies; A. gets a
Conveyance from the younger Son, B. dying without Issue; By Agreement
on the Marriage B. was bound to leave the Wife 4000 l. But nothing of Dower mentioned. Widow brought her Writ of Decease. A. sued in Equity for Relief, and decreed him by Master of Rolls. On Appeal, Wright K. dismissed the Plaintiff's Bill, declaring it to be a secret and fraudulent Deed of Trust, to deceive Purchasers and Creditors. Patch. 1702. 2 Vern. 436. Bateman v. Bateman.

8. A. makes a Bill of Sale of his Goods to a Trustee for one that lived
with him as his Wife, and was reputed as a Wife. Bill of Sale for aside as fraudulent, as to Creditors. Hill. 1704. Vern. 490. Fletcher & al. v. Lady Sidley & al.

9. A. indicted to B. 100 l. on Bond, and to C. 200 l. on Simple Con-
tract, makes his Will, and D. Executor; C. purchases a Leasehold of D.
the Executor for 500 l. and disjuncts his own Debt of 200 l. and 350 l. due from
D. to C. and pays 150 l. in Money. On a Bill by A. for 200 l. the Bills and
rolls, and after, on Appeal, per Cowper C. that this Sale is not good to

10. A. being about to marry M. the Daughter of J. S. gave a Bond for
500 l. payable to the Father of A. as a Day certain, but disenfranchised not
to be put in Suit, but for Security of the Daughter, in Case any Misfortune
would happen to the Husband, to be paid before other Creditors. Ld. Ch.
King held, that this is a fraudulent Bond on the Face of it, to disappoint

(P. a) As to obtaining Wills, relieved in Equity.

1. A Will, whereby the Heir was disinherited, and the Effece given
to two Infants, Strangers, though obtained by great Fraud and
Circumvention of the Father of one of the Infants, was denied to be aside, for
want of a Precedent, though the Lord Chancellor declared his Resolu-
tion to do all that he could, and though he had directions from the
House of Lords, to decreed according to Justice and Equity though no
Precedent could be found. 15 Car. 2. Ch. R. 236. Roberts v. Wyvne.

2. Jekyll, Ld. Commissioner, took a Difference between a Will, and a
Deed gained upon a weak Min. and upon a Misrepresentation or Fraud; For if a Will be gained from such, by false Misrepresentation, this is not
Reason sufficient to set it aside in Equity, as was determined in the late
Duke of Newcastle's Will, betwixt Ld. Thant and Ld. Chic, and in
Cafe of * Small and Roberts; But where a Deed, which is not revoca-
able as a Will is, is so gained from such a Person, and without any valu-
able Consideration, the same ought to be set aside in Equity. 2 Wins's

3. A  

* See pl. 1
Roberts's B. 
Chinnor. S. 
C. A
Fraud.

3. A Bill was brought to set aside a Will of a personal Estate, and to stay the Probate, upon a Suggestion of it's being obtained by Fraud, and the Defendant demurred to the Jurisdiction of the Chancery, whereupon an Injunction was moved for, intiting that the Demurrer confessed the Fraud, and that Fraud was cognizable in Equity, as well as in the Spiritual Court. But per Cur, the Spiritual Court has Jurisdiction of Fraud, relating to a Will of a personal Estate, and can examine the Parties, by way of Allegation, touching the same, and if the Will was falsely made to the Testatrix, then it was not her Will, and denied the Injunction. Trin. 1725. 2 Wms's Rep. 286. Stephenton v. Gardiner.

(Q. a) What Acts are to be said fraudulent, in regard to After-Creditors or Purchasers.

1. The Plaintiff had brought his Action against M. for lying with his Wife; and 13 Jan. 1689. M. made a Conveyance of his Lands to Trustees, in Trust, to pay his Debts mentioned in a Schedule annexed to the Deed, and such other Debts as he should appoint within ten Days in Hillary Term following; The Plaintiff recovered 5000 l. Damages against M. and brought this Bill to be relieved against the Deed as fraudulent against him, and made to defeat him of his Debt. Per Cur. this Deed is not fraudulent, either in Law or Equity, for such Debts as are named in the Deed; for the Plaintiff was no Creditor at the making of the Deed; and though it were made with an Intent to prefer his real Creditors before this Debtor, yet, when it became afterwards to be a Debtor, it was a Debt founded in Maleficium, and therefore it was confiscations in him to prefer the other Debts before it; but the Plaintiff may come in upon the Surplus, after the Debts mentioned in the Schedule, or appointed within ten Days, pursuant to it are satisfied. Mich. 1699. Abr. Equ. Cases. 149. Lewkner v. Freeman.

2. A Man indebted to his Daughter-in-law for Money of hers received by him, purchased a Lease for Years, and had the same originally conveyed to her. She had no Bond, or any other Security for her Money, at the time of the Conveyance, nor till several Years after, when he gave her a Bond, and died without Affets. A Creditor for a Debt contracted after the Conveyance brought his Bill, to subject this Lease to his Debt; But the Creditor for a Debt contracted after the Conveyance brought his Bill, to subject this Lease to his Debt; but the Creditor for a Debt contracted after the Conveyance brought his Bill, to subject this Lease to his Debt; and that he did not know that it had ever been determined, that a Man indebted, minding to provide for his Children, has an Estate originally conveyed to them, it should be subject to Debts; whereas, here the Father-in-law was indebted to her, and so denied to subject it to the Plaintiff's Debt. Sel. Ch. Ca. in Ed. King's time. 73 Mich. 1729. Proctor v. Warren.
Freh Suit.

(A) At what Place.

1. If I take your Beasts as a Distress, which come back to you of their own Accord, I cannot retake them by reason of the first Distress, without fresh Suit. 9 C. 4. 2. b. per Dandy.

2. Dy. 8 El. 246. 70. Replevin brought for taking of Beasts in Dale. Defendant said, that he took them in another Place for Damage feant, and showed that the Beasts escaped to Dale, as they were driving to the Pound, and upon fresh Suit, he retook them in the Place called Dale, and admitted a good Justification.

3. Old Hatur Barium, 53. after such Distress, Escape, and Fresh Suit, if the Party who distrained prays Deliverance, and he will not deliver them] Writ of Recusio lies.

4. If I distrain for Damage seant, or for Rent, and in chasing them to the Pound, they escape into the Soile of another, yet upon Fresh Suit I may retake them. 33 H. 6. 55.

5. So if the Tenant rescues, and drives them out of the Land. 33 H. 6. 53. agreed.

6. If a Minister of the Court, by the Custum, attaches a Man by a Horfe, yet upon Fresh Suit he may retake in other County. 33 H. 6. 52. b. 55. adjudged.

7. Note, that it was touched, if a Man makes an Affray, and the Justices of the Peace, or Constable seeing it, come to it, and would arrest him, and he flies into another County, and the other freshely pursues him, he may arrest him in the other County; and for Affray, Fresh Suit is Material, but if it was for Felony, it is not material; For he may take him in any County. Br. Freth Suit. pl. 3. cites 13 E. 4. 8.

(B) What shall be said, Freth Suit.

1. Where Felony is done, and the Felon is not taken, within a Year after the Felony done; yet if he, who was robbed, does his Endeavour to take the Felon, and to elpy him, and he is taken, then it be not at his Suit, it shall be adjudged fresh enough, per toto. Car. and therefore the Party shall be restored to his Goods. Br. Freth Suit. pl. 1. cites 7 H. 4. 44.

2. If Beasts escape in View of the Owner, by default of Inclosure, as out of an Highway, &c. and Freth Suit be shewn in Justification, but it appears not, that they were in View of the Owner, Freth Suit shall not be pleaded in Bar, except the Plaintiff alleges Notice. F. N. B. 128. (298) in the Notes there, cites 15 H. 7. 17. 21 E. 4. 8. 49. 10 E. 4. 8.

(C) Necessary in what Cases, to preserve Property.

1. If, who takes Goods from the Enemies of the King, which were taken before from an Englishman, shall have it as a Thing gained in Battle, and not the King, the Admiral, nor the Party to whom the Property was before
Fugitives.

before, because the Party came not freely, the same Day that it was taken from him, and before Sun set, and claim'd it. Br. Forfeiture de terres. pl. 57. cites 7 E. 4. 14.

2. If Goods are Stole, and they come into a Franchife, the Lord of the Franchife shall have them, if freth Suit be not made, and if it be no Franchife, the King shall have them, if the Party do not make Freth Suit. But this seems to be of such Franchife as has a Waife, or Bona & Catalla Felonum & fugitivorum. Br. Forfeiture de terres. pl. 110. cites 21 E. 4. 16.

3. And 'twas granted, per tot. Cur. that if a Man steals Goods, and revives them, he who was robbed, may seize them 20 Years after, if the King, nor the Lord of the Franchife have not seised them; but if they are seised, then he who was robbed ought to sue Appeal, and shall have them, if he makes Freth Suit. Quod nota. Br. Forfeiture de terres. pl. 110. cites 21 E. 4. 16.

(D) In Trespas, In what Cases it is a good Plea in Trespas.

1. Trespas in the County of E. of a Horfe taken, the Defendant said, that the City of E. is an ancient City, and a Corporation of Mayor and Sheriff, and have had a Court before the Mayor every Day, and that one T. affirmed a Plaint against the Plaintiff, and they'd Proceeds in certain, 'till an Attachment, and how he attach'd him by the Horfe, as Officer in the City of E. and the Plaintiff refused it, and went into the County of E. and the Defendant freely purfued and re-took, which is the same taking, &c. Judgment, &c. and a good Plea; for by the Freth Suit, the Horfe was always in his Possession in the Law, and therefore the re-taking good, in the Foreign County, and out of the Jurisdiction of the City of E. Quod nota. Br. Trespas, pl. 32. cites 33 H. 6. 52.

2. Trespas of Cattle taken in A. in D. the Defendant said, that he was seised of four Acres, called C. in D. and found the Cattle there Damage Feisant, and chas'd them towards the Pound, and they escaped from him, and went into A. and be freely re-took them, which is the same Trespas, and admitted for a good Plea. Quere, if he ought not to say, that they escaped into A. against his Will? Br. Trespas. pl. 355. cites 21 E. 4. 64.

(A) Fugitives.

1. A went beyond Sea without Licence of the King, with Robert de Mortimer, and the King certified the same into Chancery, reciting, that he had sent his Privy Seal, &c. but that the said A. (Spretis Manfullatis nuperis reddite recipijit) and thereupon inflicted a Commission to seize, &c. Le. 12. says, that such a precedent of Seizure was shown as of 18 E. 2. * Edmond de Woodstock's Cafe.

2. v. Luce, by the Name of Mortimer's Cafe —— S.P. and upon a Bill for Intrusion against the Grantee of the Queen, and Judgment thereupon for him, it was adjourned for Error, that it was not alleged in the Replication of what Date the Privy Seal was, nor that any Notice of the Privy Seal was given to A. But it was answered, that the Privy Seal needs not any Date, especially in this Case. For the Matters which are under the Privy Seal, are not illible and cites * D. 177; nor can any Travers be taken to it; And this Privy Seal is not as other Writs and Precipices are, returnable in any Court, but the Queen herself, from whom it originally came, shall receive it, and also the Message upon it, and the kerself;
Fugitives.

2. The Letters under the Great Seal or Privy Seal, to re-call any from beyond sea, ought to be forced by some Mefleiger, who upon his Oath, is to make a Certificate thereof in Chancery, and thence a Mitimus to be sent into the Exchequer, and thereupon a Commiffion to be granted to seize the Lands and Goods of the Delinquent. 3 Inf. 150.

3. A Merchant of London departing the Realm, to the Intent to live freely from the Penalty of the Law, and out of his due Obedience to the Queen, and not for any Merchandize, was resolved by all the Justices except two, to be no Contempt to the Queen; For Merchants were excepted out of the Statute of 5 R. 2. cap. 2 and by the Common Law, Merchants might pass the Sea without Licence, tho' it were not to Merchandize. 3 Inf. 180.

4. The King cannot re-call one that is beyond Sea, but by the Great Seal, or Privy Seal, and not by the Privy Signet. 3 Inf. 180.

5. A Privy Seal, was illused to re-call a Fugitive, but the Servants of the Fugitive hindered the Service of it, of which the Mefleiger made Affidavit; This Affidavit is not traversable, and the Matter being out of the Realm cannot be tried by a Jury, and this Matter being transmitted by Mitimus into the Exchequer, and the Fugitive not returning, his Lands and Goods were feitid. Jenk. 220. pl. 69.

6. The King may sell unprofitable Woods. Jenk. 246. pl. 35.

7. Per Tanfield, Ch. B. upon the Return of a Fugitive he shall re-have his Eftate again in Right, and not of special Grace only, but the Lord Treasurer said, he faw no Reason, for that. Lane. 48. Sir Robert Duddy's als. Ld Nottingham's Cafe.

8. Geo. 1. cap. 27. 6. 3. Enacts that if any Artificer in Wool, Iron, Steel, Brasses, Metal. Clock-Maker, Watch-Maker, or any other Artificer of Great Britain, being the King's Subject, shall go into any Country, out of his Majesty's Dominions, to Exercise or Teach the said Traders to Foreigners; and if any of the King's Subjects, in any such Foreign Country, Exercising any of the said Trades, shall not return in this Realm, within 6 Months after Writting given by the Ambassador, Minister, or Consul of Great Britain, in the Country where such Artificers shall be, or by any Person authorized by such Ambassador, &c. or by any of the Secretaries of State, and from thenceforth

This was the Method of the same

2. pl. 31. Hill.
2. Eliz. in Barrue's Cafe.

D. 206. pl. 19.

D. 375. b. pl. 21.
Mo. 111.
Knowls v. Lucy.
Funeral Charges.

A Person died in Debt, and 600l. was laid out in his Funeral, Decreed the fame should be a Debt, payable out of a Truft Eftate, charged with Payment of Debts, he being a Man of a great Eftate and Reputation in his Country, and buried there, but had he been buried elsewhere, it seemed his Funeral might have been more private, and the Court would not have allowed so much. Trin. 1691. Ch. Prec. 27. Offley v. Offley.

2. Where a Citizen of London devised 700l. for Mourning, the Question was, if it should come out of the Whole Eftate, or out of the Legatary Part only; it was inlisted, if there had been no Direction by the Will, or if the Will had directed, that the Expences of the Funeral should not exceed such a Sum, there the Deduction must have been out of the Whole Eftate. Per Cur. Mourning devised by the Will, must come out of the Legatary Part, and not to lessen the Orphanage and Customary Part. Mich. 1691. 2 Vern. 230. Deakins v. Buckley.


4. Settlements for separate Maintenance of the Wife shall never extend to Funeral Charges, and tho' she made a Will, (according to a Power given her) and an Executor, and gave several Legacies, but there was no Refiduum for the Executor, the Husband's Eftate in the Hands of a Devifee subjected to the Payment of Debts was made liable to the Funeral Charges of the Wife. 9 Mod. 31. Trin. 9 Geo. at the Rolls. Bertie v. Eyd Chettlefield.

In strictness no Funeral Expences are allowable against a Creditor, except for the Coffin, Ringing the Bell, Parish, Clerk, and Bearer's Fees; But not for Pall or Ornaments. Per Holt. 1 Salk. 296. Trin. 5 W. & M. B. R. Shelley's Case.—10l. is enough to be allowed for the Funeral of one in Debt. Per Holt. Baron Powell in his Circuit would allow but 11s. 6d. as all the necessiary Charge. Camb. 942. Trin. 7 W. B. R. Anon.