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A General Abridgment of Law and Equity

Alphabetically digested under proper Titles

With

Notes and References to the Whole.

By Charles Viner, Esq;

Favente Deo.

Aldershot in Hampshire near Farnham in Surry;

Printed for the Author, by Agreement with the Law-Patentees.
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#### Several TITLES, with their Divisions and Subdivisions.

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### Notes:

- The table lists various legal terms and their corresponding effects or actions, including titles, deeds, and rights of tenants and landlords.
- Each entry is categorized under different headings, such as Good, How, Where, and Others, to provide a structured overview of legal principles.
- The table is a comprehensive resource for understanding the legal landscape regarding tenancies and their implications.
With their Divisions and Subdivisions.

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**Corporation.**

**Covenants.**
Conuance of Pleas.

6. If Conuance be granted to be held before the Bailiff, if an
Action be brought against the Bailiff, this is good Cause to re- removing
the Plea, because he cannot be his own Judge. 8 P. 9. 19. 6.

7. Failure of Right in a Franchise is good Cause to remove.

8. (As) If a Foreigner be vouched in a Franchise, this is a good
Cause to remove it for Failure there. * 11 P. 4. 27. 8. 6. 20.

So if a Plea be pleaded that bears Date out of the Jurisdiction. 8 P.
6. 20.

10. If Conuance be to be held before the Bailiff of an Abbott, (as
it seems to be intended) and a real Action is brought against the Ab- biff,
and the Abbott Faith, that he hath the Land of the Gift of the King, and
pays Aid of the King, this shall not be any Cause to re- removing
the Plea, for he hath not failed of Right there; for he may have Aid of the King, and the King may send to the Justices to pro- ceed to Judgment, as well as in Banco. 21 Ed. 3. 38. b. ad-
judged.

11. If they will err voluntarily in a Thing of which a Writ of Error
lies, and this can be reformed by it, this shall not be Cause to remove
the Plea. Contra 8 P. 6. 20.

12. As if they will not grant the View where the View lies, this is
no Cause. 8 P. 6. 20.

13. But if they err voluntarily in such a Thing, of which a Writ of Error
lies not, or can be reformed by it, this shall be good Cause to re-
move it. 8 P. 6. 20.

14. As if they will not record a Default as they ought, or will not
give Judgment, this is good Cause to remove it, because no Writ of
Error lies without Judgment, nor the Error of the Default will not appear of Record to be reformed. 8 P. 6. 20.

15. If Wrong be done to a Tenant or Defendant that goes but in
Delay, as it seems to be intended, this is no Cause of Removal,
for he is not at Prejudice, because he hath the Possession of the Land.

16. If Conuance be granted, and the Bailiff will not read the
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17. In an Action, if the Franchise hath Conuance granted, and
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is good Cause of Refusums, because this cannot be tried there. 26 Ed. 3. 73. b.

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Br. Caufe a Remover,
pl. 10. cites 50 E. 3. 24.
20. Do of a Fine or Charter of the Lord, or Deed of the Lord, to
hold at Common Law. Ibid.
21. The Parol removed out of Court Baron, because there were only
four Suitsors; therefore quare what Number suffices when there are no
more. Br. Caufe a Remover, pl. 35. cites Register rol. 11.
22. Where a Man recovers Damages in Affipe of Frell-Force, and the
Defendant is not sufficient in the Franchife, this may be removed and
executed in another Court. Br. Caufe a Remover, pl. 54.
23. Where he that claims Confluence, shall not hold Plea of Matters
wherein himfelf is Party, See Tic. Judges (A) per to tum.

(P) Pleading after Removal.

1. If a Plea be removed out of the Lords Court for Caufe, the
Caufe is transferable. 12 P. 4. 13. b.
S. C.—Fifth. Caufe de Remover &c. pl. 7. cites S. C.—After Refummons out of the
Franchife for failure of the Right, the Bailiff came and travers'd the Caufe and his Challenge was entered upon
the Eflign which was caufd by the Tenant upon the Refummons. Br. Conufance, pl. 66. cites 39 E. 3. 17.
2. In Precipe quad reducta, Confluence of Plea was prayed and granted
to the Franchife, and after the Tenant sued Refummons, because the Court
failed him of Right, and the Demandant was effouded, and the Bailiff
came and faid, that he would traversfe the Caufe, and pray'd that (as fuper
hoc evenit, &c.) be entered upon the Eflign, and fo it was, Dies Datus
3. In Refummons, the Bailiffs of N. demanded Confluence, and the
Demandants faid, that at another time they demanded Confluence and had it;
and at the Day failed of Right, because they fuffered the Tenant to be ef
joined where he was Attorney, and the Tenant demanded the View, and they
would not make him a Precept to view, and also where there were two
Bailiffs, who ought to fee the one came and the other not, and all the
Points were furered in Illue, and because in a manner the King is Party,
and therefore may afirm the Jurisdiction of the Court the Illue was
furered upon all, and this upon Refummons in new Original, as it
feems, and there the Tenant was not compell'd to join with the one or the
other; Contra 34 H. 6. And in this Caufe it was alleged, that the
Demandant was nonfuted in the Franchife, and yet the Illue was
taken ut infra. Br. Conufance, pl. 10. cites 40 E. 3. 11.
4. If Confluence of Plea be granted to the Bailiff of a Franchife,
and he fails of Right, it is a good Caufe to remove the Plea, and upon
the Refummons this Caufe shall be flrown, and the Bailiffs may traverse the
Caufe, Quod Nuta; viz. they may demand Confluence again, and
there the Caufe shall be flrown, and the Bailiffs may traverse it. Br.
Caufe a Remover, pl. 8. cites 34 H. 6. 48.
5. Note, that where Confluence of Plea was granted, and Refum
mons sued for failure of Right, the Bailiffs may demand Confluence again,
and then the Demandant shall show how they failed, &c. the Bailiffs shall
traverse the Caufe, and upon this, by the bet Opinion, the Tenant ought

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Conufance of Pleas.

to join in this Issue with the Demandant or with the Bailiffs, and if he joins with them, and it is found with the Demandant it is peremptory to the Tenant; Contra if he joins to the Demandant, for there the Demandant can't have Judgment against him where the Issue is found with himself against a Stranger, and not against the Tenant. Br. Conufance, pl. 5. cites 34 H. 6. 53.

(Q.) Conufance.
Refummons.
In what Cases it lies.

1. After Conufance is granted, if there be good Cause after to remove the Plea, a Refummons shall be lies in the Court where the Original was commenced. 8 H. 6. 20. 18 C. 3. 31. b. 1 Ed. 3. 21. b.

2. But when it comes there, if no Cause appears, it shall be remand-ed. 1 Ed. 5. 21. b.

Br. Refummons, pl. 9. cites S. C. Hank if he vouches in Franchife, and after the Puer is re-

3. In Fennedon the Bailiffs of S. have Conufance of the Plea, and the Tenant vouches a Foreigner in the Franchife, the Demandant shall have Refummons; for this want of Power is failure of Right, and the Bailiffs shall never have the Conufance again, Quod nota inde bene. Br. Conufance, pl. 16. cites 11 H. 4. 27.

4. Where a Bailiff has Conufance, and be himself is Party, it is a good Cause to sue Refummons; per Cotton. Br. Conufance, pl. 27. cites 8 H. 6. 18.

(R.) Conufance.
Remover.
Refummons.

[What shall be Remov'd on the Refummons.]

S. P and per. 1. When Conufance is granted to a Franchife out of C. B. and there is a foreign Voucher, and thereupon the Demandant files a Refummons in Banco for Failure of Right there, nothing shall come of the Record in Banco but the Original, and the Party shall be at large to plead any Plea. 11 H. 4. 87. b.

2. In Affile of Mortdanceftor in Chester, the Tenant vouched Foreigner, and Record went into Bank, and there the Tenant made Default, and therefore the Record remanded to take the Affile. Br. Caufe a Remover, pl. 21. cites 8 All. 22.

3. Where the Action is brought in Bank, and L has Conufance of the Plea, and failed the Party of Right in their Franchife by Foreign Voucher, Foreign Plea, &c. Refummons lies to reduce it in Bank; for there it never shall be remanded into the Franchife; per Hill and Hank. For Conu-
Copyhold.


4. If Record be removed out of the County or Franchise into Bank, nothing shall be of Record in Bank but the Original. Br. Caufe a Remover, pl. 47. cites 2 H. 7. 5.

5. But where Record is sent into a Franchise by Conuance of Plea granted to them, there all the Record of the Bank shall be of the Record in the Franchise. Ibid.

For more of Conuance of Pleas in General, See Fines (C) Judge (A) Prohibition, Refummons, University, and other Proper Titles.

Copyhold.

(A) Its Original, and how consider’d, and of what it consists. And the several Sorts.

1. Copyhold Tenants were Tenants in Villetage. Br. Tenant per Copy, pl. 25. cites F. N. B. fol. 12. (C)

2. Such customary Inheritances shall not have by the Law any other collateral Qualities but such as concern the Defcent of the Inheritance which other Inheritances at Common Law have; for as without Custum such Estate at Will cannot be descendible, so neither can it have any collateral Quality or Incident to other Inheritances at Common Law; for Copyholders have Estates of Inheritances secundum Quod, viz. to be descendible by Custum to their Heirs, and not to be determined by the Deaths, nor subject to the Will of the Lord as other Estates at Will are, but are Estates of Inheritance simpliciter, viz. to all other collateral Qualities, but such as Custum has allow’d, or are incident to them. 4 Rep. 22. a. Mich. 23 & 24 Eliz. C. B. the 2d Resolution in Brown’s Cafe.

3. Though a Copyholder has not in Judgment of the Law but only Gilb. Treat, an Estate at Will, yet Custum has fo establish’d and fix’d his Estate, of Ten. 145. that by the Custum of the Manor it is descendible, and his Heirs shall inherit it, and fo his Estate is not merely ad Voluntatem Domini, but ad Voluntatem Domini secundum Consuetudinem Manoveri; refoly’d per tot. Cur. 4 Rep. 21. a. Mich. 23 & 24 Eliz. C. B. in Browne’s Cafe.

4. Though

C. 4. Though
Copyhold.

4. Though some Tenants by Copy of Court Roll have an Estate of Inheritance, yet they have nothing but at the Will of the Lord according to the Customs of the Common Law; for if the Lord sufl{ts them they have no other Remedy but to file the Lord by Petition. 3 Rep. 8. a. Patch. 26 Eliz. in Scacc'. Heydon's Cate.


5. A Copyhold consists of six principal Grounds or Circumstances, 1st, There must be a Manor for the Maintenance of Copyhold. 2dly, A Custom for the allowing of the same. 3dly, There must be a Court holden for the Proof of the Copyholders. 4thly, A Lord to give the Copyhold. 5thly, A Tenant of Capacity to take the Tenement. 6thly, The Thing to be granted which must be such as is grantable, and may be held of the Lord according to the Tenure. Calth. Reading. 2, 3.

6. It appears by a certain Book intituled, De praedicis Anglorum legibus, translated out of the Saxon Tongue by Master Lambert of Lincoln's-Inn, that Copyholds were long before the Conquest, and then called by the Name of Book-Land as there is no men in the beginning of the Book, in the Tretifie de Rerum & Verborum explicatione; and by Master Braçton, an ancient Writer of the Laws of England, who in his Book writeth divers Precedents and Records of H. 3. of Allowance that Copyholders of customary Tenants doing their due Services, the Lord might not expel them according to the Opinion of Litter Judges in the Time of E. 4 of H. In the Time of E. 3. & E. 4. It and it appears by Master Fitzherbert's Abridgment, they were preferred by a special Writ for that Purpoze, and the Lord thereby compelled to do right. And in the Time of H. 4. Tenants by the Virge, which are the same in Nature as Copyholders be, were allowed by the Name of Sokenmains in Franktenure, and in the Time of H. 7. were allowed Aid of the King for Defence of their Estates. Calth. Reading. 3, 4.

7. There is no Copyhold Land but at first was Denevle Land; per Ley Ch. J. 2 Roll Rep. 236. Mich. 20 Jac. B. R.

8. There are three manner of Copyhold Lands besides the two Sorts of old After and new After; After signifies an Hoitt, Chimney, or a Plew. Now thefe Copyhold Lands which had long Time u follicly a Houfe on them, they were called old After Lands, but three which had late had Houfes built on them were called new Afters, from the Houfe newly ered on them, and in old Records the Bittard eigne did plead, that he was Filius Askarius, as much as to fay, born in the Houfe, or in the fame Family; and fo are the ancient Records which he had fee, and fo Britton callef him; besides thefe, he faid, there are three kinds of Copyholds which he had known in his Practice. 1. Terra Nativa, and this was also called Bond-Lands, becaufe held by Villains. 2. Customary, and this was held by free Tenants. 3. Mes fois, and callfed also Dominica, becaufe this the Lord's Table is maine'd; per Ley Ch. J. And per Richardfon, fome Copyhold Land is called Peal-Land and fome Molland, a Moll Redditu, from the little Rent reffered. 2 Roll Rep. 236. Mich. 20 Jac. B. R. in Cafe of Smith v. Reynard.

9. Copyhold is nothing but a Tenancy at Will in the Eye of the Law. 3 Lev. 94. Mich. 34 Car. 2. C. B.

10. Copyhold Lands are not holden of the Manor, but are Parcel of the Manor itself, which consists of Demeines and Services; Arg' and of this Opinion were Treby Ch. J. and Nervil, and Rookesby Jufticetl, but Powell J. contra; for one fays in common Speech, that Copyhold Lands are held of the Manor. Ld. Raym. Rep. 44. Patch. 7 W. 3. C. B. in Cafe of Brittle v. Bade.
Copyhold.

11. Copyholds, though now supported by Custom, were at first established by Act of Parliament, as all other Parts of the Common Law were till the Records of them came to be lost; per Lord Macclesfield. Chan. Prec. 574. Trin. 1721. in Case of Sir H. Peachy v. D. of Somerset.

(B) What is, or may pass, as Copyhold; and by what Words.

1. As to the Custom that certain Tenants within the same Manor, have used to have Lands, &c. to them and their Heirs in Fee-Simple, and Fee-Tail, or for Life at the Will of the Lord, there must be three Supporters, the 1st. is Time, and that must be out of Memory of Man, which is included in the Word Custom, so as Copyhold cannot begin at this Day. The 2d is, that the Tenements be Parcel of the Manor, or within the Manor. The 3d, that it has been demised and demisable by Copy of Court Roll, for it need not be demised Time out of Mind by Copy of Court, but if it be demisable 'tis sufficient. Co. Litt. 58. b.

2. And if a Manor may be granted by Copy, 2dly, Underwoods without the Soil, to the Herbage or Vertue of Land, 3dly, Generally all Lands and Tenements within the Manor, and whatsoever concerneth Lands or Tenements, as a fair appendant to a Manor may be granted by Copy, &c. Co. Litt. 58. b.

3. The Opinion of Braeton and Fleta, both confessing in one, that the Copyholders grants of the Lords Demesne, wants not the modern Authority to secord it; for 15 Eliz. in the Exchequer, Coke says he finds it adjudged in the Case of a Common Person, howsoever it is otherwise in the King's Case, That if the Lord of a Manor grants away the omnes terras suas Dominicales, the Copyholds Parcel of the Manor, pas by these general Words. Neither doth this want Reeseon to confirm it; for in the time H. 3. and E. 2. when Braeton and Fleta lived, three of the Copyholders were accounted mere Tenants at Will, and therefore after for their Lands were reputed to continue still in their Lords Hands; And now tho' Custom hath afforded them a firer Foundation to build upon, yet the Franktenement at the Common Law reiting in the Lord, Porson, it can be no strange thing to place the Lands under the Rank of the Lord's Demesnes. But Lord Coke says, to deliver his Mind more freely in this Point, he thinks that howsoever, according to the strict Rules of Law, these Copyholds are Parcel of the Lords Demesnes, yet in Proprity of Speech (if Propriety can be in Impropriet) they are the more aptly called the Copyholders' Demesnes; for tho' the Franktenement be in the Lord by the Common Law, yet by the Custom the Inheritance abideth in the Copyholders; and it is not denied, if a Copyholder be impleaded in making Title to his Copyhold, he may justify himself, Quod et fictilius in Dominico suo, with this Addition, Secundum confucci Meranii. Therefore Lord Coke says, he concludes, that howsoever the Common Law valucheth the Title of the Copyholder, yet he has such an Interest confirmed unto him by Custom, that the Lord having no Power to retume his Lands at Pleasure, they are (tho' improperly) called (yet perhaps truly accounted) the Lords Demeines, and that in the Eye of the World; howsoever it be in the Eye of the Law, that those Lands alone can properly challenge the Name of the Lords Demeines (if any Lands in the Possession of inferior Lords, his
Copyhold.

Prior Lords may properly challenge that Name, which the Lord reterneth in his own Lands, for Maintenance of his own Board or Table, be it his wattle Ground, his arable Ground, his pasture Ground, or his Meadow; be it his Copyhold which he hath by Escheat, by Forteitute, or by Purchase; or be it any Part of his Freehold, of which my Lord Coke saith, he must speak a Word by the way not to prove that it is Demesne, for Manifecta probatemente non indigent, but to shew you in what Sense it is taken, and how far it extends. Co Comp. Cap. 32. S. 14.

4. A Custom to make a Copyhold must be of Necessity in the Same Manor where the said Copyholds are to granted, viz. that the same are, and have been Time out of Mind only demised, and demisiable by Copy of Court Roll; for otherwise the Lord cannot grant it by Copy, because he cannot begin a Custom at this Day. But if it have been by like Time granted by Copy, tho' since it came to the Lords Hands, yet if the Lord never Demiss the same by free Deed or otherwise, but by Copy, then he may well grant again the same by Copy, for it is neither the Person of the Lord nor the Occupation of the Land, that either makes or destroys the Copyhold, but only the Usage and Manner of demissing the same; for the Prescription of a Copholder continues neither in the Land nor in the Occupier, but only in the Usage. Calth. Reading, 16.

5. If Lands have been demised by Copy by the Space of 60 Years, and yet there be some alive that remember the same occupied by Indenture, this is not a good Copyhold. Calth. Reading, 19.

6. And if Lands have been demised by Copy but 40 Years, and there is none alive that can remember the same to be otherwise demised, this is a good Copyhold, for the Number of Years makes not the Matter, but the Memory of Man. And it is not 60, 80, or 100 Years, that makes a Copyhold or a Custom, tho' it makes a Limitation. But such certain Number of Years makes only a Likelihood, or Premption of a Prescription; that is, that it commonly happens not that any Man's Memory alive can remember alone such a Number of Years, but if any chance to be alive that remembers the contrary, then such Prescription must give Place to such Proof. Calth. Reading, 19.

7. Lord of a Manor seifed of Land which was Ancient Copyhold, Leaves it for 500 Years, and 3 Years after grants it by Copy to another, who was admitted for Lives, and paid his Fine. S. purchaseth the Manor, and got the Leafie aligned in Trull for him (tho' he knew how the Matter was at his Time of Purchase) and the Copyholder had several Years enjoyed the Land quietly as Copyhold. Decreed that the Tenant by Copy shall hold according to his Grant. N. Ch. R. 26. 10 Car. 1. Hutchings v. Strode.

8. Copyhold Lands enjoyed as Freehold for 60 Years more, and had lasted by Deed and Fine as Freehold Lands, yet being prefente d by the Homage as forfeited, being sold as Freehold by Fine at Common Law, whereby the Lord of the Manor granted over to other Persons and their Heirs, tho' it was the Ignorance of the Copyholder, from the long Enjoyment of an Anceller, and his and the Court Rolls being lost or mislaid, a Commision was decreed to set out Boundaries to distinguish the Copyhold Lands from the Freehold of other Persons.
Copyhold.

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v. Carpenter and Pisburgh.

cites 22 and
23 Eliz. 1 Freeman v. Pennav.
So where Lands had gone 5 Years as Copyhold of Inheritance it was allowed. Toth. 106, 107.

9. Whatever may pass by Deed without Surrender (tho' it be require-
ed that the Deed be enrolled in the Lords Court) can be no Copyhold,
and whatever may pass by Surrender in the Lords Court, Secundum
Confusitdm Manerii (but Non Secundum Voluntatem Domini) is no
10. Lands Time out of Mind palled by Surrender, and Copy of Court Roll
and the Grant was always tenend secundum Confusitdm Manerii, but nev-
er had the Words Ad voluntatem Domini. Resolved that they are
11. Where a Copy is that all Lands held of that Manor shall pass by
Surrender and Admissance, yet the Lands may be Freehold, and the Man-
ner of Conveyance is customary, in as much as Livery is not requisite,
Holt said the Freeholds themselves can never be Parcel of the Ma-
nor, but 'tis Service; Quere. 11 Mod. 53. pl. 28. Pasch. 4 Ann.
B. R. Anon.

(C) In what Respect Copyholds partake of the Nature
of Freeholds.

1. THOUGH Copyhold Land be governed by the Rules of the 2. New Abr.
Common Law concerning Defects, yet it partakes not of the Tit. Copy-
Nature of Freehold Land in other Respectts; for it is not Affets in the
Heir's Hands, neither shall a Woman be endowed, Husband Tenant by Car-
tels, unless by special Cusfon; neither shall a Defect toll an Entry. The but without
 Reason seems to be, because the Estates of Copyholders were at first
only Estates at Will, and at the absolute Disposition of the Land, and
there hath not since been any Provision for those particular Cases; for
my Lord Coke says, that Copyholders have only a Fee-simplse secundum
* quid, which it is they are Tenants at Will, yet their Estates shall de-
cend to their Heirs, and not to be determined by their Death, and not
to be subject to the Will of the Lord as other Estates at Will are,
(which it seems was introduced in favour of them by some positive Law,
though no Footsteps of it appear now) but not simpliciter to have all the
collateral Qualities of Estates in Fee-simple at Common Law, in which
Reasons that positive Law seems to have left them at large as before.
Gilb. Treat. of Ten. 149, 150.

(D) How it differs from a customary Freehold.

1. THE great Difference between Copyholds and customary Free-
holds which pass by Surrender is, that the Copyholder is in by
the Domife of the Lord; but in the Case of customary Freeholds, the Lord
D
Copyhold.

is only an Instrument, and that in pleading a Title to a Copyhold Estate, it is sufficient to prove a Grant from the Lord; but in customary Freedoms the Estate of the Surrenderer must be shown, as that the Surrenderer was feized in Fee, and surrendered to the Lord, and he granted &c. per Holt Ch. J. 1 Salk. 365. pl. 4. Hill. 4 Ann. B. R. Crowther v. Oldfield.

This in Roll is Letter (A)

Fol. 498.

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Cro. E 814. pl. 3. S. C.

Popham held, that they were not grantable by Copy, because a Manor and Tithes are of several Natures, and so impossible that that which is not Parcel of the Manor can be demised Secundum Contrautinum. But Gawdy J. doubted thereof, and conceived it had been well enough if it had been to used Time out of Mind.

Supplement to Co. Comp. Cop 82. S. 17. cites S. C. and says it was objected, that Tithes were not grantable by Copy, because it is against the Nature of Tithes, and none could have a Property in them before the Council of Lateran, and therefore it was impossible to have any Custom to grant them but it was resolved, that they might be granted by Copy, if there had been a Custumary Time of Grant to grant them. — Gilb. Treat. of Ten. 315. cites S. C. but makes a Quere — Mo. 355. pl. 430. per Cur. in the Case of Hoe v. Taylor. Tithes may be surrendered by Copy if the Custum permits it. — Cro. Eliz. 473. pl. 5. in Case of Hoe v. Taylor, it was held to be adjudged in Sir John Bourne’s Case, that a Grant of Tythes by Copy was good.

2. Tenofura prati may be demissible by Copy of Court Roll, according to the Custum of a Manor, by Prescription. P. 43 Eliz. B. R. per Gawdy.

The Lord by Copy granted to A. and his Heirs Underwood in M. Wood Annuitum succident by 4 or 5 Acres at leaft, adjudged a good Grant, and is exclusive of the Lord; and note, they took the Wood Annuitum succident by 4 or 5 Acres, to be the Order appointed for cutting, and not to go in Restraint of the Grant. Mo. 355. pl. 430. Parch. 56 Eliz. B. R. Hoe v. Taylor. — 4 Rep. 30 b. 31 a. pl. 25. S. C. adjudged, that it may by Custum be demissible by Copy; and Judgment affirmed; For it is a Thing of Perpetuity to which Custom may extend, because after every Cutting it will grow again Ex stipibus. — Cro. Eliz. 473. pl. 5. S. C. adjudged, and affirmed in Error. — Jenk. 274. pl. 95. S. C. accordingly. — Supplement to Co. Comp. Cop. 82. S. 17. cites S. C. — Gilb. Treat. of Ten. 208. cites 4 Rep. 31. S. F. — Ibid. 314. S. P.

2 Rep.

3. Underwood, without the Soil, may be demissible by Copy.

Co. Lit. 58. b.

4. The Herbage or Reversion of Land may be demissible by Copy.

Co. Lit. 58. b.


A Customary

5. A Manor may be demissible by Copy.

Co. Lit. 58. b.

Manor may be granted by Copy, tho’ such Lord cannot hold a Court Baron to have Forfeitures, and hold Plea in a Writ of Right. Cro. J. 359. pl. 20. Mich. 8 Jac. B. R. King v. Stanton. — Jenk. 274. pl. 95. S. P. — And such Manor may have customary Tenants, for as well as there may be a Tenant at Will of a Manor at Common Law, so there may be Tenant at Will according to the Custum of the Manor; Revolv’d, Cro. J. 359. pl. 20. Mich. 11 Jac. B. R. Moore v. Goodgame. — Bull. 135. Goodgrove v. Moore, S. C. but S. P. does not fully appear. —11 Rep. 17. a Mich. 10 Jac. Nevil’s Cale, S. C. revolv’d clearly, per tot. Cur. that a customary Manor may be held by Copy, and such customary Lord may hold Courts, and grant Copies, and such customary Manor will pass by Surrender, and Assignment, and Pines will pass by Administration, as well upon Alienation as upon Decent, and that may be customary Lord Meine, and Customary Tenants in Cale where the Meine is a Tenancy at Will, according to the Custum of the Manor, as where there is Tenancy at Will at the Common Law of a Manor; and if such customary Manor be forfeited, the Lord shall have the Custums and Services is appertaining thereto. — Yelv. 190. Mich. 8 Jac. B. R. The King v. Staverton, S. P. And it is said, that such a customary Manor cannot hold a Court Baron; For he cannot have any Frank-tenants
Copyhold.

II

tenants to hold of him, because a Copyhold Manor is not capable of an Escheat of Prebend, for that which comes in lieu of another ought to be of the same Nature, and to the Prebend escheat should be Copyhold which is repugnant and impossible.—Build. 37. 58. S. C. all the Court agreed clearly against the Court Baron — Supplement to Co. Comp. 70. S. 14.—Gilb. Treat. of Ten. 201. 202. cites Some Cases, and says that a customary Manor may be held by Copy of Court-Roll, at Quarter and Quarter; etc. and such a Lord may grant Copies; but it seems it must be of such Things as have been usally demised by him; for it seems he cannot grant all his Demesne by Copy, without they have been usally demised; for tho’ they have been demised Time out of Mind by the superior Lord by Copy, that will not warrant his Demise by Copy, because the Custom must be, that Time out of Mind they have been granted per Dominum Manerii, now they have not been granted by him that is Lord of the Manor, tho’ they have by the superior Lord. This Case seems to prove, that a customary Manor to hold Courts &c. may be without any Freehold Services, and it may as well be objected against such a Lord’s holding Courts, that he hath no Manor, because no Freehold Services, but it seems he may have Freehold Services.

6. Any thing that concerns Land, may be granted by Copy. Co. Litt. Generally all Lands and Tenements within the Manor, and whatever concerns Lands and Tenements may be granted by Copy. Co. Litt. 78. b. — Any Profit of any Parcel of the Manor may by Custom be granted by Copy; Refolv’d. 4 Rep. 31. 2. in Case of Hoc v. Taylor. — Jenk. 274. pl. 95. S. C. & S. P. — Gilb. Treat. of Ten. 314. cites S. P. out of Ed. Coke, but says, that this must be meant where they are Parcel of the Manor, and not to extend to incorporeal Things in gross; for they are no Parcel of the Manor. It seems by Littleton, that only Lands and Tenements are deminable by Copy, and therefore if the Lord of a Manor will grant Rent-charg, or the Office of Stewardships, or Bailiwicks of his Manor by Copy, or a Common graft by Copy, these be not good Grants, because they lie not in Tenure, and also because the Custom does not extend unto them, but Common appendant to a Tenement, or Copyhold Lands, may be demised with the Tenement by Copy. Cath. Reading. 54.


8. Any Profit Parcel of a Manor, may be Custom be granted by Copy; Refolv’d. 4 Rep. 31. a. in pl. 23. Pasch. 37 Eliz. B. R. in Case of Hoc v. Taylor.

9. Common and primus Vegetura Prati may be granted by Copy, because they are Parcel of the Manor, but what is not Parcel of the Manor cannot possibly be demised fecundum Consequentam Manerii; per Popham Ch. J. and therefore he held, that Tythes could not, which was the principal Point; but because upon the Verdict it did not appear that it had been granted by Copy Time out of Mind, it was held, that no Title was found for the Defendant who claimed the Tythes by Copy of Court-Roll, and therefore ‘twas adjudged for the Parson, Plaintiff. Cro. E. 814. pl. 3. Pasch. 43 Eliz. B. R. Sands v. Drury.

10. Things that lie not in Tenure are not granted by Copy, as Rents, Gilb. Treat. Bailiwicks, Stewardships, Common in Gros, Advowsons in Gros, and such like; but an Advowson appendant, a Common appendant, or a Fair appendant 5 P. For first, may pass by Copy, by reason of the principal Thing to which no Rent can they be appendant, and generally what Things for ever are Parcel of the refer’ed the Manor, and are of Perpetuity, may be granted by Copy, according to the Custom. Co. Comp. 34. S. 42.

11. Things that lie not in Tenure are not granted by Copy, as Rents, Gilb. Treat. Bailiwicks, Stewardships, Common in Gros, Advowsons in Gros, and such like; but an Advowson appendant, a Common appendant, or a Fair appendant 5 P. For first, may pass by Copy, by reason of the principal Thing to which no Rent can they be appendant, and generally what Things for ever are Parcel of the refer’ed the Manor, and are of Perpetuity, may be granted by Copy, according to the Custom. Co. Comp. 34. S. 42.
Copyhold.

there is no Lord, and consequently they cannot pass by Surrender and Admittance, and so are not grantable by Copy.

11. Demesne Lands which within Time of Memory have been occupied by the Lord himself, or his Farmer, is not good to be granted by Copy, because of the Newness of the Grant, yet by Continuance of Time it may be good Copyhold, when the Memory of the contrary is worn away, as hath been said before; neither can the Lord that granted such a Copy, put out his Copyholder during his Life that granted the same, because he should not be received to dispose his own Grant. 

12. If a Copyholder surrenders his Copyhold into the Lord's Hands merely to the Use of the Lord, Calthorpe doubts whether the Lord may grant this again by Copy, as he may where it comes into him by Forfeiture, or by Efcheat, because it is made Parcel in Demesne by his own Acceptance, and not by the Act of the Law; Quere. Calth. Read. 55.

13. A Copyhold may be of a Mill; adjudged. 4. Le. 241. pl. 393. Patch. 8 Jac. B. R. Ward's Case.

14. A Lease of the Freehold by a Copyhold to a Stranger is good between the Lord and the Stranger; per Cur. Keb. 15. pl. 43. Patch. 13 Car. 2. B. R. Garrard v. Lister.


16. A Lord of a Manor may make new Grants of Part of the Manor to hold by Copy; admitted, and a Case was cited to the Purpose. But Lord Chancellor said, that in the Case cited such Grants were made with Content of the Homage; that the Question in the Principal Case is, whether there be a Custom to do it without the Homage, and that must go to Law, and then it will be considered by them, how far a Custom to make such Grants without the Homage, be a good Custom. Sel. Chan. Cases in Lord King's Time, 62. Mich. 12 Geo. 1. Hughes v. Games.

(F) Grant. What shall be said to pass by the Grant. Things excepted, or reserv'd.

1. If the Lord of a Manor grants his Manor for Years, except Bosc. and Subsols, growing in certain Copyhold Ground, and the Leases by his Steward granted a Copyhold, within which Manor there is a Custom, that every Copyholder may take within his Copyhold, Woods and Underwoods growing upon the Ground for necessary Fuel; notwithstanding this Exception in the Lease of the Manor, the Copyholder may cut down the Woods or Underwoods according to the Custom, for though the Leese of the Manor in respect of the Exception could not meddle with the Woods or Underwoods, yet the Copyholder may, for his Title is grounded upon the Custom paramount the Exception. Co. Comp. Cop. 54. S. 42.

2. If a Copyhold be granted to a Man & Hereditis, an Estate Tail does not pass for want of the Words de Corpore; and if a Copyhold be granted to a Man & Liberis aut Puvis finis de Corpore, an Estate Tail does not pass for want of this Word Heirs; for what Estates liever are Intails since the Statute De donis Conditionalibus, were Fee-simples conditional before the Statute, without the Word Heirs, and therefore no
Copyhold.

no Intail since the Statute; and for the same Reason, if a Copyhold be granted to a Man, and to the Issue Males of his Body, an Estate for Life only pails. Co. Comp. Cap. 59. S. 49.

3. If a Copyhold be granted to a Man without expressing any certain ESTATE, by implication of Law an ESTATE for Life only pails. Co. Comp. Cap. 59. S. 49.

4. And if a Copyhold to 3. habendum successive, they are Joint-tenants, unless by special Custom the Word Successive makes their Estates severall. Co. Comp. Cap. 59. S. 49.

5. If the King by his Steward grants a Copyhold to a Man and his Heirs Males, or Heirs Female, no Fee-limple pails, because the Lord never intended to pass such an ESTATE. Co. Comp. Cap. 59. S. 49.

6. If a Copyhold be granted to an Abbot, and his Heirs, an ESTATE for Life only pails. Co. Comp. Cap. 59. S. 49.

7. If a Copyhold be granted to a Man and to his Heirs, as long as J. S. shall live, this is only an ESTATE pur ater vie, and a Render limited upon this ESTATE is good. Co. Comp Cap. 59. S. 49.

8. But if a Copyhold be granted to a Man and to his Heirs, as long as such a Tree shall grow in such a Ground, this is a good Fee, and a Render limited upon it is void. Co. Comp. Cap. 59. S. 49.

9. If a Copyhold be granted to J. S. and J. N. & Hereditibus, they are Joint-tenants for Life, and no Inheritance pails unto either, because of the Uncertainty, for want of the Word suit; but if a Copyhold be granted to J. S. only & Hereditibus, a good Fee-limple pails without the Word suit. Co. Comp. Cap. 59 S. 49.

10. If the Lord makes a Lease for Years of the Manor (excepting all Woods and Underwoods) and the Leafee makes Grants by Copy according to the Custom, the Copyholder shall have Wood in those Woods according to the Custom. 8 Rep. 107. Mich. 6 Jac. B. R. Bonham's Cafe.

11... A Copyhold was of Lands in Fee; the Lord by the Custom had, as a Profit apprinder, the Cat of the Woods and Underwoods growing on the Copyhold. The Lord grants all the Woods and Underwoods growing, and which afterwards should grow on the said Copyhold Lands to A. and his Heirs, whether this should not merge in the Copyhold, being, as was said, only a Profit apprinder. The Question was, If a Copyholder pays a Rent to the Lord, and the Lord grants, or releaseth this Rent to his Tenant, this shall merge in the Copyhold? Sed non allocutur. Vern. R. 21, 22. pl. 14. Mich. 1681. Faulkner v. Faulkner.

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*This in Roll is Letter (C)

Grant.

By whom it may be made. [By Domini pro Tempore or not, or Persons not having lawful Titles.]

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The Lord that hath a lawfull ESTATE in the Manor, be he Leffe for Tenant for Life or Years, Tenant by Statute-Merchant, Staple, Elegir, Tenant at will, or Guardian in Chevalry, may grant Copies according to Custom. Co. Lit. 58 b.

the Custom throughout England is, that the Lord for the Time being may demise by Copy, &c. And this notwithstanding, that he has only Durante Bene—Placito, or at Will; Quod Nota. Br. Tenant by Copy &c. pl. 27; cites 4 Ma 1. — But it was held, that such Leffe of the Manor cannot demise, referring a less than the ancient Rent, but must referse the ancient Rent or more. Br. Ibid. cites 5 Ma.
Copyhold.

Ma. 1. — S. P. Rolofd, 4 Rep. 25 b. pl. 7. Tit. 26 Eliz. B. R. in Case of Clarke v. Pennyteather — Gilb. Treat. of Ten. 182 cites S. C. accordingly, proved the ancient Rent, Culfoms, and Services to be referred: for if the Estate a Copyhold hath in Lands be an Estate that hath been demised, and demisable Time out of Mind by Copy by the Lord, it is sufficient to support his Estate by Custom, so that no Estate is required to be in the Lord, but only that the Copyhold be lawfully rendered, and demisable Time out of Mind by the Lord for the Time being, so that he be Lord it is enough; so that the Custom, which warrants these Estates, only requires that they should have been demised, and demisable by the Lord before the Time, but it requires no Estate to be in that Lord in particular, so that he be but Lord, and Custom in the Life and Soul of a Copyholder's Estate, for the Copyholder doth not derive his Estate out of the Lord's Estate (for then it would determine with his Estate) but from the Custom which only requires a lawful Lord for the Time being, and therefore no Regard is had to the Person of the Lord — And if Copyhold of Beasts, or comes into the Hands during their Time, any of them may regrant it to the Will, rendering the ancient Rent, Culfoms, and Services, and the Lord, who has Inheritance, shall be bound thereby. 4 Rep. 25 b. S. C.

If Tenant 2. But Difficulties, Abators, Intrudors, Tenants at Sufferance, cannot grant Copies to bind those that have Right. Co. Litt. 38 b. Co. 4. between Royse and Arters. B. R. 24 adjudged in the Case of a Celyone: Vic. Tenant at Sufferance.

Of a Manor: if Tenant continues in the Manor, and holds Courts, and makes voluntary Grants by the Copy, these shall not bind the Seilor: For he was Tenant at Sufferance without any lawful Interest, and Writ of Entry, and Termumm can prorister his against him, and to be a Defender of the Manor. 4 Rep. 25 a. b. pl. 9. Patch 29 Eliz. S. C. — Ma. 236, pl. 309. S. C. adjudged; so when the Heir grants a Copyhold, and afterwards affigges Dower, the Heir shall avoid the Copyhold. 2 Le 45 pl. 57. S. C. adjudged, Nifi. — Ow 22. Royse's Case. S. C. adjudged Nifi. — S. P. per Cur. Ow. 112. in 262. a. S. P. in a Note by the Reporter. 1 Rep. 142 b. at the End of Chudleigh's Case, Lords, and a Copyhold, the Copy was granted Poph 71. — S. P. Bridg. 71. — If a Man felled of a Manor in which are divers Copyholds demisable for Lives is difsifed, and the Diffilctor grants a Copyhold, being void, for 3 Lives, this is not good to bind the Diffilctor: otherwise it is of a Copyhold of Inheritance, because it is necessary to admit the next Heir. Calth. Reading, 49.

Cro. E. 661. 3. If Tenant in Dower of a Copyhold Manor grants a Copyhold pl. 15. Gay v. Kay S. C. in Reversion, this Grant shall bind the Heir after the Death of the Feme, tho the Reversion be not executed in the Life of Tenant in Dower; For this is all one with a Grant in Possession, the Custom warranting an Estate in Possession. P. 41 Eliz. B. R. between Guye and Bye.

Guardian in Socage held a Court in his own Name, and granted Co. B. and D. 3 Jac. B. between Shapland and Rider, adjudged. Reversion, and held good against the Heir. Ow. 112. 1 Jac. C. B. Shopland v. Radlen. — The Custom of the Manor was to admit for Life, the Remanier for Life, and there being only a Holder for Life in Possession, the Guardian in Socage, during the Heirs being under 14, admitted one to the Remanier for Life, and held good, because he had a lawful Interred. Godb. 143 pl. 177. Spall v. Rider. S. C. — Cro. J. 55. pl. 27. S. C. adjourned. — Ibid. 98. pl. 28. S. C. adjudged that the Grant was good. 4 Le 238. pl. 291. S. C. adjudged good. — S. C. cited Supplement to Co. Comp. Cop. 82, S. 17. — S. C. cited per Cur. Lord Raym. Rep. 121. Mich. S. W. 2. C. B. in Case of Wade v. Baker. — S. P. by Lord Commissor Jekyll accordingly. 2 Wm's Rep. 122. Hill. 1722 in delivering the Judgment of the Court, in Case of the Lord Co. J. Eye v. the Counties of Stafford, that Guardian may grant Copyholds in Reversion. — 2 New Abr. 283; cites 8 W. 5. C. B. 25. — Barker, that a Guardian in Socage may grant Copyholds in Reversion according to the Custom of the Manor, tho' they come into Possession during the Non-Age of the Infant. — It seems misprinted and that the Word (not) is omitted.

5. If
5. If a Lord of a Manor devises by his Will in Writing, that his S. P. and all Executor shall grant Copies according to the Custom, for Payment of Debts, and dies, the Executor, tho' he hath no Estate in the Manor, may make Grants according to the Custom of the Manor.

6. If a Bishop grant customary Lands by Copy, and dies, the Copyhold is not determined by his Death, for he was Dominus pro Tempore, and this Grant shall bind the King, and the Grantee (the Temporalities being in the Hands of the King) shall have Aid of the King.

7. If a Manor be devised to one, and the Devisee enters, and makes Co. Lit. 4 Rep. the Devise is found to be void, those Copies if they are b. S. P. new and voluntary, and not made upon Surrenders, are void; per Pop-ham. Ow. 28. cites 7 Eliz.

8. Feejee of a Manor upon Condition makes a voluntary Grant of Co. Bndll. 292. pyd Estate according to the Custom, and after the Condition is b. pl. 259. 8. broken, and the Feoffor re-enters, yet the Grants by Copy shall stand b. Co. Litt. 242, 243. pl. 4 Rep. 24. pl. 8. Patch. 26 Eliz. B. R. Anon. cites D. 342. [b. pl. 53. 26. S. C. resolved, that if the Feejee before or after the Condition broken, and before Entry for the Condition broken, grants a Copy- hold, the Grantee shall not avoid this Copyhold, for the Copyholder is in by Dominus pro Tempore, and paramount the Grant — If a Lease be made for Years of a Manor, the Lease to be void upon the Breach of a certain Condition, if the Condition be broken, and afterwards the Leafe before the Entry of the Leffor grants Estates by Copy, these Grants shall never exclude the Leffor, for presently upon the Breach of the Condition the Lease is void; but had the Manor been granted for Life, in Tail, or in Fee, Lt Coke thinks the Law would have fallen out otherwise; for before Entry the Prankeninent had not been avoided, and wherefoever a Man may enter and avoid any Estate of Extentment upon the Breach of a Condition, the Law adjudges nothing to be in him before Entry, and he may waive the Advantage which he might take by the Breach of the Condition if he will, and therefore, notwithstanding the Annuity of the Title of the Grantor; yet before this Title be executed by Entry, the Grantee has such a lawful Interests, that what Estate soever he grants by Copy in the Interim, shall stand good against the Grantee.

9. A Lord for Life, or any other particular Tenant that hath an Inte. ibid. says, reft in a Manor, may grant Copies in Reversion, though they be not ex. in the Lile of the Grantor.

10. Carew's Case.

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6. Co. Comp. 45. S. 34. 15.

7. Gils. Treat. of Ten. 102. S. P. 4 Rep. 28. b. S. P. per Cur. that the Grant is good; for after the Affent of the Executors, he is in by the Devisee. Co. Comp. 47. S. 34. S. P.

8. Feejee of a Manor upon Condition makes a voluntary Grant of Co. Bndll. 292. pyd Estate according to the Custom, and after the Condition is b. pl. 259. 8. broken, and the Feoffor re-enters, yet the Grants by Copy shall stand b. Co. Litt. 242, 243. pl. 4 Rep. 24. pl. 8. Patch. 26 Eliz. B. R. Anon. cites D. 342. [b. pl. 53. 26. S. C. resolved, that if the Feejee before or after the Condition broken, and before Entry for the Condition broken, grants a Copy- hold, the Grantee shall not avoid this Copyhold, for the Copyholder is in by Dominus pro Tempore, and paramount the Grant — If a Lease be made for Years of a Manor, the Lease to be void upon the Breach of a certain Condition, if the Condition be broken, and afterwards the Leafe before the Entry of the Leffor grants Estates by Copy, these Grants shall never exclude the Leffor, for presently upon the Breach of the Condition the Lease is void; but had the Manor been granted for Life, in Tail, or in Fee, Lt Coke thinks the Law would have fallen out otherwise; for before Entry the Prankeninent had not been avoided, and wherefoever a Man may enter and avoid any Estate of Extentment upon the Breach of a Condition, the Law adjudges nothing to be in him before Entry, and he may waive the Advantage which he might take by the Breach of the Condition if he will, and therefore, notwithstanding the Annuity of the Title of the Grantor; yet before this Title be executed by Entry, the Grantee has such a lawful Interests, that what Estate soever he grants by Copy in the Interim, shall stand good against the Grantee.

9. A Lord for Life, or any other particular Tenant that hath an Inte. ibid. says, reft in a Manor, may grant Copies in Reversion, though they be not ex. in the Lile of the Grantor.

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29 Eliz. in Welth's Case; and that in the same Case of Welth it was so adjudg'd afterwards in B. R. Patch. 41 Eliz. upon a Special Verdict return'd there. Mo. 95. pl. 256. Hill 14 Eliz. S. P. and Wray, and Dyer, and all the Justices of C. B. held the Copy not good, but Manwood and Pop-ham held e contra; and they all agreed, that if it comes into Possession before the Death of Tenant for Life, than it is good. To make such Grant good, there should be a Copyhold, to enable the Lord to grant in Reversion. Mar 6. pl. 11. Patch. 15 Car. — Lt. Coke says, that if there be Leases for Years of a Manor, and he grants Lands by Copy in Reversion, that unless the Reversion happens in Possession before the Lease for Years expires, the Grant is void; the Reason seems to be, because now he makes a Grant, which is only to take Effect after his Estate ended in Point of Possession, and so will bind the future Lord's Interest, but let his own be at large without any Grant by Copy, which by Construction they will not admit, but take the Rule strictly, that he that is Dominus pro Tempore of a particular Estate must grant in Possession; and to this Purpose is Lord of Lord's Case; but it is agreed on all Hands, that if it come in Possession during the Continuance of the Lord's El- tate, that it's good; but there is the Case of Cary v. Cary, where it was held good notwithstanding.
Copyhold.

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It did not come in Poullellion; and there it was said, that it was Cuthol only warranted the Grant, which might as well warrant a Grant in Reverlion as Poullellion, and if the Cuthol will warrant the Grant of a Free simple in Poullellion by such particular Tenants, why not a Reverlion in Fee? And the like Revolution was made in Sir Patk. Cale's Case. It seems the first Ground of this Law, that the Lord for the Time being might grant Copyhold Estates, was, because Copyholders were only Tenants at Will, and so though the Lord pro Tempore had but a particular Estate, and yet granted the Lands in Fee, yet that was no Prejudice, but rather an Advantage to the Lord that was to have the Manor, in respect of the service he was to have done him afterwards, and if he had a Mind he might put out his Tenant at his own Pleasure; but this Uncertainty of the Copyholder's Estate being found inconvenient, it was afterwards adjudged, that he should retain his Land, and not be subject to the Pleasure of the Lord, but the other Part of the Law was left as before, viz. that Lords for the Time being might grant Lands in Fee tho' they themselves had but a particular Estate, and this Copyhold being continued to this Day, is what warrants the Grants by Cuthol; For it is not certain those Estates that are granted by Lords that have a particular Interest, cannot be derived from the Interest of the Lords, for it they were, they must determine when the Lord's Estate determines, for nemo plus Juris dat &c therefore where there has been a Cuthol that such Lands have been granted Time out of Mind by Cuthol in Fee by the Lord, there the Cuthol gives the Estate, and the Lord is but Cuthol's Instrument to convey even where he has them in his own Hands, and may, if he pleased, retain them, Gilb. Treat. of Ten. 191 192. 193.

10. If the Queen be Tenant for Life of a Copyhold Manor, and a Copyhold of Inheritance ofbeats to her, she may grant it again to whom the pleas, and this shall bind the King, his Heirs, and Successors for ever; for the same Domina pro Tempore, and the Cuthol of the Manor shall bind the King; adjudged. 4 Rep. 23. b. Trin. 26 Eliz. Clark v. Pennyfeather.

11. A seised of a Minor, in which were Copyholds, dies, leaving M. his Widow, who demanded the 3d Part of the Manor for her Dowry, by the Name of 100 Measages, 100 Gardens, 2000 Acres of Land &c. and was accordingly endowed of Parcel of the Doshies and Parcel of the Services of the Copyholds, and afterwards he granted a Copyhold, and if this was good was the Question; for if the had a Manor the Grant was good, others wise not; but held, that it was not; for though the might have demanded a 3d Part of the Manor, yet by demanding it by the Name of 100 Measages &c. she could have no Manor; for a Manor muft be claimed by its Name of Incorportion, as Anderon termed it, and not otherwise, and then 100 Measages &c. cannot be said to be a Manor, and so the Grant by her, who had no Manor, is void; per tot. Cur. Goldsb. 37. pl. 11. Mich. 29 Eliz. Brook's Case.

12 A Grant of a Copyhold by an Infant is good, for the Copyholder is in by the Cuthol, and shall bind the Infant, as a Presentation by an Infant to a Church is good. Noy. 41. 43 Eliz. Reeve v. Martin.


Tenant in Tail of a Manor wherein Copyholds are demesnes for Life &c. for a certain Rent; The Copyholder for Life dies, and the Lord denys it by Indenture for 21 Years, rendering the ancient Rent &c. and by the better Opinion of the Court it is good, within 32 H. 8. For it is not any Prejudice to the Issue as to the Rent. Noy. 106. Mich. 43 and 44 Eliz. C. B. Ld. Norris's Cafe. 14. He
Copyhold.


R. B. Eqq; being seised of the Manor of H. for Life, within a Copyhold Tenants, graneth the Stewardship thereof by Deed under his Seal to W. S for Life, with a Fee of 10 £ per Fee for executing thereof, and afterwards becomes Lunatick, and non compos Mentis, and so found by Inquisition, and thereupon committed to E. C. Eqq; and others under the Seal of this Court. Resolved by the Lt. Ch. J. Hobart, and Ch. B. Tanfield, that the said Committees cannot grant any Copyhold Estate, for that they themselves by Law have no Estate in the said Manor, nor are Lords thereof for the Time being, but the said Lunatick by his Steward may grant Copyhold Estates according to the Custum of the same, whereupon it was deemed accordingly. Nevertheless it was ordered, that the said Steward should grant none without the Privity of the Committees, nor before the Court was acquainted therewith, and give Warrant for the granting thereof; but note, this was in Discretion, and the Grant by the Steward good in Law, and this merely by way of Caution, for the Benefit of the said Lunatick, and Jurisdiction of the Court. Ley. 47, 48. 9 Jac. Blew's Case.

If Tenant at Will of a Manor grants Copies, and reserves Rents and Services, those Rents and Services are annex'd to the Manor after the Will determin'd, though the Lord of the Manor does not claim by, or under, but above him, and without any Privity of Estate; per Cur. 11 Rep. 18. a. Mich. 10 Jac.

Lesse for Years of a Seigniory, after the Term expired when he was become Tenant at Sufferance, may take a Surrender; per Dogeridge J. 2 Roll Rep. 181. Trin. 18. Jac. B. R. says 'twas adjudged in B. R.

In voluntary Grants made by the Lord himself, the Law neither respects the Quality of his Person, nor the Quantity of his Estate, for he an Infant, and so through the Tendernels of his Age insufficient to dispose of any Land at the Common Law, or non compos Mentis, an Ideot, or a Lunatick, and so for want of Common Reason unable to traffic in the World, or an Outlaw in any personal Action, and so excluded from the Protection of the Law, or an Excommunicate &c. and so restrained ab omnium fidelium communione, or at least a Sacramentorum participacione, notwithstanding these Infirmities and Disabilities, yet he is capable enough to make a voluntary Grant by Copy. Co. Comp. Cop. 46. S. 34.

If a Feme Seigniorys take Baron, and they two join in a voluntary Grant by Copy, this shall ever bind the Feme and her Heirs, and yet she is not fut Juris, but fut potestate Viri, because the Custom of the Manor is the chief Bais upon which stands the whole Fabrick of the Copyhold Estate. Co. Comp. Cop. 46. S. 34.

If a Manor is granted Condition, and before the Condition is broken the Land is granted by Copy, then the Manor becomes forfeited, and the Feeor enthrall, yet the Copyhold Estate remains untouched because lawfully established by Custom, and yet all mean Estates and Charges whatsoever granted by the Feeor at the Common Law were voidable upon the Entry of the Feeor; for we have a Ground in Law, that when an Entry is made for Breach of a Condition, the Party to all Intentts is in the fame Plight that he was in at the Time of the making of the Estate. Co. Comp. Cop. 46, 47. S. 34.

If the Lord or he (whoeuer he be) that makes a voluntary Grant by Copy, has no lawful Interest in the Manor, but only an insuper'd Title, his Grant shall never bind the right Owner, but that upon his Entry
Copyhold.

he may avoid them, otherwise we should make Custom an Agent in a Wrong, which the Law will never suffer. Co. Comp. Cop. 47. S. 34.

22. If a Dileffe of a Manor dies seised, notwithstanding his Heir comes in by ordinary Course of Dilettent, yet because the Tort commences by his Ancestor is still inherent to his Estate, if any Copyhold Estate be granted by the Heir, it may be avoided by the Dileffe immediately upon his Recovery, or upon his Entry. Co. Comp. Cop. 47. S. 34.

23. So if a Dileffe enfeof a Stranger of the Manor, notwithstanding the Feeoffice come in by Title, yet no Grant made by him of Copyhold Land shall ever bind the Dileffe no more than a Grant made by the Dileffe himself. Co. Comp. Cop. 47. S. 34.

24. If Tenant in Tail of a Manor discontinues and dies, and after the Discontinence grants Copyhold Estates, the Heir recovering in a Former in the Defender may avoid the Grants; for though the Discontinence comes in under a just Title, yet his Interest being determined by the Death of the Tenant in Tail, the Continuance of the Possession is a Tort to the Heir, and Acts done by Tortfeasors tending to the Destruction of the right Owners Custom will never so strengthen, but they may be annihilated. Co. Comp. Cop. 47. S. 34.

So if he alone grants Copies and dies, it seems that after his Death the may avoid them; For he had nothing but in Jure Usuris. Gilb. Treat. of Ten. 512.

25. If a Man seised of a Manor in right of his Wife alienis the Manor and dies, any Grant made of Copyhold Estates after his Death may be avoided by the Feme upon her Entry, or her Recovery, in a Cui in Vita. Co. Comp. Cop. 47. S. 34.

26. A Man seised of a Manor in Fee has Issue a Daughter, and dies, his Wife pavement enfeint of a Son; she makes Grants by Copy, and afterwards a Son is born; voluntary Grants made by her are good, for she was Legitima Domina pro Tempore. Co. Comp. Cop. 47. S. 34.

27. Feeoffice of a Manor on Condition to enfeof another the next Day, makes voluntary Grants by Copy, this shall bind. Co. Comp. Cop. 47.

28. Lord of a Manor commits Felony, and after Exigent granted he passes away Copyhold Estates, and then is attainted, his voluntary Grants are good; for he was Dominus pro Tempore, though by Relation the Manor was forfeited from the Time of the Exigent awarded. Co. Comp. Cop. 47. S. 34.

29. If a Manor be granted with a Feme in Frank Marriage, and there is a Dilettent bad Caufa praeventaxis, so that now the Interest of the Manor is granted to the Feme only, and by Relation the Marriage is void ab initio, yet because the Baron was legitimus Dominus pro Tempore, any Copyholders Estates granted before the Dilettent remain good. Co. Comp. Cop. 47. S. 34.

30. If a Man espouses a Feme Seigniores under the Age of Consent, and after deth disaffair, though the Marriage by Relation was void ab initio, yet Copyholds granted before Disaffair shall never be avoided, Caua qua supra. Co. Comp. Cop. 47. S. 34.

31. If an Infant infefts me of a Manor, though he may enter upon me at his Pleasure, yet Grants made by me by Copy before his Entry shall never be defeated by any subsequent Entry. Co. Comp. Cop. 48. S. 34.
Copyhold.

are good that are granted to the Copyholders; yet my Lord Coke says, that if any one has a

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titious or defeasible Estate, subject to the Action or of a Right at present, that the Owner of such a defeasible

rightful and rightfull Estates in the Land till they are defeated, and before they are de-

feasible, for Leafe, and grants Lands by Copy, and after is induced, this admittance of the Copyholders is no binding Act; for though as to the

Spiritualities he be a compleat Parson presently upon the Institution, and to the Temporalities he is not compleat before Induction. Co.

Comp. Cop. 48. S. 34.

32. If a Parson after Institution, and before Induction, a Manor being

33. So if a Parson be admitted, instituted, and induced, but does not

Perced of his Glebe Lands, grants Lands by Copy, and after is induced, this admittance of the Copyholders is no binding Act; for though as to the

Church was once full, until the Sentence declaratory came, although the Deprivation shall relate to some Purposes, yet because the Preference

is not in it fell void, surely a Relation shall never be so much favoured as to avoid a Copyhold Estate in this kind. Co. Comp. Cop. 48.

S. 34.

34. But had the Parson been deprived for Crime of Hereby, or for being more Leicus, although he be declared by Sentence to be incapable of a

Benefice, and so his Preference void (ab initio,) yet because the Church was once full, until the Sentence declaratory came, although the Deprivation shall relate to some Purposes, yet because the Preference is not in it fell void, surely a Relation shall never be so much favoured as to avoid a Copyhold Estate in this kind. Co. Comp. Cop. 48.

S. 34.

35. If a Manor be granted per auctrior Vit, and Coftly quod vie dies, and

36. And if a Tenant for Life of a Manor makes a Lease for Years of

the Grantee continues still in the Manor, and makes Grants by Copy, these shall not bind the Grantor of the Manor, for immediately upon the

Death of Coftly quod vit, the Grantee was but a Tenant at Surrance, and had no Manner of lawful Interest, for a Writ of Entry ad Terminum

qui praterit lies against him as against Deforcor. Co. Comp. Cop. 48.

S. 34.

37. Grants made an Alienation in Mortmain before the Lord Paramount

38. A Lord to grant or allow a Copyhold must be such a one as by

has entered for a Forfeiture shall not be defeated. Co. Comp. Cop. 48.

S. 34.

Littleton's Definition is feized of a Manor, so that he must be in Possession at the Time of the Grant, for although he have good Right and

Title, yet if he be not in Possession of the Manor it will not serve; and on the other Side, if he be in Possession of the Manor, though he have neither Right nor Title thereunto, yet in many Cases the Grant and

Allowance of such a Copy is good, as Dominus de Facere, sed non de

jure; And in some Cases a Copyhold shall be adjudged good, according to the Largenefs of the Estate of the Lord that granted the same, and in some Cases shall continue good for a longer Time than the Estate of the Grantor was at the Time of the Grant; But that is to be understood in Case of Necessity, otherwise it will not be allowed. Calth.

Read. 48, 49.

39. If a Man have a Title to enter into a Manor for a Condition broken, and he grants a Copyhold of the same Manor (being void) at a Court

Baron, this is a good Grant, for the keeping of the Court amounts to an Entry into the Manor. Calth. Reading. 49.

40. A
Copyhold.

40. A Man seized of a Manor for Life, whereunto is Copyhold of Inheritance belonging, and a Copyholder surrenders to the Use of a Stranger in Fee, the Lord may grant this in Fee, and this Grant shall bind him in the Reversion; but if the Copyholds are demisible for Lives, it is otherwise, for then he cannot upon Surrender grant the same longer than the Life of the Granter. But if the Lord of a Manor for Years, or during the Minority of a Ward, of which the Copyholds are demisable for 3 Lives successively, and not survivingly, in this Case, if the Copyholder dies, the Lord may grant the same being void for 3 Lives at his Pleasure, and this shall bind him in the Reversion, or the Heir of his full Age.

(C) Grants by whom. Good. Where the Manor is divided.

1. Tenants in Dower of the 3d Part of a Manor has a Manor, and may keep Court, and grant Copies. Godb. 135. pl. 156. Mich. 29 Eliz. in Bragg’s Case.

Gilb. Treat. of Ten. 159, 199, cites S. C. says, that when the Grant is of all the Copyhold Lands, there is still but one Court for Copyholders, which there was in Effect when the Manor consisted of Freeholders.

2. The Lord by his own Act cannot make of one and the same Manor, at Common Law, 2 several Mansors, consisting of Demesnes and Freeholders; but he may by his own Act make a customary Manor, consisting of Copyholders, to hold Courts, and make Admittances and Grants of Copyholds. 4 Rep. 26 b. Trin. 30 Eliz. in a Note of the Reporter, at the End of the 3d Resolution, in the Case of Melwich v. Luther, says it may appear by the Judgment in that Case.

3. A was Lord of the Manor of C. which extended into B. and C. &c., and in B. were divers Copyholders for Life. A, suffered a Recovery of the Manor, excepting the Land in B. Afterwards A conveyed the Part which extended into B. to S. and A. and J. S. kept a Court at B. and the Steward granted a Copyhold, being a Copyhold for Life, to the Plaintiff. Relolved, that the Grant was void, because there was not any such Manor of B. before or now; and per Anderton, if such Severance had been of Copyholders of Inheritance, the Copyholders and their Heirs should have had it, but it cannot be surrendered; for Surrenders are by Custum, and therefore they ought to be in the Court of the Manor, and a Surrender to the Lord himself in his House, or out of Court, is not good, quod Beaumont conceit. Cro. E. 442. pl. 5. Mich. 37 & Eliz. C. B. Bright v. Forth.

and that in

Error brought thereon in the Exchequer Chamber, the Opinion of the Justices was, that it was erroneous, and that thereupon the Copyholder compounded, and took only his Corn, and relinquished the Title. Cro. E. 444. in S. C. — Cro. E. 292 the same Remark in a Note there, at the End of the Case of Melwich v. Luther, mentioned there by the Reporter, as told him by Eyres, who was of Counsel in the Case. — Gilb. Treat. of Ten. 197, says, that there are Precedents that such Grant of the Inheritance of Copyhold Lands cannot keep Court no more than the Grantee of the Inheritance of one Copyhold, and takes Notice of what is mentioned in Cro. E. as above, of the Opinions of the Justices and Barons in the Exchequer Chamber, and that the Parties compounded.

5. A.
Copyhold.

4. A. seised of a Manor consisting of Services, Demesnes, and 50 a. of Copyhold, grant to B. the Moiety of 20 of them &c., and afterwards con-

ferred his former Grant, and granted the Moiety of the Manor. A's. E. a Note by

hate came to C. and B's. to D and then C. and D. hold a Court, and the Report-

ation in the Grant of the Copyholds to maintain the Grant. It was argued, et. in the

that before the Grant to B. it was a compleat Manor, and while such it Neale v.

had 2 Courts (viz.) a Freeholder's Court, and a Copyholder's Court, to Jackson,

that by the Grant of the Moiety of 20 Copyholds, the Freehold Part Parch. 37

of the Manor is not touched, but only a Moiety of 20 Copyholds, and Eliz. C. B.

and cites it a Copyhold Court might be held for 20 Tenements, and as to the Murrell's

other 20 they may remain as they were before; but as to the Moiety of Cafe, which

20 Tenements, they might keep Court alone, and grant Moieties; Suppose it at a Rep.

the half Interest of 20 Copyholds had been granted, then they might 24 b. 25 a.

have held Courts, and the Difference is, between one Tenement being granted 53 & 54 E.

and more; for if more than one be granted, then the Grantee may hold 44 Rep.,

Courts, and make Admittances, this being for the Benefit of the Tenants; 26 b. Neale

so that had it been for 20 Copyholds it had been good, whereas this is v. Jackson,

of a Moiety; had it been of a Moiety of all they had been Tenants in

Common, and might have joined in keeping Courts, and if so, why not pl. to S. C.

when a Moiety of 20 is granted? the Court advise vult, but in—But see

cluded for Plaintiff accordingly. Skin. 191. pl. 6. Trin. 36 Car. 2. C. the Cafe of

B. Lemon v. Blackwell.

(I) Grants by Jointenants.

1. Two Jointenants of a Manor. One grants a Copy; the fame is void; if there be

for he is not Dominus pro Tempore; per Anderlon Ch. J. Le.


the whole, but if there be two Jointenants of a Manor, and a Copyhold echeats, one of them may

grant this Copyhold, and his Companion shall never avoid any Part of it. Co. Comp. Cap. 48. S.

34.—If there are two Jointenants of a Manor, and a Copyhold echeats, one may grant the

whole, for he is Dominus pro Tempore, and is seised Per my and Per tout. Gilb. Treat. of Ten.

312.

(K) Voluntary Grants. Good. And how considered.

1. When Copyhold Lands come into the Lord's Hands by E-

cheat or Perfeiture, he may grant them by Copy, rendering

greater Rent, but not when he admits a Tenant. 2 Roll. Rep. 236.


2. If the Copyholder (voet) (will) [but it should seem rather (poit]

may] priviledge any to cut Trees, the Lord may in his new Grant re-

strain it upon Condition, and yet the Copyhold is not destroyed by it.


G

(L) Grants
(L) Grants of Copyholds. To whom they may be made.

1. **The same Persons that are capable of a Grant by the Common Law** are capable of a Grant by Copy, according to the Custom of the Manor. Co. Comp. Cop. 49. S. 35.

2. An Infant, a Man **non Janae Memorie**, an Ideot, a Lunatick, an Outlaw, or an Excommunicate, may be Grantees of a Copyhold Estate. Co. Comp. Cop. 49. S. 35.

3. The Lord himself may take a Copyhold to his own Use. Co. Comp. Cop. 49. S. 35.

4. One **Jovintenant** may receive a Copyhold from the Hands of his Joint-Companion, because it passes by Surrender, not by Livery. Co. Comp. Cop. 49. S. 35.

5. A Feme Covert may be a Purchaser of Copyhold, and this Purchase shall stand in Force until her Husband disapproves. Co. Comp. Cop. 49. S. 35.

6. He shall be said a Person sufficient to be a Copyholder, who is of himself able, or by another, to do the Service of a Copyholder; as an Infant may be a Copyholder; for his Guardian, and Prochein Amy may do the Services; So a Feme Covert and her Husband shall do the Service; But a Lunatick, or Ideot, cannot be a Copyholder, because they cannot do the Service themselves, nor depute any other, and the Lord shall retain the Copyhold of an Ideot, and not the Queen. Calth. Reading. 51, 52.

7. A Bond-Man or Alien born may be a Copyholder, and the King or Lord cannot feile the same. Calth. Reading. 52.

8. But a Man cannot be a Copyholder unto a Manor, whereof he himself is Lord, although he be but Dominus pro Ternino Annorum, or in Jure Usoris. Calth. Reading. 53.

(Reproduced from the original text)

(L. 2) Grant. At what Place it may be made.

1. The Lord of a Copyhold Manor may himself grant a Copyhold at any Place out of the Manor. Co. 4. 26. b. between Melwich and Later.

(M) Grants. How they may be made, and of what.

1. If the Lord grants to his Copyholder the Trees growing upon the Lands, and which shall after grow, with Liberty to cut them down, and carry them away, he may pity the cutting of the Trees which are growing, and it shall not be a Forciture of his Copyhold, because the Lord hath by his Grant dispensed with it, but he cannot cut down the Trees which shall thereafter grow, as it was said by Plowden and
Copyhold.


Mich. 15 Eliz. C.B. Anon. S.P. as to a Lease of Lands and Bargain and Sale to the Lessee of the Woods growing, but that was not (as it seems) of Copyhold Lands.

2. One who has a particular Estate in a Manor cannot grant a Copyhold by Farcels, or demije Part, and retain the Remainder himself; and therefore if a Feme be endow'd of several Copyhold Tenements, the cannot grant Part of them by Copy in Possession or Reversion; per Popham. Cro. E. 662. in pl. 10. Parch. 41 Eliz. B. R.


4. If the Lord of a Manor having ancient Copyhold in his Hands, will by a Deed of Fiefment, or by a Fine, grant this Land to one to hold as the Will of the Lord according to the Custom, yet this cannot make a good Copyhold. Calth. Reading. 47.

5. In Grants made upon Forfeitures &c. the Ancient Services must be reserved, and the Customs also. The Reason of this seems to be, because there is nothing but Custum to warrant the Grant by Copy, which ought to be strictly pursued as to the Estates, Customs, Services, and Tenure, or else it is not the Estate that was demised before; But yet if there be a Copyholder in Fee, it seems the Lord may release Part of the Services, and not to do any Prejudice to the Copyholder's Estate, for there is an Estate there in being that appears to be the old Estate; but when the Lord grants a new Estate by Copy, since it is an Estate against common Right, and warranted only by Custum, that must be strictly pursued to bind the Heir. Lord Coke says, * if the ancient Customs and Services be not reserved, the Grant by Copy will not bind the Heir or Copy. Comp. Cop. Succefsor. This being spoken so generally, seems to intimate plainly, that if the Ancstor hath a Fee in the Manor, and he grants without observing the Custum, his Heir may avoid it, because it being a Grant against common Right, the Custum must be pursued. (Quare Cro. E. 662. 1 Roll. Ab. 499) Besides, he puts Heir in the same Equipage with Succesor, and if he means with the Confect of Dean and Chapter, then a Bishop had as much Power as an Ancelor; if he means without the Confect, yet it is not that should avoid the Grant, but the Non-reervation of the Ancelor Tenures. And so strict is the Law in this point, that if the Kent be reservered in Silver, where anciently it was in Gold, or payable at two Feasts, where anciently it was payable at one Feast, or if two Copyholds escheat, one usually demised for 20s. and the other 5s. and he demises both for 50s. so if 3 Acres escheat held by 3s. and he grants one by Copy, referring 1s. this is not good; for the Custum, which is the only Thing that warrants such Grants, must be pursued. Gilb. Treat. of Ten. 185. 186. 187.

(N) Grants. How several Estates are granted in one Copy.

1. Scifed of Copyhold Lands of the Part of his Father, and of other Copyhold Lands of the Part of his Mother, and thereof died fealed, his Son and Heir is admitted by one Copy and one Admittance; if that Son dies without Issue, the Copyholds shall descend sev- erately, the one to the Heir of the Part of the Father, the other to the Heir.
Copyhold


2. The Tenants p.r. Antiqua Servitut &c in the single Copy, continues the several Tenures, tho' the Parcels are all put into one Copy, Resolved. 4 Rep. 27. pl. 15. Trin. 26 Eliz. B. R. Taverner v. Cromwell.


(O) Grant. Operation thereof. And what Estate and Interest passes thereby.

1. THOUGH the Quantity of the Lord's Estate in the Manor be not respected, yet the Quantity of his Estate in the Copyhold is regarded; for if a Copyholder in Fee surrenders to the Use of the Lord for Life, the Remainder over to a Stranger, or reserves the Reversion to himself, it the Lord will grant this by Copy in Fee, whatsoever Estate the Lord has in his Manor, yet having but an Estate for Life in the Copyhold, no larger Estate shall pass than he himself has; Quia nemo potest plus juris in aliuum transferre quam ipse habet. Co. Comp. Cop. 47. S. 34.

2. What Acts forever are not confirmed by Custom, but only strengthened by the Power, Authority, and Interest of the Lord, have no longer Continuance than the Lord's Estate continues; and therefore it is held, that if a Tenant for Life of a Manor grants a Licence to a Copyholder to alien, and dies, the Licence is destroyed, and the Power of Alienation ceases. Co. Comp. Cop. 47. S. 34.

3. If a Copyholder for Life, Remainder over in Fee to a Stranger, surrenders in Fee, and the Lord admits accordingly, yet an Estate for Life only passes. Co Comp. Cop. 48. S. 34.

4. So if the Lord of a Manor grants a Copyhold for Life where an Estate in Fee is warranted, and the same Grantee surrenders in Fee to the Use of a Stranger, and the Lord admits him, secundum Estatam sua, sedn-rededitis, Lid. Coke thinks no Fee passes; for tho' the Lord's Admittance may prima facie seem to amount to a Confirmation of the Estate surrendered, the Reversion refts in him to dispose of according to the Custom; As where a Lefsee of Years, at the Common Law, makes a Feoffment in Fee, and makes a Letter of Attorney to his Leflor to deliver Livery and Seisin, who executes it accordingly, though the Leflor be used as an Instrument to perform the Will of the Lefsee, yet this being his voluntary Act, the Law takes it as a Contemt for the paffing away of the whole Inheritance. But if you look narrowly into both Cases, you shall find the Difference, in the latter Case by the Feoffment the Fee is devested out of the Leflor, and therefore a Contemt will serve to transfer the Reversion, but in the former Case, the Reversion is not pluckt out of the Lord by the Surrender, and therefore an implied Contemt is too weak to remove it. Co. Comp. Cop. 48. S. 34.

5. IIf
Copyhold.

5. If the Lord in open Court doth grant Copyhold Land, and the Steward makes no entry thereof in the Court Rolls, this is not good, tho' it be never so publicly done, nor no collateral Proof can make it good. Calth. Reading 47.

6. But if the Tenant have no Copy made unto him out of the Roll, or if he lose his Copy, yet the Rolls are still a sufficient Title for his Copyhold, if the Rolls be also lost, yet it seems that by Proof he can make this good. Calth. Reading 47, 48.

[P] Custom.

Pursuance.

What shall be said a Pursuance of the Custom.

Copyhold.

1. If the Custom of the Manor be, That the Lord may demy the Cro E. 377; Copyholds in Fee, he may demy them for Life, Years, or in Tail, for their Estates are included within a Fee which is the greater. S. P. libr. 37 Eliz. B. R. between Stanmore and Barns, adjudged, and there laid by Popham, that it was so agreed per Curiam, at St. Albans, in Cousin's Term. Co. Lit. 52 b. accordingly, because Omne majus contract in se minus. Godh. 20, pl. 25, Paffb. 26 Eliz. C. B. Anon. 4 Rep. 25, a. pl. 5. Mich. 35 & 36 Eliz. B. R. Gravenor v. Todd, S. P. adjudg'd.

2. So if the Custom of the Manor be, That the Lord may soldom demy his Copyhold Land in Fee, yet the Lord may demy it for Life, Years, or in Tail, though there were never any such Estates but those made before, for the Word Soldom is not to be taken so strictly to restrain the Lord from this Liberty, which the Law gives him upon the general Custom, but that he had Soldom to grant in Fee, which does not take away the Liberty which the Law gives. S. P. libr. 37 Eliz. B. R. between Stanmore and Barns, adjudged, which in

3. If the Custom be, That Copyholds may be granted for three Lives, a Copy may be granted to three for the Lives of two within the Custom, for there is not any Inconvenience to the Lord, though it be for the Life of another; for there shall not be any Occupancy, thereof, but the Lord shall have it, if the Tenants pur ater Vie die, liv. 1002, by

4. But if the Custom be, That there is not a greater Estate than for three Lives, but it is for two Lives, which is less than the Custom warrants. Arg. 15 Jr. B. R. between Vei and Howel, per Curiam. Life, and to B. durante Vizidatùre sus; for where the Custom warrants the greater Estate it warrants the letter, especially here, because this is also an Estate for Life, but limited, and as it were conditions. Cro E. 375. pl. 11. Paffb. 26 Eliz. B. R. Down v. Hopkins. 4 Rep. 29 b. 35 a. pl. 19. S. C. adjudged. — Supplement to Co. Comp Cop. 11. 16. cler. S. C. — S. P. & S. C.

This in Roll is Letter (L) in fol. 511.
4. If Customary Land hath been of ancient Time grantable in Fee, and now at late Time for the Space of 40 Years hath granted the same for Life only, yet the Lord may, if he pleafe, refer to his ancient Custom, and grant it in Fee. Le. 56. pl. 70. Patch. 29 Eliz. C. B. Kemp v. Carter.

5. If customary Land within a Manor hath been grantable in Fee, if now the same elebrates to the Lord and be grants the same to another for Life, the same was holden a good Grant, and warranteable by the Custom, and should bind the Lord; for the Custom, which enables him to grant in Fee, shall enable him to grant for Life, and after the Death of the Tenant for Life, the Lord may grant the same again in Fee, for the Grant for Life was not any Interruption of the Custom &c. which was agreed by the whole Court. Le. 56. pl. 70 Patch. 29 Eliz. C. B. Kemp v. Carter.


(P. 2) Customs. Pleadings.

1. A Custom is alleged quod infra maner' predicitum talis habetur nec non a tuo Tempore ejus &c. non exigit, habeatur Confectudo (viz.) quod quilibet Tenentes predicitorum Tenementorum vocat Collins &c. have as to have Common in such a Place of the Manor, this was held well as well for the Form as the Matter, and that such a Prescription might be applied to one Copyholder. For Copyholders cannot prescribe by reason of the Benefices of their Estate in their own Names, but in the Name of the Lord, as to say, that the Lord of the Manor, and all his Ancestors, and those whole Estate he hath, have had, in such a Place for him and his Tenants at Will &c. as 22 H. 6. 52 a. and this shall serve when a Copyholder claims Common or other Profit in the Land of a Stranger; but when he claims Common or other Profit in the Soil of the Lord, he cannot prescribe in the Name of the Lord, nor in his own Name, but quot supers. 4. Rep. 31. b. 32. Mich. 18 & 19 Eliz. B. R. Foulton v. Cracherode.

2. It was pleaded, that the Copyholders of the Manor of B. C. that the Lands where demised and demissable Time out of Mind; but adjudg'd ill, because it is not certain whether they were demised for Years, Life in Tail, or in Fee; and it was also shown, that the Lands were granted by the Steward, but did not show his Name which is illusible. Sav. 131. pl. 205. Patch. 36 Eliz. The Archibishop of Canterbury's Cafe.

3. Copyholders in alleging a Custom need not show their Estates in Certainty, but if any Tenants of Frehold at Common Law will claim any such Benefit, they ought to shew their Estate, and the Names of the Tenant in Fee by a Que Estrate; per Saunders; Arg. 2 Saund. 326. Patch. 23 Car. 2. in Cafe of Heskins v. Robins.

(P. 3) Of
Of Grants in Reversion. Where. And by whom. And Pleadings.

1. In Trespass; the Defendant pleaded that the Place was Copyhold, and that a Grant was made to S. who granted it to him, &c. The Plaintiff replied, that before the Grant pleaded by the Defendant, A. L. was Life for Life, according to the Custom of the Manor, and that the Copyhold granted a Copy in Reversion to S. The Court cited Goldsb. 103. pl. 8. Mich. 30 & 31 Eliz. Plimp. and Dobynett.

2. If a Man (it was said) be seized of a Manor, whereof there are dis. If a Lessee were Copyholders admissible for Life or for Years, and he lesseth the Manor to another for Term of Life, the Lessee [Lessee] may make a Demise by Copy in Reversion, to commence after the Death of the first Copyholders, and that is good enough; but the Copy of some Manors is to the Contrary, and that is allowed. Helt. 54. Mich. 3 Car. C. B. Davies v. Fortescue.

3. There ought to be a Custom to enable a Lord of a Manor to grant Gilh. Treat. a Copyhold in Reversion. Mar. 6. pl. 13. Patch 15 Car. Anon.

See (G) pl. 31.

To
(P. 4) To whom Copyhold granted for his own Life, and the Lives of others shall descend, or go upon Death of Grantee.

1. A Copyhold Estate for the Life of himself and B. and C. and dies. His Son, who was neither of the Nominees, enters, enjoys, and dies intestate. J. S. administered to the Son. There is no Custom in the Manor that the first Taker might surrender, nor have they any Custom where the Copies run successive. Lord Jeffries decreed for the Administrator. Vern. 415. pl. 394. Mich. 1686. Howe v. Howe.

[And in what Cases the Lord shall take as an Occupant &c.]

S. P. by Walmley. J. Cro. E. 442. in pl. 4.—Cro. C. 205. pl. 10. Mich 6. Car. B. R. S. P. per. Cur. For in such Case the Surrenderer is in Quasi by the Copyholder, and by his Death the Copyholder shall have it again.

Ibid. says the Case was further, viz. that the Baron and Peer would release all the Feme's Right to C. but the Lord would not receive it, nor hold a Court for that Purpose, that in Mich. Term after it was decreed, that the Lord hold a Court &c. or avoid the Pollowin.—S. C. cited Cro. C. 205. —S. C. cited per Cur. 2. Resp. 842. in pl. 41. Mich. 23. Car. 2. B. R. in Pooie's Case — Gilb. Treat. of Ten. 240. 341. cites S. C. that C. pray'd to be admitted, and his Copy was not accidently p. &t. Most 'peopled-red' ver Forfiphe of the Houseman; and it was the Opinion of the Justices, that he ought not to be admitted; but the Lord may retain it in his Hands as an Occupant. The Reason is, because the Interest of the Feme was concerned, who had not surrendered; but there was this further in the Case, that Baron and Feme would have released their Right to the Reversioner, but the Lord would not hold a Court for it; but it was decreed in Chancery, that he should either hold a Court or quit the Pollowin.

Cro. C. 204. pl. 10. King against Lords, S. C. adopted in B. R. for in such Case of

3. If a Copyholder for Life surrenders into the Hands of the Lord, to the Use of J. S. as after follows, and the Lord grants it after to J. S. to have to him for his Life, and J. S. is admitted accordingly, and after dies, in this Case this shall not revert to the first Copyholder for Life, for he hath wholly dissipated himself by the Surrenderer, and therefore the Lord shall have it, Mich. 7 Car. in Camera.
Copyhold.

Scarce, between King and Loder, adjudged in a Writ of Error; and the Judgment in 23. R. which was there given accordingly per Curiam, upon Argument at the Bar, was now affirmed per Cur- pror Drutton, who inclined e contra, and Verrnon, who doubted thereof, by the Lord, and not by the Copyholder who surrendered.—But if a Copyholder in Fee surrenders to Use of another for Life, he is admitted, he is in Quasi by the Copyholder, and upon his Death the Copyholder shall have it again; and says, that the Judgment in B. R. was affirmed by all the Justices of C. B. and 'arms of the Exchequer. Ibid. —Same Diversity taken, Arg' Poph. 59, Hill 56 Eliz. in Case of Bullock and Dibler. — Jo. 229. pl. 3. S. C. adjudged — S. C. cited by North Ch. J. Mod. 203. pl. 51. Paich. 27 Car. 2. C. B. says this is to be understood of Copyholds in such Manors where the Custom warrants only customary Estates for Life, and is not applicable to Copyholds granted for Life with a Remainder in Fee. — Freeman. Rep. 192. pl. 196. S. P. by North Ch. J. accordingly.—

Gilb. Treat. of Ten. 240, cites the Case of King v. Loder. That if there be a Copyholder for Life, and be surrender on the Use of another for Life, who is accordingly admitted, and then dies, yet the Surrenderor shall not be admitted again; for by the Surrenderor he paid away all his Eftate, and had no Interest left in him. If the Surrenderor had died, it seems that the Estate of Tenant for Life was not ended, for then the Lord would have two Deaths to depend upon, either of which would bring him to the Estate, and yet but one Person that had an Interest.

(Q) Where the Eftate granted shall be subject to the Incumbrance &c. of the Lord.

1. L O R D and Copyholder for Life; the Lord grants a Rent-charge out of the Manor whereof the Copyhold is Parcel; the Copyholder surrenders to the Use of A. who is admitted, he shall not hold the Land charged. 4 Le. 118, pl. 236. cites it as adjudged to Eliz. C. B.

2. If there be Tenant by the Curtesy, or for Life or Terms of a Manor, and a Copyhold comes to his Hands by Forfeiture or Determination, and afterwards he binds himself in a Statute, and then denies the Copyhold Land again, this Copyhold shall be liable to the Statute, because it was once annexed to the Freehold of the Lord, and bound in his Hands. Mo. 94. pl. 233. Paich. 12 Eliz. Anon.

3. Lord and Copyholder for Life; the Lord grants a Rent out of his Supplement Manor whereof the Copyhold is Parcel; the Copyholder surrenders to the Use of A. who is admitted accordingly, he shall not hold it charged; but if the Copyholder dies, so that his Estate is determined, and the Lord gives grants to a Stranger de novo to hold the said Lands by Copy, this new Tenant shall hold the Land charged; and so was it ruled and adjudged in C. B. Le. 4. pl. 8. Mich. 25 & 26 Eliz. Anon. cites it as adjudged to Eliz.

4. In a Replevin; the Case was, that Henry, Earl of Westmorland, Supplement was seised of the Manor of Kennington in Fee, and granted a Rent-charge to Wm. Cordell, afterwards Matter of the Rolls, for Life, and in S. C. But quere afterwards a Fee申ment thereof to Sir John Clifton, who granted a Copyhold to Sands for Life, according to the Custom of the said Manor, the same being an ancient Copyhold. Sir John died seised; the Rent is behind; Sir Wm. Cordell died; Hempiton as Bailiff of Cary, Executor of Sir Wm. Hill 18 E. Hil. C. B. the Cordell distrain'd for the Arrearages upon the Poffellation of Sands, and it was clearly holden by the whole Court, that the Poffellation of the moorland's said Copyhold was not chargeable to distress upon this Matter, for the Case; for the Copyholder is not in by him who ought immediately to pay the Rent, the Copyhold, but is also in by the Custom. 2 Le. 109. Trim. 27 Eliz. B. R. Sands v. Hempiton.

usually for Lives by Copy, and the Lord granted a Rent-chage to T. D. pro confinis impendentalis for Life, and afterwards conveyed the Manor to T. N. in Tail. The Rent was behind, and the Gnistee of the Rent died, and the Executors of the Grantor distrained for the Arrearages; and there it was adjudged, that
5. Lord of a Manor, where Copyholders are for Life, grants a Rent-charge out of all the Manor; a Copyhold effebed, the Lord regnats it by Copy; per Omnes, nisi Fenner J. he shall not hold it charged, because he comes in above the Grant, i.e. by the Custum; the same Law of Statutes, Recognisances, Dowers; but the 10 Eliz. D. 270. per tot. Cur. he shall hold it charged, but 2 Brownl. 208. 5 Jac. C. B. in Cafe of Sammer v. Force, says this has been denied in Cafe of Swain v. Becket.

6. It seemed to Coke Ch. J. that it a Copyholder be of 20 Acres, and the Lord grants Rent out of those 20 Acres in the Tenure and Occupation of the Copyholder and names him, there if this Copyhold effebed, and be granted again, the Copyholder shall hold it charged; for that 'tis now charged by express Words. 2 Brownl. 208. Trin. 5 Jac. C. B. in Cafe of Sammer v. Force.

7. If the Lord of a Manor acknowledges a Statute, and then grants Lands by Copy, and afterwards the Manor is delivered to the Cognizant in Extent, the Grant cannot by this be impeach'd. Co. Comp. Cop. 47. S. 34.

8. Those Things which take the Essence by the Lord's Grant and Interest have no longer Continuance than his Interest has, and therefore if the Lord, Tenant for Life of a Manor, licenses the Copyholder to alien, and dies, the Licence is gone. Gilb. Treat. of Ten. 190.

9. Grants made after Alienation in Mortmain, and before the Entry of the Lord, are good. Gilb. Treat. of Ten. 190.

10. The King grants a Manor in Fee-farm; the Lands and Goods of Copyholders are not liable to the Rent, because they come in by Prescription, which is before the Rent. Gilb. Treat. of Ten. 310.

[R] What
Copyhold.

[R] What Act or Thing will hinder, or destroy the Power to grant by Copy.

This is Roll is Letter (B) in fol. 498.

1. If the King be seised of a Manor, of which Black-Acre is Parcel, See tit. Pre- and demisible by Copy in Fee, and this comes to the King regal, either by Echeat or Surrender, and after the King leaves the land, Black-Acre to J. S. for Life, not taking Notice that it was demis- able by Copy, this is a good Grant, though the King did not know that it was demisable by Copy, and by Consequence it will destroy the Power to grant it to Copy at any Time after, so that the King, or any other Lord of the Manor, cannot grant it by Copy after. B. 15 Car. B. R. between Dunchiffes and Minors, per Curtain, resolved upon Evidence at the Bar, but they directed the Jury to find a special Verdict, and the Jury gave a general Verdict against their Direction.

2. If a Copyhold in Fee comes to that Lord by Echeat or Surren- der, there is no Impediment, but the Lord may after grant it, again by Copy. B. 15 Car. B. R. between Dunchiffes and Minors, per Curtain, upon Evidence at the Bar.

3. [But] if a Copyhold comes into the hands of the Lord in Fee, S. P. 4 Rep. by Echeat or Surrender, and the Lord leaves it by Parol for one Year, or half an Year, or for any certain Time, it can never be granted by Copy, but this Power to grant by Copy is wholly destroyed. B. 15 Car. B. R. between Dunchiffes and Minors, per Curtain, upon Evidence at the Bar resolved.

4. A tortious Intercurrence, as if the Lord is dissised, and the Diffeesor Supplement dies seised, or if the Land be recovered by false Verdict, or erroneous Judg- ment against the Lord, tho' during the Recovery, or before the Judgment, the Land was not demisalite or demisible, yet after Recon- tinuance it is grantable again by Copy. B. 31 a. pl. 24. Mich. Mich. of Ten. 209. cites S. C. and Eliz. B. R. in French's Case.

5. If Land forfeited or echeated is extended upon a Statute, or Recognizance acknowledged by the Lord before any new Grant made, or if it be seised of the Feme of the Lord in Writ of Deceit has this Land assigned to her, the Supplement though these Impediments are Actions in Law, yet in as much as these Co. Comp. are lawful Interruptions, the Land can never be granted again by Copy. Cop. 82, S. P. 4 Rep. 31 a. pl. 24. Mich. Eliz. B. R. in French's Case. 

6. A
Copyhold.

6. A Copyholder in Fee married the Segniur's, and after they suffered a Common Recovery, which was to the Use of themselves for Life, Remainder over; held per 3 J. that the Copyhold was extinct, for by the Recovery the Baron had gained an Estate of Freehold. But all held that the Intermarriage only suspended it. Cro. E. 7. Trin. 24 Eliz. B. R. Anon.


8. Baron seised of a Manor in Jure Usuris leaves a Copyhold, Parcel thereof, for Years by Indenture, and dies, this destroys not the Custum as to the Feoff, but that after the Death of her Baron the may demite it by Copy and Joyce; So of Tenant for Life of a Manor, if he lets a Copyhold, Parcel of the Manor for Years, and dies, it shall not destroy the Custum as to him in Reversion; per Popham and Fenner Justices upon Evidence. Cro. E. 459. (bis) pl. 7. Patch. 38 Eliz. B. R. Coningsby v. Rusky.

9. If a Copyhold begets, and the Lord makes a Footment in Fee on Condition, and enters for the Condition broken, it shall never be Copyhold again, because the Custum or Prescription (which was the Cause of the Tenure and supported it) is interrupted, and that being once broken is become remediless. C. L. 202. b.

10. A Bishop or Tenant in Tail &c. lets Copyhold Lands by Deed indentured; the Lieve or Successor may grant this by Copy again, yet they may make Leases according to the Statute to bind. Gilb. Treat. of Ten. 208. S. P. — But if he grants Estate for Life only he may afterwards grant the Fee by Copy, according to the Custum. [But it seems it is meant of a Grant for Life by Copy.] Le. 36. pl. 70. Patch. 29 Eliz. B. R. in Cafe of Kemp. Carter. — So if Copyhold begets to the Lord, and he alienates the Manor by Fine, Feoffment, or otherwise his Alliance may grant the Land by Copy, for it was always demised or demisible. 4 Rep. 31. b. pl. 24. Mich. 18 & 19 Eliz. B. R. in French's Cafe. — But if the Lord keeps the Land in his Hands for a long Time, he or his Heirs or Assigns may grant it by Copy at his Pleasure. Ibid. 31. a.


13. If a Lease be made of the Manor, and of a Copyhold by express name, yet this will not extinguish the Copyhold, though it was before the Lease surrendered to the Lord, for when he leaves the Manor it is included as a Parcel of the Manor, and the meaning the Copyhold is future fage, and it remains always as Parcel, and is demisible by Copy as it was.
Copyhold.


14. But if he, though he had been but Dominus pro Tempore, or for On Lee and half a Year (though by Parol) had made a Lease for Years of the Copyhold Boothby’s itself, it had destroy’d the Copyhold, for it was then during the Time said by Hale severed from the Manor, and so could never afterwards be deminurable again Ch. J. that by Copy. Cro. C. 521. pl. 22. Mich. 14 Car. B. R. Lee v. Boothby. a Lease for Years of Lands that are Copyhold, particularly without taking. Notice it was Copyhold, is good for the Rent of the Copyholder, and after the Lease spent, the Inheritance takes Place and sever’s the Copyhold from being granted by Copy after during the Lease, but when that is spent it is Parcel again, which was agreed in Evidence to the Jury at bar, in an Ejectment on Sir George Sandy’s Patent, and Verdict for the Defendant; 3 Kebr. 71. pl. 73. Mich. 24 Car. 2. B. R. Cholmley v. Cooper and Ward.

15. If a Copyholder pur chase the Manor, he may grant the Copyhold again; but if he puts the Copyhold from the Freehold tis gone. Cart. 24. Batch. 17 Car. 2. C. B. per Bridgman Ch. J. in delivering the Resolution of the Court, in Cale of Taylor v. Shaw.

16. If Copyholder surrenders to the Lord without declaring any Use, the Copyhold extinguishes, as on a Surrender by Tenant for Life to him in Reversion; per Holt Ch. J. Wms’s. Rep. 17. Hill. 1790. The Copyhold a Manor was to grant for 3 Lives Hadenda successive feftant non nuntatur; a Grant is made to A. B. and C. A. pur chase the Manor, and the Question was, whether there being a Custom giving Power to frustrate the 2 Remainders by Surrender A. by his Purchase had extinguished them? but held to be no Merger or Extinguishment of the Estate between the Custom of destroying the Remainders is confined to the Formality of a Surrender, and the Purchase of the Manor, though it be between the Parties a Surrender, yet it shall not be construed as such to other Purposes, viz. to destroy the Remainders; per Cur. 6 Mod. 67. Mich. 2 Ann. B. R. in Cafe of Smartle v. Penhallow.

(S) Grant &c. How; Where the Inheritance is sever’d from the Manor. How it shall be, and what shall be done.

1. If the Lord of a Copyhold Manor makes a Feoffment of a Parcel of his Manor which is holden by Copy for Life, and afterwards the Copyholder dies, though now the Lord has not any Court, yet the Feoffee may grant over the Land by Copy again; per Ayliff J. Le. 289. pl. 394. Trin. 26 Eliz. in Lord Dacre’s Case. Where the Inheritance of a Copyhold is sever’d from the Manor, as by being granted to a Stranger, the Copyholder cannot surrender or devise the same, but that it shall descend to his Heir; for such Surrender of Ten. 194, after the Severance of the Inheritance from the Copyhold is void, be. 195. cause the Lands were not Parcel at the Time of the Surrender, and a Devise only cannot transfer such customary Estate; for there can be no transferring but by Surrender into the Hands of the Lord according to the Manor. 4 Rep. 24. b. pl. 10. Mich. 33 and 34 Eliz. B. R. Murrell v. Smith.

4. After the Severance the Copyholder shall pay his Rent to the Feoffee, and shall pay and do all other Services which are due without Admittance K. Cro. E. 2 22. pl. 20. & S. C. & S. P. held,
Copyhold.

or holding at any Court, as plowing the Demesnes of the Lord, Heriot &c. But Suit of Court, and Fine on Alienation or Admittance are gone; for now the Land or Tenement may be alien'd; for as the copyholder has some Benefit by his Severance as appears before, so has he great Prejudice, for now he * cannot surrender or alien his Estate; because he cannot alien it but by Surrender in Mansu Damnu forstorum as the Custom has warranted, and this he cannot do, nor the Peolffe cannot make Admittance or Grant of the Copyhold, for he is not Dominus pro Tempore. Ibid. 25. a.

4 But [was resolved], that such Forfeitures as were Forfeitures before the Severance, as making at Tenement or Lease, Waifs, Denying of Rent &c. are Forfeitures also after Severance; so if the Land was of the Nature of Borough English or Gavelkind before the same Copyhold, all other Clauses which run with the Land shall remain after Severance. Ibid. 25. a.

5 If such Copyholder will alien, it must be by Decree in Chancery against him and his Heirs, but by this the Interest of the Land is not bound but the Person only. 4 Rép. 25. Murrell v. Smith.

6. If the Lord grants a Copyhold and after Severs this Copyhold from the Manor, by granting the Inheritance to a Stranger, though now one of the chief Pillars of a Copyhold Estate is wanting, viz. to be Parcel of the Manor, yet because the Land at the Time of the Copyholder's Admittance had this necessary Incident, this Severance, being a Matter ex poit Faith, cannot amount to the Deprivation of the Copyhold, especially being the sole All of the Lord himself. Co. Comp. Cop 40. S. 34.

(T) Decrees in Equity as to the Heads foregoing, relating to Grants of Copyholds.

1. The Father settled a Manor, reserving only an Estate to himself for Life, Remainder in Tail to his Son. He after marries a second Wife, and settles Part of the same Manor on her, and then dies, the surviving who enjoyed it for the greatest Part of her Life, during which Time the granted several Copyhold Estates to the Tenants, who enjoyed the same under such Grants, and particularly a Copyhold Estate to one A. for his Life, and after his Death the granted the Reversion to the Plaintiff. Not long before her Death the Son, as Tenant in Tail, brought an Ejectment against her, but confirmed the Estates which he had granted to the Tenants by signing their Copies, but refused to admit the Plaintiff upon the Grant of the Reversion. Decreed, that in regard A. had enjoyed it all his Life-time, and that the Defendant, the Son, had confirmed the Estates of the other Tenants, the Plaintiff should be admitted, and
Copyhold.

and hold his Estate likewise, according to the Grant made by the Widow. N. Ch. R. 32. Lippis v. Nevill.

2. A possessed of Copyhold Lands for one Life in Possession, and three Lives in Reversion, died, leaving E. his only Daughter, who was the only Survivor, and married J. S. who contracted with the Bishop of W. Lord of the Manor, after the Restoration, for two Lives in Reversion for 40 l. and was admitted and held the same after his death for several Years. This Manor in the Rebellion was granted to Corbet, and Corbet's Widow now pretends a Right and says this Bishop Thornbury (the Bishop before the Rebellion) granted the Premises for three Lives in Reversion after E.'s Death to W. R. one of whom has lately obtained a Verdict in ejectment, but J. S. suggests, that W. R.'s Copy (if any such was) was surrendered by Letter of Attorney, at a Court held by Corbet, in the late Usurpation, and a new Estate granted for Lives in Reversion who are since dead, but that Defendants having got the Court Rolls, Letter of Attorney, and Surrender, do conceal the same; The Court directed a new Trial, and the Defendants to produce the Letter of Attorney and Surrender made by W. R. and the Injunction to continue to quiet the Plantiff's Possession till Trial had, and the Plantiff to give Security to be approved by the Master to answer the meane Profits to Corbet's Widow, in Case the Verdict should go against him. Fin. R. 41. Mich. 25 Car. 2. Pitt v. Corbet & al.

3. A seized of a Copyhold in the Manor of D. sold to B. B. purchases S. C. the Manor, and by a particular in which this Copyhold was not included, B. sold the Manor to C. the Copyhold was 25 l. per Ann. and C. never claimed it in six Years, but then claimed it and recovered at Law, it passing as Part of the Manor; per Lord K. tho' the particular given to B. to C. was much beyond the Value; yet since C. neither treated for this Copyhold, and other small Parcels of 20 l. to s. &c. value &c. as in B.'s particular and conveyance, this 25 l. per Ann. would not have been omitted if C. intended to buy it, or B. to sell it, and decreed for B. but B. to pay the Rent Arrear, and for the future hold it in all respects so as Copyhold subject to Forfeiture, and uncertain Fine &c. as it was before the Regrant to him by Copy &c. 2 Chan. Cases 194. Pach. 26 Car. 2. Taylor v. Beverham.

4. A Tenant by Copy to him and the Heirs Males of his Body purchased the Fee-simple to him and his Heirs, and afterwards for a valuable Consideration, viz. 300 l. sold to B. who was in Possession several Years, and died, leaving C. a Son. Ld. Chancellor thought the Conveyance good against the Heir; for the Copyhold being severed from the Manor, there is no Means to bar it but by Conveyance at Common Law; the Entail is not within the Statute of W. 2. but Ld. Chancellor took Time to advise. 2 Chan. Cases 174. Hill, Jac. 2. Barker v. Turner. Jeffries C. seemed to make little Doubt but that the Copyhold was merged that it was said this Point was depending on a special Verdict at Law. Verm. 458. Parker v. Turner.

(U) Surrender. What it is, and how considered.

1. A Surrender is a Thing executory, which is executed by the subsequent Admittance, and nothing at all is involved in the Grantee before the Lord has admitted him according to the Surrender, and therefore if at the Time of the Admittance the Grantee be in Rerum Natura, and able to take, that will serve. Co. Comp. Cop. 50. S. 35.
Copyhold.

Gib, Treat. of Ten. 394 cites this laying of Lord Coke; but seems e contra.

2. This word (Surrender) is Vocabulum Artis, and therefore where a Surrender is needful, it this one Word be wanting, all other Words used in ordinary Conveyances are ineffectual and insufficient to convey any Copyhold Estate; for if a Copyholder comes into Court, and offers to pass his Copyhold by Word of Grant, or Gift, of Bargain or Sale, or such like, I doubt he will fail of his Purpose, for as he is tied to a singular Form of Assurance, so is he restrained to peculiar Words in his Assurance. Co. Comp. Cop. 51. S. 39.

A Surrender (where by a subsequent Admittance the Grant is to receive his Perfection and Confirmation) is rather a manifesting the Grantor's Intention, than of passing away any Interest in the Possession, for till Admittance the Lord takes Notice of the Grantor as Tenant, and he shall receive the Profits of the Land to his own Use, and shall discharge all Services due to the Lord; but yet the Interest is in him, but secludum quid, and not absolutely; for he cannot pass away the Land to any other, or make it subject to any other Incumbrance than it was subject to at the Time of the Surrender, neither in the Grantee is any Manner of Interest invested before admittance; for if he enters he is a Trespasser, and punishable in Trespass, and if he surrenders to the Use of another, this Surrender is merely void, and by no Matter ex post Facto can be confirmed; for though the first Surrender can be executed before the second, so that at the Time of the Admittance of him to whole Use the second Surrender was made, his Surrenderor has a sufficient Interest as absolute Owner; yet because at the Time of the Surrender he had but a Possibility of an Interest, therefore the subsequent Admittance cannot make this Aet good which was void ab initio. But though the Grantee has but a Possibility upon the Surrender, yet this is such a possibility as is accompanied with a Certainty, for the Grantee cannot possibie be deluded or defrauded of the Effect of his Surrender, and the Fruits of his Grant, for if the Lord refuse to admit him, he is compellable to do it by a Subprena in Chancery, and the Grantor's Hands are ever bound from the disposing of the Land any other way, and his Mouth ever stopped from revoking or countermanding his Surrender. Co. Comp. Cop. 51. S. 39.

4. Surrender is but in Nature of a Deed-Poll rather than an Indenture, and ensues by way of Limitation of Use; Arg. Saund. 151. Pach. 20 Car. 2. in Cafe of Wade v. Bache.

This in Roll is Letter E in fol. 499.

(W) Copyhold.

(Surrender.)

At what Time.


1. If there be Baron and Feme Copyholders to them and the Heirs of the Baron, and the Baron dies, the Heir of the Baron may surrender his Reversion into the hands of two Tenants of the Manor out of the Court, who by the Custom have Power to take Surrenders before Admittance, and during the Life of the Feme; and this is a good Surrender, for the Reversion was cast upon him by Deed before any Admittance. P. 41. Eliz. B. R. between Colchin and Colchin. adjudged.

2. The Heir before Admittance may surrender to the Use of another. 4. Rep. 22. b. the 3d Point in Brown's Cafe.

3. After
Copyhold.

3. After the Death of Tenant for Life be in Remainder may, without any Admittance surrender the same Land; for the first Admittance was sufficient. 4 Le. 111. pl. 226. in Time of Q. Eliz. Hegger v. Feliton.

4. If a Copyholder in Fee surrenders to the Use of B. and his Heirs, B. before Admittance cannot surrender to the Use of another, for before Admittance B. had nothing, and his Copy, upon which he is admitted, is his Evidence by the Custom, and before that he is no customary Tenant, so he can transfer nothing to another; adjudged. Yelv. 144, 145. Mich. 6 Jac. Wilton v. Weddal.

5. The Heir may surrender before Admittance; Arg' 3 Lev. 327. S. P. because he is in by Court of

Law, for the Custom, which makes him Heir to the Estate, calls the Possessions of his Ancelors upon him. Yelv. 144. Mich. 6 Jac. B. R. in Case of Wilton v. Weddal. 1 Brownl. 143. S. C. adjudge'd but it seems to be only a Translation of Yelv. so where a Surrender was to A. for Life and after to the Use of B. in Fee ; A. was admitted and died; B. may surrender without any new Admittance. 4 Le. 111. pl. 226 in Time of Q. Eliz. Hegger v. Feliton.

[X] Copyhold.

Surrender.

At what Place.


A Prescription a Surrender of Copyhold Land could not be out of Court, nor an Admittance out of Court, neither to the Lord himself nor to his Steward, but in divers Place it is used by Custom so to be, and there upon the doing of Pealry, and the paying of the Lord's Fine, shall be presented by the Homage to be done at the next Court, and all these things they said are to be done by the Custom, and in that Case it was said by the Lord Dyer, that a Surrender out of Court might be to the Lord himself; to go by way of Extinguishment. Supplement to Co. Comp. Cap. 69. S. 5.

2. But he cannot surrender to the Lord into the Hands of Tenants, A Copyholder or the Reeve, or others out of Court, without a particular Custom. Co. Lit. 59.

Manor, surrender his Copyhold Lands into the Hands of two Tenants, but the Surrender was to the Use of J. S. to take Effect immediately after his Death. In this Case it was resolved, that as unto the Surrender into the Hands of two Tenants, that might be good, although it was out of Court, by Custom. Co. Comp. Cap. 65. S. 5.

3. The Steward of the Manor may take a Surrender of a Co. S. P. accordingly, tho' he was retained by Parol only.

Co. Lit. 59.


4 Ste.
Copyhold.

4. Steward of a Manor made a Commission to one to take a Surrender in Ireland of a Copyholder who was there, and it was helden a good Surrender; cited by Manwood. 4 Le. 111. pl. 226. in Time of Q. Eliz.

5. The Steward of the Court of a Manor in Ireland being in England, sent a Writ in the Nature of a Deedum presentante to one who was in Ireland, to take a Surrender there of Copyhold Lands; and the Opinion of the Judges here, to whom the Case was referred to advise, and certify their Opinion, was, that such a Surrender taken by Deedum was good enough; but note, that in such Case it must be intender'd, that such giving Power to take a Surrender, if it be to be done, must be allud'd to be done either by Prescription or Custom; for that Surrenders generally taken out of Court must be by Custom. Supplement to Co. Comp. Cop. 68. S. 3.

6. Baron and Fee Copyholders in Right of the Fee surrender out of Court into the Hands of the Steward, and ite was examined by him. Tho' in a Ejectment brought it was not proved, that he was Steward by Patent, nor that there was any special Custom to warrant it, yet it was referred to per tot. Cur. to be good; and Mountague said he had known it to be adjudg'd. Cro. J. 526. pl. 2. Falcon. 17 Jac. B. R. Smithson v. Cage.

7. Where a Steward of a Manor has a Power to make a Deputy, and he makes B. his Deputy, and B. by writing under his Hand and Seal make C. and D. his Deputies, jointly and severally to take a particular Surrender only, D. took the Surrender out of Court to the Use of the Surrenders Will. Per tot. Cur. this is a good Surrender. Ld. Raym. Rep. 678. Pack. 13 W. 3. B. R. Parker v. Kett.

8. Steward of a Copyhold Manor may without Custom take Surrenders out of Court, for he has the Power of the Lord, and the Lord may do it; & per tot. Cur. there is as much Reason that the Steward should take Surrenders out of the Manor as the Lord, and that he should do it out of the Manor as out of the Court. 1 Salk. 18. 4. pl. Trin. 1 W. & M. C. B. Dudicild v. Andrews.

This in Roll
is Letter
(E) pl. 2. in
fol. 499. 500.

[Where there are several Surrenders of the same
Lands to different Uses. Which shall take Place; and how.]

Lane 99.
Gooch's
Cafe, seems
to be S. C.
& S. P. ad-
mitt'd.

[If a Copyholder in Fee surrenders into the Hands of certain cus-
tomary Tenants to the Use of his Wife in Fee, and after, before any Court, the said Copyholder surrenders the same Lands into the Hands of other *customary Tenants, to the Use of his Wife for Life, the Remainder to another in Fee, and at the next Court both Surrenders are presented, and the Steward admits the Wife according to the second Surrender, this is a good Admittance, and the Wife shall have it but for Life, and so it is a good Remainder. D. 8 Ja. Seaccario, ad-
judged.

[If a Copyholder in Fee surrenders out of Court into the Hands of Tenants according to Custom, to the Use of B. in Fee, upon Condition, that if he pays 10l. to B. the first of May after, it shall be lawful for him to re-enter, and after, and before Payment of the 10l. surrenders into the Hands of Tenants, to the Use of C. in Fee, and after, before the said first of May, A. pays the Money to B. and after, and]
and before the said Day, A. surrenders into the Hands of Tenants to 37 S. C. ad-
the Use of D. in Fee, and the Custom of the Manor is, that the Sur-
renders made out of Court into the Hands of Tenants shall be void
if they are not presented at the next Court, and at the next Court the
Surrender to B., is not presented, but the Surrender to D. is first present-
ed, and after, at the same Court the Surrender to C. is presented; in
this Case, upon the whole Matter, C. shall have the Land; for,
notwithstanding the Surrender to the Use of B. upon Condition nothing passed out of the Copyholder, but the Estate remained in
him till it is presented at the next Court, so that A. had Power
notwithstanding the Surrender to the Use of B. to surrender the
Use of the Land, but it was subject to be void if the Surrender to B. had
been presented; as if a Man acknowledges a Deed of Bargain and
Sale, and after bargains and fells to another, if the second Deed
be revoked, and the first not, the second Deed shall have the Land
for, to it of the Contingency of a Fine; then in this Case, the first
Surrender not being presented, and to void, the second Surrender
to be presented before the third Surrender, both being presented
at the next Court, and the Performance or Non-performance of
the Condition is not material in the Case, but it is all one as if it
had been absolute without any Condition. Mith. 8 Case. B. R.
between Burgage and Sparking, adjudged per Curiam upon a special
Pardon. Innsbruck. Ten. 7 Car. 574.

Surrender had been presented; for it seems the Presentment of the first Surrender, after the Payment
of the Money, had been void, because the surrender was void then, and a void Surrender cannot be
presented, and until a Surrender be presented, it cannot bind the Interest of the Land; fed quaece.—

3. A Copyholder in Fee surrendered to the Use of himself for Life, the 4 Rep. 23. a
Remainder to J., his son for Life, the Remainder to the Use of his heir pl. 6. S. C.
Will, and the Admittance was scedundum Formam Redditionis prædict. J. that the Fee-
dies, afterward the Father surrenders to the Use of the Defendant, and died, in the
fimple of the
without making a Will. It was the Opinion of the Judges, that by the Copyhold-
second Surrender it passed to the Defendant, and it is as a Feoffment at
this Day to the Use of his Will, for it is to the Use of himself, be-cause he might dispose of it by his Act in his Life-time, and he might Will, re-
v. Hoekley,
not in the Lord.—— Gibb. Treat. of Ten. 182. cites S. C. for all the Deign of the Surrenderer
was, that he might dispose of it by Will, not to vest the Interest in any Body, or to give away the
Power of disposing of it.

4. A being feised of a Copyhold in Fee, surrenders to the Use of his Wife for Life, the 4 Roll. Abs.
Wife by the Hands of 2 Tenants, according to the Custom, and after, 499 pl. 2.
wards surrenders the same Land into the Hands of 2 other Tenants to
the Use of his Wife for Life. Remains to J. S. in Fee; both Surr-
renders thereto be
were presented at the next Court; the Steward admitted the Wife upon made to
the second Surrender; it seems to be admitted, that it was good. Land.
Wife in Fee, and says,
"was a good
Admittance,
and the Wife should have for Life, and the Remainder should be to J. S. and that it was adjudged.
Hill. 8 Jac. in Scacc.
This in Roll
is Letter
(L) in fol. 
501.
* S. C. cited 1. 1 If a Copyholder in Fee takes the same Land from the Lord by another Copy for Life, this is not any Surrender of Determination of the Copyhold of Inheritance; for a Copy hold cannot be surrendered but by actual Surrender in Court, this is certain redress into the hands of the Lord, and not by Surrender in Law; Mich. 37. Cl. B. between Shepherd and Adamer; which intracite bill. 36 Cl. B. 2649. adjudged. Viz. * B. R. same Cafe, and there it is admitted a Surrender; but there said, the Reversion is in the Surrenderor, no Disposition being made thereof.
— Roll Rep. 256.
pl. 24. cites S. C. as adjudg'd that it should be no Estoppel to claim other Estates, and so he should not lose the Inheritance, and that the Record was brought in Court and read, and the Reason of the Judgment was, for that it was no more than if the Copyholder had surrendered to the Lord to the Use of himself for Life, with the Reminders over for Lives, and so the Reversion in Fee should continue in hims.elf. — — Gilb. Treat of Ten. 228. cites S. C. that if a Copyholder in Fee come into Court, and there accepts a Copy to himself for Life, Remitter to his Wife for Life, Remitter to his Son for Life, this is tantamount to a Surrender to the Use of himself &c. but he hath his old Reversion in him, for there is no Ground to make a Surrender of that by Constructions, because he has made no Disposition of it, but arithis Cafe, if Fee is in Rolls, it is said that it was no Surrender, for that a Copyhold cannot be surrendered by a Surrender in Law, but only by actual Surrender, yet as it is in other Places in Rolls, it is as in fulldrode, held to be a Surrender, but that the Reversion was still in the Copyholder.  
† Roll Rep. 256. pl. 22. Mich. 13. Jac. B. R. Southcott v. Adams, S. C. a Copyholder in Fee came into Court, and accepted by Copy of the Lord an Estate for his Life, Remitter to his Wife for Life, Remitter to his Son for Life. Haughton thought that this was a Surrender of the Inheritance, but Doderidge &c. contra, and held that the Reversion in Fee continued in him, but as to this Point the Court directed the Jury to find a Special Verdict, but they being ready to give a General Verdict, the Plaintiff was nonfit. — — Gilb. Treat of Ten. 228. cites S. C. — — If the Acceptance had been only of an Estate for Life to himself who had the Fee, there might be some Question, whether this should not conclude him of the Inheritance; Per Doderidge J. Roll Rep. 256.

Gilt. Treat. 2. [So] If a Copyholder in Fee comes into Court, and says, That he renounces his Copy, this is not any Surrender. B. 37 Cl. B. in the said Cafe held.


2. Le. 49. pl. 69. S. C. in" in totem Verbis Supplement to Co. Comp. Cop. 77. S. C. in and Lord Coke says, he conceives generally, that no All or Words of the Copyholder can pass his Copyhold in such a Manner, as that the Same shall be accounted as amount to a good Surrender of the Same; but that yet it rests upon a Difference.
Copyhold.

4. Lord pretending a Forfeiture by a Copyholder in Fee, the Copyholder agrees to pay him 5 l. and paid it, in Consideration whereof he was to enjoy the Copyhold, except a Wood, for his Life, and his Wife’s Widowerhood, and that the Tenant should have Admission whether the Land should be aff reducer to him by Copy or by Bill Sce. The Tenant chose to have the Land released to him by Bill; The Lord enjoyed the Wood, and this was held a good Surrender for Life only, and that the Lord had the Wood discharged of the customary interest. Le. 191. pl. 273. Mich. 31 & 32 Eliz. C. B. Coleman v. Sir H. Portman.

—Gilb. Treas. of Ten. 277, 238 cites S. C. and says, that the Communication in this Case seems to have been that which caused the Surrender, for nothing else could; and for aught appears this Communication was out of Court; The Acceptance by Bill could not be the Surrender in this Case, for the Bill was never made of that, so that it could only be the Communication that amounted to a Surrender.

5. Penal Agreement adjudged a Surrender; Arg. 2 Show. 131. cites Le. 181.
6. A Bargain and Sale to the Lord is a Surrender; Arg. 2 Show. 131. cites Jo. 141.
7. If a Copyholder or other customary Tenant shall say to his Lord, in the Court of the Manor, I agree to surrender my Lands, 178. pl. 359. there Words will not be a Present, or an express Surrender, nor will they amount to so much as a relinquishing of his Estate; for in Truth Sweeper v. it is not any Thing in present but an Act to be done in Futuro like unto Randal, S. P. the Case put by Wray Ch. J. A. feised of the Manor of D. demifeth and seems the same Manor at Wilt, that it is no Lease, no more in the other Case to be S. C. shall it be a Surrender, or a relinquishing his Copyhold, or Copyhold — Gilb. Treat. of Estate, but yet, notwithstanding, it will be agreed, that in some Cases Ten. 238. an express and particular Agreement made by a Copyholder with the Lord of the Manor, for, or concerning his Copyhold Lands, will amount to a Surrender of the same. Supplement to Co. Comp. Cop. 68.
S. 2. should be of more Validity than a Surrender by Words out of Court.
8. If a Copyholder bargains and sells his Land to J. S. and this is found by the Homage, and J. S. prays to be admitted Tenant, yet the Heir of the Copyholder shall avoid the Admission, because of the Insufficiency of the Surrender taking by the Words of Bargain and Sale, and not by the Words of the Surrender; per Lord Dyer. D. 3 Eliz. Calth. Reading. 57.
9. If a Copyholder comes into the Court, and defires his Lord to admit his Son to be Tenant in his Father’s Place, this seems a good Surrender to the Use of his Son. Calth. Reading. 57, 58.
10. If a Copyholder will in the Presence of other Copyholders of the same Manor say, that he is content to surrender his Copyhold Lands to the Use of J. S. this is no good Surrender; But if he says he doth surrender into the Hands of the Lord to the Use of J. S. if the Lord will thereunto agree, this is a good Surrender, whether the Lord will or not. Calth. Reading. 58.
11. If the Tenant resigns his Interest in the Court, into the Lord’s Hands, there withal for the Lord to do his Will, this is a good Surrender if’t be accepted. Calth. Reading. 58.
12. If a Copyholder says he will be no longer the Lord’s Tenant, though these Words be recorded, yet this is no good Surrender. Calth. Reading. 58.
13. If a Copyholder for Life takes a new Estate for Life by Copy, this is a Surrender of his first Estate. Calth. Reading. 59.

M 14. But
14. But if a Copyholder for Life takes a Leafe of the same by Indenture for Life, this is not a good Surrender of the Copyhold; Quære. Calth. Reading. 59.

15. If a Copyholder comes to the Lord and tells him, that for the Preference of his Son in Marriage with such a Man's Daughter, his Will is, to give his Land presently to his Son, and defires the Lord that he would be content therewith, this is no good Surrender. Calth. Reading. 59.

16. But if he said these Words in the Lord's Court, and the same is recorded, or found by Homage as a Surrender, and so presented, then this had been a good Surrender, without any other Words of Surrender. Calth. Reading. 59.

Gilb. Trest. of Ten. 294.
S. P. —
Gilb. Trest. of Ten. 257.
S. P. —
If he says, that he is content to surrender, this is no Surrender, for it only expresses his inclination to do it, but not that he actually does it; and adds a Quære, if Words spoke out of Court will amount to a Surrender; but any Words spoke in Court by a Copyholder, shewing his intention to surrender into the Lord's Hands, amounts to a good Surrender. Ibid.

(A. a) Of what a Surrender may be.

Coplyholder leased his Land for Years by Licence, and afterwards by Deed granted the Rent to a Stranger, to have during the Term &c. The Lessor attorned and paid Rent to the Grantee; per Gaudy J. the Grant is good, but now 'tis but a Rent-Seek, and it was paid by some, that the Leilof cannot surrender Rent referred on a Lease for Years unless he surrenders the Reversion also. Le. 315. pl. 441. Patch. 30 Eliz. B. R. Austen v. Smith.

2. Tho' it be incident to the Estate of a Copyhold to pass by Surrenders, yet so forcible is Custom, that by it a Freehold and Inheritance may pass by Surrenders (without the Leave of the Lord) in his Court, and delivered over by the Bailiff to the Feoffee, according to the Form of the Deed, to be inrolled in the Court &c. Co. Litt. 69. b.

3. Copyholder aliens Part, it seems the Lord is compellable in Chancery to accept such Surrender. Palm. 342. Hill. 20 Jac. B. R. in Cafe of Snag v. Fox.

(B. a)
Copyhold.

[B. a] Surrender. To whole Use it may be.


2. A Surrender to the Steward to his own Use is good, for the Entry And tho' it is Quod furcum-redditit in Manus Domini, and the Steward is but the Lord's Servant, and the Surrender is to the Lord, and not to him. Cro. E. 17. pl. 43. Mich. 41 & 42 Eliz. C. B. Erifh v. Reeves.

Manor a Surrender could not be made to the Steward himself to his own Use, the Court rejected it, because it was against Law. Cro. E. 71. in S. C.—Supplement to Co. Comp. Cap. 67. S. 1. cites S. C.—Gilb. Treat. of Ten. 201. cites S. C.

3. If a Surrender be made in Court into the Hands of the Lord or his Steward, it must be to such a Person or his Use who is in Effe, and capable of such a Surrender, or that may take presently by Force of the Surrender, otherwise such Surrender, tho' it be an actual Surrender made in the Court of the Manor to the Lord or Steward himself, is not good. Supplement to Co. Comp. Cap. 67. S. 1.

4. If a Copyholder in Consideration of 20l. to be paid to J. S. does make a Surrender of his Land to N. R. this Surrender is to the Use of J. S. because of the Consideration express'd in the Copy, and not to the Use of N. R. But if the Copy the Use be express'd to N. R. and no Consideration mentioned, the Use express'd shall stand against any Consideration to be averred. Calth. Reading. 37.

[C. a] By what Persons, and to whom it may be Surrendered.

1. Tenant for Life of a Copyhold, where there is a Remainder over, may surrender to the Lord. Co. 9. Marg. Pod.

2. If the Lord of a Manor for the Time being be Lefsee for Life or for Years, Guardian, or any that has any particular Estate, or Tenant at Will of a Manor, (all which are accounted in Law Domini pro * When he Tempore) do take a Surrender into his Hands; and before Admittance the Lefsee for Life dies, or the * Years Interest, or Custody do end or determine, or the Will is determined, tho' the Lord comes in above the Lefsee for Life or for Years, the Custody or other particular Interest a Surrénder or Tenancy at Will, yet he shall be compelled to make Admittance according to the Surrender. Co. Litt. 59. b. cites it as held 17 Eliz. in the Earl of Arundel's Cafe.

3. A Tenant for Life of a Copyhold, Remainder over in Fee to B. 2. Le. 259. B. may surrender his Estate, if there is no Causen to the contrary; for pl. 3:9. S. C. the Estate of Tenant for Life, and of him in Remainder, are but one Verbis. B. 4. See Eliz. in Scacc. Butler v. Lightfoot.
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Supplement to Co. Comp. 69 S. 2, cites 8. C But fays Quere — See Tit. Steward of Courts (F') pl. 1. and the Notes there.

5. Any one who may be a good Granter in a Deed at Common Law, may make a good Surrender of Copyhold Land, as any Body Politick or Corporate, Felons before Attainder, Bastards, Heretics, Lepers, Deaf, Dumb, or blind. Men, being Tenants, may surrender a Copy; and Surrenders made by such who are disabled to make a Grant at Common Law are void, as Surrenders by Infants, Aliens, Idiots, such as are born deaf, dumb, and blind. Women co-witnent their Husband's See Co. Comp. Cop. 34, 35.


[D. a] Surrender. By or to Feme Covert, Infant &c.

Cro. E. 9 E. 9 1. A Tenant for Life, Remainder in Fee to B. an Infant; they both pl. 17. Knight v. Fortian, S. C. adjudged. — It is no Discontinuance. Gibb. Treat. of Ten. 179. — An Infant surrenders Copyhold Lands, he may at full Age disagree and enter; for in Case where an Infant makes a Fee-foamoto in Fee, he may enter, much more in Case of a Surrender; for a Fee-foamoto is a Conveyance which will work a Discontinuance, but a Surrender will not. Gibb. Treat. of Ten. 261.

A Tenant out of Court cannot take a Surrender of a Feme Covert, for that she is secretly to be examined by the Steward; by the Opinion of the Judges. Tho. 108, cites 38 Eliz. li. A. fol. 422. Rich v. Erth. — Gibb. Treat. of Ten. 295. cites S. C. and says, that an Examination of a Feme Covert by the Steward out of Court, though it did not appear that he was Steward by Patent, or that there was any such Covert for such an Examination, was held good.

4. A Feme Covert may receive a Copyhold Estate by Surrender from her Husband, because the comes not in immediately by him, but by mediate Means, viz. by the Admittance of the Lord according to the Surrender. Co. Comp. Cop. 49 S. 35.
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5. A Feevne Covert being secretly examined by the Steward, comes into Court with her Husband; and relieves by Surrender in Court to a Tenant in Possession; The Husband dies; This is good to bind the Wife, and the Tenant needs no new Grant or Admittance of the Lord, and affirmed the Judgment. 2 Show. 82. pl. 70. Mich. 31 Car. 2 B. R. Stone v. Exton.

6. The Surrender of a Copyhold Estate by an Infant of 4 or 5 Years of Age allowed of by this Court, yet the Lord of the Manor inquired, he never heard of any Admittance in that Manor at such an Age. 2 Chan. Rep. 392. 2 Jac. 2 Naylor v. Strode.


2. The Father seised of a Copyhold in Fee surrenders it to the Use of S. C. cited his Son in Fee upon Condition to perform Covenant in an Indenture; the Son after Admittance surrenders to J. S. upon Condition, that if the Son pay 101. the surrender to be void; the Son neither pays the 101. nor performs the Covenant; the Father enters, and dies seised; the Lands descend to the Son; It was the Opinion of the Court, that by the Entry of the Father, both the Surrenders were avoided, and that the Son might well enter after the Death of his Father, and avoid the Surrender made to J. S. Cro. E. 239. pl. 6. Trin. 33 Eliz. B. R. Simonds v. Lawnds.

2. Surrender was to the Use of one in Fee upon Condition to pay 101. Gibb. Treat. to a Stranger, and if he failed, that it should be to the Use of a Stranger in Fee, whether in this Case (upon the Tender of 101. to a Stranger, and he refusing) the Condition be made, and as much as it is to be done to a Stranger. The Court moved, that it should also be specially found, now seems to be beyond all Doubt, that the Condition is made; for it was the Design of the Parties that the Surrender under should retain the Land; therefore if a Feevment be made in Fee on Condition, that the Feoffor shall grant a Rent-charge to a Stranger, if the Tenant tend the Grant, and he refuses, the Condition is made.

3. Lord of a Manor demised a Copyhold of Inheritance to A. on Condition to pay 20 l. per Annual during B's. Minority, and 100 l. at his future Age. A. fails in Payment, and surrendered to C. and his Heirs. The Lord admits C. and afterwards B. comes to Age, but the 100 l. is not paid to B. The Lord enters for the Condition broken, and grants to B. by Copy, and whether his Entry was lawful, or that the Acceptance had dispensed with the Condition, was the Question; Fennar J. holds that he might well enter, for he to whose Use the Surrender is made comes in by him that surrendered, and not by the Lord, for the Lord has but an Instrument to convey the Land, so the Condition is not gone, but Gaudy doubted thereof, &c. ceteris juit absent' adjourned. 4 Rep. 21. 5 Fol. 11. 12 S. P. — Gibb. Treat. of Ten. 516. 517. cites S C and

says, that sorely the Lords affirming the Power of the Copyholder to surrender an Estate after the Breach of the Condition for not paying the 20l. is a good Dispensation, for that Forfeiture, as well as if he had accepted Rent after the Forfeiture, for the affirming his Power to grant over his Estate, is as much an Indication of the Lord's Mind for the Continuance of the Estate, as the Acceptance; but then as for the Forfeiture that accrued after the Admittance, it seems the Admittance could not pass away that, for the Land was charged with the Condition, into whose Hands forever it came, and this

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seems to be Fenner's Opinion, by the Reason he gives, for that the Celly quo Ute coming in by the Surrenderer, the Lord by his Admittance did not pass away his Interest in the Condition, the Question was, whether the Lord had dispensed with the Condition, or whether he had dispensed with the Perforiture of the Condition broken, for that was not broken in Part, till after the Admittance; yet, a Breach in Part was a Breach of the whole Condition. — A Copyholder in Fee may surrender, reserving Rent, with a Condition of Re-entry for Non-payment, and he may re-enter for Non-payment; for having a Fee simple according to the Custom of the Manor, he may reserve what Profits he pleases out of it by the same Reason as he may dispose of it as he pleases. Gibb. Treat. of Ten. 146, 147.

4. Where a Surrender is made by A. to B. on Condition that B. shall pay 100 l. to a Stranger, these Words make an Estate conditional, and give Power implied to the Heirs of A. to re-enter for Non-payment, and if there are Words which give Power to a Stranger to re-enter, they are merely void, nevertheless the precedent Words shall stand and make the ESTATE conditional; per Doderidge Serjeant; and per Tanfield Ch. B. Littleton says, that such a Re-entry is void, for a Re-entry cannot be limited by a Stranger; Serjeant Nichols said, that if a Surrender be made that he shall pay 100 l. this makes the ESTATE conditional, and gives a Re-entry to the Heirs of A. but when it goes further, and limits the Re-entry to a Stranger, so that it does not leave the Condition to be carried by the Law, in such Case all the Words shall be void, because it cannot be according to the Intent; as in Case of a Re-entry of Rent, the Law will carry it to the Reversion, but if it be particularly reserved, then it will go according to the Reversion, or otherwise will be void. Lane 99. Hill. 8 Jac. in the Exchequer, in Gooch's Case.

5. A. made a Mortgage Surrender to B. but the Money not being paid at the Day, B. entered without any Admittance, and devised the Copyhold to his Son C. and died seized. C. entered, and the Lord by Agreement took the Profits for a Time certain in lieu of a Fine, but after pretending the Land was forfeited, because B. was not admitted, and had paid no Fine, refused to deliver up the Possession, though the Profits received amounted to more than the Fine. A. being dead, his Heir released to the Son of the Lord, but without any Consideration expressed, and he conveyed the Premisses to his Father; it was held, that though such Release had extinguished his Entry, yet the same should ensue to the Benefit of him that had the former Right in Truth only, and for the Use of C. the Plaintiff, and decreed the Possession to him accordingly against the Defendants, and all claiming under them. N. Ch. R. 7, 8, 9, 5 Car. 1. Lucas v. Pennington, Wright, and Noble.

6. The Father both of the Plaintiff and the Defendant, being seized of a Copyhold Estate, surrendered the same to the Use of his Will, and devised it to the Defendant, who was his eldest Son, paying his Debts, and so much Money to the Plaintiff, his Sister, for her Portion, when of Age; but if he failed to pay the Portion, then he was to have as much of the Copyhold Estate as did amount to the Value of her Portion. She afterwards came of Age, and the Defendant refused to pay the Portion, whereupon the Homage allotted to her as much of the said Copyhold Lands as they adjudged to be the Value of her Portion; but the Defendant being admitted, refused to surrender the same; thereupon the Plaintiff exhibited her Bill, to have her Portion or the said Allotment decreed to her, and the Court gave Day for the Payment of the Portion, and if he failed, then he was decreed to surrender the Allotment to the Uses declared in the Will. Nell. Chan. Rep. 24, 25. 8 Car. Mariton v. Mariton.

7. A. the Father of M. surrendered to W. his Nephew on Condition to pay 200 l. to M. at 21, and if he died before 21, without Heirs of her Body, then to W. M. died before 21, leaving a Son; the 200 l. was decreed 10
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to the Son, and that the Lands stand charged with it. 2. Chan. Rep. 34 Car. 2.

214. 33 Car. 2. Rolfe v. Tiller.

died, and the Son died an Infant; the Husband of M and Father of the Child took Administration to them both, and fixed the Son and Heir of W. and the 200 l. was decreed to the Plaintiff.

It is added, that A gave his personal Estate of good Value to W. but nothing else of his own to M. his said only Child.

8. A Copyholder surrenders to the Use of J. S. paying his Executor 100 l. within such a Time after his Death; He to whose Use this Surrender is made takes by Force thereof presently; per Doderidge, 2. Bulst. 274, 275. Mich. 12 Jac.

for otherwise it can be of no Effect.

[F. 2] How; And in what Manner a Surrender may be made.

By Attorney.

1. A Copyholder in Fee may surrender in Court by Letter of At-
torney without any Custom, because he himself might there
have surrendered De Communit Iure, by the Common Law, without any Custom. Co. 9. Combe 75. 8. resolvd.

otherwise great Inconvenience would ensue; for how should Copyholders that are in Prison, or Imprisoned in Bed, or beyond the Seas, surrender but by Attorney?—A Copyholder in Fee made a Letter of Attorney to two Tenants of the Manor, to surrender his Copyhold out of Court to the Use of J. S. and his Heirs; they surrendered the same accordingly, and at the next Court brought in the Surrender into Court, (but no Copyholder was found to warrant such a Surrender.) Notwithstanding in that Case it was resolvd, ift. That it was a good Surrender, because he might do it De communia Jure without alleging any Custom. 2dly, When the Tenants shewed the same in Court, and the Authority which was given to make the Surrender, all which they had done, was resolvd to be good, and legally done. Supplement to Co Comp. Co. 79. cites 9 Rep. Combs. Case. —— Gib. Treat. of Ten. 202 S. P. and cites, the Law allows his doing it by Attorney as an Incident to the Power which he has to surrender in Court.—Ibid. 256. S. P. and cites S. C.

2. Hill. 28 Eliz. Chapman's Case, cited [in] Co. 9. Combe 76. Co. Comp. it was held, That where * by the Custom a Copyholder out of Court might surrender into the Hands of the Lord, by the Hands of two customary Tenants, that in Effect are but Attorneys, that he cannot surrender by Attorney to the Lord by two Tenants, for there the Custom, that is the warrant thereon, ought to be purged. —— Gib. Treat of Ten. 203. S. P. —— Ibid. 256. S. P. that he cannot do it by Attorney without a Special Custom.

3. Gib. Treat. of Ten. 236. says, that it is said to be resolvd that a Copyholder cannot surrender by Attorney without Deed, and cites Prat. Reg. 136. but that he may be admitted by Attorney without Deed. But the Ch. Baron says, Quare of this.

4. By Clerch; Letters for Years cannot surrender by Attorney, but he may make a Deed purporting a Surrender, and a Letter of Attorney to another to deliver it. Le. 36. pl. 45. Trin. 25 Eliz. B. R. Anon.

5. A Copyholder of the Manor of Arundel did surrender his customary Lands to the Use of his left Will, and thereby devised the Lands to his youngest Son and his Heirs, and died; the youngest Son being in Prison makes a Letter of Attorney to one to be admitted to the Land in the Lord's Court in his room, and also after Admission to surrender the same to the Use of B. and his Heirs, to whom he had sold it for the Payment of his Dils; and Wray was of Opinion, that it was a good Surrender by Attorney;
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Attorney; but Gawdy and Clench contrary; and by Gawdy, if he who ought to surrender cannot come into Court to surrender in Perion, the Lord of the Manor may appoint a special Steward to go to the Prison and take the Surrender &c. Le. 36. pl. 45. Trin. 28 Eliz. B. R. Anon.

6. If there be a special Custom that a Copyholder for Life may make Estate for 20 Years to continue after his Death, there Estates cannot be made by Attorney. Co. Comp. Cop. 49. S. 34.

7. So if there be a special Custom, that an Infant at the Age of Discretion may surrender a Copyhold; this Surrender being confirmed by special Custom only, cannot be made by Attorney. Co. Comp. Cop. 49. S. 34.

8. There was a Custom within the Manor of Castle-Dunnington, that any Copyholder of that Manor may make a Writing in the Nature of a Letter of Attorney to two Copyholders of the same Manor, to surrender his Copyhold after his Death. The Question was, whether this was good Custom or not? The Court delivered their Opinion, that the Custom was good; and Roll Ch. J. said, that the Death of the Party doth not revoke this Writing made in the Nature of a Letter of Attorney, for it is strengthened by the Custom, and it is not like an Ordinary Letter of Attorney, which becomes void by the Death of him that made it; for this Custom is a Law, and the Authority here survives, as an Executor may sell the Testator's Lands, if he be impower'd to do it by the Will, and therefore the Custom is good, and let the Plaintiff haw Judgment Nisi, &c. Sty. 423. Trin. 1654. Roby v. Twelves.

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[F. a. 2] [Surrender by Attorney.] How the Attorney shall do it.

1. If the Letter of Attorney be made to Men to make a Surrender in Court, the Attorney ought to pursue the Form and Manner of the Surrender in all Points, according to the Custom, as the Copyholder himself ought to have done, as it ought to be by the Rob, or other Thing. Co. 9. Combe 75. b. resolved.

2. The Attorney ought to make it in the Name of him that gave him the Authority. Co. 9. Combe 75. b. resolved.

3. A Letter of Attorney was made to two to make a Surrender, and they showed their Letter of Attorney, and then they Authorize all per prædictam Literam Attornati data, surrendered it, this is as much as to say, that we, as Attorneys of the Copyholder Surrender, and both are well done in the Name of him that gives the Authority. Co. 9. Combe 75. Cuta.

(G. a) Surrender. Without expressing to whose Use it shall be. How the Admittance may be.

1. If I Surrender generally into the Hands of the Lord, not expressing to whose Use the Surrender shall be, this Surrender is a good Surrender, and shall ensue to the Benefit of the Lord. Co. Comp. Cop. 49. S. 35.

2. J. W
Copyhold.

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2. J. W. a Copyholder in Fee, to Eliz. surrendered his Land into the Hands of the Lord by the Hands of Tenants according to the Custom &c. without saying to whose Use the Surrender should be; and at the next Court the said J. W. was admitted H idea to him and his Wife in Tail, the Remainder to the right Heirs of J. W. Resolved by the whole Court for the first Point, that the subsequent Act shall explain the Surrender; for, Quando adept Proviso Partis, adept Proviso Legis, and when the Copyholder accepts a new Admittance the Law intends that the Surrender generally made was to such an Use as is specified in the Admittance, and the Lord is only as an Instrument to convey the Estate, and as it were put in Trust to make such an Admittance, as he who Surrenders would have him to make. Poph. 125. Trin. 15 Jac. B. R. Brook’s Cafe.

and says, that the subsequent Admittance explains to what Use the Surrender was made. — Lord Rayn. 626. 627. Hill. 12. W. 5. S. C. cited by Holt Ch. J. and said, that if a Copyholder surrenders to the Lord without limiting any Use, the Copyhold belongs to the Lord, and his Estate is extinguished, in the same Manner as if Tenant for Life at Common Law releases to him in Reversion; and then the Grant will be a voluntary Grant of the Lord.

3. If a Surrender be to the Lord, good in faciat voluntatem, yet by Custum the Surrenderer by Petition or Declaration may direct it to any Person whatever, and the Lord must pursue it, and there is no Estate in the Lord, but it remains in the Tenants Hands till Admittance of such Party, and the Perchafore may come in at any Time; per Cur. 2 Keb. 823, 524. pl. 41. Mich. 23 Car. B. R. in Peebles Cafe.

4. If a Surrender be made to the Lord expresssing no Use, it shall be to the Use of the Lord; for it cannot be imagined that the Surrender was made to no End or Purpose; and a Surrender may be made to the Lord, and no Use need be expresed. Gilb. Treat. of Ten. 239.


1. An absolute Surrender by a Remainderman for Life to a S. C. in B. R; Difieror Lord’s own Use was held not good, and the Copyhold not extinguished thereby, for he had no Estate capable of a Surrender; for the Possession of the Copyholder for Life prevented a Differin, and to the Reversion continued in the rightfull Lord; but had the Surrender been to the Use of another it had been good, the Lord in that Case being only an Instrument, and the Estate not out of the Surrenderee to the Admittance of the Surrenderor. And to a Judgment in C. B. was affirmed per tot. Cur. 2 Jo. 253. Pasth. 33 Car. 2. B. R. Pitt v. Moore.

Pit. 5. S. C. North Ch. J. and Windham inclin’d, that the Surrender was not good; but Arkiss J. e contra.— Vent. 359. S. C. argued, & Adjnurnur.— Freem. Rep. 245. pl. 257. S. C. argued.

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(J. a) Sur-
(I. a) Surrender to the Use of a Will.

Dal. 76. pl. 3; S. C. for he had respect to that in making his Surrender, and by his saying he surrendered all his Land accordingly, he shewed that his Intent was only to pass those Lands that were devised by the Will.

1. A Seized of Copyhold Lands devised a certain Parcel of them to his Wife for Life, Remainder to his Brother and his Heirs, and afterwards in Presence of 3 Persons of the Court said to them, I have made my Will as I would have it, and here I surrender all my Copyholds Lands into your Hands accordingly, by this not all his Copyhold Lands are surrendered, but those only mentioned in his Will. 3 Le. 18. pl. 43. 14 Eliz. B. R. Anon.

2. A devised that B. should have a Copyhold in Fee, (or devised a Copyhold to B. for ever) and afterwards a Surrender is made unto the Lord to grant the Copyhold according to the Will; the Lord may grant to B. in Fee. Godb. 137. pl. 152. 29 Eliz. B. R. Allen v. Patthall.

3. A Copyholder in Fee devised to his Wife for Life, and that she should sell the Reversion for Payment of his Debts, and afterwards he surrendered to the Use of his Wife for Life according to the Will and Deed [and died.] It was adjudged, that she might sell this because in his Surrender he referred to his Will, and afterwards he surrendered upon Condition to pay 12 l. this was held to be a good Sale according to the Will. Cro. E. 68. B. R. Hill. 29 & 30 Eliz. Bright v. Hubbard.

4. A Copyholder surrenders to the Use of his life Will, and he afterwards makes a Will, the Lands do not pass by the Will, but by the Surrender; for the Will is only declaratory of the Uses of the Surrender. Bull. 200. Patrick. 10 Jac. Semain's Case.

5. Copyholder in Fee surrenders to the Use of his life Will, which he said he would leave with his Partner Moss; Moss dies; he recites the Surrender, and makes his Will. It seems the Device shall have the Lands for those Words, (that he would leave in the Hands of his Partner Moss) are only Words of Demonstration, and no way operative or restrictive of the Operation of the Surrender or Devise; and it is a Rule in Law, when an Act is to be done, with Reference to another Thing, which is impossible, illegal, or variant, the Act shall stand, and the Reference be void. Gilb. Treat. of Ten. 258.

6. A Surrender was made to a Feme Couart, of Copyhold Lands, with Power referred to her to surrender it to such Uses as she by Writing, or Last Will, in the Presence of 3 Witnesses should direct or appoint. She made a Will in Pursuance of her Power executed in the Presence of 3 Witnesses, and gave it to her Daughter and Heir. Afterwards she made a Surrender, together with her Husband, to the Use of her Husband and his Heirs; but this was made in the Presence of 2 Witnesses only, who subscribed their Names (as Witnesses;) but the Deputy Steward, who took the Surrender, had set his Name to it. On a Bill by the Husband after the Wife's Death to establish this Surrender, who would have the Steward to be considered as a third Witness, the Daughter, the Defendant, pleaded a Title by the Will, and also demurred, for that the Plaintiff's
Copyhold.

Plantiff's Title, if any, was only at Law, and he might bring Ejealthough. Ld. Chancellor feemed to think the Plea good, as a Plea of the Defendant's Title, and the Demurrer good likewise, as a Demurrer to the Plaintiff's Title. But at last he over-ruled the Plea, and allowed the Demurrer. Abr. Equ. Cases 42. Trin. 1728. Cotter v. Layer.


Ld. Chancellor said, that the Reason, that the Party is in by the Surrender and not by the Will, and therefore it is good, tho' there be no Witness at all; but that it is necessary that the Will be in Writing, and if it be so, it is sufficient if it be Copyhold, tho' there was no Surrender at all to the Use of the Will, nor the Will attested by any Witness, yet it is sufficient to give the Trull of the Copyhold Estate, per Ld. Chancellor, and said, that this is merely the Case of a Trull, and the Testator could not make a Surrender of it. Ibid. 11, 12, 15.

(K. a.) Surrender. Take. Who shall take by the Description. And what is Certainty sufficient. Averment.

1. It is not necessary that upon Surrenders of Copyholds, the Name of the Party to whose Use the Surrender is made, be precisely set down, if by any Manner of Circumstance the Grantee may be certainly known, it is sufficient, and therefore a Surrender made to the Archbifhop of Canterbury, or the Lord Mayor of London, or the High Sheriff of Norfolk, without mentioning either their Christian Name or Surname, are good enough, and certain enough, because they are certainly known by this Name without farther Addition. Co. Comp. Cop. 49. S. 35.

2. So if I surrender to the Use of the next of my Blood, to the Use of my Wife, to the Use of my Brother or Sister, the Surrenders are good without any Additions, because the Grantee may certainly be known by these Words. Co. Comp. Cop. 49. S. 35.

3. But if I surrender to the Use of 3 or 4 of St. Dunstan's Parifh, not naming the Parishioners by their Names, this Surrender is utterly void. Co. Comp. Cop. 49. S. 35.

4. If a Copyholder will surrender to the Use of the right Heirs of J.S. be being alive, this is void, because it cannot take Effect according to the Intent of the Grantor; for he would have the Grant to be executed presently, which cannot be, in regard that J.S. can have no Heir till after his Death. Co. Comp. Cop. 49. S. 35.

5. A Copy was granted to J.S. and his Son (without naming his But where Name;) He avers, that at the Time of the Grant he bad but one Son only, and 'twas adjudged a good Limitation to that Son. Cro. J. 374; adapted pl. 4. Mich. 12. Jac. B. R. Cob v. Betterfon. not good for the Uncertainty. Ibid. cited per Coke Ch. J. as 29 Eliz. Winkmore's Case. ——— Gilb. TreaT. Ten. 247. cites 5 C. accordingly, but adds, that Coke says, that if a Man and he has more Sons of that Name, this Uncertainty may be helped by Averments, but if a Man surrenders to the Use of his Friend or Cozen, this is void, and not to be helped by Averment, for the Uncertainty; so if the Surrender be to the Use of J.S. or I N. ——— Co. Comp Cop. 49. S. 53. the Same Point in toto in Verbis.

(L. a)
(L. a) In what Cases a Surrender is necessary.

A Copyholder cannot transfer his Estate but by Surrender; the Reason is, because he has only an Estate at Will, which is determined when he takes upon him to grant it over; for that is a plain Declaration of his Intent, that he design to hold the Land no longer; so that he must surrender to the Lord, and then he may grant another Estate at Will, which now the Lord is compellable to do to him, to whose Use the surrender is made. Because the Copyholder now has that settled Interest and Estate in the Land, that his Heirs shall inherit the Land, whether the Lord be willing or not; and so a Copyholder hath Power over his Estate, and not the Lord; therefore 21 E. 4. Brian said, that if the Lord enter upon his Copyholder, he might have Trepass. So far it is now from being a Determination of the Copyholder's Estates.

2. A Copyholder in Fee surrender'd to the Use of his Will and devised his Copyhold Land to his Wife, and that if she had any Issue by him, then to such Issue at the Age of 21 Years, and if he had no Issue by her, then to such Issue 2. Attornies, and they to make a Bill of Sale of the Lands to her best Advantage; the Court held that the hath Authority by the Will to name 2 Attornies, who shall fell, and that they may make Sale and the Vendor shall be in by the Will, and there needs not any new Surrender.


3. I. S. a Copyholder in Fee held all his Copyhold and other Lands to J. C. by Indenture of Bargain and Sale, and the Leafe of the Manor entered and took Pollission, and afterwards J. S. died seized, and W. S. his Son and Heir was admitted upon Prefixement of the Hanage, that his Father died seized, and that the said W. was his Heir, and afterwards W. S. surrendered to the Use of the Plaintiff, who was admitted and brought Ejetment; It was agreed that tho' a Copyholder cannot convey his Copyhold Estate to a Stranger without Surrender and Admittance, yet he may grant it to the Lord of the Manor out of Court by Bargain and Sale, because the Custom is not between the said Lord and Tenant, but between the Tenants themselves only; and Judgment for the Plaintiff. Win. 66. 67. Pach. 21 Jac. C. B. Haffet v. Hanfon.

4. D. agreed for the Purchase of a Copyhold, and puruuant to that Agreement a Surrender was made out of Court to his Use, then be devised all his Lands to R. B. &c. and died before Admittance; It was decreed that the Copyhold Lands shall pass because the Tenant had a Title in Equity to recover them, and the Vendor stood seized for him till a legal Conveyance could be made. 9 Mod. 75. Marg. cites * 2. Chan. Rep. Trin. 15 Car. Davie v. Beardsam.


6. Copyhold in Mortgage may be devised without the Formality of a Surrender to the Use of a half Will, for the Copyholder has only an Equity of Redemption. Vern. R. 69. pl. 65. Mich. 1652. Brent v. Belt.

7. Surrender of Copyhold Lands assigns them, together with Freehold Lands, to J. S. Per Lord Chancellor the Copyhold could not pass but by
Copyhold.

Surrender only and not by Conveyance. 2 Ch. Cafes 43. Hill. 32 & 33 Car. 2. Knight v. Cook.

8. Cytentary Lands within the County Palatine of Cornwall, tho' they pafs by Lease and Releafe, yet by the Custom cannot be devisfed without a Surrender, ye one, who has an equitable Interest only, and not the legal Estate, may devise them without making a Surrender. 2 Vern. R. 679. pl. 604. Hill. 1711. Greenhill v. Greenhill.

9. Where a Person purchasef Land in the Name of another, or has only an equitable and not the legal Estate, he may devise the fame without a Surrender; per Parker C. 10 Mod. 519. 529. Nich. 10 Geo. 1. in Canc. Acherley v. Vernon.

10. An Equity of Redemption of a Copyhold may be devised without being surrendered to the Use of a Will. 3 Wins's. Rep. 358. pl. 96. Trin. 1735. King v. King and Ennis.

(M. a) Surrender. Want of Surrender, or defective Surrender. Supplied in Equity. In what Cases.

1. A Copyholder in Fee Surrenders to the Use of one, and to his Heirs, upon Condition of Redemption, writes down his Debts, and willeth Part of his Copyhold to be sold for Payment of his Debts after his Death; one of the Creditors payeth the Money at the Day to the Mortgage, who nevertheless inrolleth the Surrender afterward, this other Creditot complaints against him, and the Heir in Chancery, and had a Decree that the Copyhold should be sold for the Payment of Debts, and the Remainder of it (if any were) should descend to the Heir, for altho' the Devife of the Copyhold be void, yet to take it from the Surrenderee, (who held it only for Money to be paid) and to pay him and the other Creditors therewith, hath good Warrant in Equity, and the Heir hath no Wrong, for that it was gone from him by the Surrender lawfully. Cary's Rep. 9. 10. cites 41 Eliz.

2. A. purchased a Copyhold for the Lives of himself and B. and C. his Sons. A. alone paid the Fine. A. agreed to surrender all his Title to J. S. who paid the Purchase-Money agreed upon. A. died before any Surrender made. Then J. S. died. His Executors brought a Bill against the Sons of A. to compel them to surrender the Copyhold according to the Agreement; and decreed accordingly. Chan. Rep. 272. 19 Car. 2. Greenwood v. Hare.

3. A. covenanted with the Trustees to settle Freehold Lands on himself and M. his Wife for Life for Part of her Jointure, Remainder over, and to surrender certain Copyhold Lands to the same Uses, and in going to make a Surrender he fell Sick by the Way, but made a Letter of Attorney to others to do it, but died before it was done. The Remainders limited were to the Heirs Male of the Body of A. by M. Remainder to the Heirs Male of his Body, Remainder to B. Brother of A. and the Heirs Male of the Body of B. Remainder to the Heirs of A. The Heir Male of B. praved a Conveyance of the Copyhold; Lord Keeper said, that if A. had had a Son by a former Wife, no Relief could be had against him upon this Covenant, which as to the Plaintiff was merely voluntary, and if A. and B. where both living, B. could not inforce A. to execute the Covenant tho' M. might, and dismissed the Bill. Ch. Cafes 243. 14. January 1674. Bellingham v. Lowther and Wentworth.
Copyhold.


5. The Plaintiff having contracted with the Defendant's Father for the Purchase of a Copyhold Estate, the Plaintiff paid the purchase money, and the Defendant's Father agreed to surrender the Premises at next Court, and said, he had made a Surrender lately to the Use of his Will, which would enure to the Benefit of any Purchaser, but before next Court Day, and any Surrender made, the Defendant's Father died. This Court decreed the Defendant when he came of Age to surrender effectually the Premises to the Plaintiff, and the Lord of the Manor presently to admit the Plaintiff Tenant to the Premises. Chan. Rep. 219, 219. 33 Car. 2. Barker v. Hill.

6. Surrender being to one Copyholder only was supplied against the Heir in Favour of the younger Children. Vern. 132. pl. 120. Hill., 1782. Hardham v. Roberts.

7. By the Custom of the Manor of Yelminger Prima in Devonshire, every Copyhold Tenant of that Manor may, in the Presence of two Witnesses, nominate his Successor, and such Nominee shall enjoy the Lands after him for Life, and the Person who nominates may except any Part of the Lands to any other Person, yet the Nominee continues Tenant to the Lord for the whole, but the Person to whom any Part is excepted shall enjoy any Part during his Life; and if any Tenant dies seised, having a Wife, and makes no Nomination, then the Wife shall have the Tenement during her Life, else it goes to the Lord; a Copyholder by his Will intending to give the greatest Part of his Estate to his Godson, and the other Part to his Wife, the Wife perjures him to nominate her to the whole, and that he would give the Godson the Part designed for him; Decreed against the Wife, notwithstanding the Statute of Frauds and Perjuries. Chan. Prec. 3. pl. 3. Hill. 1689. Devenish v. Baines.

8. Chancery will help the want of a Surrender in Case of a Purchaser; per Hutchins. 2 Vern. 165. Trin. 1692. in Case of Hitchcock v. Sedgwick.

9. Equity will supply the want of a Surrender of a Copyhold as well for an Elder Son as a Younger, in Case of Greatkind Copyhold, if it appears to be the Intent of the Will, that the Elder Son should have the Copyhold, paying a Legacy thereunto to the Youngest Son; Per Lds. Commissioners. 2 Vern R. 163. pl. 132. Trin. 1692. Bradley v. Bradley.

10. A Copyholder in Fee, having Ilfive two Daughters, devised a Copyhold Estate to his Younger Daughter, whereby her Fortune was made much more considerable than the eldest Sister's, and there being no Surrender made to the Use of his Will, the Question was, Whether that Deceit should be supplied in this Court; for alcho that Deceit is generally supplied, where it is for a Provision for a Wife or Child, yet in this Case, in Case it were not supplied, her Fortune would have been equal to her other Sister's and the Copyholder could have defended equally to them both; yet notwithstanding it was supplied here, being intended a Provision for a Child, tho' it made her inferior to her elder Sister in Fortune. Ex Relatione M'ti Foley. 2 Freem. Rep. 234. pl. 359. Baker v. Jennings.

11. Decreed that all Devises by Copyholders for the Use of Children or Creditors, and all Charges made by them upon their Lands for the Benefit of Children or Creditors, will be good in a Court of Equity, though there was no Surrender to these Uses. 3 Salk. 84. pl. 5. Patch. 11 W. 3. Pope & al. v. Garland.
Copyhold.

12. A younger Son brings a Bill, and sues for a Copyhold which his Father had devised to him by Will and was surrendered to the Use of his Will, or however that being for the Advancement of a Child, it ought to be made good here. He made no Proof of any Surrender, nor that a Court was called for that Purpose, nor any Proof that any of the Court Rolls were extant (which was pretended) and he was well provided for, without this Copyhold, and the elder Brother was in Possession 20 Years, by Consent of the Plaintiff; so the Bill was dismissed, with Costs. Abr. Equ. Cafes, 123. Pauch. 1700. James v. James.

13. Chancery ought not to supply the want of a Surrender in Fa C. cited in vour of a Grandson, but only of a Son or Daughter, and not then the Cage at neither it was to disinherit the eldest Son, but prior Provision is not Litton- material, in Domo Procurum, by which a Decree of Lord Somers's was reversed. 1 Salk. 187. pl. 6. in Time of W. 3. Kettle v. Townend. Ruffel and Falkland.

And in a Note there added to the Report of the Cafe of Wm. v. Bullas, it is said, that the like was declared by Lt. Harcourt, in the Cafe of Trustees v. Kante, Trin. 1712, and the Note says, that it is observable, that the Cafe of Kettle v. Townend being cited before Lt. Cowper in the Cafe of Trustees v. Kettle, Trin. 1712, his Lordship doubted thereof, in regard that the Grandsi- ther, by the Act of 41 Eliz. for maintaining the Poor, it bound to maintain his Grand-Child, which he said he believed was not taken Notice of in that Cafe. Ibid. 61.


15. A Mortgage Surrender was made to A. to secure 200 l. but was not presented at the next Court, and so was void according to the Cu- stom of the Manor. Some Years after the Mortgagor (the Mortgage Money not being paid to A.) agrees to sell to B. for 400 l. but B. having Notice of the former Surrender takes a Surrender in C.'s Name who had no Notice, and agrees to become the Purchasor, and pays the Consideration Money; and upon a Bill for Relief by A. against B. and C. C. pleads his being a Purchasor without Notice, the Prefentment of his Surrender and Admittance, and the Non-prefentment of the Surrender to A. till long after. Adjudged that this Notice was sufficient to affect C. and de- creed C. to pay A.'s Money or surrender to him; and though C. did not employ B. to purchase for him, or knew anything of it till after B. had agreed and taken the Surrender in B.'s Name, yet he approving it afterwards made B. his Agent ab Initio. Decreed at the Rolls and af- firmed by Lord Cowper. 2 Vern. 609. pl. 547. Pauch. 1708. Jennings v. Moore, Blencorne & al.

16. Chancery will not supply the want of a Surrender of a Copy- hold for a Devisee to disinherit an Heir at Law; per Tracy J. 3 Ch. K. 187. Trin. 7 Ann. Litton, alias, Strode v. Falkland.

17. It will help no further than a Son, a Wife, or a Creditor; per Ch. 115. D. Ch. J. and Ld. Chancellor. 3 Chan. Rep. 167, 199. [Trin. 7 Ann. Arg. says, that so it is of Charitable Uses.

18. A. on the Marriage of B. his Son makes a Feoffment of certain

Freehold Lands by the Name of such and such Farms to Trust for B. for pl. 464 4 C. Life, then to his intended Wife for Life, then to his first Son &c. and for want of such Issue, then in Trust for the right Heirs of B. It hap- pened, that 8 Acres, Part of one of those Farms, were Copyhold, and that the thing was a Covenant in the Deed, that A. should surrender those 8 Acres to the Uses on the Freehold Lands were therein limited. B.'s Wife dies without Issue, so that Trust of the Fee-simple was in B. who mortgaged the

Farms the Deed.
Copyhold.

Farm of which the 8 Acres were Parcel by the Name of such a Farm, with the general Words, All and singular the Lands and Tenements, Parcel thereof, or usually occupied therewith &c. but does not mention the 8 Acres of Copyhold by Name, nor is there any Covenant in the Mortgage Deed to surrender them. B. dies, and his Heir conveys the Equity of Redemption to the Mortgagee, and afterwards A. at the Request of the Heir of B. surrenders the 8 Acres Copyhold to J. S. to whom A. was indebted by Judgment. Upon a Dispute between the Mortgagee and J. S. it was said, per Cowper C. that the Copyhold Lands were never by the Mortgagee under any specific Law, and that the Mortgagee requiring the Settlement in which the Copyhold Lands appear, and the Mortgagee taking no Care to get a Conveyance of them, nor so much as naming them, he should hold, that if the Freehold Lands were sufficient the Copyhold should not pass by the Deed, though there was no Creditor or Purchasor in the Cafe, and it so J. S. hath both Law, and the better Equity on his Side; And he rely'd upon that substantial Difference, where there is a specific Law, and where not, which distinguishes this Cafe from that of Taylor v. Wheeler, where the Copyhold was specifically bound by the Mortgage. G. Equ. R. 13. Hill. 7 Ann. Oxwich v. Plummer.

19. Bill to have an Account of the real and personal Estate of their Father, and a Partition of his real Estate.

The Cafe was, B. having several Freehold and Copyhold Lands, devises all his Lands, Goods and Chattels to his three Sons, equally to be divided between them, and devises over and above this to his Eldest, provided he gives a lawful, good, and general Release to his two younger Brothers, and by his Codicil appoints, that if one of his younger Sons should die or marry in his Minority without Consent of his Executors, then his Portion to go to the other younger Son.

2d Point, if the Copyhold Lands shall pass by his Devise without a Surrender to the Use of his Will? Ld. C. was of Opinion, that the Copyhold Lands do not pass by the Devise for want of a Surrender to the Use of the Will, though in the Cafe of younger Children, because there are Freehold Lands to satisfy the Words of the Will. MS. Rep. Mich. 12 Ann. Canc. Bullock v. Bullock.

20. Andrew Burton was seised of Freehold, Leasehold, and Copyhold Land, and so seised made a Surrender of his Copyhold to the Use of his last Will (he delivered the Surrender to his Tenant of the Copyhold [who was one of the customary Tenants of the Manor] to be presented at the next Court, but took it back from him, and both the said Andrew and his Tenant were at a Court held shortly after, but did not present the Surrender) whereby he devised his Copyhold to Andrew his Eldest Son, and the Heirs Male of his Body, the Remainder to Cornelia his 2d Son, who was by a 2d Venter and the Heirs Male of his Body, Remainder to Burton his 3d Son and the Heirs Male of his Body, Remainder to his own right Heirs. The Deviseor died, leaving the said 3 Sons and one Daughter, who was by the first Venter the eldest Son entered upon the Copyhold, and received the Rents and Profits of it during his Life, but did not present the Surrender, and died without Issue, whereupon his Sister of the whole Blood, Wife to the Defendant Floud, claimed as Heir to Law to her Brother, whom she conceived to be seised in Fee for want of a Surrender; the Tenant attorned to the Defendant in right of his Wife, whereupon the Plaintiff, 2d Wife of Andrew the Father, brought her Bill as Guardian to her two Sons, Cornelius and Burton, to have the Copyhold according to the Will; the Council for the Defendant inferred, that the want of a Surrender ought not to be supplied in this Cafe, because the younger Sons have an ample Provisions.
Copyhold.

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...the Will, besides the intended Copyhold, and that the Court of...by the Ld. Chancellor...in the Court of...in the...such Estates are devised; they further insisted, that tho' the Court...will supply the want of a Surrender for the Benefit of younger Children where there is a sufficient Provision for them besides, yet in this Case it ought not, because the Acts of Andrew the Father, subsequent to his making the Surrender, amount to a Revocation of it, and manifestly cites the...the Surrender should not be presented, as his...taking it back from his Tenant to whom he had given it to present, and his neglecting to present it at Court at which he was present, and had an Opportunity to do it, but Trevor, Master of the Rolls, decreed for the...and to there being a sufficient Provision by the Will for younger Children besides the Copyhold, he said that the Parent was the only Judge of that, and as to those Acts of the Testator, which it was laid amounted to a Revocation of the Surrender, he said they did not, and that if it had been the Testator's Deign that the Copyhold should not be surrendered to the Use of his Will, he should have revoked it, and observed that there was not so much as Parol Evidence of a Revocation. This Case was reheard before Harcourt Lord Chancellor, who affirmed the Master's Decree, and that the Defendants should join in a Surrender pursuant to the Will. MS. Rep. Mich. 12 Ann. Canc. Burton v. Field and Ux. 21. It was denied to be supply'd in Case of a Wife to whom the Husband devised it by his Will, it being suggested, that the wife was other wise supply'd for out of the Testator's Freehold and personal Estates, but the...in the...per Annum, whereas the Provision for the Wife was according to her Fortune, which was upwards of 3000 l. but the Court lent it to the Master to inquire into the Facts and report it specially before they could make any Decree in it. G. Equ. R. 121. Mich. 2 Geo. 1. in Canc. Bifceo v. Cartwright. 22. A. feised of Copyhold Lands, and also of a considerable Estate in Fee, which he had settled on a Papist, contrary to the Statute of 11 & 12 W. 3. Cap. 4. to surrender the Copyholds, for he had made a Letter of Attorney to W. R. to surrender them, and the Steward or Tenant refused to accept the Surrender, insisting that they ought to keep the Letter of Attorney, upon which they broke off, and no Surrender was made; And Cowper C. thought this a lucky Accident in Favour of the Heir, which Equity ought not to deprive him of any more than it. the Copyholder and the Lord had disfavored about a Fine, which had prevented a Surrender, and that this being a voluntary Conveyance was not to be affihed in Equity, as a Conveyance to a Wife or a Child would be, but it did not appear that A. had done all in his Power to make the Surrender, and therefore the Court declared that the Title to the Copyholds was in the Heir. Wm's. Rep. 354, 355. Trin. 1717. Vane v. Fletcher. 23. But if the Heir had done any Thing to prevent the Acceptance of the Surrender it had been material; per Cowper C. Ibid. 355. 24. Sir Charles Rawley devised Copyhold Lands to his Daughters, without surrendering them to the Use of his Last Will and died; Carey Rawley his Son and Heir entered and mortgaged them for 400 l. the Mortgagee assign'd his Mortgage to one of the Plaintiffs. The first Question was, whether the Want of a Surrender should be supplied for the Benefit of the Daughters, seeing they had a very large Provision besides the Copyhold Lands? The second was, whether the Mortgage which was taken and assigned without Notice of Sir Charles's Devise, should be first discharge'd? Cowper Ld. Chancellor, as to the first decreed that the Want of a Surrender should be supplied for the Benefit of the Daughter not-
notwithstanding their other Provision, because the Father was the best Judge what was a sufficient Provision for them. As to the second he decreed, that the Mortgage being had without Notice should be first discharged, there having been Laches in the Daughters. MS. Rep. Mich. 4 Geo. in Canc. Weeks v. Gore.

15. A. had Issue two Sons B. and C. B. died, leaving H. a Son. A. being feied in Fee of Freehold and Copyhold Lands, devised all his Mefiances and Lands, whether Freehold or Copyhold, to H. his Grandson and Heir at Law, or for Life, Remainder to the first and other Sons of H. in Tail, Remainder to Daughters of H. in Tail, Remainder to C. in Fee. A. died without making any Surrender to the Ufe of his Will, but had made other Provision for C. H. died without Issue, but Surrender'd the Copyhold to the Ufe of his Will, and devised it to his Mother in Fee. It was decreed at the Rolls, that this being no present Provision intended for C. the Defect of a Surrender should not be supply'd; but, Ld. C. Talbot reversed the Decree, and order'd the Defect to be supply'd; and as to other Provision being made for C. he said, that it had been often held here, that the Father is the sole Judge of the Quantum of the Provision, and as to this Remainder to C. not being to be intended as a present Provision, he held this to be a Provision, though not to good an one as a present Provision; That in this Case it could not be said, that the Heir was disinherit'd, for when this Remainder is to take Place, C. then becomes Heir at Law himself by the Default of Issue of H. Nor can it be said that there is an Heir unprovided for; For though he is made only Tenant for Life, yet there are Limitations to all his Issue, who are to take before C. the Plaintiff. Ccases in Eqv. in Ld. Talbot's Time, 35. Trin. 8 Geo. Cook v. Arnham.

16. The Defect of Surrenders has been supply'd even where the Copyhold intended to pass has not been Part of the Provision, and so not liable to the Objection of leaving the Child utterly unprovided for in Case the Defect was not supply'd; For the Court has never yet enter'd into the Consideration of the Quantum proper for each Child; Per Ld. C. Talbot. Ccases in Eqv. in Ld. Talbot's Time, 36. Trin. 1734. in Case of Cook v. Arnham.


It is the Circumstances of the Case that induce the Court to do it, or they will not to do it in all Cases. 2 Frenm. Rep. 115. pl. 143. agreed Hill. 1690. Anon.

This the Reporter admits to be so, but observes, if it were not an Equitable Charge, and the legal Estate of the Copyholder had depend'd to the Heir, that would have made it necessary that the Heir should be a Party, because otherwise.

19. One by Will charges all his Wordly Estate with his Debts, and dies seised of Freehold and Copyhold Estates, which be particularly disposes of by the Will ; the Copyhold, though not surrendered to the Ufe of the Will, shall yet be applied to the Payment of the Debts Pari passu with the Freehold ; and it had been sufficient if the Testator had only said, I charge my Copyhold Land with the Payment of my Debts ; in which Case the Equity would have supply'd the Want of a Surrender. 3 Wms's. Rep. 96, 97. Hill. 1730. Harris v. Ingledew.
A Copyholder made a Lease for Years, with Licence &c. rendering RENT, and afterwards he surrendered the Recovery, with the UFE of a Stranger who was admitted; it was held by Rhodes 29 Eliz. and Windham Justices, that the Surrender and Admittance were in Nature of an Inrolment, and fo amount to an Attornment, or at least do supply the want of it. 1 Le. 297, pl. 408. Hill. 28 Eliz. C. B. Anon. S. C. in toto dem Verbo.

2. Tenant for Life, the Remainder in Fee of a Copyhold, he in the Remainder, join in a Surrender to the Ufe of him in the Remainder in Fee; it was the Opinion of the Justices, that the Lease was good against him in Remainder, and that by the Surrender of the Tenant for Life to the Ufe of him in the Remainder, his Estate is drown’d in the Fee, and as it were extinct, and cannot hinder the Lease to have Operation. Cro. E. 160, pl. 49, Mich. 31 & 32 Eliz. B. R. Dove v. Williot.

Copyhold.

4. If a Copyholder surrenders his Land to the Use of a Stranger, in
Confederation that the same Stranger shall marry his Daughter before such a
Day, if the Marriage succeeds not, the Stranger takes nothing by
the Surrender; But if the Surrender be in Confederation, that the Stran-
ger shall pay such Sum of Money at such a Day, then the Money be not
paid, yet the Surrender stands good. Calth. Reading. 36, 37.

5. A Right or Condition cannot be given or determined by Surrender,

6. Copyholder made a Surrender to the Use of his second Son for Life,
after the Death of him and his Heirs; adjudged no good Surrender,
for tho' it be good in a Will, yet Implication is not good in a Surrender;
And in Copyhold Cases a Surrender to the Use &c. is no Use, but
an Explanation how the Land shall go. Brownl. 127. Hill. 5 Jac.

7. If there are two [joint] Copyholders and one surrenders to the Use of
his Will, and makes his Will &c. and dies, there shall be no Surrender
ship; cited by Coke Ch. J. as adjudged Noy. 152. Hill. 5 Jac.

8. Surrender and Admittance in Court are public Acts, whereof
every Tenant may take Notice, and if Copyholder surrender the Re-
version of 2 Parts of his Copyhold in Le&ec, the Surrenderee may
allow after Admittance without Attornment. Lev. 49. Trin. 13 Car.

9. Surrender of Copyhold is within the Equity of 32 H. 8. 3. to
bring Debt or Covenant against the Life. 1 Salk. 185. pl. 2. Mich.

10. Admittance relates to Surrender, and Surrenderee's Title began
by the Surrender. 1 Salk. 185. pl. 5. Pach. 5 &c W. & M. B. R.
Benton v. Scott.

11. Copyholder in Fee surrendered into the Hands of the Lord to the
Use of himself and the Heirs Male of his Body, but died without Admit-
tance upon the Surrender. It was unanimously resolved, that without
Admittance on the Surrender he continues feiled in Fee as before; for
the Lord could otherwise have no Remedy for his Fine &c. Holt's Rep.

Supplement

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(O. a) Operation and Effect of a Surrender. In what
Cases it shall be a Discontinuance.

1. A

Dmitting the Copyhold. Lands may be intail'd, then a Sur-
render thereof by the Tenant in Tail is a Discontinuance to
put the Issue to his Athus; for he must take it subject to all the Incon-
veniencies which an Estate Tail at Common Law is subject to. Cro. E.

2. If there hath been a Custom in a Manor that Plaints should be pros-
icated there in Nature of real Actions, if a Recovery be had upon such
Plaints against Tenant in Tail, it is a Discontinuance; for since the
Custom warrants the Recovery, it is an Incident to such a Recovery
by the Common Law, that it should be a Discontinuance, which it feems
drawn from the Nature of the Thing; That a Judgment given in a
Court of Judicature ought not to be avoided, but by Matter of as high
a Na-
Copyhold.

a Nature, viz. by a Recovery in a Court of Judicature, and not by the Entry of the Party that hath Right. Gilb. Treat. of Ten. 176. 177.

3. There are Cases that a Surrender is a Discontinuance of an Estate Tail in Copyhold Lands, and my Ed. Coke says, that a Surrender by Custum may bar an Estate Tail; But these opinions for discontinuing by Surrender do not seem to be grounded upon that Reason or Authority, as the contrary Opinion is; for there are more Causes against it than for it. Gilb. Treat of Ten. 178. 179.

(P. a) Surrender. Good in respect of the ESTATE of the Surrenderor.

1. A Woman Copyholder for Life took a Husband, the Reversion of the said Copyhold was granted to 3, viz. to A. B. and C. and accident post Mortem, Sustain-Restitution, or Veritas, for their Lives Successively according to the Custum; the Husband surrendered to the Use of A. for Life, to whom the Ld. granted it by Copy for the Life of A. and A. and B. died. It seems to divers Justices and Serjeants that C. shall not be admitted; for after the Death of the Husband, the Wife may enter, or have her Planta in Nature of a Cot in Vita, but during the Life of her Husband the Ld. may retain it in his own Hands in Nature of an Occupant, after the Husband. But further the Husband and the Wife would have released to C. and the Ld. would not receive it, nor hold a Court, but he was enjoined in Chancery to hold Court, or to avoid Poffedion. Dyer 364. pl. 38. Trin. 9 Eliz. Rollesw. Cae.

2. Surrender by the Heir before Admittance is good, but this shall not prejudice the Lord of his Fine by the Custum of the Manor due to him on Defcent. 4 Rep. 22. b. pl. 1. Mich. 23. and 24 Eliz. C. B. Brown's Cae.

3. If a Man failed of a Copyhold in Right of his Wife surrenders it to Mo. 596. pl. 35 Eliz. B. R. Bullock v. Dibley.

such Estate nor, can a Warranty be annexed to it for the Benefit whereof a Discontinuance is admitted. And cites S. F. adjudged Mich. 32. and 35 Eliz. C. B. Foxley v. Cofen.—Supplement to Co. Comp. Cap. 30. 15. cites S. C. — Gilb. Treat. of Ten. 177. cites S. C. accordingly; for by the Surrender he gives up no more than he had, and therefore could not give away his Wife's Right; tho' before Entry she cannot be said to be Tenant, because the Surrender is by the Lord's Admittance made his Tenant, and this is not the "a Personat at Common Law", which being so notorious a Way of conveying Estates, the Wife's Entry was taken away, the whole Estate being pulled away to the Poofte for the Benefit of Strangers, who could never have known whom to have brought their Prinice against, if the Estate did pass by notorious a Conveyance; and if the still might have entered, they could never know whether she were a Trepassor, or in whom the Frehold was rightfully vested. But in Case of Copyhold Lands, as there is no such Inconveniency, so the Nature of the Conveyance will not admit of such Expousite; for a Surrender is but a giving or yielding up that Estate one hath from another; and it is in the Nature of Things impossible to surrender more than one hath. * Cites Cro. E. 717. *per Cur. Mich. 41. and 42. Eliz. in the Case of Erith v. Reeves. Poph. 38. 39. S. C. adjudged accordingly.

R. 4 Sur-
Copyhold.

For the Fee-

4. Surrender by Copyholder to the Use of himself for Life, then of his Son for Life, then the Remainder to the Use of his own Will. His Son dies. The Copyholder may again surrender the Estate in Fee if he will, and it will pass by such Surrender; Per Walmley and Anderson. Fed. adjournat. Cro. E. 441. pl. 4. Mich. 37 and 38 Eliz. C. B. Fitch v. Hockley.


Mo. 465. pl.


in this Case the Lord is not to have a new Fine on the Death of his Tenant for Life, but where the Lord is to have a Fine there must be a new Admixture.—Goldsb. 91. pl. 9. Kipping's Case S. C. argued.—Cro. J. 21. Aucelin v. Aucelin, for the Admixture of Tenant for Life was the Admixture of him in Remainder, and both makes but one Estate.

5. C. cited. Gibb, Treat. of Ten. 249. cites. S. C. that it was a Diffictin, and for it sets out that the surrender was void.

A. Copyholder inFee. 15. Feb. made a Lease for Years by Licence, which Lease was to commence at Mich. following. The Lease entered, and was forfeited before the May following, and afterwards, viz. 8 May, the Copyholder surrendered, the Recoveror to draw his Usfes. Resolved, that the Entry was a Diffictin, and so the Grant of the Reversion not good. Lit. Rep. 17. 18. Hill. 2 Car. C. B. Selby v. Berke.

So of a Surrender by Remainderman for Life, during his Outfer of Usfes, the Copyholder for Life; for by his Entry he is a Diffictor, and has no customary Estate in him whereof to make a Surrender. Mod. 169. pl. 51. Patrick. 27. Car. 2. C. B. Bird v. Kirk.—Carr. 527. S. C. but no Judgment as to this Point.—If Tenant by Copy in Possession be disfisted the Recoveror also is to have a Right, and then a Surrender is not good. 2. Jo. 154. Patrick. 53. Car. 2. B. R. in Case of Put v. Moor.


8. In Ejectments the Lessor of the Plaintiff claimed under a Surrender made by W. Kirby, who had an Estate in Land after the Death of his Father, but entered during his Life, and thereby became a Diffictor, and this Estate being now turned into a Right, he made a Surrender to the Lessor of the Plaintiff, which being found by special Verdict; it was adjudged the Surrender was void; 'twas pretended at the Trial, that the Father, who was Tenant for Life, had suffered a Common Recovery in the Lord's Court, and so his Estate was forfeited, for which the Son may enter, and then his Surrender is good; But per Cur. without a particular Custom for that Purpose the suffering a Recovery is no Forfeiture; but if 'twas, then the Ld. is to enter, and none else can, and so Judgment was given for the Defendant. 2. Mod. 32. Patrick. 22 Car. 2. C. B. Ken v. Kirby.

9. A Copyhold is granted in Recoveron after 2 Lives, Habend' post Mortem, sursum-rectificationem &c. of the Tenants for Life; The Tenants for Life fell their Estate to A. and surrender to the Ld. to the end that he may admit A. the Vender; the Copyholder in Recoveron enters and brings an Ejectment, and recovers at Law; A. brings his Bill, and has Relief, because the Surrernder being only to admit A. the Purchasor, it was against Conscience that the Reversioner should enter. 2. Frenc. Rep. 118. pl. 134. Mich. 1691. Anon.

(Q. a)
(Q. a) Surrender. Good in respect of the Manner of the Surrender.

1. If the Ld. makes a Lease for Life to the Copyholder by Parol, this determines the Copyhold, if Livery be made, but otherwise if it is by of Ten. 283. Died only, per Hyde and Jones. But by Jones, if it be a Lease for Life, the Copyhold is gone without Livery upon it; Quod non fuit negatum. Lat. 213. Mich. 3 Car. Anon.

Estate at Will passes, and an Estate at Will cannot merge an Estate at Will.


Twifden J. held it no Performance; but Keeling Ch. J. held that it was, but Judgment was affirmed on another Point. Lev. 235. Trin. 22. Car. 2. — 1 Mod. 62. Turner v. Beany, S. C. and Judgment affirmed Nifi St. — Ibid. cites Hill 21 Car. Trebun v. Purchas adjudged, that where the Agreement was for a Surrender generally such a particular Surrender is naught.

3. Special Verdict found that Surrender was made by A. to the Use of B. and his Heirs, to the Use of such Person as A. should name by his last Will, this by Twifden is ill, in that no Use can be a Use, altho' it is not executed by Statute; but the Verdict finding further, that H. nominated by the last Will of A. had surrendered unto B. the Court conceiv'd no Doubt in the Cafe. Judgment for the plaintiff Nifi. Keb. 627. pl. 197. Mich. 15 Car. 2. B. R. Leaper v. Booth.

4. Custom, that where an Estate is granted by Copy for 3 Lives to A. B. and C. that the first Life named may bar the Remainders, this must be by a Surrender according to the Custom; for a Surrender by Implication (as A's. joining in a Fine with the Lord to the Use of M. and N.) is not Manner a Surrender sufficient to bar the Remainders of B. and C. Adjudged in C. B. and affirmed in B. R. 2 Show. 130. pl. 199. Mich. 32 Car. 2. B. R. Zinzan v. Talmash.

Where it is only the Es- tate of him- self a small Manner would do it, but here are the Interests of B. and C. concerned.


(R. a) Surrender. Good. In respect of the Limitation, And where it is in Futuro. And to Persons uncertain.

1. A Surrender of a Copyhold in Fee may be for 1000 Years, and it is very good if the Lord will admit, but if he refuses there is no Remedy but in Equity, and Equity will not compel the Lord to admit on such an unreasonable Surrender, for the Executors should pay no Fine for Admittance. Comb. 445. Trin. 9 W. 3. B. R. Anon.

2. A
Copyhold.

2. A Copyholder in Possession surrendered the Reversion of his Copyhold *Post Mortem* from to an *Ufe &c.* It was adjudged, that nothing passed thereby. 4 Le. 8. pl. 36. Trin. 29 Eliz. Clamp v. Clamp.

3. Replevin; *J. S.* and *M.* his Wife Copyholders in Fee of a Houfe, and 12 Acres of the Nature of Borough English; *J. S.* died. *M.* survived, and takes Husband *J. C.* and by him both *Iffue the Plaintiff and Defendant.* *J. C.* and *M.* his Wife surrendered the Land by name of the Reversion after the Death of *J. C.* and *M.* his Wife, to the Use of the Plaintiff and his Heirs. *M.* died, and afterwards *J. C.* died. The Defendant, the younger Son, enters as Heir by the Cutton; It was the Opinion of the Court the Surrender was not good by the Husband and Wife, by the Name of a Reversion after the Death of *M.* and *J. C.* for that *J. C.* had nothing in the Land, and it is absurd that *J. C.* by a mere Grant should have an Estate for Life who had nothing before, and Judgment was given for the Defendant. Cro. E. 29. pl. 1. Trin. 26 Eliz. B. R. Clampe v. Clampe.

4. *A. a Copyholder surrendered to *J. S.* for Life, and afterwards to the right Heirs of *A.* and then he made another Surrender of his Reversion to the Use of *W. R.* in Fee, and died; *J. S.* and the right Heir of *A.* entred; and Coke a Counsel argued, that by the first Surrender nothing remain'd in him, but the Fee was referred to his right Heirs, and if he had not made the second Surrender of the Reversion, his right Heir would have been in by Purchase, and not by Defcent, and the Common Difference is, it is made to the Use of the Surrenderor himself for Life, and afterwards to another in Tail, Remainder to the right Heirs of the Surrenderor for Life &c. For in the first Case his right Heir shall be in by Defcent, and in the other by Purchase. 1 Le. 107. Pasch. 30 Eliz. B. R. in Case of Allen v. Palmer.

5. *Copyholder for Years or Life surrendered to the Use of *A.* and his Heirs &c.* adjudged the Surrender good, and the Use void. Mo. 352. Judgment. 

6. *A. surrendered to the Use of *B.* in Fee in Condition to pay 100l. to the right Heirs of *A.* and on Failure, then to the Use of *W. R.* in Fee; whether this be good, being a *Fee upon Fee*; The Court spake not much to it, but recommended the finding it specially, yet Beaumont *J.* conceived it to be good enough, for it shall be as an Use limited on a Feoffment, and these Ufes shall arise out of the first Surrender. Cro. E. 361. pl. 22. Mich. 36 & 37 Eliz. C. B. Paultor v. Cornhill.

7. *If I surrender to the Use of him that shall be Heir to *J. S.* or to the Use of *J. S.* next Child, or to the Use of *J. S.* next Wife, though at the Time of the Surrender of *J. S.* had no Child or Wife, yet afterwards he has a Child, or takes a Wife, his Heir, his Child, or his Wife may come into the Court, and compel the Lord to admit according to the Surrender. Co. Comp. Cop. 50. S. 35.

8. So
8. If I surrender to the Use of him that shall come next in to Pauls after such an Hour; whose Fortune forever it is to come first, the Lord must admit him, and I shall never avoid it. Co. Comp. Cop. 50. S. 35.
9. The same Law is, if I surrender to the Use of him that J. S. shall nominate, or that myself shall nominate to the Lord at the next Meeting. Co. Comp. Cop. 50. S. 35.
10. Estates of Copyholders shall be directed according to the Rules of the Common Law, and therefore a Surrender made to take Effect after the Death of Surrenderor is not good, as a Freehold cannot begin in Future or at a Day to come. Supplement to Co. Comp. Cop. 69. S. 3.
11. If a Copyholder surrenders 2 Acres of Land into the Lord's Hands, the one to the Use of J. S. and the other to the Use of J. N. and does not name in certainty who shall have the one Acre, and who shall have the other, the Limitation of this Use is void for this Uncertainty. Calth. Reading, 31.

12. Surrender by A. to have after his Death in the Use of his Child 1 Roll Rep. in Venture is none, and if the Child die before his full Age of 21 Years or 109. 175. Marriage, then I surrender the said Lands to the Use of my Cousin J. S. and the his Heirs and Assigns, this Surrender to J. S. is merely void, for he cannot make such a conditional Surrender to operate in Future, and so the Intant being born, and dying afterwards, the Defendant claiming from the surrender hath not been to the Heir at Common Law to the Intant hath good Title. Cro. J. 376.

by the Will the above Estates had been limited, they should be good.—A. was jacent in Extremis, and surrendered. Godb. 264. pl. 554. Sampson's Case, S. C. resolved. And that it cannot be good, because it was to commence upon a Condition precedent, which was never performed; and therefore the Surrender into the Hands of the Lord was void; For the Lord takes only as an Instrument to convey the Lands to another.—2d 727. &c. S. C. adjudged. —S. C. cited Mar. 175. 256. Supplement to Co. Comp. Cop. 67. S. 1. cites S. C. —Supplement to Co. Comp. Cop. 67. S. 15. cites S. C. and that the Surrender into the Hands of the Lord is void, because he takes it only as an Instrument to convey it over.—Gilb. Treat. of Ten. 244, 245. cites S. C. and says it is not grounded upon so good Reason as the Revolution is in Cro. 9. For Surrenders are not to be construed to favourable as Wills, (the Coke says they should be taken according to the Intent of the Surrenderor) neither is there the same Reason; for a Man may as well order a Surrender in his Life-time, according to the Rules of Law, as he may any Deed to pass away a Freehold Estate, so that the Intention of the Party hath not to strong an Operation in a Surrender as in a Will; and therefore that Reason will not support a Fee upon a Fee in that Case, as it doth in a Will. —Gilb. Treat. of Ten. 247. says, that Coke in his Copyholder says, that a Man may surrender Co- pyholds immediately to the Use of an Infant in Venture so mere, for that a Surrender is a Thing executory, and making void before Admittance; and therefore if there be a Person to take at the Time of the Admittance it is sufficient, which seems to be reasonable, and to carry no Inconvenience with it; for it is not like a Grant at Common Law; for there if be no body to take, the Grant is void, because the Estate must be somewhere, and the Grant paras it out of the Grantor; but in Case of a Surrender there is no Inconvenience at all, for the Surrenderor hath nothing till Admittance, but the Estate is in the Surrenderor. But then it seems, that if the Surrenderor be not in Eile before the Admittance that the Surrenderor will be void, for it seems to be implied by Lord Coke; for he says, that if at the Time of the Admittance the Grantee be in Rumor Nature, that will ferve, which implies, that the Admittance is to be made after the usual Manner, not that the Admittance time shall be put off till there be such a Person, for then it would have been to no Purpose to have said, that if there be such a Person to take at the Time of the Admittance &c. for there is no Question but that it will ferve, if the Admittance must be faved off till there be such a Person, and no Question but the Grantee be in Rumor Nature, if the Admittance be to be put off, and so he need not have made a Question. If he be, &c. and if he never come in Eile, then the Admittance-time will be eternally put off, the old Surrender fland good, and no body be able to dispose of the Copy- hold Estate.—Tho' at the Time of the Surrender the Grantee is not in Eile, or not capable of a Surrender, yet if he be in Eile, and capable at the Time of the Admittance, that is sufficient. Co. Comp. Cop. 50. S. 35.

13. If I surrender to the Use of B. after my Death it is not good; Per Nay 152. Warburton and Daniel. Brownl. 41. Trim. 6. Jac. in Cafe of Dannal Hill; J.C. B. Allen v. Giles. v. Nahl, that this good, tho' one cannot preserve the same Estate to himself; for the Estate is in the Lord, and the Surrenderor shall take the Profits during his Life, and after the Lord must admit B. according to the Directions of the Surrenderor. —Brownl. 127. S. C. adjudged that (to the Use of the 2d Son Late) after S. the
Copyhold

1. The Death of the Tenant and his Heirs is not good in a Surrender; for tho' it be good in a Will, yet application in a Surrender is not good, and in Copyhold Cases a Surrender to the Use &c. is no Use, but an Explanation how the Land shall go — Clayt. pl. 36. Ang. 1653; before Damport Ch. B. Holfhworth's Case it was held, that such Surrender was good by reason of the Customs of the Manor, (which was Wakefield) but that afterwards it is by the Common Law;

Ibid. cites it as adjudg'd 27 Eliz. B. R. in Clark's Case.


15. If a Copyholder in Fee doth surrender his Copyhold Lands into the Lands of the Lord, to the Use of himself and his Heirs; resolved, that in that Case, because the Limitation of the Use to him who had it before was void, the Surrender thereof to the Lord himself was also void. Supplement to Co. Comp. Cop. 67. S. r. cites Hill. 17 Jac. B. R. Bambridge v. Whitton.

S. P. For wherein the Limitation of the Use is void the Surrender is void. Godb. 165. pl. 364. Mich. 13; Jac. B. R. in Simpton's Case.

16. A. surrenders to the Use of B. and C. his Sons, and the longest Lifer of them, and for Default of Illue of the Body of B. then to the youngest Son of M. his Sister, and says, this surrender'd not to take Effect till after my Death, these Words are void, and contrary to the Premises; agreed per tot. Cur. Jo. 342. pl. 1. Trin. 10 Car. B. R. Seagood v. Hone.

C. r. C. 366. says it was resolv'd, that the Surrender was good, and the Chief being repugnant to the Premises shall be rejected as idle and void, and shall not destroy the Premises. — S. C. cited Arg. 5. Mod. 267. — Gilb. Treat. of Ten. 244. cites S. C. and says that this Surrender was held to be void to M.'s youngest Son, because the Contingency did not happen in the Life of the Surrenderor, and a Man cannot surrender to take Effect after his Death; but says, it was not resolv'd absolutely that a Fee cannot be limited on a Fee.

Saund. 149. S. C. it was argued, that tho' the Estate limited to B. was void, yet the Limitation to J. S. was good, and adjudg'd that the Estate of J. S. was good by way of present Estate, but not by way of Remainder. — 2 Keb. 341. pl. 12. S. C. adjudg'd. — Gilb. Treat. of Ten. 249. cites S. C.

18. A Copyholder surrenders to the Lord, to the Intent that the Lord shall admit A. whom he intended to marry, after Marriage; until Marriage to the Use of himself and his Heirs, and after Marriage to the Use of himself and A. in tail; Pecor. Cur. it is good enough to limit a Remainder upon a contingent Fee in Copyholds, as in Case of Mortgages of Copyholds, a Surrender in Futuro is good, for the Freehold remains in the Lord. Freem. Rep. 267, 268. pl. 293. Hill. 1679. C. B. Bently v. Delamore.

19. A Copyholder in Remainder surrendered his Remainder to the Use of the Tenant for Life, and after his Death to the Use of himself and his Wife &c. and though the Limitation for the Life of the Tenant for Life was void, and so by Consequence by the Common Law the Remainder would have been void also, yet it was held, that in Case of Copyhold it should be taken as a mediate Settlement upon the Husband and Wife after the Death of the Copyholder for Life. Lord Raym. Rep. 626. per Turton J. Hill. 12 W. 3. cites Cro. J. 434. 2 Roll Abr. 67. Brookes v. Brookes, and also 1 Saund. 151. Wade v. Bache.

(S. a)
Copyhold.

[S. a.] What passes by the Words of a Surrender.

1. Copyholder surrendered to the Use of B. for Money paid, but limited to no Estates, and there was a Custom, that the Party to whom the Surrender was made should have a Fee, and adjudged a good Custom. Arg. Roll Rep. 43. cites 6 Eliz. Thettenwell v. Bunney.

2. R. B. surrenders to the Use of Margaret and Robert without limiting 5 C. cites of any Estates; Here they have but an Estate for Lives, for these Estates shall be directed according to the Rules of Law, unless there be a special Custom within the Manor, as those Words, Sibi et suis, or Sibi et Affig., as lately made by Custom create an Estate of Inheritance. 4 Rep. 29. a. adjudged accordingly. pl. 18. Mich. 27 & 28 Eliz. Bunting v. Lepingwell.

A Copyholder surrendered to the Use of a Stranger for ever; it was made a Quere, if an Admittance by the Lord of the Surrenderee be good in Fee to him and his Heirs, it being by a bare Surrender only, but in Case of a Devise by such Words it had been good. Godb. 157. pl. 162. 29 Eliz. B. R. Allen v. Pathall.


5. A. Copyholder in Fee surrendered to the Use of his last Will, Le. 174 pl. and devised to B. his Wife for Life, Remainder to C. his Son in Tail. 244 & C. Remainder to D. his Son in Tail. B. and C. are admitted. B. dies. C. dies without Issue. D. is admitted, and C. surrenders to the Supplement of Ufe of the Defendant, and dies without Issue; Per Cur. the Lord is to give C. the Ufe of the Defendant's Will, this at first is the whole Fee, but when he devised the Land for Life, or in Tail, and does not meddle with the Reversion, by this the Reversion never pales out of him to the Lord, but descends to his Heir, and he shall have it without any Admittance. Cro. E. 148. pl. 17. Mich. 31 & 32 Eliz. B. R. Bullen v. Grant.

6. An uncertain Surrender of what Estate is to pass, may by Custom be altered by the Lord, and he may grant to the Cefty que Ufe in Fee. of Ten. 259. Cites Cro. E. 392. pl. 15. Pach. 37 Eliz. C. B. Brown v. Foster. Cro. E. 392. S. C. for the Lord is Chancellor in his own Court, and so not responsible for the Lord to determine what shall pass.

7. A. surrendered to the Use of B. but did not say what Estate he should have, but there was a Custom that in such Case the Lord upon such Surrender might admit him in Fee, and adjudged a good Custom. Arg. Roll Rcp. 48. pl. 17. cites 37 & 38 Eliz. B. Brown v. Foster. Cro. E. 392. pl. 15. S. C. held accordingly per Cur. and the Interest of the Land being between the Lord and the Copyholder, it is not unreasonable that upon such an Uncertainty the Lord may alter it. Supplement to Co. Comp. Cop. 15. 8. 19. cites S. C. and takes
Copyhold.

takes Notice that it was objected that the Custom was unaccountable, because it was to charge the Land with a greater Estate than the Copyholder gave; to which it was answered, that the Copyhold was good, because the Lord is Chancellor in his own Court, and might dispose thereof, when the Tenant leaves it uncertain; but Lord Coke says Quære, for the Case was not resolved.

8. A Copyholder surrenders to such Uses as the Lord should appoint; the Lord limits the Use to J. S. for Life.Resolved that the Fee should result to the first Copyholder, and that he by his Will may dispose of it. Litt. Rep. 26. Arg. cites Patch. 35 Eliz. C. B. Wrot's Case.

S. P. cited as adjudged, that it is only an Estate for Life. GB. in a Note at the End of the Case of Arnold v. George.

Gilb. Treat. of Ten. 243. — Co. Comp. 59. S. 49. S. P.

10. If the Limitation of the Use be general, then the Custom que Use takes but an Estate for Life, and therefore Littleton expresses upon the Declaration of the Use the Limitation of Estate, viz. in Fee simple, Fee tail &c. Co. Litt. 56. b.

Cæse of Bunting v. Leggingwell, unless there be a particular Custom to the contrary within the Manor, as these Words Soc & fun., or Soc & Agnati &c. may by Custom make an Estate of Inheritance; and it was observed, that Estates in these Cases limited upon Surronders are always annex'd to the Estates of him to whom the Surrender is made, and that the Surrender to the Lord is always general without limiting any Estate. — Gilb. Treat of Ten. 206. cites S. C. and S. P. for a Surrender of the Estate gives up all the Copyholder hath to the Lord. Put the Case then, that the Surrender was made to Lord for Life, to the Use of another for Life, what Estate would the Lord then have? what could he make over to a Quære, whether the words (for Life) would be of any Significance, tho' he that is admitted be in by the Surrondero. Yet may a Man surrender to the Use of his Wife, for he takes the Eate from the Lord, at an Infrainment to convey the Estate to her, and so it comes not within the Restion of other Cases, that they being but one Person cannot contract; for he gives the Estate to the Lord, and he admits the Female to it.

11. The Lord cannot grant a larger Estate than is expressed in the Limitation of the Use; as it two Jointestates be in Fee, and one out of Court, according to the Custom, surrender his Part to the Use of his Left Will, and devises his Part to a Stranger in Fee, and dies; at the next Court the Surrender is presented; by the Surrender and Prefentment the Jointure was severed, and the Devisee ought to be admitted to a Moety, for now by Relation the State of the Land was bound by the Surrender. Co. Litt. 59. b.

12. If I surrender a Copyhold to a Man and his Heirs, and be reciting this Estate, re-surrenderers in the same Manner to me that I surrendered to him, not making any Mention of my Heir; yet this Recital seems sufficient to pass a good Fee Simple. Co. Comp. Cap. 58. S. 49.

13. If I surrender to you as large an Estate as J. S. his in his Manor of D. and he has a Fee-simple in his Manor, it is somewhat probable that an Estate in Fee Simple should pass, by reasoon of his Relation, without the Words Heirs. Co. Comp. Cap. 58. S. 49.

14. If a Copyhold be surrendered to a Man & femini suo Hereditabiliti de Corpore, or to a Man & Heredibus ex ipso Precessatis, or to a Man in Frank-marriage with his Wife, in these Grants an Estate Tail pails in the first without the Word Heirs, in the second without the Word Body, in the third without either. Co. Comp. Cap. 59. S. 49.

If a Copyhold be granted to a Man and to his Heirs Male, or to his Heirs Females, if to a Man & Sanguinis suo Heredabilis; If to a Dean & Chapter, or to a Mayor or Common- racy, without any express Estate, or without a Limitation of some inferior Estate, in all these Grants a perfect Estate in Fee pails. Co. Comp. Cap. 58. S. 49.

Gilb. Treat. 15. A seised in Fee surrendered to the Use of his Left Will, and by of Ten. his Will devised to his Wife his Copyhold Lands, and if she have no Issue, that
Copyhold.

that then the shall abuse two Actories, and they to make a Sale of my Lands to her self Advantage &c. She had Estate for Life, and not having anytitle, has not any Interest to dispose, but has Authority by his Will to nominate two to fell, and they may make Sale, and the Vendee shall be in by the first Will, and there needs not any new Surrender. Cro. J. 199. pl. 30. Mich. 5 & Jac. B. R. Beal. v. Shepherd.

16. If a Copyholder surrenders for Life, there passess from him no 9 Rep. 107, more than suffices to make the Estate, and the rest remains to him. Brownl. 1, S. P. by the Ch. J. in Margaret Podger's


17. Surrender of Copyhold is not to be reassembled to surrender at Common Law; for if Copyholder in Fee surrenders to the Use of another for Life, nothing more passess from him than will serve the Estate limited to the Use, and he that makes the Surrender than pay a Fine for Re-admittance to the Reversion, for this continues always in him. 9. Rep. 107, in Marg. Podger's Cave.

18. If a Copyholder surrenders his Copyhold of Inheritance into the Hands of the Lord, to the Use of J. S. paying of a 100l. to his Executors within such a Time after his Death, he to whose Use this Surrender is made takes by Force of this presentl; Per Doderidge J. 2 Build. 275. Mich. 12 Jac.

19. A feised of Copyhold Land is not by Licence demisned the same by Brownl. Indenture to S. the Plaintiff for 20 Years. A. surrender'd the Reversion 173. S. C. of one Moity to B. to which he was admitted, and then surrender'd the other Moity to C. who was also admitted. Refolv'd, that ingly,—— the Surrender by the Name of a Reversion was good in this Case, though Gilb. Treat. the Leafe was not made by Surrender, (which had been directly derived, of Ten. 162, and that according to the Custome out of the customary Estate) but by J. and J. S. C. Gilb. says, that tho' the such Lord, Refolv'd. Hob. 177. pl. 203. Hill. 14 Jac. Swinerton v. Miller. Interest may pass by Name of Reversion (for any other Name to give it will be hard to find) yet perhaps he hath not in strictness such an Estate in him. However that be, it seems the Particular Tenant holds of the Lord; therefore if the Tenant in Fee of a Copyhold surrenders to one for Years, it seems to me that the Tenant for Years shall hold of the Lord, for by Admittance the Lord takes him for his Tenant; but if the Leafe be made by Indenture, there it seems he holds of his Leitor; for he is not admitted Tenant to the Lord.

20. A Feme Copyholder in Fee came to Court, and offered to surrender to J. S. and his Heirs, but he desired to retain an Estate to herself for Life, and the Steward entered, that she surrender'd the Reversion of her Copyhold to J. S. after her Death, and it was adjudged an ill Grant, because there was not any Reversion, cited per Harvey J. Hill. 2 Car. C. B. in Cae of Selby v. Becke. Lit. Rep. 18. as one Drewell's Case.

21. Surrender with the Appertainees will pass Land. Surrender of a Copyhold Messeage and three Acres will pass more Acres if divers Copies succeffively have been fo; Per Harvey. Het. 2. Patch. 3 Car. C. B. Blackhall v. Thursby.

There was a Copyhold called Syward s. B. R. Smithson v. Cage. — Gilb. Treat. of Ten. 194, 195. cites S. C.
Copyhold.

22. A and his Wife Tenants for Life of a Copyhold, Remainder to 
A. in Fee surrendered thus, viz. My Lands in H. which were my Wife's, 
and now her's for Life, I give to the Heirs of the Body of my said Wife, if 
that he or they live to 14 Years of Age, and for want of such Heirs then to 
R. S. and his Heirs. The Husband died without Issue, the Wife mar 
rried again, and had Issue which lived to 14 Years of Age. The Wife 
died. Quære, if the Words of the Will will pass any Estate to the 
Culter.

See (U.) (T. a) Where Tenant shall be bound by a voluntary 
Surrender made out of Court.

S. C. cited 1. If a Copyholder languishing in Extremity surrendeth out of 
Court to the Life of his Cousin, in Consideration of Con
tanguity, 
or to the Life of his Son, in Consideration of natural Love and Affection, 
and recovereth his Health before Presentment, this Surrender is perad

Anon. 

1. Copies of 270, 271. cites S. C. and says that this seems to warrant 
the a forefaid Opinion of Coke.

2. But if it be granted upon valuable Consideration, as for the Discharge 
of Debts, or for a Sum of Money paid, though it is made out of Court, 
yet it is as binding as any Surrender whatsoever made in Court. Co. 

This in Roll U. a] What shall be said a good Presentment of a Sur 
render, and at what Time.

See (K) pl. 1. C. D. 4. Rite and Mouintan 25. The Custom of the Manor was 
that a Surrender out of Court should be presented in Court; A 
Copyholder surrenders accordingly upon Condition, and this is pre 
sented absolutely, and resolved, that the Presentment is void.

Copies of 265, 266. says, that tho' the Presentment be made wrong, yet if Administra 
te be made according to the Surrender, the Admittance is good.
Copyhold.

2. Co. 4. Blunting 29 b. Copyholder in Fee surrenders out of Mich. 27 & Court, and dies before it is presented in Court, yet the Surrender being presented after his Death, according to the Custom, is good, as is related; but if it had not been done according to the Custom, it had not been good; and if the Tenants, by whose Hands the Surrender was made, die, yet if this upon a good Proof is presented, it is well enough. Co. Lit. 62.

---S. C. cited Bridgman 51.---If it be presented by any other Copyholder at the next Court it is well enough, the Copyholders who took the same being dead; Held per t. Cur. and cited Blunting's Caf. Cro. 1. 342. pl. 1. Titn. 14. Jac. B. R. in Caf. of Frofet v. Welfh.---Co. Comp. Caf. 51. S. 40. says the Prelentment must be made by the late Perfon that took the Surrender.---Gilb. Treat. of Ten. 265. cites Lex Cult. 157. that a Surrender must be presented by the same Persons that took it; to fays, but that this is not literally true, will appear from what he fays in another Place, that if he that took the Surrender die, yet if Prelentment be made of it, it is sufficient; and it is faid in Lex Cult. to have been held by Wadham Windham, that if a Surrender be made to one Tenant, and prefented to have been made to another, yet that is nothing to vitiate the Surrender; if the Surrender be prefented by any Body, and Admiiniftration thereupon made, it seems to be well enough, for it is known that there was a Surrender; and if the Prelentment should be prefented, yet the Admiiniftration is good enough without it.

3. If there be two Jointenants in Fee of a Copyhold, and one surrenders his Part out of Court into the Hands of the Lord, to the Use of his late Will, and after devifes it to another in Fee, and dies, and after, at the next Court, this is prefented, the Devife shall have it; for by Relation the Jointure was feted, and the Eflate of the Land by the Surrender. Sthn. 2. 3. Pf. 59. B. Contable's Cafe, cited. Co. Lit. 59. b.

4. Within the Manor of P. there was a Custom, that if any Tenant of the Manor aliens Lands helden of the Manor by Writing or Feoffment, or devifes it by his Will, or surrenders it into the Lords Hands to the Use of any other, that sufh Alienation, Feoffment, Devife, or Surrender used, and ought to be prefented at some Court of the Manor there held within a Custom Year after sufh Alienation, Feoffment &c. It was objected it was no good Custom; all the Court except Anderfon held it to be a good Custom, and allowable, and agreeable to Law; for it is good Reafon the Lord should know his Tenant, for otherwife it may be fo secret that the Lords or other may not know who is the Tenant. Cro. E. 668. pl. 29. Patch. 41. Eliz. C. B. Parman v. Bowyer.---If the Surrender be not prefented at the next Court (after the Death of him that made it) according to the Custom, then the Surrender becomes void, and fo it was clearly holden. Patch. 14 Eliz. in the Common Pleas. Co. Litt. 62. a.

of Blunting v. Lepingwell---Gilb. Treat. of Ten. 207. S. P.---Co. Comp. Caf. 51. S. 40. S. P. and that fo it muft be by the General Cultom of the Reafon; but by Sufh Custom in some Places it will ferve at the 2d or 3d Court.---Gilb. Treat of Ten. 264. S. P. and fays the Reafon of this seems to be to prevent Difputes; for if an old Surrender might be trimmed up at any Time, it would defeat any After-Charges made by him that surrendered, which Charges would appear to be good enough, fince he is Tertenant, and continues Possifion, and the Surrender could not be known. But now let but the Purchafe fly a Court or two, and then he may be fure to know whether there is any Incumbrance; for if the Surrender is prefented, then it appears, and he need not meddle; if it be not prefented, he knows it is void, and fo may proceed.

6. By the Surrender out of Court the Copyhold Eflate paffes to the Lord under a secret Condition that it be prefented at the next Court, according to the Custom of the Manor, and therefore if after fuch a Surrender, and before the next Court, he that made the Surrender dies, yet the Surrender stands good, and if it be prefented at the next Court, Cefty que Ufe shall be admitted thereunto. Co. Litt. 62. a.

(W. 2)
This in Roll is Letter (K).

What Entry of the Surrender and Presentment shall be good. [Variance.]

But if the Presentment of the Surrender at the next Court by the Copyhold Tenant (who took the same out of Court according to the Custom) omits the Condition the Presentment is void. Repolv'd 4 Rep. 25. a pl. 111. Patch. 31 Eliz. B. R. the S.C.—Supplement to Co Comp. Cop. 30. S. 15. cites S. C. — Gilb. Treat. of Ten. 538. cites S. C. — Co Comp. Cop. 52. S. 43. S. P. — Gilb. Treat. of Ten. 538. cites S. C. that Ld. Coke says, that Presentments of Surrenders ought in all material Points to enjoin and agree with the Surrenders themselves, else the Surrender, Presentment, and Admittance thereupon will be void, which seems reasonable; for if the Presentment in Many respects differs from the Surrender, the Lord hath no sufficient Notice of the Surrender, and then the Admittance upon it must be Reasoned be bad, and not help out the Presentment; for if the Lord knew the true Surrender, perhaps he would never consent to such a Surrender; and the true Surrender ought to be known; that the Lord might know his Tenant, and from whom to take his Services. The Admittance cannot help out, for that was grounded upon the Presentment; but if the Lord had Notice of the true Surrender, tho' the Presentment did differ, yet it seems reasonable the Admittance should endure; and when a Man is admitted, he is in by the Surrender; fed sure, Where it is said that if the Presentment differs in Points material from the Surrender, that there the Admittance, Presentment, and Surrender are all void; It seems this must be understood, if the Time for presenting the Surrender be past, for if there should be a Presentment and Admittance made contrary to the Surrender, fore this will not make the Surrender void before the utmost Time allowed by Law for the Surrender's being presented; for it is no Reason to say, that because the Presentment is void, that therefore the Surrender is void, for the Surrender depends not on the Presentment, that it may be void, because not presented, but not because ill presented; So that if after such ill Presentment and Admittance there should be good Presentment and Admittance, it seems the Surrender, and all the other Acts will stand good.

For this Entry is not Matter of Record, but is but an Ecroll, and on Issue joined of the Time of the Surrender, or of the Court, it shall not be read by the Rolls, but by the Country. Ibid. — 4. Rep. 25. pl. 543. S. C. in toto verbo. — 4. Rep. 25. pl. 543. S. C. in toto verbo.

An Entry in the Steward's Book, and a parol Proof by the Steward or Foreman of the Party, admiss'd as good Evidence, that a Feme covert surrendered her whole Estate, though the Surrender on the Roll differed, and was only as also the Admission of a Mety. 2. Vern. R. 557. Hill & Ux. v. Wiggot.

Where the Admittance differs from the Surrender the Estate of the new Copyholder shall be guided by the Surrender, for after Admittance he is in by Force of the Surrender, as where the Surrender was absolute and the Admittance is on a Condition. 4. Rep. 28. b. pl. 17. Trin. 33 C. — Co. Eliz. B. R. Wellwick v. Wyer.

Comp. Cop. 52. 53. 81. cites S. C. — Roll Rep. 238. 317. 458. Lane v. Pannel. — Covenants in a Settlement to surrender Copyhold Lands to the Heir Males, but the Surrender by a Mistake was entered on the Roll to the Use of the Heirs General, this Surrender was decreed to be voided, and a new Surrender made according to the Settlement. Fin. R. 234. Brenda v. Brend.
What Effect the Surrender has, where there is no Presentment.

1. If Copyhold Lands are surrendered into the Hands of the Ld. of the Manor, and he in the Presence of his Tenants, out of the Court grants the same to another, and the Steward enters the same into the Court Book, and makes thereof a Copy to the Grantee, and the Ld. dies before the next Court, this is no good Copy to hold the Land; But if the same Surrender and Grant be preferred at the next Court in the Life of the Lord, and the Grantee admitted Tenant, and a Copy made to him, this is a good Copy. Calth. Read. 46. 47.

2. If I surrender out of Court, and die before Presentment, if Presentment be made after my Death, according to the Custom, this is sufficient. 4 Rep. 29. b. Bunting v. Ledingwell S. P.

3. So if he to whose Life the Surrender is made dies before the Presentment, yet upon Presentment made after his Death, according to the Custom, his Heir shall be admitted.

4. And so if I surrender out of the Court to the Use of one for Life, the Surrender and the Leafe for Life dies before Presentment, yet upon Presentment made, he in the Remainder shall be admitted.

5. And so if I surrender to 2 jointly, and one dies before Presentment, the other shall be admitted to the whole.

6. The same Law is, if those, into whose Hands the Surrender is made, die before the Presentment, upon sufficient Proof in Court that such a Surrender was made, the Lord shall be compelled to admit accordingly; and if the Steward, the Bailiff, or the Tenants, into whose Hands the Surrender is made, refuse to present upon a Petition, or a Bill exhibited in the Lord's Court, the Party grieved shall find Remedy. But if the Ld. will not do him Right, he may both sue the Ld. and him that took the Surrender in the Chancery, and shall there find Relief. Co. Comp. Cop. 52. S. 40. cites 4 Rep. 29. b.

7. Copyholder in Fee surrendered into the Hands of 2 Tenants according to the Custom of the Manor, to the Use of another and his V. Welch, Heirs, to be preferred at the next Court; no Court was held for 30 Years S. P. and afterwards, within which Time the Surrenderer, Surrendered, and the Tenants all died. The Heir of the Surrenderer entered, and made a Leafe for Years according to the Custom of the Manor. Adjudged that the Leafe was good. Godb. 265. pl. 372. Mich. 14 Jac. B. R. Anon. The Surrender into the Hands of 2 Tenants, nothing put until it was presented in Court; and that in the Interim the Interest remained to him who made the Surrender, which Interest descended to the Heirs who is Leifor to the Plaintiff, and that he well might enter and make the Leafe (being but a Year) without the Ld.'s Licence, or without shewing any Special Custom; and the Acceptance of the Rent by the Hands of Celny that Ufe gives not any Interest unto him, until this Surrender be preferred in Court; for the Custom is strict, which ought to be observed; but they held, that it was not of Necessity that the Party took the Surrender shou'd present it; and altho' they be dead, and the Party who made it is dead, yet (as the Custom is found) if it be presented by any other Copyholder when the next Court is held, it is well enough; and he may thereupon be well admitted.—Gib Tret. of Ten. 265. cites S. C.—Supplement to Co. Comp. Cop. 69. S. 3. cites S. C. and says it was resolved, that the Leafe for Years was well made, because before such Time that the Presentment was made in Court of the Surrenderer, the Interest of the Copyholder did remain in the Surrenderer, and his Right descended unto and upon his Heirs and he might take and receive the Rents and Profits of the Lands; for that no Person can have a Copyhold, or a Copyhold Estate, but such a Person who comes into the same by Custom of the Manor, viz. by Admissance of the Ld. which in this Case Celny was Ufe did not differ. Bridgn. 49. S. C. adjudg'd. — 3 Barrid. 214. Rollevell v. Welch. S. C. adjudg'd. — Roll Rep. 415. pl. 5. S. C. adjudg'd.

8. A Surrender is not effectual till it is surrendered in Court; per Rull. Ch J. Stry. 257. Palch. 1651. in that of Shann v. Shann.
(Y. a) Want of Presentment Relieved in Equity.

1. A Copyholder on Marriage agreed to settle on the Wife for Life, but did not; after he surrendered by way of Mortgage to A. for Money lent, and then surrendered to the Use of his Will, and then by Will devolved to his Wife for Life, Remainder to his Daughter in Fee, and dies. A's Surrender was not presented at the next Court, but the Wife got herself admitted. The Wife being in by Agreement precedent to the Plaintiff's Title, the Court would not impeach her Title, but as to the Daughter, her being purely a voluntary Eatee, 'twas ordered, that unless she would pay the Plaintiff his Money, he should hold and enjoy the Premises against her. Ch. Cales 170. Trin. 22 Car. 2. Martin v. Seamore.

2. Copyholder in Fee surrendered to the use of Mortgagor in Fee, and became Bankrupt before Presentment, and there never was any Presentment made; per Cowper Chanc. tho' the Surrender was void in Law for want of a Presentment, and that might be the Luck of Mortgagors in not procuring it, yet the Surrender was a Lisn, and bound the Land in Equity, and an Assignee of the Commissioners of Bankruptcy ought not to be in a better Cafe than the Bankrupt, who was plainly bound in Equity by this defective Conveyance. 2 Salk. 449. pl. 2. Mich. 3 Ann. in Cane, Taylor v. Wheeler.

(Z. a) What Effect a Release, or other Deed, will have as to Copyholders.

Supplement to Co. Comp. 1. R Elease by Copyholder to one that purchased the Fee of the Ld. extinguishes the Copyhold. Le. 102. pl. 145. Patch. 30 Eliz. B. R. S. cites S. C. Wakefield's Cafe.

Per Anderson contra; But Snagg seemed to think it did. Cro E. 21. pl. 2. Trin. 25 Eliz. B. Anon—Release by a Copyholder to the Ld. is good; per Twidten. Keb. Se8. in pl. 77. — Gilb. Treat. of Ten. 283. cites S. C.

Supplement to Co. Comp. 2. If a Man is a Copyhold, and is a Copyholder in Possession, so that a Release of the Custody Right may enure to him, and because the Ld. is thereby at no Prejudice, for he has had his Fine Gibb. Treat. upon the Admittance of the present Tenant, and he to whom the Ref. of Ten. 176, ife is made is in by Title, viz. by the Admittance of the Ld. the Release enures by way of Extinguishment of the Right of the Copyholder, and is a Bar to him. Refolv'd 4 Rep. 25. b. pl. 11. Patch 31 Eliz. B. R. in Cafe of Kite v. Quetinon.

3. But if Copyholder be acted by one by Tort, there his Release by Deed to the Diffeator or other Tort-leafer does not transfer any Right, nor
Copyhold.

nor but him, first because he has not any customary Estate whereupon the Release of the customary Right may ensue; And as, It will be to the Prejudice of the Lord, for thereby he will lose his Fine and Services, and do it is utterly void. Iblid.

4. Copyhold Interest cannot be transferred by any other Assurance than by Copy of Court Roll, according to the Custom. Co. Comp. Cop. 50. S. 36.

5. If I will exchange a Copyhold with another, I cannot do it by Gilb. Treat, an ordinary Exchange at the Common Law, but we must surrender to of Ten. 293. each other’s Ufe, and the Lord admit us accordingly. Co. Comp. Cop. cites S. C. 50. S. 36.

6. If I will devise a Copyhold, I cannot do it by Will at the Common Law, but I must surrender to the Use of my last Will and Testament, and in my Will I must declare my Intent. Co. Comp. Cop. 50. S. 36.

7. If I am asked by a Copyholder, a Release made to him to him is Gilb. Treat. void, because it would be a Prejudice to the Lord; and besides, there is no customary Right upon which the Release may inure; But a Re-

lease incurred by the way of extinguishing, where no Prejudice accrues to the Lord, will serve to drown a Copyhold Right; and therefore if I surrender out of Court upon Condition to the Ufe of J. S. and the Precedent is made absolute in Court, and the Admittance framed accordingly, this Ad-

mittance and Precedent differing from the Effect of the Surrender are both void; yet because upon the Admittance the Lord is satisfied of his Fine, and to nothing at all prejudiced, and besides, here is a customary Right upon which the Lease may be grounded, I may by a Release at the Common Law sufficiently confirm this void Estate. And to upon the same Reason, if I am asked by a Copyhold, and the Lord admits him according to the Custom, a Release made by me at the Common Law will extinguish my Right; But if make a Lease for Terms of a Copyhold, I cannot by my Release pass my Recovery, because this Release incurred by way of Interruption to transfer an Interest, and not by way of Extin- guishment to drown a Right; but my Way is to surrender my Reversion into the Hands of the Lord, and be to grant it over to the Lessee. Co. Comp. Cop. 50. S. 36.

8. A Copyholder surrendered upon Condition, and afterwards by Deed released the Condition; Resolv’d, that this is good, for a Right or Con- dition cannot properly be determined or given by Surrender, or other wise than by Release. Cro. J. 36. pl. 11. Trin. 2 Jac. B. R. Hall v. Shad brook.


9. If there are two Joint Copyholders, and one of them relizes to the other, this is good without any Surrender or Admittance of him to whom the Release was made, because the first Admittance was of them, and every of them, and the Ability to release did arise from the first Ad-


10. If a Copyholder relizes to the Lord, it extinguishes the Copyhold Jo et. 41, 42. thought it be contrary to the Nature of a Release to give a Possession Hutt. 65. Trin. 19 Jac. in Caffe of Blemmer-Haffet v. Humberstone.


11. If
Copyhold.

11. If a Man comes into a Copyhold tortuously, and is admitted by the Lord, and afterwards he makes a Lease for 3 Lives, which is a Forfeiture of his Estate, yet it is he that has the pure Right to the Copyholder releases to the Wrong-doer, it is good; For till the Lord enters he is Tenant in Fait; Per Velverton; but Walter feemed of another Opinion, and therefore the Reporter says Quere what Benefit he shall have by the Release. Brownl. 149, 150. Mich. 19 Jac.

12. Copyholder is ousted, and so the Lord dispossessed, and the Copyholder releases all his Right to the Diffeifor, and dies. His Heir enters, and bears Trepass against the Diffeifor, who pleads his Franktenemen, and by the Court the Release is clearly void, the Diffeifor never being admitted Copyholder. Hettl. 150. Mich. 5 Car. C. B. Mortimores's Cafe.

(A b) Pleadings. Surrenders.

1. PLEA in Ejeaement that the Lands were Copyhold, and that B. the Tenant surrendered them into the Hands of A. the Steward to the Use of C. the Defendant, and that C. was accordingly admitted. B. replies, and concludes with oblique Sec that A. was Steward. Held to be no good Use, for it should be Aneuse how that B. made any Surrender. Cro. E. 260. pl. 45. M. 33 and 34 Eliz. B. R. Wood v. Butts.

2. This is the general Custom of the Realm, that every Copyholder may surrender in Court, and need not allege any Custom therefore. So if out of Court he surrender to the Lord himself, he need not allege in Pleading any Custom, but if he surrender out of Court into the Hands of the Lord, by the Hands of 2 or 3 Ecc. Copyholders, on by the Hands of the Bailiff or Reeve &c. or of any other, these Customs are particular, and therefore he must plead them. C. Litt. 59 a.
Copyhold.

3. A. covenanted to surrender to B. Copyhold Land upon Request. B. All 63.,
affixed a Breach, that he did not surrender it into the Hands of two T.'s C. ad-
ments of the Manor, this is not sufficient; for he may surrender it into the Judge's, and
Hands of the Lord, or in Court, and the surrendering into the Hands
of two Tenants, is only a particular Way. Sty. 107. Trin 24 Car.
B. R. Freeborn v. Purchafe.

[2. b] Copyhold. Admittance. In what Cases the
Estate shall be in the [Person who has the Right to be
admitted] Tenant before Admittance.

1. If the Custom of a Manor be, that the Wife of every Copy-
holder for Life shall have her Free-Bench of the Tenement of Trin. 6. Jac.
his herland, Dun Cafla & folo biree after the Death of the Ba-
ron, the Law casts the Estate upon the Wife, so that she shall
have the Estate before any Admittance; and may make a Lease for a
Year as another Copyholder may. Tr. 16. B. R. between
*Jordan and Stone, agreed per toto an Curiam upon Evidence at the
Bar. Hobart's Reports 244, between 7 Howard and Bartlett, per
Curiam; and there cited. P. 16 L. || Remington's Case ad-
judged.

Epculment, and whether the Action lay, the not being admitted (for it was agreed that no Fine was
due) was the Question. Refor'd, that her Eftate arises out of that of her Husband's Estate, and if
Her Admittance had not a neceflary, she did all in her Power to procure it, and vice ean Eftate is
created by Custom, that shall be an Admittance in Law.

|| Hob. 181. pl. 218 S. C. that this Eftate is cast upon her and worth by Law.—2 Roll Rep.
S. C. and S. P. seems to be admitted.


2. The Heir of a Copyholder may enter and have an Action of
Trespass before Admittance. A Difcent shall not bind the Heir of
a Copyholder. He may surrender unto a Stranger before Admittance.
Supplement to Co. Comp. Cop. 71. S. 5. cites 4 Rep. [23. b]

3. A Copyholder surrendered to the Use of J. S. and the Lord
of the Manor, without any reasonable Cauts, refused to admit him; adjug-
ed that he cannot enter without a special Custom to warrant it, for
Admittance the Surrenderor continues in Possifeion. Cro. E. 349.
Copyhold.

2. Surrender before Admittance has neither *Res in Re*, nor ad
Rum, nor has he any Remedy if the Lord refuses to admit; per Holt
332. S. C. ruled accordingly.

5. Custom &c. that a Copyholder might surrender out of Court into the
Hands of two customary Tenants, to the Use of another, and that at the
next Court the Surrender deed to be admitted; a Surrender was made unto
the Hands of the Steward out of the Court, but the Party, to whose Use it
was made, died before the next Court; It was inquired, that he dying be-
fore Admittance, he cannot be said to be a Copyholder within the Cus-
tom, and by Consequence cannot be poisoned of the Copyhold Ef-
tate; and if so, then the Heir of the Surrenderor is in by Defcent, and
shall hold by the Copy of his Ancestor; Roll Ch. J. said, that this Case
differs from the Case of surrendering into the Hands of Tenants, for it is
in to the Hands of the Steward out of Court, which is good, and that
the Lord's Acceptance of his Rent is an Admission; But Bacon doubt-
ham.

6. A Surrender of Copyhold Continues seised till the Admittance
of the Surrenderee, and the Perion to whose Use the Surrender is
made is not Ceafy que Ufe in the mean Time, but when admittet he
is in by Grant from the Lord; per Holt Ch. J. Wms's Rep. 17. Hill.

7. In the Case of a Surrender to the Ufe of A. the Lands were found to
be surrendered into the Hands of the Lord himself in still Court, and that
the Lord annulled a Fine upon the Surrenderee, but never admitted him;
Adjudged per tot. Cur. that the Heir of the Surrenderee had no Title,
for that the Title of the Surrenderee is wholly by the Copy of the Court
Roll made from the Entry upon the Court Roll, which before Admittance
can't be; but in Case of a Defcent the Heir may surrender be-
fore Admittance, because he has a Title by Defcent, but the Lord in
this Case shall have a Fine. 11 Mod. 73. pl. 4. Pack. 3 Anne

[B. b. 2] In what Cases the Estate shall not [be
out of Surrenderor till Presentment, or Admittance of
Surrenderee.]

This in Roll
is Letter
(M) pl. 2, in
Fol. 522.

1. I f by the Custom of the Manor the Copyhold ought to descend
to the youngest Son, and the Copyholder in Fee surrenders it to
the Use of himself and his Heirs, and dies before any Admittance upon
the Surrender, and the youngest Son first enters, the eldest cannot
justify his Entry upon him before Admittance. B. 10 In. B. R.
adjudged.
Copyhold.

2. If a Copyholder surrenders out of Court into the Hands of Te- This in Roll nants, according to Custum, to the Use of another; before this Surrender is presented at the next Court, or any Admittance of him to — Bridgdm. whole use this Surrender is made, the Estate continues in the Sur- renderor. Hitch. 14 R. R. between Frostell and Whelf, per Curiam.


3. But in that Case, if the Lord admires Cestui que Ufe for his Te- nant, and accepts the Rent from him as his Tenant, the Estate shall be in him, before any Pretention of the said Surrenderer at the next Court that the Words (and accepts) should be in the Cestui que Ufe upon a Surrender before Admittance. Hitch. 14 R. R. between Frostell and Whelf, per Curiam. (by Acceptance of.) — Godb. 268. pl. 177. S. C. agreed, that if the Lord takes Knowledge of the Surrender, and accepts the Customary Rent as a Tenant being admitted, this shall amount to an Admittance; but otherwise if he accepts it as a Duty generally, he acts both. See Roswell v. Welsh S. C. and S. P. admitted. — Roll Rep. 415, 416 S. C. and S. P. by Haughton J. accordingly, but Doderidge and Cooke e contra — Bridg. 52. S. C. and S. P. by Haughton J. but the others contra. Cro. J. 405. pl. 1. S. C. adjudge'd for the Heir of Surrenderor. Supplement to Co. Comp. Cop. 69. S. C. cites S. C. says it was doubted by the Justices, but not resolve'd whether the Acceptance of the Rent by the Lord at the Hands of the Cestui que Ufe did amount to an Admittance or not. — S. P. admitted, arg' 2 Sid. 61. — Gilb. Treat. of Ten. 266. cites the same Cases, and says, if we look into the Reason of the Thing, we may conclude, that any Thing that expresses the Lord's Consent to the Surrender, should amount to an Admittance; for it is his Consent only that is requisite after the Surrender, to make the Surrenderer a Tenant; and what Matter is it whether that be done by a Dominus concessit & Admissius eft, or by any Act that amounts to as much?

4. If a Copyholder surrenders his Land to the Ufe of J. S. and the Lord grants the same to J. S. accordingly, and thereupon be enters, yet he is no good Copyholder till he be admitted; but if J. S. appears at the Lord's Court, and pays on the Lord's Homage, or the Lord accepts his Rent or his Fine for the same Copyhold, then he is become a good Copyholder without any further Admission. Calth. Reading. 63.

(C. b) In whom the Estate shall be said to be before Admittance of Surrenderee, and whether, when admitted, he shall be said in by the Lord or by Surrenderor.

1. WHEN a Copyholder surrenders to the Use of another, and the Gilb. Treat. Lord admits him, he is in by the Surrenderor. Resolved. 4 of Ten 241. Rep. 27. b. pl. 15. Trin. 26 Eliz. B. R. Taverner v. Cromwell. cites S. C. and says, that this being spoke so generally cannot by any fair Construction but extend to all Surrrenders, either by Tenant for Life or in Fee; but that in the Case of King v. Lord (Loder) it is adjudged, that if a Copyholder for Life surrenders to the Use of another for Life, who is accordingly admitted, that he is in from the Lord, and not from the Surrenderor; [see P. 3] pl. 3. and the Notes there] but Ld. Ch. B Gilbert says, Quere well of this Matter; for the Tenant for Life has not such Estate as to be allowed to grant for Life to another; but when a Copyholder in Fee surrenders to the Use of another for Life, he is in Quasi by the Copyholder; this is against Ld. Coke, and, as it seems, against Reason, for the Lord is but an Instrument to convey, therefore he is compellable to grant according to the Sur-
Copyhold.

Surrender, and no Charge by him, while it is in his Hands, shall be of any Force, and he that surrender'd shall pay the Services, and the Words of Coke are general, that he shall be in by the Copyholder in Admittances upon Surrender; yet Coke says in another Place, that by Surrender to the Lord out of Court the Estate pass to the Lord under a secret Condition, that it be presented at next Court; but it hath been adjudg'd since, that by Surrender to the Lord by the Hands of two Tenants nothing pass'd, but the Interest remained in him that made the Surrender, and there can be no Difference where the Lord takes himself by the Hands of two Tenants, and if it be in the Lord, how can the Copyholder pay the Services, or take the Profits after Surrender, or make another Surrender?

This in Roll
is Letter
(N) in Fol.

This in Roll [D. b] What Persons may enter before Admittance, and how they shall be seised of it, and in what Manner it shall descend.

C. B. the 3d
Resolution.
—Adjudg'd accordingly, and that he may bring Trespass before Admittance. 4 Rep. 25. b. pl. 7. Trin. 26 Eliz.
S. P. Arg, and the better Opinion of the Court seem'd to be so — Lane 20 Pech. 4 Jac. in the Exchequer, S. P. admitted by all the Baron's.

Mo. 125. pl. 2. Co. 4. Browne 22. [b.] adjudg'd, that there shall be a Possessio
Fratris before Admittance.

In what
Cafes there
shall be a
Possessio
Fratris. See Land is committed to his Mother by the Lord during his Lifetime, who enters, and after the Son dies before any Admittance, yet this Possession of the Mother, as Guardian, gives the actual Possession to the Son, and therefore his Sister of the half Blood cannot be Heir to him.

Supplement to Co. Comp. Cop. 72. S.
6. cites S. C. for the deference they are in, made the Surrender, and not by the Lord.

5. C.-
Lands to the Use of R. for Life, and afterwards to the Use of T. in Fee, both
the Sons T. being within Age, surrendered the Lands to the Use of W. in Fee for
who was admitted. R. and T. died, but T. left Issue A. who was admitted, S. C. adjudg-
and entered upon W. the Surrender; and it was adjudged lawful, and
that he should not be put to his Plaint in the Nature of a Dum fuit in-
fra Ecadem. Le. 95. pl. 142. Hill. 30 Eliz. B. R. Knight v. Foot-
man.

Matter of Fact and no Higher and may bring Trespasses before Admittance.

6. Though the Heir be not admitted, yet he may enter and take the it was ad-
Profits, and make a Lease according to the Cultum, or bring an Action
of Trespass against him that disturbs him; but if the Lord require his
Fine or his Services, and the Heir refused to do them, this may be a Copyhold-
Forfeiture of his Copyhold, but until lawful Seisin made by the Lord der surren-
ders, or it is admitted to the Use of a younger Son
Diblcy.

bring an Action till Admittance; but if the Copyholder had defended to the Heir he
might have an Action before Admittance. Lane 20. Pach. 4 Jac. in the Exchequer, Anon.

7. A Copyhold was granted to A. and his Wife and their Heirs. A. Cro E. 90.
dies. The Wife dies. The Lord admits a Stranger. The Heir of the
Wife enters and brought Trespasses against the Stranger, and held good

35. b. Pennyfeather.

8. If Copyholder surrenders to B. and the Steward will not admit him, Supplement
and B. enters and Occupies the Land, and the Lord brings Ejectment, to Co. Comp.
B. though not admitted, may plead Not Guilty, and shall have a Ver-
dict, Quare Rationem, for in respect of the Possession if he claims that it shall
Lord's Title is eldest; for his Title to the Freehold is good and law-
ful, and consequently to the Profits of the Freehold, unless another can
make Title to the Profits which in this Case seems difficult without an
Admittance. Quære if the Reason is not that the Lord is Particeps Gni-
trinis supposing him not to fuller the Steward to admit B. Yelv. 16,

Tend that the Lord would not suffer the Steward to admit him. (And Lord Coke makes no Quære
of it)—Gilb. Treat. of Ten. 272. cites S. C. and takes Notice of a Note there, viz. that the
Surrender was but of a Copyhold to him, & libris Abligatis suis, so that by his Death the Eject
in the Copyhold determined &c. This is a very strange Report, for the Quæres and Reasons of the
Cafe confound it, and the Lord Ch. Baron says, it seems to me, that the Reason of the Cafe was, becaufe that after the Surrender the Eject came in the Surrenderor, and not in the Lord; and
then the Possession of the Surrenderor was illegal against the Surrenderor; yet it was good against
every Body else, and so against the Lords Leicce; for when the Lord refuses to admit, the way is to
compel him in Chancery, and no Action upon the Cafe lies against the Lord for Non Admiss. |
Tis said in Lex Cuff. 148. that an Action lies for the Surrenderor; sed quære; indeed the Reason
given was, becaufe the Surrenderor hath no Interest which the Surrenderor hath.

The Lord of a Manor has that Prerogative in his Copyholds, that no Stranger can be his Tenant there, with-
out his special Assent, and Admiss. and for that Caufe a Copyhold shall not be liable to any Execu-
tions of Statutes or Recognizances, neither shall be Affet in Debt or Fornoned, neither is contained in
any of the Statutes; but for if it were, then should the Lord have forced to have a Copyhold-
whether he will or no, which is against the Nature of a Copyhold; and therefore a Stranger
can never enter a's Surrender made to his Use be accepted, except he be admitted Tenant, but
soner of the Heir, for he may enter and take the Profits before the Admittance after the Death
of his Father. Calth. Reading, 61, 62.

Y

9. Lord
Copyhold.

Supplement to Co. C. 9. Lord of a Manor ftes a Copyhold without Cause, and grants it to Copyholder. J. S. in Fee. J. S. died seised, and his Heir is admitted. The first Copyholder dies, and his Heir enters and surrenders to the Ufe of a Stranger. Resolved, that a Defcent of a Copyhold hain't take away the Entry of another Copyholder that has Right, and that the Heir entering without Admittance his Entry is lawful, and being in, his Surrender is good before Admittance. Cro. J. 36. pl. 10. Trin. 2 Jac. B. R. Joyner v. Lambert.

10. These Admittances upon Surrender differ from Admittances upon Defects in this, that in Admittances upon Surrender nothing is vested in the Grantee before Admittance, no more than in the voluntary Admittances; but in Admittances upon Defects the Heir is Tenant by Copy immediately upon the Death of his Ancestor, not to all Intents and Purposes, for perhaps he cannot be sworn of the Homage before, neither can be maintain a Plaint in the Nature of an Affidavit in the Lord's Court before, because till then he is not complete Tenant to the Lord, no farther forth than the Lord pleases to allow him for his Tenant. Co. Comp. Cop. 53. S. 41.

11. And therefore if there be Grandfather, Father, and Son, and the Grandfather is admitted, and dies, and the Father enters, and dies before Admittance, the Son shall have a Plaint in the Nature of a Writ of Auid, and not an Affidavit of Montandecfer; so that to all Intents and Purposes the Heir, till Admittance, is not complete Tenant, yet to most Intents, especially as to Strangers, the Law takes Notice of him as of a perfect Tenant of the Land instantly upon the Death of his Ancestor, for he may enter into the Land before Admittance, take the Profts, punish any Trespass done upon the Ground, surrender into the Hands of the Lord to whose Use he pleases, satisfying the Lord his Fine due upon the Defect, and by Etoppel he may prejudice himself of his Inheritance. Co. Comp. Cop. 53. S. 41.


[Note: This is from a legal document discussing the rights and obligations of those involved in Copyhold tenures, including the rights of successors and the effects of surrender and admissances.]

This in Roll is Letter (X) in Pol. 529.

* Cre. E. 504. pl. 29. Mich. 38 & 29 Eliz. B R. Gypin v. Bunney, S. C. the Surrender in this Cafe was made by a Remainderman in Fee, where the Tenant for Life had been admitted; and Popham said, that Tenant for Life and he in Remainder have but one Estate in Law, and therefore the Admittance of the one shall serve for the other; to which Fenner J. agreed; but because the other Justices were absent it was adher'd — Mo. 425. pl. 638. Tring v. Bunning, S. C. adjudged, that the Admittance of Tenants for Life is the Admittance of him in Remainder. — Godolphin 95. pl. 9. S. C. & S. P. argued — S P. relev'd. Mo. 352. pl. 483. Trin. 36 Eliz. Delv v. Higton. — See (P b) pl. 1 and the Notes there.

† Cre. E. 662. pl. 11. S. C. but S. P. does not appear.
Copyhold.

2. If a Copyholder surrenders to the Use of another, and after the Lord having Notice thereof, accepts the Rent from Cefuy que Ufe of Ten 266. out of Court, this is an Admittance in Law. Mitch. 14 Jac. B. R. cites S. C. and the Cale above (pl. 1.) and says, that by the fame Reason that the Acceptance of a Surrender before Admittance amounts to an Admittance, the Admittance of such a Surrender's Surrender is a good Admittance of the first Surrender. — See [B. b. 2] pl. 3. S. C. and the Notes there.


4. When the Heir of a Copyholder is to be admitted, the Words Admittisse are only used, and not the Words Dominus concedeit, which last are the Words of Grant of the Lord used upon every Surrender, and the Reason is, because the Ancestor of the Heir had the Copyhold Estate before. Arg. 3 Bulk. 216. Mich. 14 Jac. in Cafe of Kofwell v. Welh.

5. A Copyholder surrendered out of Court, according to the Custom of 3 Bulk. 157. the Manor, which at the next Court was presented, and Entry thereof made S. C. Earls by the Steward, viz. Comptum eft per Homagium &c. but no Admittance; vult, and Afterwards Cefuy que Ufe surrenders before Admittance, and the first Co. by Copyholder surrenders to the Plaintiff; Hawthorn Justice held, that he Medion, could not surrender before Admittance, and the Entry of the Surrender doth not make an Admittance, for this being the false Act of the Steward, shall not bind the Lord, and it is not like to the usual Form of 70. S. C. cites an Admittance, for that is, Dat Domino de fine, fecit Fidelitatem &c. and Admittisse in tenes. Doderidge J. agreed. Poph. 127. 128. Mich. 14 Jac. B. R. Rawlinson v. Green.

that none of the BS fulfilable Things did imply a perfect Admittance to the Copyhold; for if he, the Acceptance of the Presentment by the Steward from the Homage was no more than what he was bound to do, as being Judge of the Court. 260y, The Entry of it in the Roll was but an Office of Duty, being but an Evidence for the Lord, as also for him to whose Use the Surrender was, and fo was the Delivery of the Copy to J. S. the Cefuy que Ufe; but none of these Things did imply the Consent or Will of the Lord, that the Cefuy que Ufe should be admitted, or have the Lands according to the Surrender, and all these Things together do not imply any Admittance, for all of them may be done, though no Admittance be in the Cafe. — Gilb. Treat. of Ten. 268. cites S. C. and says, the Entry of Compertum eft per Homagium doth not make an Admittance, for that only flows there was a Surrender, but implies no Allent to the Surrender; but the Entry of Dat Domino pro fine &c. prefert Domino Pidel. & Admissit, that is the Admittance. It is said, that in this Cafe, the Steward was present, and the Surrenderer accepted, and a Copy granted him, and he surrendered again, and this Surrender was present, and a Copy granted, and he accepted as a Copyhold Tenant; in this Cafe nothing is said to be resolved, but the Court said, that he to whose Use the Surrender is made, had not any Estate before Admittance, but they said nothing to the Point, whether he were admitted or not; but it seems, that in that Cafe there is a very good Admittance, for he was accepted as Tenant, and I should think it was that made him Tenant, and not the Entry of it in the Roll.

6. Acceptance of Rent by the Lord of one to whose Use a Surrender is Stv. 146. made, as of his Tenant before any Presentment of the Surrender at the S. P. by next Court, this will vest the Estate in the Surrenderer; but if the Lord accepts the Rent as a Duty generally it is otherwise. Godb. 269. pl. 373. Lord the Mich. 14 Jac. C. B. Frofwell v. Welh.

Fine before Admittance, Quere if this will not amount to an Admittance. 11 Mod. 70 pl. 7. Though
7. Though the effusing a Fine be no Admittance, yet if the Steward accepts a Fine of him so aflersed, as of a Copyholder, this a good Admittance of him; Arg. 3 Bult. 259. Mich. 14 Jac.

8. If the Lord saith to the Copyholder you have surrendered to the in the Court which Surrender I agree, this is good, and shall make him to be a good Copyholder, per Haughton, to which the Court agreed. 3 Bult. 219. Mich. 14 Jac. in the Court of Rollewell v. Welch.

9. If a Copyholder surrenders his Estate to the Ufe of J. D. and the Lord meeting with him saith such a Surrender is made to your Ufe, to which I do agree, or am content therewith, and that you shall be my Tenant, these Sayings shall amount unto good Admittances, and shall make him to be a good Copyholder without any other Admittance, per rot. Cur. 3 Bult. 232. Mich. 14 Jac. in the Court of Elkin v. Wathell.

10. Winch said, that the Admittance of the Lord, viz. the Lefsee of the Manor, amounts to a Grant to him who had a Title, but it is otherwise if it is to him who was in by Wrong, as by Dissipation, cites 4 Rep. 22. which was granted by all the Court. Win. 67. Patch. 21 Jac. C. B. in the Court of Haftel v. Hanfion.

11. If a Surrender be to the Ufe of J. S. and afterwards J. N. is admitted, the Consent of J. S. afterwards makes this a good Admittance; Per Glynn Ch. J. 2 Sid. 61. Hill. 1657.


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[F. b] What shall be said an Admittance according to a Surrender.

[Or rather, How the Lord is consider’d as to his Power of admitting, and where the Admissiion is different from the Surrender, How it should operate.]

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THE Lord is but an Instrument to admit Celerity que ufe; for no more pains to the Lord than to serve the Limitation of the ufe; and Celerity que ufe when he is admitted shall be in him that made the Surrender, and not by the Lord. Co. Lit. 59. b.

2. If a Mann surrenders to the Ufe of J. S. and J. D. for their Lives, the Remainder over to another, and J. S. and J. D. are admitted in Fee,
Copyhold.

Fee, yet this shall not alter their Estate, but they shall be seised according to the Surrender. By Reports, 14 Ta. Lane and Penwell a djudged.


5. If j. surrender with the Reservation of a Rent, and the Lord admits not referring any Rent, or referring a less Rent than j. reserved upon the Surrender, this Admittance is wholly void. Co. Comp. Cop. 53. S. 41. cites 4 Rep. 29. Bunting v. Leppingwell.


7. If j. surrender upon Condition, and the Lord omits the Condition, the Admittance is wholly void; but if my Surrender be absolute, and the Lord's Admittance be conditional, the Condition is void.

8. A. W. surrenders to the Use of W. W. and his Heirs; the Steward admits W. W. and Joan his Wife, and their Heirs. The Lord here by the Custum has but a customary Power to make an Admittance Secundum Formam & Effectum furum-redditionis, and this is not like the Cafe of Feeses at the Common Law, and tho' the Lord grant the Estate to another, all this is without Warrant, notwithstanding the Lord may make an Admittance according to the Surrender.

9. So if a Surrender be to the Use of one and the Lord admits him to have and to hold to him and his Heirs, yet he who is admitted has but an Estate for Life, and in the Cafe above, the Admittance shall enure only to the Baron, without an Especial Custum, or other special Matter, which is not in this Cafe. 4 Rep. 25. b. pl. 17. Trin. 33 Eliz. B. R. Weitwick v. Wyer.

10. If a Copyholder surrenders to the Use of f. S. and the Lord after Supplement such Surrender grants the Land to Ceify que Use and a Stranger, all shall enure to Ceify que Use. 4 Rep. 25. b. Trin. 33 Eliz. B. R. Weitwick v. Wyer.

11. The Reason of these Diversities are these; where an Authority is given to any one to execute any Act, and he executes it contrary to the Effect of his Authority, this is utterly void; but if he executes his Authority, and goeth beyond the Limits of his Warrant, this is void;
void for that part only wherein he exceeds his Authority. Co. Comp. Cop. 53. S. 41.


Prefentment
The void, in Nocwithlanding only Copyholder prefent- the Lands without a Condition, and the Lord admits the Tenant upon a Condition, the Condition is void;
For that after the Admittance the Surrenderee is in by him that made the Surrender, and not by the Lord. Supplement to Co. Comp. Cop. 71. S. 6. cites 4 Rep. 32. Ells. Weltwich's Cafe.

13. Copyholder that comes in voluntary Grant shall not be subject to the Charges or Incumbrances of the Lord before the Grant. 8. Rep. 63. b. Mich. 6 Jac. in Swayne's Cafe.

14. A Copyholder surrenders to the Use of B. and his Heirs. The Steward admits him to him, and the Heirs of his Body. Notwithstanding this Admittance the Eftate shall be to him and his Heirs according to the Surrender; per Mountague Ch. J. 3 Bullit. 249. Mich. 14 Jac.

15. The Lord of a Copyholder is only an Instrument to admit the Copyholder, and ought to admit him according to the Surrender, or otherwise the Admittance is not good. Sty. 462. Mich. 1655. B. R. Hether v. Bowman.

16. If a surrender be to the Use of J. S. and J. N. is admitted, and J. S. confents, this is a good Admittance; per Glin Ch. J. 2 Sid. 61. Hill. 1657. in Cafe of Blunt v. Clark.

17. It seems that the Prefentment of a Surrender in Court is only by way of Instruition to let the Lord know of the Surrender, and accordingly he may admit, for it is apparent that a Prefentment is not of Necessity, because the Lord may admit out of Court, and any Act of the Lord's conjeting to the Surrender will amount to an Admittance, which plainly shews that a Prefentment is only to shew there was such a Surrender; for if it were of Necessity, then there could be no Admittance out of Court, nor any Act implying the Lord's Consent would be tantamount to an Admittance; and then if we go to the Reason of the Thing, since the Eftate is only to be surrendered to the Lord, and by him transferred to the Surrenderee, if he accept the Surrender, and grants an Admittance, which is all that can be done, what need is there of a Prefentment, and of what Use can it be, for the Homage to present a Surrender, in order for the Lord's Admittance, when the Lord may take Notice that there was such a Surrender, accept it, and admit accordingly? The Eftate, as it was derived from the Lord, to it must be surrendered to him, and the Prefentment makes no Part either of the Surrender or Admittance; in itself it is nothing but a Notification that there was such a Surrender, which if the Lord takes Notice of without a Prefentment, it frustrates the End of a Prefentment, and the Prefentment is no ways of Use; therefore it seems, that if a Surrender be made, and then a wrong Prefentment be made of this Surrender, and then Admittance is made according to the Surrender, that this is good; for only the Prefentment can be void, and then there is an Admittance upon a Surrender without any Prefentment, which for the Reafons before seems to be very good. Gilb. Treat. of Ten. 262, 263.
Copyhold.

(G. b) In what Cases an Admittance is Necessary. And the Effect thereof.

1. D. A Copyholder having a Son about five Years old, surrendered Gilb. Treat.

&c. that the Lord might grant de novo to the Ufe of himself for 11. 7. Ten. 272.

Life, and afterwards to the Ufe of his Wife, during the Nonage of his Son, ibid. 516.

and afterwards to his Son in Tail. D. soon after died, before he was ad-

mitted but his Widow was admitted accordingly, and married again. It

was held, that the second Husband should have the Lands during the Infancy

of the Son, and must not be admitted, for he is not in of any new Estate but

in the Estate of his Wife as Assignee. 3 Le. 9. pl. 22. 7 Eliz. C. B.

Dedico's Cafe.

2. If a Copyholder surrenders to the Use of another for Years, and the

Leffe dies, his Executors shall have the Remain of the Term without any

Admittance; Arg. Le. 4. pl. 8. cites it as adjudg'd, 8 Eliz. C. B.

3. Where a customary Estate defends to the Heir he may enter before

Admittance and take the Profits, and he may surrender to the Ufe of an-

other before Admittance, but not to prejudice the Lord of his Ufe due by the


C. B. the 3d Revolution in Browne's Cafe.

4. Lord of a Manor of which Bl. Acre is held by B. by Copy in Fee, accor-

ding to the Custom, made Feoffment of Bl. Acre to J. S. The Co-

pyholder dies. Though J. S. has not any Court, so that the Heir cannot

not be admitted, nor the Death of his Ancestor preferred, because but

one Tenant, yet per Cur. the Copy shall bind J. S. and the Ceremony of

Admittance is not necessary in this Cafe. 4 Le. 236. pl. 364. Mich. 29


5. Surrender is but a Conveyance by Matter of Fact and no higher; so

that if an Infant Copyholder surrenders and dies, his Heir may enter


B. R. Knight v. Fortipan.

6. If the Death of the Ancestor be not presented, nor Proclamation made,

the Heir is at no Mischief, though he comes not to be admitted, not-

withstanding his being of full Age. Le. 100. pl. 128. Pach. 30 Eliz. B.

R. in Cafe of Runnym v. Eve.

7. If a Copyholder dies, his Heir within Age, he is not bound to
come to any Court during his Nonage to pray Admittance. 3 Le. 221.


8. If the Death of the Ancestor be not presented, nor Proclamation made,
the Heir is not at any Mischief if he does not come in and pray Admit-
tance, altho' he be of full Age. 3 Le. 221. pl. 294. Pach. 30 Eliz. B.

R. Anderdon v. Hayward.

9. Copy a que Ufe shall not enter nor have Action before Admittance,

unless there be a special Custome for it. But till his Admittance the Surren-
deror may have Action of Trespafs against any who enters. Cro. E. 349.

Cops. 72. S. 6. S. P. as to the Entry cites S. C.

10. A Surrender of a Copyhold was to A. & tribus Affignatis suis; by the

Death of A. the Estate in the Copyhold was determined, and he to

whom the Surrender was intended had nothing in Interest, nor other-


George.

11. If
11. If a Copyholder will surrender to the use of the Lord, the interest of the Copyhold is sufficiently vested in the Lord immediately upon the surrender, without any admittance of the Lord, because the Lord cannot admit himself. Co. Comp. Cap. 51. S. 38.

12. If the Lord will make a voluntary grant of a Copyhold no surrender is requisite, for by the admittance of the Lord according to the Custom the Copyholder is sufficiently settled in his land without any other ceremony. Co. Comp. Cap. 51. S. 38.

13. If a Copyholder will surrender in Court to the use of a stranger, besides the surrender the admittance is requisite; and if the surrender be made out of Court into the hands of the Lord himself, which the general Custom will warrant, or into the hands of the Bailiff, or two tenants of the Manor which by special Custom only is warrantable; besides a surrender, two other ceremonies are requisite, the one a true presentment of the surrender in Court by the same persons into whose hands the surrender was made, the other is an admittance of the Lord according to the effect and tenor both of the surrender and presentment. Co. Comp. Cap. 51. S. 38.

14. If the effect of the Lord determines after the surrender of a Copyhold, before an admittance, yet the surrenderee shall be admitted; so if a man surrenders to the use of his last will out of Court according to the Custom, and dies before presentment, yet at the next Court the devisee ought to be admitted. Co. Litt. 59. b.

15. If a woman intituled to frank-bank comes into court, and prays her widow's estate, and she is denied the same, Warburton and Hutton thought the law would supply the admittance which was refused to be made to her on her prayer. Hob. 181. pl. 218. in case of Howard v. Bartlet.

16. The Lord may assess upon the heir for rents and services before admittance, but he is not compleat tenant before admittance, for he cannot maintain a plaint in nature of an Affide before admittance, but it seems he may have Affide of Mortdancer for his ancestor's admittance. Gilb. Treat. of Ten. 271.

17. Two joint tenants, the one dies, the other shall have all by survivor, without paying a fine, or being admitted. Gilb. Treat. of Ten. 316.

18. It was ruled by Holt Ch. J. at Brentwood summer Assizes, to Will. 3d. upon evidence at Nith Prius, that if Copyhold land be surrendered to the use of a Will &c. and afterwards the will devises this land to B. and his heirs, upon condition that he pay 100 l. within 6 months after the death of the devilor to J. S. if the money is not paid, J. S. ought to be admitted, then he must make an actual entry before he can surrender; and therefore in the present case, a surrender made by J. S. before actual entry was held ill. Ld. Raym. Rep. 726. Clerke v. How.

19. A copyholder makes a surrender in court into the hands of the Lord, and the lord doth affe a fine, this is no admittance by implication. This surrender was to the use of himself for life; then to his wife for life, and then to them in tail, remainder to the heirs of his body &c. no express admittance was made. The wife enjoys her widow's estate by the custom &c. The eldest son and heir of the body of the surrenderer is admitted generally as heir, but not as to the estate tail; then he makes a mortgage and dies, leaving issue, who is admitted, and the mortgagee recovers in ejectment, for the son was admitted to the fee-simple, for the estate in fee and James right remain'd in him till admittance upon the
Copyhold.

the Surrender, for this Fee-simple descended upon the Death of the Father to him, as his eldest Son and Heir; but bad the eldest Son and Heir been admitted to the Estate Tail, he could not have made the Mortgage. Hill. 5 Ann. B. R.

(H. b) Where the Lord may enforce a Mortgage-Surrender to be admitted.

1. Mortgage surrender to secure £100. at 6 Month's end was made into the Hands of the Lord. The Money not being paid the Mortgagee and Mortgagor were both willing the Money should lie, and defined the Lord that the Surrender should be taken up, and a new one made for 6 Month's longer; but he infisted, that the Mortgagee should come in and be admitted, and refused to accept a new Surrender, and called Courts, and made Proclamations; but before the third Proclamation the Copyholder brought a Bill against the Lord, but the Court would not decree, but to try at Law what the Custum was. 2 Vern. 368. pl. 336. Mich. 1699. Tredway v. Fotherley.

(I. b) In what Cases a New Admittance must be.

1. If a Copyholder be for Years, and makes his Executor, and dies, the Gilb. Treat. Executor shall have the Term, and that without any new Admittance; Per Brown and Dyer Justices, but Welfen e contra. 3 S. C. but seems reasonable; For, they continue the Possession of the Testator, and have it only to his Use.

2. Copyholder surrendered to the Use of A. for Life. A. is admitted free, and dies; be in Reverence may enter without a new Admittance; Per S. C. and Wray. Le. 175. pl. 244. Hill. 31 Eliz. B. R. in Case of Bullen v. S. P. held accordingly. — Gilb.


4. If a Surrender of a Copyhold be made to the Use of a Stranger for Life, and the Lord makes a Grant thereof to the same Stranger in Fee, this shall not bind the Heir of the Tenant, but that he may enter after the Death of the Grantee, for he took the Land by the Surrender, and not by the Grant made by the Lord, for the Lord is but an Instrument of the Conveyance of the Land; for if I make a Surrender unto the Lord to Intenions that be shall grant over unto such a Man, if the Lord will not grant the same, I may then re-enter, but the Stranger has no Means to enforce the Lord to grant the same over unto him, but he may maintain Trespass against the Lord, if he doth suffer me to re-enter; and this is the Opinion at this Day. Calth. Reading 64. A a 5. In
Copyhold.

This was a Release to a Tenant in Possession by wrongful Title; there needs no new Grant or Admittance of the Land, and if the right in Court by a Free Court in a Suit. Per Cor. 2 Show. Covert, who filed a new Petition. He may re-enter, and shall have the Land without any new Admittance, or any new Fine, for he is in his old Estate; so he may surrender, reverting, and that if the Rent be not paid, he may re-enter, and there no Fine or Admittance is to be had; but in Case where the Day of Payment of Money by the Surrenderor is past, so that he hath only an Equity of Redemption, there it seems he must pay a Fine, and be re-admitted. Gilb. Treat. of Ten. 259, 260.

Calthrop's Reading 60, 61. S. P.

6. A Copyholder may surrender to the Use of another upon Condition, that if the Surrenderor pay such a Sum of Money at such a Day the Surrenderor be void; after Admittance of such Surrenderor, the Surrenderor pay the Money, he may re-enter, and shall have the Land without any new Admittance, or any new Fine, for he is in his old Estate; so he may surrender, reverting, and that if the Rent be not paid, he may re-enter, and there no Fine or Admittance is to be had; but in Case where the Day of Payment of Money by the Surrenderor is past, so that he hath only an Equity of Redemption, there it seems he must pay a Fine, and be re-admitted. Gilb. Treat. of Ten. 259, 260.

[I. b. 2] What Thing may pass by Admittance.
[Or rather, How much shall be laid to pass by the Surrender and the Effect of an Admittance, though on a void Prefentment.]

Ibid. The Report says that those General Words of Per Nomen of all his Lands &c. were not really in the Note of the Surrender taken by the Steward, and whether more than is particularly mentioned in the Surrender should pass by its being so prented and enrolled was much debated in several Courts for 24 Years; Dyer held, that no more should pass than the Surrender expressed particularly, and a Decree was made accordingly by the Lord Wentworth, Lord and Chancellor of the said Manor, Unde polita se posuit. But nevertheless, diverse others agreed to the said Opinion for Law. — Ibid. Winter v. Jeringham. —— S. C. cited Gilb. Treat. of Ten. 258, 259.

2. Co. 4 Rite and Auct. 25. A Man is admitted upon a void Prefentment, yet resolved, that he hath a customary Estate in Possession, and is in by Title, and capable of a Release from him that hath the Right.

2 Roll Rep. 3. Several Copyhold Lands were appertaining to a Messuage, which Messuage, cum Pertinentibus, were surrendred to the Lord, and the Surrenderor was admitted; all the Court held that it is all one in Case of Copyhold and Frechold, and that only the Messuage, Curtailage, Orchards, and Tarts, and Garden passed by this Surrenderor. Cro. J. 526, pl. 2. Pach. 17 Jac. B. R. Smithson v. Cage.

(I. b. 3)
Copyhold.

[1. b. 3] Copyhold.
Admissitance upon a Surrender.
By whom it may be.

at Sulliance, or others that have defeasible Titles, are good pl. 9. Pach.
against those that have Right, because this was a lawful Act, and
they were compellable to do it. Co. Lit. 58. b.

--- Mo. 226. pl. 569. S C and S. P. adjudg'd, and fo if the Heir before.
Affignment of Dower grants and admits to a Copyhold upon a Surrender thereof, he is only in such Case an Instrument
of Conveyance by the Surrender, and does not impart with any Interest; Agreed by all the Justices --- 2 Le. 45. pl. 59. S. C. cites 1 Rep. 120 b. S. P. accordingly by the Reporter in a
Note at the End of Chudleigh's Case. --- S. P. Arg. 3 Bullf. 214. cites 4 Rep. 23. in Case of
Cafe of Rous v. Artois.

2. If the Difficult of a Manor accepts a Surrender of a Copyholder of Inheritance, to the Use of another and his Heirs, and he admits Ceshuy
que Uie accordingly, this is good, and shall bind the Difficult. P. 46
G. B. R. between Martin and Rece. per Papham. Co. 4. 24.

3. If a Copyholder of Inheritance surrenders to the Difficult of the Manor, ut Dominus inde faciat Voluntatem suam, and the Difficult at
the same Court regrants it to the Copyholder in Tail, with a Remain-
ner in Fee, or in other Hamitier, according to the Intention of the
Surrender, it seems this shall bind the Difficult; But quere.

4. If a Copyholder for Life, or in Tail, surrenders to the Difficult of
the Manor, to the Use of another for Life, or in Tail, this shall
not bind the Difficult. P. 49 G. B. R. in Martin's Cafe.

5. But if a Copyholder for Life surrenders to the Difficult of the
Manor, to the Use of another for Life of A. and the Difficult
does him accordingly, this shall bind the Difficult, without.

6. If a Copyholder of the Inheritance dies, and this desends to & Rep. 24.
his Heirs, a Tenant at Sulliance of the Manor, though he hath not a
lawful Estate, may admit the Heir, and this shall bind him that
hath Right. Co. 4. 24. 58. b.

S. P. for such Acts are within the Custom and lawful, et quodam Modo Judicial, and to do which
he may be compell'd in a Court of Equity, and therefore shall bind him, that has the Right.

7. If the Lord pro Tempore of a Copyhold Manor be Lese for * See (G)
Life, or for Years, Guardian, or other that hath a particular Interest, pl. 8. S. C.
of Custody, or a Tenant at Will of a Manor, and accepts a Surrender, and after
before Admittance the Lese for Life dies, or the Years, Interest
of Custody is ended or determined, or the Will be determined,
then the Lord comes in paramount the Lese for Life or
Years, Custody, or other particular Interest or Tenancy at Will,
yet he shall be compell'd to make Admittances according to the
Surrender. 17 Ja. in the Lord * Arundel's Case held, cited Co. Lit. 59. b. Tr. 1 Ja. Rot. 354 between ↑ Shipland and Ridley, in
the Case of a Guardian in Soccage adjudged.

This in Roll
in Letter
(P) in Fol.
523.
Copyhold.

This in Roll [K. b] What Admittance shall be good, and by vox comm & c contra. And at what Time.

See (W. a) 1. D. 4. Life and Quintum 25. It is put, That if a Conditional Surrender be presented it.

Supplement to Co. Comp. 15. c. 4. Note: that the Surrender being dead the Life, admitted his Heir, but the Presentment of the Surrender being (as of an Absolute, and not as of a Conditional Surrender) without taking Notice of the Condition, it was revolved to be void; But if the Conditional Surrender had been presented it had been good, tho' it was entered on the Roll.

2. D. 8 25. [a. pl.] 90. A Copyhold is surrendered to the Lord, ad Intentionem that he shall grant it to him for Life, with a Remainder over, if the Party that surrenders die before Execution thereof had, yet the Grant of the Remainder after by the Lord is good.

3. 25. Life and Quintum 25. A Copyholder surrenders to the Use of J. S. in Fee; J. S. dies before Admittance, and it is admitted, that his Heir was well admitted after his Death, and the Lord Coke cited the Case. 29. b. That his Heir shall be admitted.

(L. b) Admittance. How it may be.

A. Copyholder in Fee surrendered to the Ld. by whom B. was admitted, habendum to him and his Wife in Tail, Remainder over; It was agreed per Cur. that this Admittance was good to the Wife, tho' she was only named in the Habendum, and not in the Premises, tho' it be otherwise in Case of Foellimt and Grant; But this Case of Copyhold as like the Case of a Will, or of frank Marriage, which will put the ESTATE, tho' the Party is only named in the Habendum; and Judgment accordingly. Poph. 125, 126. Trin. 15 Jac. B. R. Brook's Cafe.

--- Supplement to Co. Comp. 51. S. 6 cites S. C.—Ld. Raym. Rep. 526. Hill 12 W. 7. Holt Ch. j cited the Case of Brooks in Poph. 125, and the saying of Popham, that the Case of a Copyhold resembles the Case of a Will, but says the Report of Cro. J. 344 makes no Mention of any such Thing, and that the said Part of Poph. Rep. being reported by an uncertain Author ought not to be regarded.—— But in Cro Car. 366. t. Jones 342 Serjeant v. Holm, where a Copyholder surrendered to the Use of A and B, and the Survivor of them; and for want of Illue of the Body of B Remainder to J. S. and his Heirs; it was held, that B had only an Estate for Life; for an Estate for Life being limited to him by express Limitation, he shall have no higher Estate by Implication, and tho' perhaps it might have been enlarged by Implication in a Devil's, yet it shall not be so in a Surrender or Conveyance, which shews the Difference between a Surrender of a Copyhold and a Will, and that the Surrender is like any other Conveyance at Common Law. Ld. Raym. Rep. 650. Hill 12 W. 3. per Holt Ch. J.——Gilb. Treat. of Ten. 259, cites Poph. and Cro. J. and says, that the subsequent Admittance explains to what Use the Surrender was made —— Gilb. Treat. of Ten 243, says, that since the Judges thought that the Baron did not take before the Habendum any more than the Wife, and that this Case does not fully prove, that a Person may take that is named after the Habendum when there is another only named in the Premises, for when both are named in the Habendum only, the Admittance would be to no Purpose, it both could not take; and perhaps at Common Law, if there be no Body named in the Premises, Habendum to o, they shall both take, ells the Dead could have no Effect but an Admittance to one Habendum to him and another, may be good; i.e. square.
Copyhold.

[M. b] [Admittance.] How. (And in what Cases) by Letter of Attorney.

1. The Ld. may refuse to admit by Attorney itself a quare a quo utile a Surrender of a Copyhold is made, because he ought to be Feele, which cannot be done by Attorney. Co. 9. Ch. 76.

A Copyholder may not make an Estate in the Copyhold by the Surrender of another Copyholder into the Hands of a Tenant of the Manor by Covenant, but then this Surrender must be presented in Court, and he to whose Use the Surrender was made must personally appear in Court, and there be admitted to the Land; and he cannot be admitted by Attorney Supplement to Co. Comp. S. 18. 

Copyholder ought not to be admitted by Letter of Attorney, for he ought to do Feele at the Time of his Admittance, which can't be done by Attorney 2. Chan. Rep. 56. 21 Car. 2. Floyer v. Hedgingham. 

2. [But] If the Ld. will admit him by Attorney it is good. Co. 9. Gilb. Treat. of Ten. 556. 

S. P. Admits that tance by the Ld. in Court and out of Court seems to be de Communi Jure, and therefore it may be done by Attorney.

3. A Copyholder of the Manor of the Earl of Arundell did surrender Supplement to Co. Comp. his Custumary Lands to the Use of his left Will, and thereby devised the Lands to his youngest Son and his Heirs, and died; the Youngest being in Prison makes a Letter of Attorney to one to be admitted to the Land in the Ld.'s Court in his room, and also after Admittance to surrender the same to the Use of B. and his Heirs to whom he had sold it for the Payment of his Debts, and Wray was of Opinion, that it was a good Surrender by Attorney, but Gawdy and Clench contrary; and by Gawdy, if he who ought to surrender cannot come in Court to surrender in Person, the Ld. of the Manor may appoint a Special Steward to go to the Prison and take a Surrender &c. Le. 36 pl. 45. Trin. 25 Eliz. B. R. Anon. 

and afterwards to have Surrendred the Lands. 

4. What Persons forever are capable of a Grant by Copy may well take by Attorney, not that the Lord shall be enforced to admit any one by Attorney, because upon every Admittance there is Feele due by the Party admitted, which is a Duty so infeparably annexed to the Persons, that it cannot be discharged by Deputy, and therefore no reason the Ld. should be enforced to admit by Attorney; but if he will admit him it stands good. Co. Comp. Cop. 49. S. 35. 

5. C. Surrender'd to the Use of J. S. and his Heirs upon Condition that if Gilb. Treat. C. pay 800 l. such a Day the surrenderer to be void. J. S. died before the Day without being admitted, his Heir being then beyond Sea. A Neighbour came and was admitted in the Name of the Heir. This Heir returnd and contended to the Admittance by bringing an Action against another, and Judgment for the Plaintiff; for this is a good Admittance. 2 Sid. 61. 62. Hill. 1657. B. R. Blunt v. Clark.

B. b [N. b]
[N. b] Admittance. At what Place it may be.

This in Roll 1. 

1. The Lord of the Manor may make Admittances out of Court, and out of the Manor also. Co. Lit. 60. b.

ter. — Gilb. Treat of Ten. 205. cites S. C. —— Ibid. 501. cites S. C. and says, that this
seems to imply, that the Lord may make by Copy Grants and Admittances at a Court held off the Man-
or, or else, where is the Difference between the Cafe of the Lord and Steward; and in the next Case
but one it is resolved, that if the Steward at a Court held off the Manor make any Grants or Admit-
tances, they are all void, but he says nothing of the Lord; In his Comment upon Littleton he says
the Court Baron must be held upon the Manor, else it would be void. —— S. P. agreed by Crooke,

This in Roll 2. The Steward of a Manor may admit upon a Surrender out of

(pl. 4. 203.)


The admitting a Copyholder is not any judicial Act; for there needs not beauty of the Sui
there who are Judges; and such a Court may be held out of the Precinct of the Manor, for no
Pecas are holden; Quad furii Concessium per tor. Car. Le. 289. pl. 394. Trin. 26 Eliz. B. R. in Li.
Dacres's Cafe.

See the Notes at pl. 1. supra.

Supplement to Co. Comp. Cop. 69. cites S. C.

3. If the Under-Steward holds a Court Baron, and grants customary

Land by Copy of Court Roll, without Authority of the Lord or High-
Steward, this is a good Grant. Br. Tenant per Copy. pl. 26. cites H. 2
E. 6.

4. Contra if he does it out of Court without such Authority. Ibid.

5. But the High-Steward may admit by Copy out of Court, by some;
Sicere inde; if he has not special Authority from the Lord to demife.
Ibid.

6. A. had two Manors and granted a Copyhold of one at the Court of the
other Manor. It was adjudged a void Grant; for it cannot be a Copy-
hold according to the Custom of a Manor whereof it is not Parcel; cited
per Popham Ch. J. Cro. E. 914. to have been adjudged in Qu. Mary's
Time, in Cafe of the D. of Suffolk.

But Gaudy

I doubted thereof, and

conceived

it had been well enough

if it had been so used Time out of Mind. Ibid.

7. A Copyhold granted at a Court held out of the Manor was confirm'd
against the Lord that made it. Toth. 107. 25 Eliz. Marke v. Su-
liard.

8. Admittance of a Copyholder is not any judicial Act for there need
not be any of the Suiors there who are the Judges and a Court may be
held out of the Precinct of the Manor for no Pecas are holden. Le. 289.

9. If the Steward of a Manor holds a Court out of it, all the Grants and
Admittances made are void; for the Court of the Manor ought to
be held within the Manor; Resolv'd per tor Cur. 4 Rep. 27. a. pl. 14.


10. But
Copyhold.

10. But resolv'd that by Custom the Court may be held out of the Manor, Gilb. Treat. and that Grants and Admittances made there are well enough; As of Ten. vs. 30. vers Abbots, Prioris &c. used to hold Courts in one Manor for diversse several Manors, and good by Custum. 4 Rep. 27. a. pl. 14. Mich. 27. &c 28 Eliz. B. R. Clifton v. Molinieux.

11. In Case of a customary Manor where the Copyhold Tenements are divided from the Reissue of the Manor, the Lord or his Steward may grant Copies out of Court as well as in Court; Per Cur. Cro. E. 103. pl. 10. S. P. but S. C. & 30 Eliz. B. R. in Cafe of Melwich v. Luter.

It is held, that if the Inheritance of Copyhold be granted to one, he may hold Courts where he will, for it is no longer a Court Baron, and that the Lord or his Steward may grant Copies out of Court as well as in Court, and as the Cafe is reported by Coke, the Grant was at a Court held at another Manor; but at Coke reports it, though the Grant be at another Place, yet it is not said to be done at a Court; so quere, whether a Steward may make Grants by Copy out of Court; but if a Steward can, an Under-Steward cannot. Gilb. Treat. of Ten. 235, 236.

12. The Lord himself may make a Grant or Admittance of a Copyhold out of the Manor at what Place he pleases, but the Steward cannot do it at any Court held out of the Manor. 4 Rep. 26. b. pl. 12. 30 Eliz. the 4th Refoluation. in Cafe of Melwich v. Luter.

Coke, it is there said, that if the Lord grants away the Freehold of his Copyholds, the Grants may hold Courts where he will to make Admittances and Grants; if then a Grant by Copy or Admittance should be made at a Court held off the Manor, though it be a Court Baron, why should it be void? Since a Court Baron contains in it two Courts, one for the Freeholders, the other for the Copyholders, and since that for the Copyholders, as to granting Copies, &c. may be held off the Manor, there is no Reason, that because the Court Baron is void, that therefore the Admittance should, for they are at two different Courts, and the Admittance had been good, had the Courts been only the Copyholders' Court; and if we look back to the Reason of the Thing, if an Admittance may be made at a Place off the Manor, why not at a Court held off the Manor, for it is no judicial Act; if it were, surely it must of Necessity be done in Courts, and therefore it was held per tii Cur. that a Court to do these Things might be held off the Manor; it is not distinguished in this Case between the Grant of the Lord or Steward, but Coke is express, that Grants by Stewards at Courts held off the Manor are void. Ideo quers de Re, Gilb. Treat. of Ten. 502, 503.

13. A Lord may make a Grant or Admittance of a Copyhold out of the Manor at what Place he pleases, but the Steward cannot, at a Court held of the Manor, make any Grants or Admittances; and in Coke's 11th Intit. 58. a. he says, that a Court Baron cannot be held off the Manor, unless the Lord hath 2 or 3 Manors, and hath usually kept Court at one or all, which plainly thews, that a Lord cannot make Admittances or Grants at a Court held off the Manor, no more than the Steward; For Coke says, that if the Court Baron be held off the Manor, it is void, and he there speaks of a Court Baron as including the Copyholder's Court, where the Steward is Judge; but, as hath been said before, a Lord may make Admittances or Grants out of the Manor at what Place he pleases which are Coke's Words, and must be underfoot not at Court but at some other Time or else he contradicts himself. Gilb. Treat. of Ten. 235.

14. If the Under-Steward make Admittances it is good; but if it be out of Court it ought to be by a special Custum. Arg. 4 Le. 244. pl. 397. Pach. 8 Jac. C. B. in Cafe of E. Rutland v. Spencer.

15. The Honour of Hampton had many Manors within it, as O. P. Q. &c. J. S. was a Copyholder of the Manor of P. and surrendered into the Hands of two Tenants of the Manor of P. according to the Custum of that Manor, to the Use of W. S. his Son, and died. The Surrender was professed at the next Court, and the Stile of the Court, and recital of this Surrender in the Copy made out was thus, At the Court Baron of the
Copyhold.

the Honour of Hampton J. D. and J. N. Tenants of the Honour of Hampton, do present that J. S. did surrender into the Hands of the two Tenants of the Honour &c. Per 3 Justices against Jones J. this is good enough; for P. being in the Margin it shall be said a distinct Court of itself; for an Honour consists of many Manors, yet all the Courts for the Manors are distinct, and have several Copyholders, and although there is for all the Manors but one Court, they are Quasi several and distinct Courts. And it was usual, in Time of the Abbeys, to keep but one Court for many Manors. Cro. C. 366. pl. 4. Trin. to Car. B. R. Seagoold v. Hone.

16. J. S. was feized of the Manors of A. and B. and about 20 Years since sold A. to W. R. and now W. R. brought a Bill against a Copyhold Tenant of A. for a Rent of 8s. payable out of a Copyhold held by the Manor of B. and though it appeared from the Manor-Rolls of B. from H. 8. to Car. 1. that the Copyhold was held of the Manor of B. and though it was admitted by the Plaintiff that the Copyhold was held of the Manor of B. and not of the Manor of A. and Plaintiff had no other Evidence of Title to the Rent but that it had been paid near 20 Years, yet the Court decreed him the Arrears, and growing Rent, and denied Defendant a Trial at Law; and per Wright K. after 10 long Payment of 20 Years a Grant of the Freehold of the Copyhold from the Lord of the Manor of B. shall be presumed. 2 Vern. R. 516, 517. pl. 465. Mich. 1795. Steward v. Bridger.

(O. b) Admittance. Good. In respect of the Estate granted.

Rep. 29. 1. C. Copyholder bargained and sold his Copyhold, but sawed not what Estate, and surrendered it to the Use of the Bargainee, and the Lord granted it to the Bargainee in Fee; it was good, and the Bargainee shall retain it in Fee; laid it had been so adjudged in Lipingwell v. Bunting, and of that Opinion was the whole Court in this Case, that a Custom was good and allowable (being used) that when the Tenant doth not appoint the Estate of City que Use that the Lord may; the Interest of the Land being between the Lord and the Copyholder it is not unreasonable that upon such uncertainty it may be afterward by the Lord. Cro. E. 392. pl. 15. Pach. 37 Eliz. C. B. Brown v. Forster.

[This in Roll 158 Letter(Y) in fol. 505.

P. b] In what Cases the Admittance one shall be of the other.

* 2 Rep. 23. 1. If a Copyholder Surrenders to the Use of one for Life, the Remainder to another, the Admittance of the Tenant for Life is an Admittance for him in Remainder also, because they are but one Estate, and but one Life is due for both, and if there ought to be an Admittance of him in Remainder also, this would be void, because nothing paid before Admittance, and so the particular Estate would be determined before the Remainder could commence.
Copyhold.

Co. 4. 22 & 23. * Fitch's Cafe adjudged. Hitch. 38 & 39 Eliz. B. R. 60 to prorogue the Lord of his Fine which was due by the Custom of the Manor according to the Opinion in Brown's Cafe. [4 Rep. 22. b.]--Cro. E. 441. pl. 2. S. C. but S. P. does not appear.
† See (E. b) pl. 1. and the Notes there.

2. A. Surrendered to his Wife during the Nones of his Son, and then to his Son in Tail &c. and died; The Wife is admitted accord- ingly, Marries, and dies. The Heir at her Admittance was but few Years old. The second Husband shall have the Land during the Non- age of the Infant, for the Wife had her said Estate to her own--S. C. Ufe, and then her Husband surviving her shall take, and that without any Admittance, for that he is not in of any new Estate but in the Estate of her Wife as Affignee, but if she had been only Guardian or Prochein Amy it had been otherwise. 3 Le. 9. pl. 22. 7 Eliz. C. B. accordingly. Dedicat's Cafe.

Tenn. 272. cites S. C. held accordingly by 2 Judges. --Ibid. 316. cites S. C.

3. Admittance of Tenant for Life is Admittance of him in Remainder. 4 Rep. 23; because the Fine is intire, and no new Fine due for Remainder-man. a. pl. 3. D. Deal v.

appear. --Cro. E. 372. pl. 17. S. C. but S. P. does not appear. --Supplement to Co. Comp. Cap. 72. S. 7. cites S. C. and S. P. S. C. cited 5 Lev. 328. 7-9. --4 Rep. 22. b. in Brown's Cafe S. P. resolved. --Ibid. 23. a. pl. S. P. in Cafe of Finch v. Huckley. --2 Brownl. 301. Pafch. 7. Jac. C. B. Warren v. Packman S. P. resolved. --S. P. adjudg'd; For whereas the Lord is to have a Fine there must be a new Admittance. No. 431. pl. 638. Pafch. 39 Eliz. B. R. Tipping v. Bunning. --Cro. E. 504. pl. 29. Guppy v. Bunney. S. C. and by Popham the Tenant for Life, and he in Remainder have but one Estate in Law, and therefore the Admittance of the one shall serve for the other. --Goldsb. 95. pl. 9. S. C. and S. P. Arg. --Supplement to Co. Comp. Cap. 72. S. 7. cites S. C. and S. P. as held accordingly. --The Cafe of Dell v. Higden, as it is reported by Moor, is also contrary to the Cafe before; for there it is said but one Fine is due, but otherwise it is of a Reversion, which Diftribution is laid quite crot to what it is in the Cales before, and seems to have been a Mistake in the Reporter; for as it is against the Cales before, so it is against Reazon. The same Cafe is reported by Lord Coke, and no such Reolution is mentioned in his Report of it, and it is observable, that nothing in that Cafe as reported by Moor, seems to have been either upon Reazon or Authority, but one Point, which is the single Reolution, as the Cafe is reported by Lord Coke. Gilb. Treas. of Ten. 182.

4. Copyholder of Inheritance surrendered to the Use of M. his Wife for Supplement Life, Remainder to C. his youngest Son in Fee. The Wife was admitted, to Co. Comp. but the Son refused during his Mother's Life, and afterwards, without Cop. 72. S. 7. being admitted, he surrendered to the Use of the Plaintiff in the Life-time of his Mother. Adjudged, that the Admittance of the Wife was the 22 & 24. Mich. Admittance of the Son in Remainder, for the being admitted to the 22 & 24. Mich. particular Estate, the Remainder depends on that, and vefts without other Admittance; for both make but one Estate. Cro. J. 31. pl. 1. P. but that it shall not bar the Lord of his Office which he ought to have by the Custom --S. P. resolv'd. 4. Rep. 219. a. pl. 6: Pafch. 39 Eliz. B. R. Finch v. Huckley, but not to prejudice the Lord of his Fine due by the Custom according to the Opinion in Brown's Cafe. --Supplement to Co. Comp. Cop. 72. S. 7. cites S. C.

5. If he in Remainder makes a Lease for Years before his Admittance, the Admittance of the Termor shall be good to this Purpofe for him in Remainder; but Yelverton J. to which Fenner J. agreed. Bullit. 42. Mich. 8. Jac. in Cafe of Ellyff v. Cholpey.

C c 6. A
6. A Copyholder surrenders to the Use of several Persons for Years purchase, the Remainder in Fee to J. S. Wyld held, that an Admittance of a particular Tenant is an Admittance of all the Remainders to all Purposes, but only the Lord's Fine; and if the Custom be, that the Fine paid by the first Tenant shall go to all the Remainders, then the Admittance of the first Man is to all Intents and Purposes an Admittance of all that come after. In this Case the Possession of the Lease is the Possession of the Remainder-man. Mod. 102 pl. 8. Mich. 25 Car. 2. B. R. Blackburn v. Graves.

7. Surrender to J. S. and his Heirs, if J. S. dies his Heir is in without Admittance, per Hale Ch. J. who said there had been diversity of Opinions, but the better Opinion had been according to the Lord Coke's Opinion. Mod. 120. pl. 22. Patch. 26 Car. B. R. in Cae of Blackburn v. Graves.

8. Surrender to A. for Life, then to his Wife for Life, and the Survivor of them, and after their Death, then to the Use of his last Will, and for want of such Will, then to his own right Heirs. A. was admitted &c. and made his Will, and devised all his Estate Real and Personal to his Wife, and after his Death, and devised the Remainder to be divided by G. and H. (whom he made Executors) between his Relations, according to their Discretion. In Ejectment it was found that G. and H. entered with Intent to divide the Estate according to the Will, but were not admitted. The Question was, what vested in them before Admittance, and what passed by the Will. Held, that Admittance of Tenant for Life upon a Surrender is Admittance of those in Remainder. 5 Mod. 306. Mich. 9 W. 3. Warlop v. Abell.

9. If a Copyholder surrenders to the Use of his last Will, and by that devises it to 2, and the Lord admits one, this shall ensue to both, for when he is admitted, he is in by the Surrender, which he cannot be unless he be a Joint-tenant; for that is his Title by the Surrender. Gilb. Treat of Ten. 312, 313.

(Q. b) Admittance of whom it may be in Case of Death of Surrenderee before Admittance.

S. C. cited 1. A Surrender to him and his Heirs dies before Admittance, his Heir may be admitted. 4 Rep. 25. a. pl. 11. Patch. 31 Eliz. B. R. Kite v. Queinton. Co. Comp. 2. If a Copyholder according to the Custom doth surrender into the Hands of 2 Tenants to the Use of J. S. and his Heirs, and afterwards the Copyholder dies before the Presentment be made of the Surrender by the Tenants, and the Lord before the Presentment accepts of the Rent of J. S. generally, but not as a Copyholder, the Heir of the Surrenderor may enter into and upon the Lands, and receive the Profits thereof to his own Use, for that nothing vesteth in the Surrenderee before Admittance,
nature, and the inheritance of the Copyhold is in the Heir Qua
3. Copyhold was for a Copyhold to descent to the youngest Son, and not
to the eldest Brother; A Copyholder surrendered the Land to another and
his Heirs but before Admittance, Surrendered dies, leaving two Sons, and
the Question was between the two Sons, and adjudged that the eldest
Son should be admitted, because the Custom was, that the Estate
should descend to the youngest Brother, and there was no Estate in the
Ancestor to descend; and therefore the eldest Son must have been taken as Pur-
chaser; but according to the Report I have of the Case, the Court
said, that if the Copyhold had been laid to have been Borough English,
the eldest had been excluded, for the Law takes Notice of Borough
English and Gavelkind Custom. 6 Mod 121. cited by Holt Ch. J.
as Hill. 1659. Fane v. Barr.

(R. b) Admittance. Where the Custom is to descent
to the youngest Son, or is Gavelkind &c.

1. A
Surrender was to the Use of J. S. and his Heirs of Copyhold SPr. 145.
Land, descindible according to the Nature of Borough English, Mich. 2
J. S. died before Admittance ; The Court held, that the Right would de-
scend to the youngest according to the Custom. Mod. 102. pl. 8. cites it
as the Case of Baker v. Dereham.
S. P. by Glyn Ch. J. that the youngest Son shall have the Land, because he is in by Defcent, or at
least by Force of the first Surrender, and to in Nature of a Defcent. 2 Sid. 61. Hill. 1657. Blunt v.
Clerk. — Vent. 261. S. P. by Wilde.

2. Copyhold was for a Copyhold of every Tenant dying seized, Wms's Wms's Rep.
Rep. 66.] to descent to the youngest Son, and not to the eldest Brother. 66. S. C.
cited per
Holt Ch. J. B. dies, leaving two Sons. Adjudg'd that the eldest Son should be ad-
mitted, because the Custom was, that the Estate should descend to the in C. B. in
Youngest, and there was no Estate in the Ancestor to descend; cited per
Holt Ch. J. as the Case of Fane v. Barr. 1659. But he said, that ac-
cording to the Report he had of the Case, the Court said, that if the Hale and
Copyhold had been laid to be Borough English the eldest Son had been ex-
cluded, and the youngest must have been admitted; for the Law takes
the Law
Notice of Borough English and Gavelkind Customs. 6 Mod. 121.

li is the Reason why in Placing that the Lands are Borough English, you must not set forth the Nature
of the Custom specially — Wms's Rep. 66. Marg. says, it seems to be S. C. as is cited 2 Keb 159,
159. by Name of Pain v. Herbert. — Vent. 261. in Cafe of Batmore, alias, Blackmore, v. Graves,
per Wild J. said it was fo held.

3. If the eldest Son, where there is Borough English, be admitted, be Holt's Rep.
is a Copyholder De Facto, and he has a good Title against all Mankind 165 S. C.
but the youngest Son, and by Virtue of it may maintain an Ejectment.

(S. B)
Copyhold.

(S. b) How far the Lord is bound by Admittance.

1. Surrender to the Use of A. upon Trust till Money paid, and that after A. shall surrender to B. A. having received the Money refuses to surrender to B. The Lord decrees a Surrender by A. to B. B. refuses. The Lord may seize and admit B. for in such Case be is Chancellor in his own Court; Per tor. Cur. Lc. 2. pl. 2. Hill. 25. Eliz. B. R. Anon.

2. Baron and Feme Copyholders for Life, the Baron surrendered to the Lord who granted the Land over by Copy to a Stranger; the Baron died; the Feme recovered and entered, and surrendered to the Lord; the Stranger shall have the Land, and not the Lord himself against his own Grant. 4 Lc. 88. pl. 186. Patch. 26 Eliz. B. R. Anon.

3. A Copyhold Custom is, that a Woman shall have her Free Bench, Quamdiu fe bene gessit, and live chafe, and she is Incontinent, of which the Lord hath not Notice, and the Lord admits her Tenant, it was held that it should bind the Lord, though he had not Notice of the Incontinency. 4 Lc. 240. pl. 399. Mich. 3 Jac. C. B. Wheeler's Cafe.

4. It seems, that when a Tenant for Life makes a Surrender in Fee, though nothing can pass by the Surrender but what he hath, yet it seems, that when the Lord admits the Surrender according to this Surrender, the Lord has a Estate to pass a Fee-simple. Gilb. Treat. of Ten. 178.

(T. b) To what Time the Admittance shall have Relation.

Cro. E 656. 1. Seized of Freehold and Copyhold makes a Lease of both for Years, rendering Rent, and after he grants the Reversion of the Freehold, and makes a Surrender of the Copyhold to the Use of the same Person, and an Attornment is had of the Freehold, and the Prentment of the Surrender for the Copyhold is not made until a Year after, yet he in Reversion shall have an Action of Debt of all the Rest, for the Prentment of the Surrender is but a Perfection of the Surrender before made. Lane. 33. cites it adjudged 41 Eliz. B. R. the Cafe of Collins v. Harding.

Jo. 441. pl. 4. S. C. and that the Bankrupt shall not be sold to have died seized of it, notwithstanding the Vendees

2. The Wife of a Copyholder dying seized is to have his Estate for Life; he becomes a Bankrupt, and the Commissioners bargain and sell this Land by Deced inrolled. The Baron dies. The Feme is admitted, and afterward the Bargainee is admitted; and it was held, that the Copyholder was no Tenant after the Deced inrolled, for the Bargain &c. binds and bars his Estate, and the Bargainee is bar'd only to take the Profts until the Admittance, which is for the Lord’s Benefit in respect of the Fine, and not for the Copyholders, and though between the Bargain and Sale, and
Copyhold.

and the Inrollment, the Tenant dies, and his Wife is admitted, yet were not admitted in the Life of the Bargainee, and shall have Relation to the Bargain and Sale, and shall Copyholder, devise the Estate which the Feme claim'd by the Custom. Cro. C. 568, 569. pl. 6. Hill. 15 Car. B. R. & cites 7 E. 6. Br. Title Jorolments. Parker v. Blecke.

2. Admittance of Surrenderee shall have Relation to the Surrender. 1 Salk. 185. 4 Mod. 251. 254. Hill. 5 W. & M. in R. Benfon v. Scott. pl. 5. S. C.

(U. b) Pleading of Admittances.

1. Where some have imagined that nothing should be invested in the Heir before Admittance, because every Admittance of an Heir upon a Defent amounts to a Grant, and so may be pleaded, they are in an Error; for though it be true, that after Admittance the Heir may in Pleading allege this as a Grant, and that has been allowed to avoid the Inconveniences that otherwise would ensue, for if the Copyholder should be driven in Pleading to shew the first Grant, either that was made before the Memory of Man, and so is not pleadable, or since the Memory of Man, and then Custom fails; for this Reason the Law has allowed a Copyholder in Pleading to allege any Admittances, as well upon a Defent upon a Surrender, as a Grant, and shew the Defent to him, and that he entered and paid, without any Admittance. Co. Comp. Cop. 53. S. 41. cites 4 Rep. 22. b. [Mich. 23 & 24 Eliz. C. B.] Brown's Cafe.

2. But the Heir cannot plead that his Ancestor was seised in Fee at the Will of the Lord, by Copy of Court Roll of such a Manor, according to the Custom of the Manor, and that he was seised, and that the Copyhold descended upon him, because in Truth such an Interest is but a particular Interest at Will, in Judgment of Law, although it be descendeable by Custom. Co. Comp. Cop. 53, 54. S. 41. 4 Rep. 22. b. resolved in Browne's Cafe.


4. When a Copyholder surrenders to the Use of another, and the Lord admits him, now he who is so admitted is in him that made the Sur- a b. pl. 15. render, and in a Plain in the Nature of a Writ of Entry in the Per., shall be supposed to be en le Per by him who made the Surrender, for the Lord is Taverner v. but an Instrument to make Admittance, and he who is admitted shall Cromwell, not be subjed to the Charges and Incumbrances of the Lord, for the S. C. & S. P. Lord hath but a customary Power to make the Admittance secundum Effectum furum-redititions. Supplement to Co. Comp. Cop. 72. S. 6. cites Co. Taverner's Cafe.

5. In Admittances made by Under-Stewards, as well as in Admittances made by the Stewards themselves, it is good Order to express in the Copy, and in the Court-Roll, the Name of the Under-Steward, or the Steward, because in Pleading any Admittance a Man must say, that he was admitted by such a one Under-Steward or Steward, naming his Name. Co. Comp. Cop. 57. S. 46.

D d (W. b)
This in Roll 1st Letter (Z) in fol.

502


1. A Copyholder in Fee surrenders to the Use of another for Life when the Lessee dies, he shall not pay a Fine for a Re-admission to the Reversion, for it continued always in him. Co. 9.

Cary's Digester 107.

2. Fitch. Treat. of Ten. 151, cites S. C. and says, Quere, whether the Lord in such Case must admit before the Heir has paid his Fine; and if he does, what Remedy there is for the Fine?

3. Admittance of Tenant for Life is Admittance of him in Remainder, but it shall not prejudice the Lord as to the Fine from him in Remainder due to the Lord by the Custom. 4 Rep. 23. a. pl. 6. Pach. 36 Eliz. B. R. Fitch v. Huckley.

4. Tenure by Tenant Right, as it is usual towards the Borders of Scotland, shall not pay any uncertain Fine or Income at the Change of the Lord by Alienation, but by Death, which is the Act of God, for otherwise the Lord might weary the Tenant by frequent Alienations, but it may be Fine uncertain upon the Alienation of the Tenant, as well upon Death as Divestit, for that it is the Act of the Tenant, and in his Power. Mich. 1599. The Cafe of the Manor de Thwaite sine & les Justices accord the same holds in Copyholders, for the Custom must be reasonable. Cary's Rep. 9. Egerton (Sir Thomas) Cafe.

5. Of Fines due to the Lord come by Change or Alteration of the Lord, and some by the Change or Alteration of the Tenant; the Change of the Lord ought to grow by the Act of God, otherwise no Fine can be due, but when the Change grows by the Act of God, there the Custom is good, as by the Death of the Lord, and this upon a Cafe in Chancery referred to Popham Ch. J. and upon Conference with Anderson &c. and all the Judges of Sergeant's Inn of Fleet-Streeet, was resolv'd, and so certified into the Chancery, but upon the Change or Alteration of the Tenant a Fine is due to the Lord. Co. Lit. 39. b.

6. If a Copyhold be granted durante Vita, and the Grantee dies, living Ceсть que Vie, and a Stranger enters as a general Occupant, he shall be admitted and pay a Fine. Co. Comp. Cap. 62. S. 56.

7. Where by the Custom of the Manor, the Bailiff of the Manor is to have the Wardship of the Copyhold, Heir being under the Age of 14, such a Guardian shall neither be admitted, nor pay a Fine, because he is but a Partner of the Profits, and that not in his own Right, but in the Right of him to whom he is Guardian. Co. Comp. Cap. 62. S. 56.

8. By
8. By special Custom Copyholders are to pay Fines upon Licences granted unto them to demy by Indenture, but by general Custom they are to pay Fines only upon Admissions. Co. Comp. Cop. 62. S. 56.

9. If the Lord having a Copyhold by Escheat, Forfeiture, or other, a Fine is due, Copyholder may make a voluntary Admission, a Fine is due unto the Ld. Co. Comp. Cop. 62. S. 56.

10. If a Copyholder surrenders to the Use of a Stranger, and the Lord admits, a Fine is due to the Ld. Co. Comp. Cop. 62. S. 56.

11. If a Copyhold be granted to one and his Heirs durante Vita, and the Grantee dies, and his Heir enters as a special Occupant, where by the Custom of the Manor a Copyhold may be extended, upon the Extent the Party shall be admitted, and shall pay a Fine. Co. Comp. Cop. 62. S. 56.

12. If the Copyhold Lands of a Bankrupt be sold according to the Statute of the 13 Eliz. cap. 7. the Vendees shall be admitted and pay a Fine. Co. Comp. Cop. 62. S. 56.

13. If a Copyhold be granted upon Condition, and the Condition be broken, and the Grantee enters, he shall not be admitted, neither pay a Fine, because upon the Breach of the Condition and the Entry, he is to all Intents in Status quo prius, as if no Grant at all had been made. Co. Comp. Cop. 63. S. 56.

14. If a Copyholder in Fee surrenders for Life, reserving the Reversion, and the Lessee for Life dies, the Copyholder shall not be admitted to his Reversion, neither shall he pay a Fine, because the Reversion was never out of him. Co. Comp. Cop. 63. S. 56.

15. If a Copyholder be dispossessed, and then enters upon the Diffei or, recovers by Plaint in the Nature of an Assise, he shall not be admitted, neither shall he pay a Fine, for he continues till Tenant by Copy, notwithstanding the Dispossession. But where by a Plaint a Copyhold is recovered upon the Account of a new Title, where he that recovers was never admitted, nor paid Fine, thereupon his recovery an Admission is requisite, and a Fine is due. As if a Copyholder died seiz'd, a Stranger abates, and the Heir recover'd by Plaint in the Nature of an Assise of Morerendant, upon this Recovery shall be admitted, and pay a Fine. Co. Comp. Cop. 63. S. 56.

16. If I take a Wife with a Copyhold in Fee, tho' by this Intermarrriage there accrues a present Interest to me, yet because I am seiz'd not by Jure Proprio, but Jure Alieno, therefore I shall not be admitted, neither shall I pay a Fine. Co. Comp. Cop. 63. S. 56.

17. The same Law is if she be a Termor of a Copyhold, for tho' the Term by the Intermarrriage be so vested in me that I may dispose of it without control, yet because before Titulat, I am possessed of it but in the Right of my Wife, therefore I shall neither be admitted, nor pay a Fine. Co. Comp. Cop. 63. S. 56. cites Pl. C. 418. b.

18. If a Copyhold be surrendered for Life, the Remainder to a Stranger, tho' the Admittance of Tenant for Life be sufficient to invest the Estate in him in the Remainder, yet upon the Death of Tenant for Life, he in the Remainder shall be admitted and pay a Fine. Co. Comp. Cop. 63. S. 56.

19. So if a Copyhold be granted to 3 habendis succoce, where by Custom Succession is in force, if any one dies, he that next succeeds shall be admitted, and pay a Fine. Co. Comp. Cop. 63. S. 56.

20. If 2 or more Tenants in Common of a Copyhold be, and the one dies, and the other has all by Defcent, he shall be admitted, and shall pay a Fine; But if 2 Joint tenants be of a Copyhold, and one dies, the
Copyhold.

the other shall have all by the Survivorship without Admittance, or pay-
ing a Fine, because Jointtenants to all Intents and Purposes are feitied per-
my & per tout. Co. Comp. Cop. 63. S. 56.

Gilb. Treat. 21. Upon Admittance of a Woman to her Widow's Estate by the Custum
of Ten. 299, no Fine is due to the Lord. Nov. 29. Hill. 15 Jac. C. B. in Case of
Reversion v. Cole.

This for the Estate be adjudged in the Woman, yet that is no Argument that she shall pay no
Fine, for the Estate is in the Heir by Defect, and yet she shall pay a Fine, and both are compo-
libile to be admitted, and then why should they not pay a Fine? So of Dower and Curtesy. Ibid. 210.

If a Copyhold descends, and the Ld. admits the Heir, where by the Custum of the Manor the
Wife is to have Dower, and the Husband is to be Tenant by the Curtesy of the Copyhold, either
of them shall be admitted, and shall pay a Fine to the Ld. Co. Comp. 62. pl. s. 56.

But if a Fine is asfessed for the whole
Estate, there is an End of the
Business; and if it be asfessed only for a particular Estate, the Lord ought to have another; per Hale Ch. 7. J.
Mod. 102, pl. 22. Patch. 26 Car. 2. 6 R. in Case of Blackburn v. Graves. —— Mod. 102. pl. 8. S.
C. —— Gilb. Treat. of Ten. 173. cites S. C.

23. The Court doubted whether the Custum was good as to the
claiming an Alienation Fine upon an Alienation for Life, because by that
the Tenure of the Lands aliened is not altered; for the Reversion is
still held as before by the same Tenant. 2. Vent. 133. Hill. 1 and 2 W.
and M. in C. B. in Case of Holland v. Lancaster.

24. In a special Verdic in Ejectment the Cafe was, the Father being
seized of a Copyhold in Fee, surrendered it to the Use of himself and his Wife
for Life, Remainder to the Son (the now Defendant) in Tail; the Father and
Mother were admitted, and paid a Fine, and being both dead, the De-
defendant prcd to be admitted to the Remainder, which was done, and a
Fine of 58l. set upon him, which was demanded, and a Day and Place
appointed for the Payment of it; which be he did not pay, and said that he
thought that none was due, he being admitted by the Admittance of his
Father and Mother, Tenant for Life, and therefore refused to pay it; Ad-
judged, that no Fine is due, unless there is a special Custum for it, and
what Ld. Coke says 4 Rep. 22, 23. b. that such Admittance shall not
prejudice the Lord in respect of his Fine, is to be intended where
such Fine is due by Custum for the Admittance to the Remainder,
but without special Custum none is due. 3 Lev. 308, 309. Trin. 3 W.

25. The Admittance of Tenant for Life is an Admittance of him in
Remainder as to the Eate, but not to prejudice the Lord of his Fine,
faith Ld. Coke; therefore upon the Death of Tenant for Life, he shall
be admitted, and pay a Fine; for tho' his Estate of Tenant for Life
vests, ye he was never Tenant to the Ld. for the Admittance to which
he pays his Fine; But if a Copyholder in Fee surrenders to the Use of
one for Life, and the Tenant for Life dies, he may enter without any new
Admittance, or paying any Fine, for he had his old Estate in him, and
he was admitted Tenant before; yet it was said by Popham, in
Stuppin and Bunney's Cafe, that one Fine is due in such Cafe, but it is
but of little Authority, for the Point of the Cafe was, whether the Ad-
mittance of Tenant for Life was the Admittance of him in Remain-
der, and because it was made an Objection, that if it were, the Ld.
would lose the Fine, which Popham answers by saying, there is none
due in such Cafe, which Objection Ld. Coke answers by saying, that
that the Estate be vested in the Remainder-man, yet a Fine is due. Gilb.
Treat. of Ten. 181, 182.

26. Where
Copyhold.

26. Where the Custom is for a Copyholder's Lands to be extended, the Extender shall be admitted and pay a Fine. Gilb. Treat. of Ten. 315.

[X. b] Fines. How much shall be paid. And where one or several.

1. If a Copyholder in Fee surrenders to the use of one for Life, the Cro E. 574. Remainder to another for Life, the Remainder to another in Fee, by this, but one Fine is due; for the particular Estates, and the Remainders are but one Estate. Mich. 38 & 39. B. R. by Popham.

2. It is decreed by Assent, that the Defendant being Lord of the Manor of Alderfawly, shall have for a Fine of a Copyholder upon a Surrender, one whole Tenor's Value, as the Fine is reasonably worth, according to the usual Rates of Lands in that Country. Cary's Rep. 77. cites 18 & 19 Eliz. Blackwell & al.' v. Low.

3. If two tenants, or two Tenants in Common, or Tenant for Life, and be in the Remainder, join in a Grant of a Copyhold, one Fine only is due, and it shall enure as one Grant only; So if a Surrender be made, and after a Common Recovery is had by Plaintiff in the Nature of a Writ of Entry, or le poit, for the better Assurance one Fine only shall be paid. Co. Comp. 63. S. 56. cites 4 Rep. 27. b. Hubbard v. Hammond.

4. If one Copyholder has diverse several Lands severally held by several Services by Copy, the Lord ought to demand several Fines for every Parcel which is so severally held, for the Tenant may refuse to pay the Fine for one Parcel, and pay the Fines for the others. 4 Rep. 28 a. S. C. cit. in Mich. 42 & 43 Eliz. the third Resolution in Cafe of Hubbard v. Hammond.

--- Mo. 622. pl 851. S. C. resolv'd accordingly.

5. If two several Copyholders join in a Grant of their Copyholds by one Copy, or if one Copyholder, having several Copyholds, grants them by one Copy, yet the Grantee shall pay several Fines, for they shall enure as several Grant. Co. Comp. 63. S. 56.

6. 51. 125. 8d. was held an unreasonable Fine for admitting a Surrender to a Cottage, and an Acre of Paffure, being Copyhold of Inheritance; for this is not like to a voluntary Grant. As when the Copyholder hath but an Estate for Life, and dieth, or if he hath an Estate in S.C. Fee-simple, and committed Felony, there Arbitrio Domini Res estlatinari Gilb. Treat. debet; but when the Lord is compelled to admit him to whole Use of Ten. the Surrender is, and when Cestui que Use is admitted, he shall be in by 224. 225. cites S.C. him who made the Surrender, and the Lord is but an Instrument to present the same; And therefore in such Case, the Value of two Years for such an Admission is unreasonable, especially when the Value of the E. C. Cottage
Copyhold.

Cottage and one Acre of Paffure is a Rack at fifty three Shillings by the Year. 13 Rep. 3. Mich. 6 Jac. in Willows's Cafe.

7. If a Copyhold be cut, the Lord ought to increase and improve his Fine before he grants it, or he has no remedy afterwards, for he is not compelled to grant it again, and so may have what Fine he will. Arg. Her. 6. Patch. 3 Car. C. B. in Cafe of Patton v. Manne.

8. A moderate Year's Value is a reasonable Fine in Cafe of a Tenant-Right upon every Alienation or Death of the Tenant, or Death of the Lord, and the Defendants to give Notice of every Alienation at the Lord's Court, and the Fine now afield not to be taken as a Fine certain, and a Master of this Court to fet the said Fine. Ch. Rep. 33. 5 Car. 1. Rich. Jackfon.

It was a- agreed by all the Court, that by the

Cafus of

Freehold, or

Manor

a Fine of 4


in one Year

after the Leaves expire, or return from beyond Sea, or attaining 21.

11. Upon a Writ of Error the Question was, whether a Custom for a Copyholder upon his Admittance to pay a Year's Value of the Land, as it is at the Time of the Admittance, were a good Custom and ruled in C. B. that it was a good Custom, and the Judges in B. R. inclined that it was a good Custom. F. Rep. 494. 469. Mich. 1682. Anon.

12. An Alienation Fine was set forth to be due upon the Alienation of any Parcel of Land or Tenements held of the Manor of M. to have a Year and halfe's Rent, by which the Lands or Tenements so aliened were held; So that if the 20th Part of an Acre be aliened, a Fine is to be paid, and that of the whole Reur, for every Parcel is held at the Time of the Alienation by the whole Rent, and no apportioning thereof can be but subsequent to the Alienation, and this the whole Court held an unreasonable Custom; and as it is set forth, it could not be otherwise understood, than that a Fine should be due, viz. a Year and a halfe's Rent upon the Alienation of any Part of the Lands held by such Rent. 2 Vent. 134, 135. Hill. 1 & 2 W. & M. in C. B. Holland v. Lancafter.
Copyhold.

13. Tenant for Life, and he in Remainder, join in a Grant of their Copyhold; but one Fine is due. Gilb. Treat. of Ten. 316.

14. So if a Surrender be made, and after a Recovery is had by Plaintiff, in the Nature of a Writ of Entry in the Pott, for the better Assurance; but one Fine is due. Gilb. Treat. of Ten. 316.

(Y. b) Fines. Certain or uncertain.

1. A Fine is not to be decided by Witnesses, but by Court Rolls, and ordered to go to Hearing upon them. 10 Jac. ii. B. fo. 176. Toth. 167. Hopton v. Higgina.

2. To prove a Custom for uncertainty of Fines, and not to be certain two Years Rent, there ought to be shewn Court Rolls, and that in Cafes of Defcents that upon such Admittance they have used to pay above two Year's Rent; But Rolls, to prove Uncertainty of Fines (the in Cafes of Defcents) if the Fines are under the Value of two Years Rent, they are no Proof at all, for the Fines must be above two Year's Rent; for it is a good Custom to pay for Fines upon Admittances, the Value of two Years Rent or under, and the Proofs must be in Cafes of Defect; for in Case of a Surrender or Purchase of a Copyhold the Lord may take what Fine he will, but such Fines are no Proof of taking uncertain Fines by the Custom but it must be in Cafes of Defect. Per tot. Cur. abilente Fleming Ch. j. 2 Bullit. 32. Mich. 10 Jac. on a Trial at Bar Allen v. Abraham.

3. Held in Chancery, that where by Ancient Rolls of Court it appeared that the Fines of the Copyholder had been uncertain from the Time of King H. 3. to the 19 H. 6. and from thence to this Day had been certain, Except 20 or 50 that these few ancient Rolls did destroy the Custom for certainty of Fine; But if from 19 H. 6. all are certain except a few, and so uncertain Rolls before the few shall be intended to have escaped, and should not destroy the Custom for certain Fines. Godb. 265. pl. 365. Trin. 13 Jac. in Canc. Lord Gerard's Cafe.

4. There is scarce a Copyhold in England but the Fine is really uncertain; For if the Rolls make it appear that sometimes a less and sometimes a greater Sum has been paid for a Fine, this is a Fine uncertain; Per Richardson J. to Harvey privately. And he said, that he was of Counsel in a Case where the Jury found that the Fine was certain, and afterwards by Bill in Chancery it was decreed upon search of the Rolls to be a Fine uncertain, and that this is now the Ordinary Course by Decree in Chancery. Litt. Rep. 252. Patch. 5 Car. C. B. Anon.

5. Whether Fines be certain or not to regulate the same, the most Number of Court Rolls are to determine, and the Time. 14 Car. and Mich. 15 Car. Toth. 167. Burraffon v. Wallib.

6. A former Decree was confirmed, and an Award by which the Commons and Enclofures between the Lord and his Tenants, and Land in the Bill mentioned were bounded and ascertained, and the arbitrary Fines reduced to a Certainty, and enjoyed and paid accordingly till Defendant, who had now purchased the Manor, refused to be bound by it. Fin. R. 154. Mich. 26 Car. 2. Meadows v. Patherick.

7. In Replevin, the Defendant avowed for Damage feanant; the Plaintiff in Bar of Avowry pleads that it is a Copyhold &c. and that there is a Custom &c. quod quelibet Perioma &c. que ad. Error was brought of
Copyhold.

this Judgment in B. R. and the Judges seem'd to agree to the Reason offered by Levin, but for the Manner of laying this Custom. Curtis aduanere vult.—3 Mod. 132. S. C. in B. R. and the Court affirmed the first Judgment and all held the Custom good.

(Z. b) Fines. How to be assailed or demanded.

I. If divers Copyholds descend to one, the Lord can't demand one Fine for them all, but he ought to demand several Fines. For perhaps the Heir may accept of the one at the Fine assailed, and refuse the others on such Fines, Cro. E. 779. pl. 13. Mich. 42 & 43 Eliz. B. R. Dalton v. Hammond.

Supplement to Co. Comp. 1st q. 2d cit. S. C. and S. P.—And if all such Copyholds are surrendered to the Use of another and his Heirs, Tenures per annum feritias in debita & de Jure confueta, there, as was refere'd in Taverner's Case, the Tenures are several, and therefore the Fines ought to be severally assailed and demanded. 4 Rep. 28 a. pl. 16. Mich. 42 & 43 Eliz. B. R. Hubbard v. Hammond.


3. A Custom that a Copyholder for Life may nominate one or two that shall have the Copyhold Lands after his Death for a Fine to be assailed by the Homage if they cannot agree with the Lord is good. Nov. 2. Yelmeter Custom's Cafe.

4. A Custom to pay what Fine the Homage should set was ruled to be good; and so held in a Cafe Hill. 6. Jac. C. B. Rot. 1613. Frem. Rep. 494. pl. 669. says it is cited in the Lord Ch.'s J. Hale's MS. in Lincoln's Inn Library.

5. By the Custom of a Manor of a Fine was due to the Lord for a Licence to the Tenant to alien. It was agreed by all, that the Lord may assail a Fine out of the Manor, and likewise he may make it payable out of the Manor and Judgment accordingly; but if it had been for a Forfeiture, the Court said it might have been otherwise. Lord Raym. Rep. 44. 45. Falch. 7 W. 3. C. B. Yaxley v. Rainer.
[A. c] [Fines.]

At what Time due.

This Roll is Letter (A. a.)

[Pol. 406, where the Fine is certain then the Heir ought to tender it.

A Fine for an Admittance of a Copyholder is not due before Admittance, but after Admittance. (Trin. 4 Jac. 2. R. between Fysh and Rogers, agreed.

In his Prayer to be admitted, otherwise the Lord is not bound to admit him. Cro. E. 779. pl. 12. Mich. 42 & 43 Eliz. B. R. Dallou v. Hammond. —— Mo. 625. pl. 851. S. C. he ought to bring it with him to the Court and pay it before Admittance, and if he be not ready to pay such Fine if it is a Forfeiture, otherwise if the Fine be uncertain, but there he ought to pay it in convenient Time after the Lord has assented to it, if he does not pay it, it is a Forfeiture. —— Cro. E. 779. S. P. Supplement to Co Comp. Cop. 7. S. 10. cites S. C. and S. P. accordingly. —— Rep. 28. a. pl. 16. Hubbard v. Hammond S. C. & S. P. — Gilb. Treat. of Ten. 225. says that as this Case is reported by Cooke, it is said, when a Fine is certain, the Heir ought to tender it upon his Prayer to be admitted. As it is reported by Cook, it is said no Fine is due till Admittance, and that Admittance is the Date; and as Cooke reports it, so has Mo. 625. and if he does not pay it, it is a Forfeiture. This seems to contradict what he said before; for if it cannot be a Forfeiture till Admittance, the Demand of the Fine must be of the Peron of the Tenant to make a Forfeiture; so of Rem. — Preem. Rep. 190. Mich. 1689. in Case of King v. Dillington, S. P. said to be accordingly. —— Rep. 28. a. pl. 16. in Case of Hubbard v. Hammond Popham Ch. J. says it was adjudg'd in one Sand's Cafe, that no Fine is due to the Lord, either upon Surrender or Defective till Admittance, for the Admittance is the Date of the Fine, and if after the Tenant denies pay to it, is a Forfeiture; And that so it was resolve'd by Wray and Periam Justices of Afflict in Suffolk, between Sir Nich. Bacon and Platan. — Supplement to Co Comp. Cop. 7. S. 10. cites S. C.

2. The Heir of a Copyholder within Age is not bound to come to a Le. 12. any Court during his Nonage to tender his Fine. 3 Le. 221. pl. 294. in old times. Verbis.

3. Prescription that Copyholder shall pay a Fine on Change of every Heir, 127. Lord was ruled a void Custom by all the Judges, for Lord may change Arg. cites his Manor every Day, but if it be that after the Death of the Lord a Fine be paid, it is a good Custom, for it is the Act of God. Arg. Litt. R. 233. Mich. 4. Car. C. B. cites Armington's Cafe.

The Admittance of him in Remainder because they make but one Eftate; but the Lord shall have a Fine for the Remainder-man's Interest, but the Remainder-man need not pay it till after the Death of Tenant for Life, for then he becomes Tenant to the Lord. Mich. 8 W. 3. B. R. per Holt cites Mod. 120. Blackbourn v. Graves, and adds, that the Admittance of Tenant for Life is the Admittance of him in Remainder, so as to vest the Eftate, but not to prejudice the Lord of his Fine, for after the Death of Tenant for Life, he in Remainder shall be admitted again. Quere. Gilb. Treat. of Ten. 158.

4. There is no Fine due to a Lord so long as he has a Tenant. 3 Ch. R. 36. Patch. 21 Car. 2. in Cafe of the Attorney General v. Sands.

5. The Defendant and others were the Plaintiff's Tenants in the Fortescue North, and the Duke claimed a general Fine upon the Death of the late Lord. Rep. 42. Mich. Dutschess; and a great Number of Tenants denying the Duke's Right to such a Fine, as being only Tenant for Life by Settlement &c. the in B. R. the Duke brought his original Bill to establish his Right. The Defendants by Answer insinuated, the Duke was not intituted to a general Fine as next Sovereign v. France & admitting Lord upon the Dutchess's Death, and Defendants brought a 11 S. C. Cross-Bill to be relieved against the Duke's Demands, and to establish their Rights.

F f

Upon
Copyhold.

Upon the Hearing this Cause 11 June last, Lt. Chancellor directed an Issue, whether the Duke was intituled to a general Fine upon the Death of the Duke or not.

And upon Trial at the Bar of B. R., the last Term it was found for the Duke, and now upon the Equity referred, the Court declared and established the Duke’s Right to the general Fine, and decreed the Tenants to pay the Fines affiled, referring a Liberty to such of the Tenants as should think fit to try the Reasonableness of the Fine affiled upon Ejectment to be brought by the Duke, at the Peril of forfeiting their Eiftates.


I. T H E Lord may bring Action of Debt against the Copyholder for his Fine; Per Windham and Twifden Juttices, and not denied by any, and Twifden said that it was held by Porter J. 15 Jac. which was not denied, but it was said, that the Opinion of Bacon was e Contra. Sid. 58. pl. 26. Mich 13 Car. 2. B. R. in Cafe of Wheeler v. Honour.

2. In a Note at the End of the Cafe of Wheeler v. Honour. Gilb Treat. of Ten. 274. cites S. C. and says it seems to him, that the Heir may waive the Possession in the Court of Record, or in the Cafe of Copyhold Lands in the Lord’s Court; and if he may do it, then no Fine is due.

3. It is not De communi Jure that if the Tenant refuses to pay the Fine that he forfeits his Eiftate, for in some Places the Lord shall seize the same for a Fines, and therefore here he ought to allege a Custom that he shall forfeit his Eiftate for a Refusal. Arg. and seems admitted. Skim. 250. Hill. 1 & 2 Jac. 2. C. B. Titus v. Perkins. If the Lord demands more than he ought, he may make his Demand de novo, for the Judge, in Cafe of a greater Demand than is due, ought not to adjudge as much as is due to the Lord, and bar him from the Residue, but ought to adjudge against him for the Whole, and that his Tenant by the Custom such Custom is good.

(B. c) What Remedy lies for the Lord for his Fines.

1. The Lord may bring Action of Debt against the Copyholder for his Fine; Per Windham and Twifden Juttices, and not denied by any, and Twifden said that it was held by Porter J. 15 Jac. which was not denied, but it was said, that the Opinion of Bacon was e Contra. Sid. 58. pl. 26. Mich 13 Car. 2. B. R. in Cafe of Wheeler v. Honour.

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3. It is not De communi Jure that if the Tenant refuses to pay the Fine that he forfeits his Eiftate, for in some Places the Lord shall seize the same for a Fines, and therefore here he ought to allege a Custom that he shall forfeit his Eiftate for a Refusal. Arg. and seems admitted. Skim. 250. Hill. 1 & 2 Jac. 2. C. B. Titus v. Perkins. If the Lord demands more than he ought, he may make his Demand de novo, for the Judge, in Cafe of a greater Demand than is due, ought not to adjudge as much as is due to the Lord, and bar him from the Residue, but ought to adjudge against him for the Whole, and that his
his Entry was tortious if he had entered, and put him to a new De-
mand; Per Herbert Ch. J. Skin. 249. Hill. 1 & 2 jac. 2. C. B. in Cafe
of Titus v. Perkins.

5. 9 Geo. 1. cap 29. S. 1. Enacts, that where any Persons under the Age
of 21 Years, or Female Coverts, shall be intitled by Defect or Surrender to the
Use of a left Will, to be admitted Tenants of any Copyhold Tenements, such
Infant or Female Covert in their proper Persons, or such Female Covert by her
Attorney, or such Infant by his Guardian, then his Attorney (for which
Purposes they are intitled by Writing to appoint Attorneys) shall appear at
one of the three next Courts which shall be kept for such Manner, whereof
such Tenements shall be Parcel, and shall there tender themselves to be ad-
mitted Tenants, and in Default of such Appearance, and of Acceptance of
such Admittance, the Lord or his Steward, after three Courts holden and
Proclamations made, may nominate at any subsequent Court, any fit Person
to be Guardian or Attorney for such Infant or Female Covert for that Purpose
only, and by such Guardian or Attorney may admit such Infant or Female Co-
vert, and impose such Fine as might have been imposed, if such Infant had
been of full Age, or such Female Covert unmarried.

6. S. 2. The Fine set thereon may be demanded by the Bailiff, by a Note
signed by the Lord or his Steward, to be left with such Infant or Female Covert,
or with the Guardian of such Infant, or Husband of such Female Covert, or
with the Tenant of the Tenements to which they were admitted; and if the
Fine be not paid to the Lord or his Steward, within three Months after De-
mand, the Lord may enter upon such Copyhold Estate, and hold the same,
and receive the Rents, but without Liberty to sell any Timber till by such
Rents he be paid the Fine with Costs, although such Infant or Female Covert
happen to die before such Costs and Fines be raised; of all which Rents received
the Lord shall yearly on Demand render an Account, and pay the Surplus to
such Person as shall be intitled.

7. S. 3. As soon as such Fine and Costs shall be satisfied, or if after such
Seisure and Entry the Fine and Costs shall be tendered, then such Infant or
Female Covert or other Person intitled may enter and take Possession; and if
the Lord, after the Fine and Costs satisfied, or tender'd shall refuse to de-
liver Possession, he shall be liable to make Satisfaction for all Damages and
Costs.

8. S. 4. Where any Infant or Female Covert shall be admitted to any Copy-
hold Tenements, if the Guardian of such Infant, or Husband of such Female Co-
vert, shall pay the Lord the Fine and the Costs, then the Guardian or the
Husband, their Executors &c. may enter into, and hold the said Copyhold Tenens,
and receive the Rents till they be satisfied all the Money they
shall disburse on the Account aforesaid, notwithstanding the Death of such
Infant or Female Covert.

9. S. 6. If the Fine be imposed in any of the Cales before mentioned shall
not be warranted by the Cajlom of the Manor, such Infant or Female Covert
shall be at Liberty to controvert the Legality of such Fine, as they might have
done if this Act had not been made.

(C. c)
Copyhold.

(C. c) Remedy for Fines after the Lord's Death. For whom it lies.

1. THE Lord assailed a Fine upon Admittance of a Copyholder of Inheritance and died. Executors brought an Assumpsit, and held per 3 Justices, that it lies; but Holt Ch. J. contra, because it is a Duty arising out of an Inheritance, Custum, or Tenure; but by the other three in this Case the Fine is for, and does not depend on the Inheritance, but is as Fruit fallen. 3 Lev. 161. Trin. 1 W. & M. in C. B. Shuttleworth v. Garnet.

2. The Heir can't enter for a Fine in his Acestor's Time; but per Holt Ch. J. if it were forfeited and demanded he may. Show. 35. Trin. 1 W. & M. in Cafe of Shuttleworth v. Garret.

(D. c) Forfeiture. In what Cases And the Effect thereof.

Lord Coke says, that if a Copyholder be outlawed or excommunicated, upon Presentment the Lord shall have the Profits of the Lands. It is told in Lex Cauf. 210. that if a Copyholder be outlawed in a Personal Action, it is no Forfeiture of his Copyhold, but the King shall have the Profits; Quære of this; For then how can the Lord have his Services paid him? Quære, if a Copyholder forfeits any Thing in Utlawry, unless for a Capital Crime. Gilb. Treat. of Ten. 227.

1. WHERE a Copyholder is outlaw'd the King shall have the Profits of his Copyhold Lands, and the Lord has not any Remedy for his Rent. Arg. Le. 99. at the End of pl. 126. Mich. 30 Eliz.


3. All Forfeitures may be reduced into the Heads; either voluntary Acts done to the Prejudice of the Lord, or negligent or wilful Refusals to do and pay his Duties and Services to the Lord, which by the Laws and Custom of the Manor he ought to do and perform. Supplement to Co. Comp. Cop. 74. S. 9.

4. An Entry before Admittance is no Forfeiture, without a special Custum pleaded, but he Heir may make a Forfeiture for Non-payment of the Rent, as the Custum was there pleaded before Admittance. Calth. Reading 60. cites 30 H. 8. Dy. 41. 16. there.

5. If the Tenants have used to have Common of Pasture in their Lord's Woods, for Horse-Cattle, and they put in their Neate-Cattle, and destroy the Woods
Copyhold.

Woods, this is an Abuser; but it is but fineable, and no forfeiture of the Common, which they might have rightfully used, no more than if they have Common for a certain Number of Beasts in the Lord's Soil, and they will exceed the Number; this abuse by their Surcharging is only fineable, and no forfeiture. Calth. Read. 26.


7. By Forfeiture Copyhold is extinguished, and so determined. Arg. Skin. 8. Mich. 33 Car. 2 B. R.

8. The Case of a Copyholder was compared to the Case of a Tenant at Will, viz. that which would be a Determination of the Will at Common Law, is a Forfeiture of the Copyhold. 11 Mod. 94. pl. 3. Arg. Mich. 5 Ann. B. R. Anon.

9. Sir H. P. Copyholder in Fee of Lands held of the Manor of Petworth in the County of Suffix, which belonged to the Defendants in 1693, makes a Settlement of them on his Marriage with Jane Janet, in Trufl for himself for Life, then to Jane for Life, then to the first and every other Son of that Marriage in Tail Male successively &c. The Premises were afterwards surrendered to the Usu of the Settlement, which Surrender was accepted by the Defendant, Lord of the Manor, but no Admittance upon it, nor any Fine that appeared; Sir Henry had Issue his other Plaintiffs his eldest Son, and Jane died. The Bill charges, that the Defendants pretending that the Plaintiffs, by leasing a Meadow, Part of the Copyhold, without Licence from them, contrary to the Custom of the Manor, had forfeited the said Copyhold Meadow to them as Lords of the said Manor, who infitted upon the said Forfeiture, and brought an Ejectment against the Plaintiff, Sir Henry, to recover the Possession; the Bill therefore prayed to be relieved against the said Forfeiture upon Payment of Costs &c.

The Defendants by their Answer insist, that the Custom of the Manor was established by Decree of this Court 36 Eliz. yet the Plaintiff, Sir H. Peachy, 25 January 1714, had made a Leaf of this Copyhold Meadow to one Allen for 11 Years, 13 l. per Ann. without Licence from the Defendants, and they do insist upon this Leaf as a Positive and wilful Breach of the Custom, and also, that the Plaintiff had forfeited several other Copyhold Tenements by grubbing up Hedges, Topping, and Lopping Timber Trees, and digging Quarries &c.

The Plaintiffs, upon this, bring a Supplemental Bill, and charge, that the several Leaves refer'd to by the Answer were made by one Dec, then Steward to the Defendants &c. and were made without any Design to prejudice the Defendants, and as to the Presence of Wafe they charge, that about 25 Years ago the Defendants did fell several Timber Trees to several Copyholders, and among the rest some to the Plaintiff, with Liberty to carry them off in 15 Years, which was the same Timber, and no other; that as to Hedges grub'd up, they were such as grew between Copyhold Lands on both Sides, and not between Copyhold and Freehold.

The Answer to this Bill admitted Dec to be Steward to the Defendants, and put the other Matters in Issue.

Council for the Plaintiffs cited several Cases of Relief against Forfeitures in this Court, and particularly in the Cases of Copyhold, Cor v. Higford Tempore Harcourt C. Bill brought to be relieved against a Forfeiture of a Copyhold, in which Case Mr. Vernon cited several Cases for the Plaintiff, (sic) Thomas v. Porter, Chan. Cases 95, where Relief was decreed in Case of voluntary Waste (Sed Vide the Case whether}
Copyhold.

ther the Question was voluntary Wafte or not) Nash v. the Earl of Derby 20 Feb. 4 Ann. per Cowper C. Bill to be reliev'd against a Forfeiture of a Copyhold by selling of Timber, there the Question was, if the Timber was imploy'd in the Repairs of the Copyhold or not? And after an Ejection brought, and one Verdict for the Copyholder, and another Verdict for the Lord, the Copyholder was reliev'd in Equity upon Payment of the full Value of the Timber sold, and the Costs of Law, and in Equity, he was reliev'd to the Possession of the Copyhold.

Claymore v. Raven in Canc. a Quaker Copyholder refus'd to do Fealty; the Lord forfeited the Forfeiture, and the Quaker was reliev'd. In the principal Case of Cor. v. Digford, Harcourt C. dismis'd the Bill, but that was upon the special Circumstances, it appearing that there had been 30 Years Oblinity in the Tenant, and Refusal to repair, and do Homage, and that the Lord had made several Offers &c. if he would repair &c.

Whiffet v. Cage, per Coventry C. S. a Surrender made and presented in Court, but a Forfeiture inflied on, because the Surrender was not made to two Tenants of the Manor, the Plaintiff was relieved paying the Fine, and the Lord paid Costs. Shellby v. Calon per Coventry C. S. a Forfeiture inflied on for leasing without Licence, the Copyholder was reliev'd, and the Lord decreed to account for the Prizes, and restore the Possession. Lucas v. Pennington, the Cases of Cor. v. Brown, and Nash v. Fuller were cited, where an Entry for Non-payment of Rent by Copyholder was reliev'd against in this Court on Payment of the Rent.

Counsel for the Defendants argued, that at Law this is a Forfeiture, and that two Points were to be consider'd in the Case.

1st. If the Court can relieve at all in such a Case?

2dly. If it be reasonable to do it in the present Case?

This is different from the common Case of Forfeitures for Non-payment of Rent or Money, which are Matters depending on the Agreement of the Parties, and for which, if a Circumstance is shewn &c. a Compensation may be made. Here the Copyholder is by Custome but a Tenant at Will, and his Lease without Licence is a Determination of his Will, and consequently of his Estate, so as to relieve here is in Effect to relieve against a Custome, and totally alter the Nature of the Copyholder's Estate. The Case of Cor and Brown cited for the Plaintiff had special Circumstance, the Assignment of the Lease there (which makes the Forfeiture) was made for Payment of Debts, and that was the Reason the Court there reliev'd against the Forfeiture. The Case at Law likest to this is, where Tenant for Life makes a Fee-simple, or levies a Fine, the Reason of the Forfeiture is, for that the Tenant takes upon him to grant a larger Estate than his Interest will bear. The Case of Morgan v. Stibbo moore was no more, than whether the Lord should be at Liberty to let what Fine he pleas'd, or be restrained by the Court where the Fine was arbitrary, and the Lord was limited by the Court to two Years Value. As to the Case of Thomas v. Potter a Chan. Cases 95. there was some Difference about the Value of the Timber fell'd, but the Chancellor declar'd he would not relieve in Case of wilful Wafte, and refer'd the Cause to the Bishop, the Defendant, though he afterwards directed an Issue to try if the primary Intention of selling the Timber war to do Wafte, or as the Order was worded, to try whether the Wafte was wilful or not, and the Plaintiff was reliev'd upon the 2d Verdict for him. Cor v. Digford was of Permissive Wafte.

This Case is very strong against Relief upon the Circumstances of it; For the Plaintiff in 1694. made no less than 3 Leases without Licence, and it is in Proof he endeavour'd to make a Mutiny among the Tenants
nants of the Manor, by diffwading the Homage from presenting Persons who had ill'd Timber, which are very great Aggravations in the Cafe.

And as the Law is with the Defendants, and there are no Precedents in Equity of Relief in such Cafes, and if there were, these Aggravations would exempt this Cafe from those Rules, there ought to be no Relief here. It was also Urged by Mr. Mead for the Defendants, that as this Cafe was, the Plaintiff was not proper for Relief in Equity. That this Cafe did not come within any of the Rules touching Relief against Forfeitures in this Court. The most general Rule that he could find was laid down in Cor and Russell's Cafe 2 Vent. 352, that a Forfeiture should not bind where a Thing may be done afterwards, or a Compensation made for it; As where the Condition is to pay Money, or the like, and the Relief given in that Cafe was on the want of a Circumstance only; And as to the Cafes of Relief against Conditions of Re-entry for Non-payment of Rent, and of Mortgages Forfeited &c. they have gone upon this, that such Conditions are as Penalties against which this Court will relieve; but there are many Cafes where a Court of Equity will not give Relief against Forfeitures, as the Cafe of Berrie and Lord Falkland, per Somers C. and afterwards in Dom' Proc. where the Condition is precedent to the vell'g of the Estate, this Court will not relieve against the Breach thereof, tho' in many Cafes it will relieve against a Condition subsequent by which an Estate is to be divested, because that fails under the Rule of Compensation, and such Conditions are not favoured. So was the Cafe of Fry v. Porter 1 Chan. Cafes 138. 1 Mod. 300. per Bridgman C. S. affi'd with the Judges, where Relief was refused against the Breach of a Condition. It is a stronger Cafe here, because the Condition here is annex'd to the Estate by the Law, and not by Act of the Party, and if therefore Relief should be given in this Cafe, it would be to make a new Law; For by the Law a Copyholder is no more than a Tenant at Will, subject to the Cafions of the Manor, which if he breaks, his Estate is by Law Forfeited. It is true, (according to the Cafe of Ford and Houghton, Cro. 368. and Westminster's Cafe, 4 Co. 28. b.) that Chancery can alone compel the Lord to hold a Court for the Admission of a Copyholder; So this Court has reliev'd where a Lord and his Steward had by a Fraud got a Freeholder to be admitted, as by Copy of Court-Roll, as in the Cafe of Hammond v. Anoge, per Parker C. but in the Cafe of Smith and Wv. v. Dean and Chapter of St. Paul's, and Rugle, per Jefteries C. and reported in Parl. Cafes 67. A Bill was brought to compel the Lord of a Manor to receive a Petition in Nature of a Writ of Taffe to reverse a Recovery in the Court of the Manor, whereby an Estate Tail was barr'd under which the Plaintiff claim'd, the Bill was Dismiss'd, and the Dismissal affirm'd in Dom' Proc. There is no Cafe where a Copyholder has come for Relief against a Forfeiture but up-equitable Circumstances, and in this Cafe all the Plaintiff's Equity is, as he sets it out in his Original Bill, that the Leafes were made by Mistake &c. and in his supplemental Bill, that the Leafes were made by the Under-Steward of the Manor, and he offers to pay Coils at Law, and in Equity, to be reliev'd; Now as to the Pretence of Ignorance or Mistake, the Copyholder is bound to take Notice of the Tenure at all Events. As to the Cafe of Nash v. the Earl of Derby, there were equitable Circumstances, so in the Cafe of Eildmore v. Hallet, of the Quaker's refus'd to do Fealty, thereupon the Lord enter'd for the Forfeiture, probably there were some such Circumstances, for the Lord might be aware of his Perfwation, and might take an unjust Advantage, and Conditions annex'd to Copyholds seem in the Eye of the Law to be different from those annex'd to Freeholds, as in the Cafe
Copyhold.

Cafe in Hardres; That the King can’t take Advantage of the Forfeiture of a Copyhold Estate in Cafe of Treafon, because the King can’t be admitted as Tenant to any Lord.

As this Cafe is compos’d of many Ingredients of Forfeiture, among which are voluntary Wafts, and altering the Boundaries, those go to the Disinheritance of the Lord, and the Destruction of his Estate and Manor, especially when, as in this Cafe, they are repeated, and the Cazes where Relief has been given are generally of one single Act of Forfeiture, and that extenuated by equitable Circumstances, but besides all the rest is in Proof here that the Plaintiff, Sir Henry Peachy, has excited the Tenants at several Courts to break the Customs of the Manor &c. by declaring that they were Badges of Slavery, and that he was for Liberty, and the like. And he mentioned a Cafe cited by Attorney General, as decreed in the Dutchy Court, where they would not relieve against a Forfeiture for plowing up an ancient Meadow, and concluded that this Cafe did not come within the Reasons of Relief upon the foot of Compensation.

Reply by Cheshire Serjeant; He cited the Cafe in 1 Rolls Abr. 854. Piers v. Ashley and Dorne, reported in Owen, 621. I.e. 126. Husband seized in Right of his Wife for Life of the Wife, intestate another to the Feoffee, his Heirs and Assigns, ad folum Opus et Ufum of the Wife during her Life; it his there doubted if this be a Forfeiture, because of the laft Words, (during her Life,) which seems applicable to the whole Sentence precedent, Ut Res Magis valeat quam pererat, but he submitted supposing that to be a Forfeiture at Law, if this Court would not relieve against it, and put the Cafe of Tenant for Life levying a Fine for Conuance de droit come ceo &c. and declaring the Ufe of it by Deed precedent or subfleuent, to be such as Tenant for Life might lawfully make, if the Reverterion in that Cafe should enter for the Forfeiture, whether this Court would not relieve against it.

Mr. Talbot insisted in his Reply for the Plaintiff, that there were divers Inflances of Relief given her against the Break of a Condition by Copyholders, viz. Relief given in Cafe of Non-payment of a Fine, that is, Relief against the Break of a Condition in Law. In the Cafe of Cor v. Digfor, there was this Circumstance against the Plaintiff, that he came here for Relief after the Lord had been 9 Years in Possession under the Forfeiture, and though the Leafe by the Copyholder be a Diffellation to the Lord, yet it is so but at his Election, and the Fine for the Leafe is capable of being a celerated’d as the Lord may have a Recompence.

As to the Objection that the Leafe is a Determination of the Will of the Copyholder, and consequently of the Tenancy, it is possible when the Tenants were me’r Tenants at Will it might be so understood, but Time and judicial Determinations have changed the Nature of their Interell, and they have something very near, if not properly an Inheritance; and as to the Cafe of Tenant for Life making a Feoffment, it is hard to imagine that he can do it without intending to prejudice the Inheritance, which may therefore incapacitate him for Relief, but a Copyholder that looks upon himfelf as Owner of the Inheritance on such condition, cannot be supposed to have any such View in leating, especially when the Leafe takes Notice that the Lands are Copyhold, as in the present Cafe, and since the Leafe is only a Diffellation to the Lord at his own Election.

Resolutio Curiae; A Copyholder is considered at Law as a Tenant at Will to all Purposes, except the Continuance of his Estate, but it is true, there have been many favourable Resolutions for the Benefit of the Copyholder, by which he has got an establi’d Estate, and the Lord
Copyhold.

Lord cannot determine his Will otherwise than as the Custom allows; formerly the Tenant was to perform all his Services while he continued Tenant, which was at the Lord's Will, but the Will cannot now be determined but where the Custom doth allow it to be, and in the Case of Tenant's making a greater Estate than he lawfully may, that doth determine his Will; for it is an Operation upon the Right of the Lord, and the Cases of Tenant for Life lasting pur ater vie, or Tenant for a great Number of Years lasting for Life, have been held Forfeitures, not from any Notion of their intending Damage to the Inheritance, but as it is a quitting or disclaiming their ancient Right which is thereby determined, and this is the Case here. Now the Question is, What there is to relieve upon in Equity in this Case? To say this is a hard Law is to repeal it here; it has been admitted on the Part of the Plaintiffs, that in the Case of Waite, where the Place waited and treble Damages are recovered, there can be no Relief, tho' the treble Damages are more than a sufficient Recompence to the Reversioner, but that they say is by a Statute Law; it is true, but there is no Difference in a Common Law Case, if there were, it would confound the Law; It is true, in Cases where the Condition annex'd is as a Security to have a Thing done, this Court can relieve in Case of Non-performance, because the Thing may be done tho' not perhaps at the same Day or Place &c., the Party for whose Benefit the Thing is to be done has all that he in Confidence can ask, but this Case cannot come under the Notion of a Compensation, the Lord has not hurt, so cannot be made amends, but it stands on the foot of the Nature of the Tenants Estate. This Court has relieved against Forfeitures for Non-payment of a Fine, or of Rent by the Copyholder, the Forfeiture there is consider'd only as a Security to the Lord for his Fine, or his Rent, and the Thing is done in Effect and made up as advantageously for the Party, tho' it varies in Circumstance of Time, Place, or the like; nor can the Law in this Case of Forfeitures be called a harsh Law for the Copyholders, because it has given them in other Things so many Advantages &c. This Case is stronger than any that have been mention'd, it makes nothing for the Plaintiff that the Lords Stewards was a Witness to the Lease, for it is not pretended that he was so with the Duke of Somerfet's Notice, and the Plaintiff indeed put Confidence in him, but not the Defendants, and it would be strange if his Acts should be construed to prejudice those who did not trust him; here have been no less than 3 Leases made at different Times, and it won't avail that it is taken Notice of in the Leases, that the Lands are Copyhold, so long as the Ground of the Forfeiture is the Tenant's granting a larger Estate than he can grant without Licence from the Lord, and it is certain that a Repetition of these Acts would in Time destroy the Manor, and the Plaintiff's Discourses (which are proved) excusing the Tenants to get rid as it were of their safe Tenure, is a Circumstance against him. I see no equitable Circumstance in this Case to vary it from what it would be at Law; it was proper enough for the Plaintiff to come here to discover what were the Forfeitures implied on, that he might be prepared at a Trial to defend against them, but now that Discovery is had it is merely at Law upon the Question, Forfeiture or no Forfeiture? I cannot relieve the Plaintiffs.

H h [E. c]
If a Copyholder comes into Court, and says he renounces his Copy, this is not any Forfeiture. 8. 37 El. B. to held.

(F. c) Forfeiture by Misfeasance.

2. Outlawry is no Determination or Forfeiture of Copyhold Estates. Het. 127. cites it to have been so adjudged 43 El.

3. If a Copyholder in Presence of the Court speaks irreverent Words of the Lord, as that the Lord exalieth and extorteth unreasonable Fines, and undue Services, this is finable only, but no forseiture; and if he says in Court, that he will devise a Means no longer to be the Lord's Copyholder, this is neither Cause of Fine nor Forfeiture; for perhaps the Means that he intended was lawful, viz. by palling away his Copyhold; Et Ubi fenitus Verborum est multiplex, Verba semper sunt accipienda in meliori sensu. Co. Comp. Comp. 64. S. 57.

Calh. Readings 67. S. P.

4. If a Steward files a Court Roll to a Copyholder to prove that his Land is holden by Copy, and the Copyholder says he is a Freeholder, and makes a Deed pretending thereby to procure his Land to be Freehold, and tears in pieces the Court Roll, this is a Forfeiture ipso facto. Co. Comp. Comp. 64. S. 57.

5. A Forfeiture is not induced by any Collateral thing, but by some Act that is a Disinheritance to the Lord and therefore an Act that makes a Forfeiture ought to be against the Custom; for his Estate is fix'd by the Custom as long as he does the Services and observes the Customs. Het. 7. Pat. 3 Car. Arg. in Case of Paton v. Manne.

6. The Forfeiture of a Copyhold is always by something done to the Copyhold Land itself, to a Copyholder including Part, where the Lord by Custom claims a Fold-Course over the Lands of his Copyholders, is no Forfeiture, because this is Fold-Course of the Lord's which is no Copyhold, and 'tis better for the Copyhold, and makes the Land better, and more beneficial for the Lord; and this Fold-Course is a Thing that Commences by Agreement, and it is but a Covenant and not a Common Right. And Forfeitures (which are Odious) shall be taken strictly for the Lord. Het. 102. Pat. 5 Car. Paton v. Uther.

7. Defacing of Landmarks is a Forfeiture. Gilb. Treat. of Ten. 228.
Copyhold.

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[G. c.] Forfeiture by Misfeasance; As Making Leavees.

1. If a Copyholder leaves his Copyhold for 4 Years by Parol, to

commence a Day to come, this is a Forfeiture, though it be

not in Possession, nor by Indenture, nor had been a Dilletent if such

Estate had been vested by a Tenant at Will, for he hath taken

upon himself to make a greater Estate than his Copyhold will

support. In Ch. 38, 39 Eliz. B. R. between Left and Harding, per

Coote, & Ch. 40, 41 Eliz. adjudged.

This in Roll (D.) is pl. 7 in Pol. 357.

For he hath no Authority by Law to make such Estate; And that this is a Leave to begin at a

future Day, and the Leave hath not entered, yet it is a Forfeiture presently; for it is a good Leave be-

tween the Parties — Mo. 302. pl. 568. S. C. and S. P. agreed by all that it was a Forfeiture,

whether the Leave had entered or not because it was an illegal Contract made to the Difhition of the

Lord. — Supplement to Co. Comp. 74. S. 9. cites S. C. and S. P. accordingly, rhor the Leave

is good as between the Parties. — Roll Rep. 75. Mich. 12. Jac. Coke Ch. 9. cites it adjudged to

C. A. in Willows’s Café, that a Fine of 1. imposed upon a Copyholder for admitting him, the Copy-

hold being but of the Value of 50l a Year, was very outrageous, and consequently void. — Gibb.

Treat. of Ten. 319. cites S. C. that it is a Forfeiture, because of the unlawful Contract made to

the Lord’s Difhition.

2. If a Copyholder leaves his Copyhold to another, to have and to hold to him for one Year, and so from Year to Year during the

Life of the Lord, referring to the Lord in every Year the 25th Day

of March, this is a Forfeiture; for this is a Leave for two Years at

least, referring one Day; so that a greater Estate than for one

Year passes in Interest, and the Referring a Day in every Year is

but a Shirt to avoid the Forfeiture. Rich. 11 Jac. 2. R. between

Luttrell and Wibberie.

—and ibid. Fleming Ch. J. said, that if he had referred a Month at the End of every Year, it

would have been all one as referring a Day, and a Forfeiture clearly. — Cro. 368. pl. 5.


3. If a Copyholder that may leave for three Years by the Custon, This in

leaves for three Years, and so from three Years to three Years, till nine

Roll (D.) is pl. 7.

Years, this is a Forfeiture, for this is a Leave for six Years at the


4. If a Copyholder for Life agrees to make three severall Leavees by

This in Roll

Indenture, one to commence after the other, there being two Days

— Co. C.

between the End of the First and the Commencement of the second, 233 234 pl.

and so to the second and third, and after he makes them 13. S. C.

accordingly, and seals them at one Time, this is a Forfeiture, for

adjudged.

— Jo. 249. pl. 2. S. C. adjudged.

this is an apparent Fraud; and a greater Estate than for one

Year passes presently. S. 7 Car. 2. R. between Matthews and — Leafe for a

Wheatton, adjudged upon a special Perdite, I myself being de Con-

duite Mercantil, Jurateur Hilt. 4 Car. Lut. 496.

Annum during the Life of the Copyholder, excepting one Day at the End of every Year, for the Copyholder to enter, and this only to avoid a Forfeiture, this is a Forfeiture. 1. Buff. 215. Trin. 13 Jac. Luttrell v. Wolton.

— Fleming. Ch. J. said, that if he had referred a Month at the End of every Year, it would have been all one as referring a Day, and a Forfeiture clearly. Bufs. 215. S. C. — Cro. J. 358. pl. 5. S. C. adjudged. — Gibb. Treat. of Ten. 218. cites S. C. and says it was adjudged, that the sd. Leave was a Forfeiture; for it being Warranted by Custome, and so being out of the Custome, it is, as every other

Leave for Years, a Forfeiture; for tho’ it be not to commence till after the first Leafy ended, yet the

Land is charged with a double Interest, one in Present, the other in Future, which is against the

Custom, and so a Forfeiture. So ly. It was adjudged this Leave was void against the Lord who had the

Land.
Copyhold.

Land, by the Surrender, and when the Ld. enters by Force of the Surrender, he is in by Title paramount the Leafe: but it seems the first Leafe shall enjoy his Leafe, or else it were in the Power of the Lord to deny his own Grant: There is nothing said of this, but the Case in Rolle 14. That Leaues were executed at one and the same Time, and then the Leafe, being Partecips Common, may perhaps forfeit; and as the Case was ordert by the reft, the Leafe was made to him to commence in Reversion, and so he is as much Party to the Wrong as in the other Way; and so it seems the Le. may enter preferntly.—See (T. c.) pl. 5. S. C. and the Notes there.

5. A Copyholder makes a Leafe for Years by Licence of the Lord, the Leefe may allign it over, or make an under Leafe, without any new Licence, for the Interest of the Lord was discharged by the first Licence. P. 12 J. C. between Johnson and Smart, per Citiramm.

6. A Copyholder makes a Leafe either for Life or Years of his Copyhold Lands, which is not warranted by the Custom of the Manor; Now altho' such Leafe shall be a good Leafe betwixt the Copyholder and his Leefe, and he shall not avoid his own Leafe, yet as unto the Ld. it is a Forfeiture of the Copyhold and of his ESTATE, and the Ld. shall take Advantage of such Forfeiture, and may enter upon the Lands leflet.

7. A Leafe for Years of Copyhold Lands by Indenture, or by Partol, is a Forfeiture unlefs there be an express Cutoff to warrant it, and that Custom must be Time out of Mind. Cro. E. 351. pl. 3. Mich. 56 and 57 Eliz. B. R. Jackman v. Hoddesdon.

8. Copyholder made a Leafe for 3 Lives, and Livery, and the Survivor of the 3 continued in Possifion 40 Years, but because no Livery appeared on the Deed to have been made, it was no Forfeiture of which the King who was the Lord could take any Advantage. Godb. 269. pl. 374. Mich. 5 Jac.

9. If a Copyholder makes a Leafe for 1 Year, according to the Custom, and Covenants, that after that Year ended be shall have another Year, and so in this manner De Anno in Annum during the Space of 10 Years, this no such Leafe as will make a Forfeiture of his Copyhold Estate, for that he has no lawful Leafe here but for 1 Year only, and it is only by way of Covenant, agreed per tert. Cur. Bullit. 190. Patch. 10 Jac.

Hamlen v. Hamlen.

Forfeiture. Ibid. — Cro. J. 321. pl. 6. Lady v. Montague's Cafe S. C. and Same Points accordingly.—Supplement to Co. Comp. Cop. 74. 89. cites S. C.—Gilb. Treat. of Ten. 219. cites S. C. but says QUARTE, and See the Book; For the Words Covenant and Grant make a Leafe &c, but in another Case it was held, that these Words by Construction might make a Leafe where the Lands might be let; but otherwise where the Lands could not be let, which Diffinition seems very reasonable; for the Words themselves do not import a Leafe, and would be a very injurious Construction to make them a Leafe, and for a Forfeiture, when they only import of themselves a Covenant. — A Leafe, that will make a Copyholder forfeit his estate, ought to have a certain Beginning and End, or else it is a void Leafe, and can convoy at most but an Estate at Will, which is no Forfeiture. Gilb. Treat. of Ten. 218. cites S. C. and S. P. per tert. Cur.

Supplement to Co. Comp. Cop. 74. 89. cites S. C. but if he had been the Copyholder in Fee, it had been a Forfeiture of his Estate to have made such an absolute Leafe, because he had done more than he was licent i to do by the Law; And so it was adjudged in Hall and Arrowmith's Cafe, which see in Papham's Rep. 125.

11. Infant
Copyhold.

11. Infant Copyholder in Fee leaves for Years without Licence, rendering a Rent; and at full Age he accepts the Rent, and after outs his Lease, who brought an Ejectment, and agreed by the Court. 1. That a copy of a Sa

Leafe for Years by a Copyholder, although that it be a Forfeiture, yet -— Jo. 1577. it is no Diſſiſt to the Lord. 2. That the Leafe is not void but voidable, and may be aﬃrmed by Acceptance and Judgment for the Leﬄee this Judge-

ment aﬃrmed by all the Judges and Barons in the Exchequer Chamber. — Lat. 159. S. C. agreed that it was no Diſſiſt to the Lord, and adjudged that the Leafe was not void, but the Leﬄee had Judgment against the Infant.

If the Copyholder make a Leafe it is a Forfeiture, yet it is no Diſſiſt to the Lord, which is plain from the Cases that say such a Leafe is good against every Body but the Lord, for it could not be a Leafe at all if it were a Diſſiſt; It is a Forfeiture, because the Copyholder has broken the Custom of the Manor, by bringing in a Tenant without any Admittance, but it is no Diſſiſt in Favour of the Lord since the Copyholder hath such Effeſt as may last much longer than the Leafe, and not a bare Leafe at Will. Gilb. Treat. of Ten. 247. 218.

12. A. Copyholder for Life being indebted 100l. and one P. S. being bound with him for the Debt, A. executed a Deed to P. by which he did covenant, grant, and agree with P. &c. that he should have and enjoy his Copyhold Lands for 7 Years, and so from 7 to 7 Years, for and during 49 Years, if A. should so long live, but to be void, if the said 100l. was paid by A. &c. It was infurled, that this was not a Leafe so as to entitle the Lord to a Forfeiture; the Word (Covenant) or the Words (to have, hold, and enjoy) in Cafe of Freehold will make a Leafe, but if conftruinf it to be a Leafe will work a Wrong, then it is only a Covenant, and no Interest vells, therefore this Being in the Cafe of a Copyhold, shall never be conftruinf to be a Leafe, because it would work a Wrong both to the Leﬄor and Leﬄee, for the one would forfeit the Effeſt, and the other would lose his Security; The Court inclin’d that it was a good Leafe, and consequently a Forfeiture of the Copyhold, that the Meaning of the Parties must make Conſtruction here, and that seems very strong that it is a good Leafe; but they gave no Judgment. 2 Mod. 79. Palef. 28. Car. 2. C.B. Richards v. Seely.

(H. c) Forfeiture. Making Leaves exceeding the Licence.

1. L ORD grants a Licence to his Copyholder to grant a Lease for The Justices 20 Years from Michaelmas next, and the Copyholder makes a Deed, that Leafe to C. and afterwards (but before Michaelmas) makes another Leafe to B. for 21 Years each by Indenture, the Justices doubting, if making void in Leafe the second Leafe be a Forfeiture, but Anderfon Ch. J. thought it a Forfeiture. Mo. 184. pl. 329. Mich. 26 Eliz. Anon.

Lord grants a Licence to his Copyholder to grant a Lease for The Justices 20 Years from Michaelmas next, and the Copyholder makes a Deed, that Leafe to C. and afterwards (but before Michaelmas) makes another Leafe to B. for 21 Years each by Indenture, the Justices doubted, if making void in Leffe the second Leafe be a Forfeiture, but Anderson Ch. J. thought it a Forfeiture. Treat. of Ten. 239.
2. Lord licences his Tenant to make Leases for 21 Years, Tenant makes 2 Leases to two several Persons for the Term, if the Lord may affirm the 2d Lease against the Leif for a Doubt. Moore 184. pl. 329. Mich. 26 Eliz. Anon.

This proves that the Heir is in by Decree, and not by his Admittance; he may have no Title therefor. Arg. 5 Lev. 527. in Case of Glover v. Cope.—*Poph. 105. S. C. reports this Point just Vice Verba, viz. that a Lease so made by Copyholder in Fee absolutely where the Licence was limited, had been a Forfeit, because he did more than he was licensed to do; but a Lease so made by a Copyholder for Life makes no Forfeit, and they agree, that such a Licence cannot be made void by Condition subsequent to what was once well made, but there may be a Condition precedent united to it, because in such Case it is no Licence till the Condition is performed, but the Licence before mentioned is not a conditional Licence, but a Licence with a Limitation, and therefore had not been of Force if the Limitation which the Law makes in this Case had not been, and the Limitation in Law is preferable to a Licence in Deed, where they work to one and the same End, and are not different. Hill v. Arrowmith, S. C.—If Copyholder for Life both Licence to let for 5 Years if he so long lives, and he leaves for 3 Years absolutely, it is no Forfeit of his Estate; but otherwise in Case of a Copyholder in Fee. Poph. 105 Hill, 38 Eliz. Hill v. Arrowmith.—Gibb. Treat. of Ten. 280 cites S. C. & S. P. accordingly, but says it is otherwise had the Copyholder had a Fee and the Limitation had been during the Life of a Stranger. The Words (if he lives so long) are but to shew how long the Lease is to continue, which is no more than what the Law appoints, and so it is good enough, and they are not Words of Surpassage and no more than what the Words say, and if they had been inserted in the Lease it would have been in vain; had it been in the Case of a Copyholder in Fee it had not been warranted by the Licence, for then the Intent would be to give him Licence, but not to hurt the Heir, and without these Words in the Lease the Heir should be bound, and the Lease good; but it is otherwise of a Copyholder for Life, for the Law without these Words determines the Lease by his Death. Cro. E. 461. 462. pl. 8. S. C.

† S. P. But if it had been with a Limitation, if 7 S. had lived so long, that perhaps had been material. Cro. J. 457. in Case of Worledge v. Benbury.

[I. c.] Forfeiture by making a Grant &c. as at Common Law.

This in Roll 1. If a Copyholder bargains and sells the Copyhold to another in Fee, and after the Deed is not enrolled, yet this is a Forfeiture, for it would have determined a Lease at Will, being made by a Leifee at Will. Contra B. 39 39 Eliz. B. R.

This in Roll 2. So if a Copyholder makes a Deed of Feoffment with a Letter of Attorney to make Livery, though Livery be not made accordingly, yet this is a Forfeiture.
Copyhold.

by the Delivery of the Deed, and therefore it is a Forfeiture.—Gibb. Treat. of Ten. 320; cites S. C.

3. But otherwise it seems it is if it be without a Letter of Attorn. This in Roll ney, for it rests in him at all Times to perfect it, and if his Will is D) is not perferred till it is done. Mitch. 38, 39 El. B. K. Co. Lit. 59, pl. 12;—
as it seems it is to be intended.

3 Le. 109. —Gibb. Treat. of Ten. 320; cites S. C. It was adjourned in the Exchequer, that where the King was Lord of a Manor, and a Copyholder within the said Manor made a Lease for 3 Lives, and made Livery, and afterwards the Survivor of the 3 continued in Possession 40 Years; And in that Case, because that no Livery did appear to be made upon the Endowement of the Deed; (al-
tho, in Truth there was Livery made) that the same was no Forfeiture of which the King should take any Advantage. Godd. 299. pl. 574. Mich. 5 Jac. Anon.

4. Entry en le Poit against an Abbot, who said that his Predecessor leas'd the Tenements to the Demandant, Habendum at Will, by Copy, who enfoiff'd the Demandant, by which the Abbot enter'd for Alienation to the Disinherihtance of his House, and admitted for a good Bar, by the Demandant said, that his Grandfather was feiled in Fee, subique hoc that the Predecessor leased Prout &c. Br. Entre en le Per pl. 33. cites 11 H. 4. 83.

5. A Surrender by Tenant for Life to the Use of another in Fee, is not any Forfeiture, for it passes by Surrender to the Lord, and not by Li-


Cop. 76. S. 10 cites 15 C, but alters it, that besides the Surrender he made Livery of the Land, and that it is no Forfeiture for the Reason above.—Such Surrender in Fee is no Forfeiture, be-
lock v. Dibley, that it is no Forfeiture ; For it may be seen by the Court Rolls who is Tenant, and to the Stranger is at no Loss to fee.

6. Tenant by Copy cannot alien his Land by Deed, for then the Lord may enter as into a Thing forfeited to him. Litt. S. 74. But when a Man has but a Right to a Copyhold, he may release it by Deed or Copy to one that is admitted Tenant de fide. Co. Litt. 59 a.

7. The making of a Deed alone, unless some Thing pafs thereby is no Forfeiture ; As if he make a Charter of Covenant, or a Deed of Demise for Life, and makes no Livery, this is no Forfeiture, because nothing passes, and therefore no Alienation; But otherwise 'tis of a Lease for Years. Co. Litt. 59 a.

8. If a Copyholder for Life surrenders in Fee this is no Forfeiture, be-
cause it did not pass by Livery. Co. Comp. Co. 64. S. 57.

9. If a Copyholder for Life suffers a Recovery by Plaint in the Lord's A. Tenant Court as Copyhold of the Inheritance, this is a Forfeiture ipso facto for Copyhold, Remainder to B. in Fee. 27 Car. 2. C. B. in Cafe of Kren v. Kirkby.—Car. 237 Bird v. Kirkby, S. C. & S. P. held accordingly per tot. Cur.—Free. Rep. 192. pl. 195. Kirkby's, alias Kirk's Case S. C. says it was conceived, that the suffering a Recovery in Fee was a Forfeiture of the Estate for Life; but that the Lord should hold it during the Life of him that committed the Forfeiture. —Med 199. pl. 51. Bird v. Kirk S. C. & S. P. held accordingly; For the Prehold not being concern'd, and it being in a Court Baron where there is no Elispe, and the Lord who is to take the Advantage of it, if it be a For-
feiture, being Party to it, it is not to be reeledmed to the Forfeiture of a Free Tenant, and that Cus-
tomary Estates have not such accidental Qualities as Estates at Common Law have, unless by special Cusom. —Gibb. Treat. of Ten. 220; cites S. C. but says it was otherwise adjudged in the Case of Bird v. Keck Ido Quare.

10. If
Copyhold.

10. If a Copyholder makes a Feoffment of all his Lands in Dale, and makes Livery in Charter Lands; no Part of his Copyhold Land is thereby forfeited; but if Livery be made in any Part of the Copyhold Land, all his Copyhold Lands are forfeited. Co. Comp. Cap. 65. S. 58.

11. If a Copyholder by Deed of Bargain and Sale involv'd according to the Statute, doth bargain and sell all his Land in Dale, having both Copyhold and Freehold, his Copyhold is not thereby forfeited; for the Law will continue this to extend to his Freehold only, rather than by any over large Construction make a Forfeiture in this Kind. Co. Comp. Cap. 65. S. 58.

12. If a Copyholder by Deed involv'd bargains or sells all his Copyhold Lands in Dale, or all his Lands in Dale generally, having no Freehold Lands, this is a Forfeiture. Co. Comp. Cap. 65. S. 58.

13. If a Copyholder makes a Bargain and Sale of his Copyhold, and it is not involv'd according to the Statute, this is no Forfeiture, no more than a Feoffment without Livery, because nothing passes. Co. Comp. Cap. 64. S. 58.

14. If a Man grants a Farm by Name, and all his Lands &c. usually held occupied thereon, and it happens that some of the Lands are Copyhold, this will not be a Forfeiture; per Cowper. Ch. G. Equ. R. 14. Hill. 7 Ann. in Cafe of Oxwith v. Plummer.


This in Roll 1. If a Copyholder commits Waste against the Custom of the Manor, this is a Forfeiture. Co. 4. 27. Clifton's Cafe, admitted.

(D) is pl. 15 in Pol. 568. —— If a Copyholder commits Waste voluntary or permittive, this is a Forfeiture ipso facto. Co. Comp. Cap. 64. S. 57. —— Voluntary: As if he pulls down any ancient built House, or if he builds any new House, and then pulls it down again; or if he plows Meadow, so that thereby the Ground is made worse, or the Trees, or pulls the Lopping; or if he cuts down any Fruit-Trees for Fuel, having other Wood sufficient; these and the like voluntary Wastes are Forfeitures ipso facto. Co. Comp. Cap. 64. S. 57.

This in Roll 2. If the Copyholder suffers the House to decay, and be wasted, this is a Forfeiture. Tr. 39 El. B. R. between Raffell and Turner, Co. E. 596, admitted. Co. Lit. 63. pl. 3. S. C.

but the Point was for burning an Out-house; Adjudge'd a Forfeiture. —— Suffering the House to be ruinous is a Forfeiture, admitted per Cor. 1 Salk. 186. pl. 5. Trin. 10 W. 5. C. B. Eastcourt v. Weeks.

The Defendant in Egothorne Plaine pleaded, that the Lord of the Manor did enter into the Land of a Copyholder by reason of Forfeiture for Waste committed, by suffering the Houses to be uncovered, by which the Timber is become rotten, and did not agree in facts that the Custom of the Manor was, that such Waste is a Forfeiture; for it was said, that although other Waste by the Common Law is a Forfeiture, yet this permittive Waste is not; fed non allocatur; for all Waste done by a Copyholder is forfeitable, Owe. 17, 18. Trin. 56 Eliz. B. R. Downingham's Cae. —— Permittive: As if he suffers his House to decay or fall to the Ground for want of necessary Reparation; or he suffers his Meadow, for want of mending his Banks, to be furrowed, so that it becomes ruify, or worth nothing; or his arable Ground so to be furrowed, that it becomes unprofitable; these, and the like permittive Wastes, are Forfeitures ipso facto. Co. Comp. Cap. 64. S. 57.

This in Roll 3. If a Stranger commits Waste upon the Copyhold, without the Affent of the Copyholder himself, this is not any Forfeiture of the Estate of the Copyholder. Co. 4. 27. Clifton's Cafe agreed.

Trice, or if another who occupies by Sufferance of Copyholder cuts them, this is a Forfeiture of the Copyhold.
Copyhold.

Copyhold. Mo. 39 pl. 149. Paltch. 3 Eliz. Anon. — Dal. 39 pl. 12. S.C. in rotonde Verbis. — Gilb. Treat. of Ten. 221. lays it comes no Forfeiture, because it is not the Copyholder's Act; and says, that Lord Coke in numbering permissive Waife does not reckon the Waife done by a Stranger: And that it is so resolv'd in Clifton's Calif, but that if the Husband cemmits Waife in the Lands of the Wife, it is a Forfeiture and lays, that it seems every Forfeiture ought to be the willful Act of the Copyholder, so as it may amount to a Determination of his Will.

4. If a Copyholder cuts down great Trees, (solicet, Elmis,) to this in Roll repair his Copyhold House, which is in Decay, and employs them accordingly, this is not a Forfeiture, because the Law allows it to him, without any Custom to warrant it. B. 38, 39 Eliz. B. R. holder cuts between East and Harding, per Curtiam agreed and adjudged, down Trees without a special Custom for it, it is a Forfeiture by the Common Law: Per Gandy and Popham, because it is to the Lord's Dishonesty; but per Popham, if it be found that he did it for Reparation of the House, whereby it is made better, there peradventure it is otherwise. Cro. E. 292. pl. 5. Hill. 35 Eliz. B. R. the S. C. —— Ibid. 499 pl. 19. S. C. the Court to this Point were not all agreed, whether it was a Forfeiture or not, in regard it was found that he cut them for Reparations, and that they were necessary for that Purpose. —— Mo. 592 pl. 508. S. C. and the Justices agreed, that the cutting the Trees, if not employ'd upon Reparation, is a Forfeiture, no Custom being the one way or the other.

5. So if a Copyholder cuts down two great Trees (solicet, Elmis,) this in Roll repair his Copyhold House, which is in Decay, and employs them accordingly, and leaves the other ready to be employed, Cro. E. 499, though he had cut down more than would serve his Turn for the present, yet this is not a Forfeiture, for a Man cannot precisely know what will be sufficient. B. 38, 39 Eliz. B. R. between East and Harding, per Curtiam. Elt. 40 & 41 Elt. adjudged.

393. pl. 508. says the Court took it, that the making Reparations with it, though it was five Years after the Cutting, and after the Entry for the Forfeiture, and the Action brought in a Dispenation with the Forfeiture, because Timber ought to be felled soon before it is employed. —— Om. 63. S. C. but S. P. does not appear. —— Gilb. Treat. of Ten. 221. cites S. C.

6. [But] if a Copyholder cuts Trees to repair his House, and after this in Roll does not employ them accordingly, but fells them, after the Cutting, to be purfified and rotten, this is a Forfeiture. B. 38 & 39 Mo. 392 pl. 508. the first Resolution in S. C.

7. If there be no Custom to the contrary, Waife, either permiffive or it is now voluntary, of a Copyholder, is a Forfeiture of his Copyhold. Co. Litt. 63. a.


8. It was said by Hobart, that a Copyholder may hedge and inclose, Gibb. Treat. but not where it was never enclosed before, and agreed by him and War- burton, that a Copyholder may dig for Marle without any Danger of Forfeiture, but he ought to lay the said Marle upon the same Copyhold, says it seems Land, and not upon other Land. Winch. 8. Paltch. 19 Jac. in Paltone’s Cafe. C

K k 9. A
Copyhold.

9. A Copyholder suffered a House to fall, and repaired it; yet held to be a Forfeiture, and it is not like to Waste, at Common Law, for there if it be repaired before the Jury hath View, it is well enough; Skin. 211. in Pool and Archer's Cafe, cites Lat. 277. & Palm. 417.

Mich. 2 Car. Cornwallis v. Horwood, or Hammond. — Palm. 417. Patch. 1 Car. B. R the S. C but I do not observe S. P.

10. Pulling down a ruinous House is a Forfeiture, unless there is a Custom to the contrary, because Waste lies not against a Copyholder, and yet the Lord in favour may annexe such a Copyholder if he will. Arg. Het. 6. Patch. 3 Car. B. Gibb. Treat. of Ten. 221. cites S. C. accordingly.


Gibb. Treat. of Ten. 221. 

cites S. C. 12. Converting part of the Land into Pishbarb by a Copyholder is a Forfeiture; Per Huton J. and it was not denied. Litt. R. 268. Patch. 5 Car. C. B.

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This in Roll (D.) v. pl. 6. in fol. 507. —

Gibb. Treat. 1. I f a Copyholder erects a new House upon a Copyhold without Licence, this is no Forfeiture, for this is for the Improvement of the Tenement, though he alters the Nature of the Land by it; and this is not Waste in the letter for Years. Patch. 38 Eliz. B. R. between Cecil and Cave. then it seems.

that this House must be subject to all the Customs of Copyhold Land; and therefore if he pulls it down again it is a Forfeiture. — Litt. Rep. 266. Arg. cites 8 Jac. B. R. Brooke v. Beer, where a Copyholder built a new House upon Part of the Land, and it was adjudg'd a Forfeiture; for though the Land is better, yet it is in another Kind, and cites 22 H. 6. that if Leafe alters his House, and makes it bigger, and takes Timber for it, it is Waste; but it wasresolver'd there, that if he better the Land it is no Forfeiture or Waste. Hutt. 105. Arg. says that it was adjudg'd in Brook's Cafe at the first coming of Popham to be Chief J. that building a new House is a Forfeiture, because it alters the Nature of the Thing, and puts the Lord to more Charges.

So where a Tenant for Life built a new House where none was before, and without laying 4 Acres of Freehold Land to it, and so within the Statute of Cottages, and after his Death Reservesman pulled it down, this is a Forfeiture. Bulk. 50. Mich. 2 Jac. adjudg'd. Brock v. Berne. — If a Copyholder builds a House, but it is not covered, it is no Forfeiture to pull it down, for till it is covered it is not a House; per Fenner J. Bulk. 52. S. P. by Popham Ch. J. Poph. 14.

2. A Woman Copyholder built a new House upon the Land, and it was agreed to be a Forfeiture. 4 Le. 241. pl. 393. in Ward's Cafe cites Hill. 8 Jac. Anon.

Het. 5. S. C.

3. A Copyholder may ledge and inclose, but not where it was never ment. but no Judge- inclosed before; Winch. 8. Patch. 19 Jac. cites it as laid by Hobar in

Palton's Cafe.

Per Dode-


5. 15-
Copyhold.

5. Inclusion of Land with Gaps in which the Lord has a Fold-Courte. Hel. 5. Pa-
for 500 Sheep is not a Forfeiture; for it is a Thing collateral to the Land, and a Forfeiture of a Copyhold is always by some Thing done to the Land. The Copyhold Land itself, and this Fold-Courte is a Thing which com-
ments by Agreement, and is but a Covenant, and not a Common Right, and Forfeitures are odious in the Law, and shall be taken stri-
ly, and all the Court were of Opinion, that this is no Forfeiture. Hutt. Land was
bettered by this Inclu-
sure, unless it be expressly shewn to the contrary; Sed adfornatur.—Litt. Rep. 264. S. C. reolv-
ed.—Gilb. Treat. of Ten. 227. 228. cites S. C. that because there was a Custom to Fine for such Inclusion it is no Forfeiture; but if there had been no Custom to Fine it seems it is a Forfeiture, be-
cause there is no other Remedy.

(M. c) Forfeiture. By Crimes. Conviction, At-
tainder &c.

1. If a Copyholder be Outlawed or Excommunicatet; that the Lord
may have the Profits of his Copyhold Land, a Prefentment is
necessary. Co. Comp. Cop. 64. S. 58.

2. The Custom of a Manor was, that if a Copyholder commits Felony
and it is not felony, then the Tenant should forfeit his Copyhold
by the Lord. The Custom was made against A. but afterwards at the
Copyholder, A was acquitted; the Lord forfeited the Copyhold; it was adjudged by
no good Custom, because in Judgment of Law, before Attainder it"S. C. accord-
Packington v. Hutt.

3. Another Point was, whether the special Verdict, agreeing with the Giving v
Prefentment of the Homage, that A. had committed Felony, did intitle
the Lord to the Copyhold notwithstanding his acquittal, Quere; for it
seems to be it was not resolved. Godd. 267. pl. 370. Hill 6 Jac. C. B. Pagington S. C and as
alias Pagington v. Hutt.

judged clearly a good Custom, viz. that if any Copyholder commits Felony, he shall forfeit to the
Lord his Copyhold, and that the Lord upon Prefentment of this by the Homage may enter and
seize the same, but whether the Verdict and Acquittal should conclude the Lord of his Entry
the Court deliver'd no Opinion, but Curia advicere Vult, and the Parties submitted the Matter to

4. Copyholder conviuet of Felony has Clergy allowed before Attainder; Conviction
the Court inclined strongly that it is no Forfeiture without special
of Felony and Pre-

Custom, but on the Importance of Counsel it was appointed to be ar-

5. An Outlawry of Felony is a Forfeiture, and in Case of Copyholds. Lev. 263.
the Land goes to the Lord, and not to the King, and the Custom is good S. C but
Caufe to feize, but shall enufe the Trial of the Fact, and on Acquittal
is discharged. Per Keclel Ch. J. to which the Crown agreed 2 Keb.

Pawley.

6. By Attainder of Felony the Copyhold Estate for Life is absolute-
ly determined, so that afterwards the Person attainted is no Copyholder

not
nor can be of the Homage, or take a Surrender out of Court. 2. Jo. 189, 190.
Hill. 33 & 34 Car. 2. B. R. Benfon v. Stroud.

Copyhold.

7. In Case of Attainer of Copyholder for Life Perfeuition is on-
Ch. J. held. 2 Jo. 189, 190. Hill. 33 & 34 Car. 2. B. R. Benfon v.
that Entry Stroud.

8. It seems, if a Copyholder commits Felony or Treafon, he forfeits to
the Lord, without any particular Cuftom, else a Felon would have no
Punifhment in his Pofterity, if he had Copyholds of never to of
Value. Coke in one Place says, if a Copyholder commits Felony or
Treafon, he forfeits his Copyhold prefently; in another Place he says
he forfeits upon Prefeuition; and in a 3d place he says the Lands
efchew to the Lord. In none of these Cases he mentions any Cuftom,
but speaks generally; it is a Forfeiture prefently before Indiftement
or Attainer, as it seems, becaufe the Cuftom will not in favour of
a Felon, support an Eftate at Will, but let the Lord determine it, as
in Case of any other Eftate at Will, the Law will not give his Eftate
to the King, becaufe then the Lord would lose his Services. Gilb.
Treat. of Ten 226, 227.

[N. c] Forfeiture by Non-Feafance; Not coming in
on what Summons or Notice. And how Advantage
may be taken of it.

This in Roll 1. If a Copyholder makes a voluntary and obfinate Abtrain
(C.) is pl. 7. of his Suit from the Court of the Lord upon{fufficient Warning,
in Fol. 507. this is a Forfeiture; By Reports, 14 Ji. * Butwent and Pickflaff
judged. H. 13 Ja. 2. R. between & Boston and Adams, per
Curiam.

This in Roll 2. If the Lord gives a particular Summons to evury particular Cu-
(C.) is pl. 6. holder, that he will hold a Court at a certain Place, at a certain
Fol. 507. Time, if any of them do not come at the Day, this is a Forfeiture.
23 Eliz. Sir Christopher Hatton's Case adjudged; cited
in pl. 30.
Crip v. Fryer cites S. C. against his Tenants of Welfington, and S. P. agreed there per Car.—Moy.
35 pl. 468. S. C. & S. P. cited, but says not whether the Summons was particular or General.—Noy.
Ibid. 268, 269. S. P. admitted per Car. — But in Sir Christopher Hatton's Case it was agreed
that if he could excute his not coming upon any good Caufe as Sicknefs &c. it should fave the For-
feiture. C. E. 506.—Gibl. Treat of Ten. 215. S. P. and says that if a Copyholder be in Debt,
and is afraid of being arrested, or is a Bankrupt, and keeps House, these are good Exceufes.
Copyhold.

3. But otherwise it is upon general Summons, for there perhaps the Tenant never had Notice thereof. 23 Eliz. Sir Christ.

per hatton's Case, held 3 S. Jac. S. between Farrer and Wood in the Court of the Exchequer, upon a general Summons in the Church, according to the Custom. Coke's Entries 285 between Taverner and Cromwell, willful Abnegation, where a general Summons in the Church without alleging a Custom to summon a Court in the Church.

but in the last Case the Summons ought to be Personal, or at his House, or it ought to be ordered that bad Notice, and 4 Days Notice was held sufficient, though Walmley thought there ought to be 14. Cro. E. 315. pl. 10. Mich. 36 & 37 Eliz. C. B. Taverner v. Ld. Cromwell — Godd. 142. pl. 156. Hill 36 Eliz. Anon. seems to be S. C. & S. P. per ton. Cur. and to that Purpose was the Case of Ld. Dacre v. Harleton — Le. 102. pl. 159. Mich. 36 Eliz. B. R. braunch's Case, held per ton. Cur. that general Warning within the Parish is sufficient; for if the Tenant himself he not reliant upon his Copyhold, but elsewhere, his Farmer may send Notice of the Court to him. — Non-appearance at Court after Summons is a Forfeiture of the Copyhold, but without Warning it is no Forfeiture, but only Negligence; and after Summons it is a Forfeiture without an express Refusal, as in Case of Rent; for the Consequence is more fatal in this Case, because without the Copyholder's Attendance there can be no Court. Gilb. Treat. of Ten. 215. — And ibid. says, that the Opinion that there must be a Personal Notice is most reasonable; for as 4 Days Notice has been adjudged a sufficient Time of holding a Court, how can a Copyholder be summoned in that Time that lives 200 Miles off?

4. If a Copyholder dies, his * Heir within Age, the Heir is not bound S. P. Le. to come to any Court during his Nonage to pray Admittance, or to travel 321. pl. 294. to the Parish. And if the Death of his Heir be not presented, or Proclamation made, he is not at any Mischief, though be be of full Age; per Anderson v. Cur. Le. 100 pl. 128. Pach. 36 Eliz. B. R. in Cafe of Rumney v. Hayward. Eves. S. C. in roti
dem Verbis.

— 4 Le. 30. pl. 82. S. C. in rotidem Verbis. — Gilb. Treat. of Ten. 216. cites S. C.

* This is altered by Statute 9 Geo. 1. Cap. 29. which sees,

5. If a Man be so weak and fable that he cannot travel without Danger, S. P. cited by or if he hath a great Office &c. these are good Causes of Excuse. Arg. Popham Cro. Le. 104. pl. 159. Mich. 30 Eliz. B. R. in Sir John braunch's Cafe.

Eliz. in Sir Chr. Hatton's Cafe against the Tenants of Willingborough. — Gawdy J. cited, if the Copyholder be impair the Lord may set a Fine upon him, and if he will not pay the Fine it is reason that he should forfeit his Land. Le. 104. pl. 159. Mich. 30 Eliz. B. R. in Sir John braunch's Cafe.

6. An Attorney appointed by the Copyholder cannot do the Services for Supplement him, but he may effect the Copyholder. Le. 104. pl. 159. Mich. 30 Eliz. B. R. Sir John braunch's Cafe.

& S. P. accordingly.

7. The Summons of a Copyholder to appear at the Lord's Court was made Supplement at the Church; the Copyholder did not appear; all the Court held, that this was not any CAUSE of Forfeiture, because it was not so specially invited to be the Catholm to make such Summons, and it would be hard to make it S. P. a Forfeiture; for perhaps he had no Notice of it, therefore it ought to be as Personal Notice, for his Refusal must be willful to make a Forfeiture, and cited the Case of Ld. Dacre v. Harleton to the Purposes. Godd. 142. pl. 176. Hill 36 Eliz. C. B. Anon.

Cafe, the whole Court held, that general Warning within the Parish is sufficient; for if the Tenant himself be not reliant upon his Copyhold, but elsewhere, his Farmer may send him Notice. — Cro E. 315. 366 in pl. 30. Popham cited 32 Eliz. S. P. agreed by all the Judges in Sir Cristopher Hatton's Cafe, against his Tenants of Willingborough, and the same was agreed by the Court Mich 38 & 39 Eliz. in the principal Cafe.
Copyhold.

8 Rep. 99. a. Sir Richard
12. Where a Copyholder in Fee withdraws his Suit to the Lord's
Belshields Caff, S. C.
Beufield v. Cafe, S. C.
& S. P. agr. But
refusing or
denyng to
do his buit is a Forseiture.— Supplement to Co. Comp. 75. 10. cites S. C.

11. The Custem of a Manor was, that those who claimed Copyholds by
Defeunt ought to come at the 1st, 2d, or 3d Court, upon Proclamation made to
take up their Estates, or else they should be forfeited. A Tenant of the
Manor having an Estate inheritable by the Custem, beyond the Sea, died; the
Proclamations all passed, and the Heir did not return in two Years, but
upon his Return be prayed to be admitted to the Copyhold, and proffered the
Lord his Fine in Court, which the Lord refused to accept of, and to
admit the Heir, but seised the Land as forfeited. It was adjudged in
this Cafe, that it wos no Cause of Forseiture, because the Heir was be-

tween the Sea at the Time of the Proclamations, and the Lord was at
no Prejudice, for that, for any thing appeared in the Caffe, the Lord
had taken all the Proffits of the Land in the mean Time. Supplement to
Co. Comp. Cop. 84. 19. Hill, 7 Jac. B. B. Gopley's Cafe.

13. A Copyholder was summonsed to appear at Court, and to do and per-
form his Suit and Services as a Copyhold Tenant &c. He made Default.
The Declaration was, that Sefiati voluntarie & contentufoe subfrisit, &
ilam facere reciwa, and that on such a Day Notice was given to him by

9. If he be hindered by Sickness, or be over-flowing of Waters, or if he be
much in Debt, and fear to be arrested, or if he be a Bankrupt and keeps his
Hous, then his Default is no Forseiture. Co. Comp. Cop. 65.

S. 37.

Cro j. 236.
10. Forseiture was by an Heir beyond Sea not coming in at the third
20

Proclamation after 20 Years the Heir returned, prayed Admittance, and
and proffered his Fine, but the Lord relented. Adjudged that it was no
Forseiture, the Heir being beyond Sea at the Time of the Proclamation
and held by 4 Justices; made, and because the Lord was at no Prejudice since he received the

Jan. B. Anon.
Copyhold.

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the Bailiff of the Manor to appear, but did not stay by the Command of the though it Lord. The Court held clearly, that here is sufficient Matter of For- feiture of his Copyhold, and that the Declaration is good, and judg- ment accordingly. 3 Bulst. 268. Mich. 14 Jac. Hammond v. Wm- bank.

and if so, that then Peradventure the Tenant was not bound to come to it, and that the Manor may contain several Houses, and to the Place uncertain, yet Judgment was given for the Plaintiff — Sup- plement to Co. Comp. Cop. 75. S. 16. cites S. C. as sojudg'd.

14. If the Heir of a Copyholder does not come in to be admitted upon Keb. 287. Proclamations, the Lord may seize the Land Quasique the Tenant comes pl. 98. S. C. alias, Pate- son v. Dang- es, the

R. Earl of Salisbury's Cafe.

Custom or Personal Notice; and the Court agreed, the Cafe of copyhold. L. 27, that one saying he would come in if the Lord had a Court, otherwise not, that this is no Forfeit; but yet the Lord on such Refusal might seize Quasique.

15. A Question was, Whether in the Proclamation for the Heir to The Procla- come in and be admitted there ought to be a particular Mention of the Lands, by Name, as they are named in the Copy, or whether a general Pro- clamation to come in and be admitted to all the Lands of his Ancestor be sufficient? This was intended to be found specially, but afterwards to the Lands the Parties agreed in Court. Lev. 63. Pach. 14 Car. 2. B. R. Earl of Salisbury's Cafe.

by the Lands were before declar'd, and therefore Windham J. held it sufficient, unless the Custom be contrary, and not like a Demand of Rent, which being generally of so much, as is in arrest, is ill; Quod fulc recentum per Cur. the Custom of the Court being to demand it generally and not to specify the Lands. Keb. 287. pl. 98. Pach. 14 Car. 2 B. R. Patefon v. Danges, alias, Lord Salisbury's Cafe.

16. Proclamations whereby the Lord claims Forfeiture of a Copyhold ought to be pro'vid Viva Voca, and not by the Court Rolls only; held in Evidence to a Jury. Keb. 287. pl. 98. Pach. 14 Car. 2 B. R. Patefon v. Danges, alias, Ld. Salisbury's Cafe.


18. It is a good Custom that a Copyholder shall be discharg'd of Suit to Gib. Treat. Cour. Baron upon Payment of 8 d. to the Steward for the Lord, and id. to the Tenant of 306. the Steward for entring it. Sid. 361. pl. 5. Pach. 20 Car. 2 B. R. Port- bury v. Legingham. But See Tit. Suit of Court (D.) S. C. pl. 4. and the Notes there.

Thers, there are Copyhol- ders sufficient to keep Court that live near the Manor, or else surely the Custom will be void, for then no Court can be held. As this CAfe is reported by Siderfin, it is said it was held a good Custom, because the Court was a Court Baron, where the Suits are Judges, but it seems to me to be all one; for that if it were a customary Court, if sufficient Copyholders were near the Manor, it is unreasonable to oblige Persons that live a great way off to attend; and if the Court be a Court Baron, if there be not a sufficient Number of Tenants that live near the Manor, to do the Duty, then Copyholders are obliged to do it in that Court as well as Freeholders, and therefore it seems the Custom cannot be good, for no Court can be held.

19. There hath been generally practised in most Copyhold Manors, that upon the Mortgage of a Copyhold the Mortagor surrender into the Hands of two customary Tenants to the Use of the Mortgagee, upon Condition to be void if the Money be paid at such a Day; now to avoid
Copyhold.

avoid the Fine to the Lord the usual Way is, not to present the Surrender at the next Court, but after the Court is over to make a new Surrender into the Hands of two customary Tenants, ut supra and so from Time to Time, as often as any Court shall be holden, which Non-preseement is at Law a Forfeiture and to be relieved against this Forfeiture was a Bill exhibited, which North Lord Keeper denied to help, but let them to Common Law. Skir. 142. pl. 13. Mich. 35 Car. 2. in Chancery, Anon.

20. 9 Geo. 1. Cap. 29. S. 5. No Infant or Feme Covert shall forfeit any Copyhold for Neglect, or Refusals to come to any Court, and be admitted; or for the Omission or Refusal to pay any Fine imposed on their Admittance.

[O. c.] Forfeiture.

What will be a Forfeiture.

Nonseance.

[Refusal of Services.]

This in Roll 1. If a Jury or Homage of the Manor, after a Note made to present the Articles of the Court, refuse to make a Presenentment according to their Oath, if the are Copyholders, this is a Forfeiture of their Estates. * D. 4 Eliz. 211. 31.

Anon. held by 2 Justices.—Supplement to Co. Comp. Cop. 75. S. 10. cites S. C. and Eliz., that it was so resolved by both the Chief Justices in the Star Chamber in the Earl of Arundel's Case.—— S. P. by Gawdy. J. Mo. 550. in pl. 468.——Gilb. Treat. of Ten. 211. S. P.——Co. Comp. 67. S. 57. S. P. and that it is a Forfeiture ipso facto.——If a Copyholder being with the other Copyholders charged upon Oath to enquire of the Articles of the Court Baron, and sufficient Matter being given to them in Evidence to induce them to find a Matter within their Charge, and they or any of them obliquely refuse to find the same, this is a Forfeiture of their Copyhold, 3 Le. 129. pl. 138. Trin. 26 Eliz. B. R. said to have been adjudged, in Case of Southton v. Thurston.

This in Roll 2. If the Copyholder does not pay the Services due to the Lord, this is a Forfeiture. 42 Eliz. 3. 25. 6. admitted.

——Br. Tenant by Copy &c. pl. 1. cites S. C. and the Lord may seize the Land; admitted for clear Law.——4 Rep. 21 b. S. C. cited per Cur. and that the Lord shall have the Corn then growing.

3. If upon a Demand of Services the Tenant says, these Services which you require are doubtful whether you ought to have them or no, and until it be resolved by the Law whether they are due I will not pay them. Arg. Lat. 14. says it was adjudged to be no Forfeiture Patch. 26 Eliz. between Barnham and Higgens.

S. C. cited Arg. as Patch, 16 Eliz. by the Name of Vernon v. Huggins.

Lat. 125. and Crew Ch. J. said. It is a Quaestion, if Copyholder denies to do Services which are dubious, whether this be a Forfeiture?——Gilb. Treat. of Ten. 216 S. P.——Calth. Reading. 67 S. P.


57 S. P. and this is a Forfeiture ipso facto.

Lat. 125. S P. by Dodderidge J. in S C.


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6. If a Copyholder be demanded to do his Services, and he agrees to do them, but did not do them for a long Time, this is a Forfeiture; per Dampourt and Crew. Lat. 122. Trin. 1 Car. in Cafe of Grey v. Utilities, and cited 43 E. 3. 5.

7. If a Copyholder does not come to do his Services, yet if he be often demanded to do them, and still defers, and puts off the Time of doing them, tho' he does not absolutely refuse, yet it seems this makes a Forfeiture. Lat. 14. Pacht. 2 Car. Johnson's Cafe.

8. In Trefpaís &c. The Cafe was, that the Defendant being Lord of a Manor, and holding Court, and the Plaintiff being a Copyholder, and present in Court, and there being a Question, whether the Court was legally then held, or not, and he being asked if he did appear or not, the Adjudged a Court he did appear, but if it was not a lawful Court, then he did not appear; Adjudged that this was no Contempt, or Non-appearance, so as to make a Forfeiture. Roll Ch. J.

thought there was no real Controversy as to the Legality of the Court, but that the Words were used only as a Shift to avoid the Plaintiff's doing Suit and Service, it is a Forfeiture; but otherwise, if there was a real Controversy. And the other 3 Justices inclined that it was no Forfeiture. Et adjournatur. Sty. 241. Hill. 1650. Parker v. Cook.

[P. c] Forfeiture. Refusing to pay a Fine.

1. If a Copyholder refuses to pay his Fine for Admission after it is due, this is a Forfeiture. Tr. 4 Jac. B. R. between Fife (D.) is pl. 2.

and Rogers, agreed. * Roberts' Reports 183. between Denny and - * Hob. Lewan. If there be a Demand thereof from the Person of the Tenant, 175. pl. 182. Hill.

C. B. the S. C. — Supplement to Co. Comp. Cop. 75. S. 10. cites S. C. — See (C. a) pl. 3. and the Notes there.

It was said, that if a Copyholder refuses to pay a reasonable Fine, or to be admitted to the Copyhold, this is a Forfeiture of his Estate. Sty. 537. Mich. 1653. B. R. Faulkner v. Bond. — If the Lord upon the Admittance of a Copyholder, the fine the Court of the Manor being certain, demands his Fine, and the Copyholder denies to pay it upon demand, this is a Forfeiture ipso facto. Co. Comp. Cop. 64. S. 57. cites 4 Rep. 27. b. Hubert v. Hammond.

2. If the Lord affiles an unreasonable Fine upon his Tenant, and the Copyholder refuses to pay it, this is a Forfeiture. P. 36 Eliz. (D) is pl. 3.

B. between * Inverness and the Lord Drumwell adjudged, cited 335. pl. 10.
Pacht. 38 Eliz. B. R. in Crisp's Cafe; it seems this is not Law: S. C. but

Et vide this Cafe, Coke's Entries 288, where no such Matter appears to have been in the Cafe. Contra 1 Jac. B. Rot. 183. between + Stallion and Brandy, adjudged (as it seems) cited Co. 27. 2. pl.

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This in Roll (D) in pl. 4. — See pl. 2 and the Notes there.

3. But if after the Fine imposed, the Tenant intends the Lord to mitigate the Fine, and after he relieves it, the Relief of the Tenant to pay this unreasonable Fine is a Forfeiture, [Pathe. 36 El. 3. in Townevel and the Lord Townevel's Case agreed; it seems this is not Law. Et vide this Case, Coke's Entries 288, where no such Question appears in the Case.

4. If the Lord relieves a Fine where the Fine is not certain, and the Tenant relieves to pay it, though this be after adjudged to be a reasonable Fine, yet this is not any Forfeiture, because it was dubious to the Tenant, and Matter of Controversy between Lord and Tenant, whether it was reasonable.

5. Were a Fine is denied after Admittance it is a Forfeiture of the Copyhold, cited by Popham Ch. J. 4 Rep. 28. a. in pl. 16. Mich. 42 & 43 Eliz. as adjudg'd in Sands's Case, and that it was to be reolved by Wray and Periam, Justices of Alien in Evidence to the Jury in Case of Bacon v. Flatman.


6. If the Lord demands an Excessive Fine, and the Copyholder refuses to pay it, this is no Forfeiture, but otherwise, where a reasonable Fine is demanded. Mo. 522. pl. 531. Mich. 42 & 43 Eliz. Dalton v. Hammond.


7. If the Fine by the Custom of the Manor be uncertain, tho a reasonable Fine be assessed, yet because no Man can provide for an Uncertainty, the Copyholder is not bound to pay it presently upon demand, but shall have convenient Time to discharge it, if the Lord limit no certain Day for Payment thereof; and if within convenient Time it be not discharged, this is a Forfeiture without Preference. Co. Comp. 64. S. 57.

Supplement. 8. Though a Fine assessed be reasonable, yet the Lord ought to appoint a certain Day and Place on which it should be paid, because it stands upon a Point of Forfeiture of the Estate, and the Copyholder is not tied to carry his Fine always with him; per Cur. 13 Rep. 2.

Treat. of Ten. 205. cites S. C. but a Fine certain he must pay presently upon Admittance.


10. Upon Demurrer it was adjudged, that the Lord was not bound to over, or even that the Fine assessed was reasonable, for that must come on the Copyholder's Side to shew the Circumstances of the Case, to make it appear that it was unreasonable, and so to put it upon the Judgement of the Court. Hob. 135. pl. 182. Hill. 13 Jac. C. B. Denny v. Leman.

Gilb. Treat. 11. The Lord assessed a Fine of 12 l. and appointed it to be paid at his Manor-house 3 Months afterwards, but the Copyholder pretending that he
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the Fine was certain, viz. 2 Years Quit-Rent, offered to pay accordingly on the Day when the other Fine was asseased, but on the Day appointed by the Lord for Payment he came not to the Place to excuse his Nonpayment, nor made any other Refusal; the Court held that this was a Forfeiture, but if he had come at the Day and Place as assign'd, and tender'd the 2 Years Quit-Rent, being the Fine certain due, according to the Custom, though not the Fine asses'd and demanded by the Lord, it had been no Forfeiture. Cro. J. 617. pl. 1. Mich. 19 Jac. 1 B. R. Gardiner v. Norman.

12. H. was a Copyholder of the Manor of L. and upon his Admission the Lord in open Court asseased 2 Years Purchase for a Fine, and appointed him to pay it within half a Year. H. replied, he would pay 3 Years Quit-Rent for the Fine, according to the Custom, and that the Tenants are not to pay an uncertain Fine. Afterwards the Lord entered for a Forfeiture, for not paying the Fine he had asseased, and brought Ejectment. It seemed to the Court, that if there was a Real Doubt, whether the Fine was certain or not, the denying to pay an uncertain Fine is no Forfeiture, though found afterwards that the Fine ought him that it to be certain; but that such Doubt ought to be real, and not covetous. Rayn. 41. Mich. 13 Car. 2 B. R. Wheeler v. Honour. Sid. 58 pl. 26. S. C. but not up. on the S. P. Gilb. Ten. 275. cites S. C. and says it seems to Fine it is a Forfeiture.

13. The Defendant was admitted Tenant to a Copyhold, and a Fine of 8 l. set upon him, payable at three several Payments, a third part of which beingersonally demanded, and he refusing to pay it, the Lord brought an Ejectment to recover the Lands as Forfeited; the Reason why he refused to pay it was, because upon a Survey of the Manor, in the Reign of Queen Elizabeth, by Virtue of a Commission directed to some Men of Credit, and by the Consent of the Lord of the Manor, and his Tenants, a Decree was then made by the Court of Chancery, by which the Fine was ascerained, according to the Value of the Lands at that Time, and which was a Year and half's Value upon Defeants, and 2 Years on an Alienation, and this was to be binding for ever. The Question was, How the Years Value should now be computed, whether as at that Time, or according to the improv'd Value, and the Tenant refusing to pay according to the improv'd Value, but being willing to pay as it was set in the Reign of Queen Elizabeth, upon the Survey by the Commissioners, this Ejectment was brought. Lord Ch. Baron held, that if it be a Doubt, and the Tenant gives a probable Reason, to make it appear that no more is due than what he is ready to pay, it is no Forfeiture, and the Doubt being whether it shall be paid according to the computed or improved Value, he inclined that the Action would not lie. The Court were Doubtful in the Matter, and upon the whole thought it a proper Case for Equity, and so directed a Juror to be withdrawn, which was done. 2 Mod. 229. Patch. 29 Car 2. in SCC. Trotter v. Blake.

This in Roll 1.  I  If a Copyholder be to pay a certain Rent yearly by his Copy to his Lord, and the Lord comes upon the Land, and demands his Rent at the Day, and the Copyholder being pretend refutes to pay it, this is a Forfeiture. * Patch. 2 Jac. 23.

This in Roll (C.) is pl 4. * * Cop. E. 575 pl. 30. S. C. Popham v. Gawdy held this a Forfeiture, but Fenner e contra. Adjournatur.—Mo. 350. pl. 468. S. C and Popham and Gawdy held, that this Voluntary Negligence for to long a Time [viz. for 3 Years before, as Cop. E. cites it] implies a willful Refusal, and is a Forfeiture.—Nov. 58. S. C held accordingly by Popham and Gawdy, but Fenner e contra.—Supplement to Co. Comp. Cop. 74. S. 10. cites S. C and says, that the better Opinion of the Court seem'd to be, that it was a Forfeiture ; But says Queue of it; For it was resolv'd in another Case, Trin. 21 Jac. C. B. that Non-payment of Rent, or of the Fine upon Admittance to his Copyhold was no Forfeiture of his Copyhold Estate, unless there was some express Verbal Denial of it, which there was not in this Case.—S. C cited Gilb. Treat. of Ten. 211, 212. † Hob. 145. pl. 182. S. C held accordingly, both for Rent and Fine.—Supplement to Co. Comp. Cop. 75. S. 12. cites S. C.

Lat. 122. Trin. 7 Car. in Cafe of Gray v. Utilities. S. P. ruled accordingly. But because the Lord upon such Excuse ordered him to pay it at his House such a Day (which House was within the Manor) the Non-payment then will amount to a willful Refusal and a Forfeiture ; But if the Place which the Lord had assign'd had been out of the Manor, Failure of Payment there would be no Forfeiture.—S. C cited Gilb. Treat. of Ten. 213, 214.

4. If the Rent be demanded of the Tenant himself, and he says nothing; per Popham and Gawdy J. this Silence and Nonpayment is a Forfeiture. Nov. 58. cites 42 E. 3. 5. in Cafe of Criphe v. Fryer.

5. Popham Ch. J. held that Nonpayment of Rent, if the Demand was after the Day of Payment, was no Forfeiture ; But per Fenner J. many Defaults of Payment may be deemed a Forfeiture. Goldsb. 143. pl. 59. Hill. 43 Eliz. Anon.

If the Copyholder says that he wants Money to discharge the Rent, and therefore intends the Lord to forbear until he be better provided, unless the Lord gives his consent, this Nonpayment is a Forfeiture ipso facto; for a Copyholder knowing his Day of Payment is to provide against the Day; But if the Lord comes upon the Copyholder's Ground, and demands his Rent, and neither the Copyholder himself, nor any other by his Appointment, is there present to answer the Demand, though this be a Denial in Law of the Rent, yet this is no Forfeiture. Co. Comp. Cop. 64. S. 17. —But if the Lord continues in making demand upon the Ground, and the Copyholder is still absent, this continual Denial in Law amounts to a Denial in Fact, and makes the Copyholder's Estate subject to a Forfeiture without Premeditation. Co. Comp. Cop. 64. S. 57.

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7. If a Copyholder will swear in Court that he is none of the Lord's Copyholders, this is a Forfeiture ipso iacuo. Co. Comp. Cap. 63. S. 57.

8. If a Copyholder will sue a Replevin against the Lord upon the Lord's lawful Distress for his Rent or Services, this is a Forfeiture ipso iacuo. Co. Comp. Cap. 64. S. 57.

cause they amount to willful Refusals. Gilb. Treat. of Ten. 225.

9. Where the Estate of a Lord of a Manor ceases by Limitation of an Gitb Treat Use, and the Use and Estate thereof is transferred to another, who demands Rent of a Copyholder, and he refuses to pay it, 'tis no Forfeiture of the See, S. of Co. Copyhold, without Notice given to the Copyholder of the Alteration of the if a Bargain Use and Estate. 8 Rep. 92. a. cited per Cur. as adjudg'd Hill 1 Jac, and Sale be of a Manor by Deed in-dented and iacuo, the Bargainee shall not take Advantage of a Forfeiture without Notice, cited as adjudg'd and affirmed per Cur. for good Law. 8 Rep. 92. a. It seems the Law is the same concerning Leafe and Releasee, but if the Manor be in Possession of the Lord himself, and not in the Hands of any Leafee, and he makes a Leafe, and then releases, the Leafee having Possession, Quære if the Copyholder denies paying, if this is not a Forfeiture, because the Entry of the Leafee is Notice as much as Libery &c. Gilb. Treat. of Ten. 214.

10. A Female Widow Copyholder knew not how to pay her Rent, and several Gilt. Treat. came for the Rent, but she put them all off with dilatory Answer. As left came a Young Gallant and demanded it; she answered, that she did not know him, but if he would dance before her, if she liked his Dancing she would pay it. Cited by Harvey J. as a Case which he knew in Queens Forfeiture; And Fennor J. doubted if this Denial was a Forfeiture, but adjudg'd that it was not, because it was not a willful Denial. Litt. Rep. 267, 268. Pach. 5 Car. C. B.


1. A Man Non sana Memoriae, an Idiot, or a Lunatick, though they be able to take a Copyhold, yet they are unable to forfeit a Copyhold, because they want common Reason, nay common Sense. Co. Comp. Cap. 65. S. 59.

2. So an Infant that is under the Age of 14 is unable to forfeit his Co- But an Infant in the Age of Dif- pytho to the next of Kindred, to whom the Inheritance cannot descend, or to the Lord, or the Bailiff of the Manor, as the Custom shall warrant. Co. pytho of the next of Kindred, whom the Inheritance cannot descend, or to the Lord, or the Bailiff of the Manor, as the Custom shall warrant. Co. Comp. Cap. 65. S. 59.

3. A Feme covert by an Act she can do of herself, cannot possibly forfeit her Copyhold, because she is not a Juris, sed sub potestate Viri; But if she do any Act which amounts to a Forfeiture by the Consent of her Husband, this is in her a Forfeiture. Co. Comp. Cap. 65. S. 59.

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5. If an Infant comes not in to be admitted, according to the Custom, at three solemn Proclamations made at three several Courts, or if he will suffer his Houles to go to ruin, or his Ground to be surrounded, these Acts, favouring of Negligence only, are no Forfeitures. Co. Comp. Cop. 65. S. 59.

6. So if an Infant Copyholder sues a Replevin against the Lord upon a Diftress lawfully taken, or it he aliens by Deed, or the like, these Acts relinquishing of Ignorance only, are no Forfeitures. Co. Comp. Cop. 65. S. 59.

7. But if he denies from Time to Time to pay the Lord the Rent, or commits voluntary Waffe, notwithstanding often Warning given him by the Lord, these Acts proceeding from Malice and Contempt are Forfeitures; and so if he commits Felony or Treason. Co. Comp. Cop. 65. S. 59.

8. In Ejecution it was found by a special Verticle, that the Custom of a Manor was, That if on a Surrender presented, and three Proclamations, the Surrenderee comes not to be admitted, the Lord shall seize as forfeited. Surrenderee died; three Proclamations were made; his Heir, an Infant, did not come in; the Lord feized. Holt Ch. J. held the Infant was bound; because otherwise the Lord would lose his Fine; and it is not the Forfeiture of the Infant, but of the Surrenderor in whom the Estate continues till Admittance; and that if it be a Forfeiture it is to only Quo Waffle. But Dolben, Eyre, and Gregory contra. Custom shall not be intended to reach Infants; and by Eyre, if it had been found expressly, that all Persons, Infants, as well as others &c. he had been bound; for as Custum makes his Inheritance, it may abridge it, and the Lord cannot be said to lose a Fine, for he has a Tenement and no Fine due, nor Occasion of Admittance, and here is no Room to suppose a temporary Forfeiture, for the Jury have found the Custom to be of an absolute Forfeiture, nor is the Infant within the Custom, for as found, it is, that if the Perfon to whom the Surrender is made comes not, the Bailiff of the Manor may, by Command of the Lord, seize such Tenements as forfeited. In Error on a Judgment in C. B. which was affirmed. 1 Salk. 386. pl. 1. Hill. 1 W. & M. King v. Dillilton.

(R. c. 2) Forfeiture. By whom. One not in Possession.

Supplement 1. Cytion of a Manor, that if a Copyholder be convicted of Felony, it is a Forfeiture, and that the Widow has Frank-bank, and that the Heir shall not be admitted to the Copyhold during the Life of his Mother. The Widow having her Frank-Bank, the Heir commits Felony, which is presented by the Homage, and dies, leaving a Son, the Estate is forfeited (withstanding the Frank-Bank) as to the Heir of the Felon. Le. 1. pl. 1. Hill. 25 Eliz. C. B. Bornford v. Pakeington.

If a Copyholder be convicted of Felony, yet it seems Conviction is not necessary; but if the Thing will bear it, it is good to lay a Cytion.
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2. If a Copyhold be surrendered to the Use of J. S. and before Admittance J. S. commits Waste, this is no Forfeiture; for by the same Reason that he cannot grant before Admittance, he cannot forfeit before Admittance. Co. Comp. 65 S. 59.

3. If a Disfeyer of a Copyhold commits Waste this is no Forfeiture. Co. Comp. 65 S. 59.

4. If two jointtenants be of a Copyhold, and one commits Waste, he forfeits his Part only; for no Man can forfeit more than he hath granted. Co. Comp. 65 S. 59.

5. If there be Tenant for Life with Remainder over of a Copyhold, and the Copyholder for Life purchases the Manor, commits Waste, or does any Act which amounts to the Extinguishment, or the Forfeiture of a Copy, yet the Remainder is not hereby touched. Co. Comp. 65 S. 59.

6. If a Copyhold be granted to three habendi, successively, where by the Custom of the Manor this word Successive takes Place, the first Copyholder cannot prejudice the other two by any Act he can do, no more than if a Copyholder in Fee by Licence makes a Lease for Years by Deed, or without Licence by Copy, and either of these Lelies commits Waste, the Reversion is not hereby forfeited. Co. Comp. 65 S. 59.

[S. c] Forfeiture.

In what Cases the Forfeiture of one shall be of another. This in Roll is Letter [F.] in fol. 599.

1. If there be Tenant for Life, the Remainder in Fee, of a Copyhold, and the Tenant for Life commits a Forfeiture, this shall not bind the Remainder.

2. As if there be Tenant for Life, the Remainder in Fee, of a Copyhold, and the Tenant for Life furners the House to decay and be wasted, by which the Estate of the Tenant for Life is forfeited, and the Lord enters for the Forfeiture, yet this shall not bind him in Remainder, but only the Tenant for Life. Tr. 39 El. B. R. between Rafeled and Turner, adjudged, upon a special Verdict.

3. If a Feme Tenant for Life of a Copyhold takes Husband, and the Husband commits a Forfeiture of the Copyhold, and dies, this Forfeiture shall bind the Feme. 4 Co. between Clifton and Molineux resolved.

4. If a Copyholder leaves for Years, by Licence of the Lord, and after the Lelie makes a Forfeiture, this shall forfeit only his Estate, and not the Estate of the Copyholder. P. 1 Fa. B. between White and Hunt. Bodart's Reports 239.

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Cro C. 7. 5. If a Feme Copyholder takes Baron, and the Baron makes a Lease for Years, though the Lord enters for a Forfeiture, yet this is not any Forfeiture to the Feme after the Death of the Baron, but she may well enter because this Act was a Tort to the Feme as well as to the Lord; and where there is a Tort to the Feme, 'tis no reasonable that it should be a Forfeiture of her Estate. Pith. 21 Jac. B. R. betwixt S. C. and Mollin, adjudged upon a special Verdict.

A Woman Copyholder married, and then her Husband made a Lease for Years not warranted by the Custum of the Manor; Wray said, that if the Husband denies to pay the Rent, or do Suit to Court, there are present Forfeitures which shall bind the Wife; for they are Things which the Lord must necessarily have, but a Lease is no great Prejudice to him, and it is good to 2506.5, but Shurley and Tankeld said it had been adjudged that Wale is a Forfeiture, which shall bind her. Cro. E. 149. pl. 18. Mich. 31 and 32. Eliz. B. R. Hedv. v. Ch'riner. Gilb. Treat. of Ten. 209 cites S. C. — But if a Stranger had committed Wale here with the Affent of the Husband, this would be no Forfeiture. 4 Rep. 27. a. pl. 14 in S. C. refolv'd. —— Gilb. Treat. of Ten. 203. cites S. C. and S. P.


Cop. 76. S. 11. cites S. C. — Where A. was Tenant for Life, Reversion to B. in Fee, A. contrived to sell the Copyhold to J. S. in Fee, which was to be done by A.'s committing a Forfeiture, and then the Ld. to seise, and grant it in Fee by Copy to J. S. and this was done accordingly; but Gaunt J. who was the only Judge in Court, conceived that this Collusion ought not to prejudice the Reversioner, and thinking it a clear Case, commanded Judgment to be entered for the Plaintiff the Reversioner. Cro. E. 298. pl. 3. Hill. 40 Eliz. B. R. Raiffal v. Turner. —— Noy 42 cites Raiffal v. Lane. S. P. and seems to be S. C. —— Gilb. Treat. of Ten. 250, says such Authorities are founded upon the highest Reasons, for cliche he that has but a particular Interest in Copyholds will have as good an Interest as those that have the Fee, for seer Coverin he may commit a Forfeiture, and to give away the Fee.

Cro. E. 879. 8. Surrender to A. for Life, Remainder to B. in Fee. A. comes not pl. 19. S. C. in on 3 Proclamations according to the Custum, this is a Forfeiture during the Life of A. but on his Death B. may enter. Noy 42, 43 Eliz. Balo po olv. Long. Ejfates, and the Custum shall be intended of an entire Fee—simple given to one Person, and the Custum being to be allowed an Ejfate shall be taken strictly. Yelv. 1. S. C. adjudged. —— But a Quære is added, if such Surrender be made to A. and B., and their Heirs, and A. comes in, and B. not, within the Proclamations, whether A. shall have all, or that the Moiety be forfeited? Ibid. —— S. C. cited Godb. 369. in pl. 418. —— But the Reason of the Revolution of the Caflc implies, that had the Custum been laid to reach Remainders too, it had been good, and the Remainder had been forfeited in that Case. Gilb. Treat. of Ten. 250, cites S. C.

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Lacom. S. P. accordingly.

10. If Husband and Wife be Joint Copyholders of the Purchase of the Husband, and during the Coverture, the Husband is attainted of Felony, and death, it is no Forfeiture of any Part of the Copyhold; but if the Purchase be made before the Coverture, then it is a Forfeiture of the Moieties. Supplement to Co. Comp. Cop. 76. S. 19.


12. If Husband commits Waste in Copyhold Lands which he has in Right of his Wife, this is a Forfeiture of the Wife's Copyhold. Co. Comp. Cop. 65. S. 59. cites 4 Rep. 27. a.

13. But if a Stranger commits Waste, notwithstanding the Consent of the Husband, this is no Forfeiture, the Wife consents. Co. Comp. Cop. 65. S. 59.

14. If Two Joint Tenants are of a Copyhold and one commits Waste, he forfeits his own Part only; for no Man can forfeit more than he has granted. Co. Comp. Com. 65. S. 59.

15. Caesque tyranni of a Copyhold Estate commits Treason or Felony, this no way charges or affects the Copyhold Estate, but if a Tyrant does 'tis a Forfeiture of the whole Estate; but where a Copyholder in Fee on his Marriage Surrendered to the Use of himself for Life, Remainder to the first &c. Son in Tail Male, Remainder to himself in Fee, and no Admittance on such Surrender is had in many Years after, and in the mean Time he does Acts of Forfeiture, and the Ld. is in for the Forfeiture, and the Tenant denied Relief in Equity, yet whether the eldest Son should bring a Bill against Father, and the Ld. to compel an Admittance pursuant to the Marriage Surrender and Settlement, was not in the Case; but Ld. Macclesfield said, that on such Bill it might come then to be considered, How far the Forfeiture of the Father should bind the Son. Ch. Prev. 573. Trin. 1721, in Case of St. H. Peachy v. the Duke of Somerset.

[T.c] Advantage. Who shall take Advantage of a Forfeiture, [as Lord.]

1. A Copyholder for Life, where the Remainder is over for Life, commits a Forfeiture, he is the Remainder shall not enter, but the Lord, because the Remainder is to commence in Possession after the Death of the Lessor by the Custum.

2. Lease for Years of a Manor shall take Advantage of a Forfeiture committed by a Copyholder of the Manor, for he is Dominus pro Tempore. 9. 38, 39 Eliz. B. R. in *Left and Harding's Case, a greed per Curiari. Tr. 10 Ja. B. between Rawles and Mason, per Curiari.

3. If there be a Lord of a Manor, in which there are Copyholders, Tenants of the Manor, and the Lord grants to a Stranger the Freehold of a Copyhold in Fee, Though by this the Tenement is divided from the * Manor, and not demnable by Copy again, per the Grantee.

This is in Rull

Analyz. (G.) in fol. 589.
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Grantee of the Freehold shall take Advantage of a Forfeiture committed after by the Copyholder, for he ought to pay his Rent to the Grantee.

Mo. 295. pl. 108. S. C. & S. P. agreed, with this Difference, that all Forfeitures which accrue by Reason of Matters of the Court are discharged, but not Forfeitures at Common Law, as Waif, and Leases to the Diherbion, but that the Copyee shall enter and take Advantage of such as are done in his Time.

4. So in this Case, if the Grantee of the Freehold makes a Lease for Years of the Freehold, this Lease for Years shall take Advantage of a Forfeiture committed after by the Copyholder, because he is Dominus pro Tempore. Rich. 38. 39 Eliz. B. R. between Leaf and Harding, adjudged by the Opinion of all the Judges.

5. If a Copyholder for Life makes a Contract at one Time, to make three several Leases by Indenture, not to commence after the other, there being two Days between each, and after makes the three several Leases accordingly, and leases them at one Time, and the Lease enters, and after the Copyholder surrenders to the Lord the Use of the Lord, who hath not any Contumacy of the making of those Leases, and after the Lord enters, and makes a Lease for Years to J. S., and the first Lease for Years being Crispals against the second Lease, and adjudged it does not lie; because it was a Forfeiture, and a void Lease against the Lord, so that by his Entry he was in of his ancient Right. Rich. 7 Car. B. R. between Matthews and Wheaton adjudged upon a special Occasion, to my self being the Conclude Aquellanis. Intravacurrhill. 5 Car. B. R. Rot. 466.

6. The Custom was, that if a Copyholder makes a Lease for more than one Year, that he shall forfeit his Copyhold. A Copyholder committed such a Forfeiture, and afterwards the Lord leased the Manor for Years, and Leases entered for the Forfeiture; but per Welton, it was held it was not lawful, for though the Heir may enter in the Time of his Ancestor for a Condition broken, because he is privy in Blood, yet the Lease cannot so do, for he is a Stranger; but per Dyer if the Forfeiture is presented by the Homage, and enrolled in the Court-Rolls, the Lease may afterwards enter, because by the Forfeiture the Copyhold Eilrate was determined.

7. Two Copyholders, the one made a Forfeiture in Fee. The Lord made a Lease of the Manor. The Lease shall not take Advantage of this Forfeiture, because he is not privy in Title; but if the Leffer dies, 
Copyhold.

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the Heir shall take Advantage. Lat. 227. cites it as agreed in Harper's and says the
Rep. 15 Eliz.

Reason of the Diver-
sity seems to be, because Waffe is a Prejudice to the Lord only, for the Time being at leaf, and is
not a Prejudice as Prejudices, (and so it seems of other Forfeitures a denial of Rent.) Suit of
Court &c. &c. a forranth these Forfeitures, for the Denial doth no way prejudice the Proceeding Lord.

Per Feoffment does the Lord of the Forfeited and Inheritance, which being standing Prejudice to the
Lord, he ought to have Remedies as taling as the Harm that is done to him. Dyer, If the Lessee
notifies the Lease, whether he may take Advantage of the Forfeiture. Lat. 226. Trin. 22 Jac. Corn-
Dubitatdr.

8. Lefsee for Years of a Minor shall not take Advantage of a Forfeiture after a For-

for not doing Realty; per Popham, Ow. 63. Mich. 39 & 40 Eliz. in Case of Forfeiture com-

mitted, the Lord leased the Manor for Years; Per Woten, Lefsee cannot enter for the Forfeiture; Per Dyer, if the Forfeiture be pre-

sented by the Homage, and involved in the Court Rolls, Lefsee may afterwards enter, for by the For-

feiture the Copyhold is void and determined. 4 Le. 223. — He shall take Advantage of the For-

feiture without any Prelemtnt by the Homage, per Wallarton J. Arg. 3 Brownl. 197. Trin. 10

Jac. 3. B. in Case of Rowles v. Milon, The Lord's Lefsee may enter for a Forfeiture, per Cor.


9. Copyholder made a Lease for Years, without Licence, which is a For. S. C. cited

feiture of Common Law, and afterwards the Lord of the Manor made a by Levin J.

Feoffment or a Lease of the Premises of this very Copyhold to another; ad-

judged, that the Feoffee or Lefsee shall not take Advantage of the Forfeiture, Cor. 2 C. B.

because the Lefsee made by the Lord, before Entry or Prelemtnt was, and full,

that there is an Allen that the Lefsee of the Copyholder shall continue his Estate

and so is in Nature of an Affirmance of the Leafe made. Owen 63. Mich.


A Forfeiture in the Time of the Ancestor, and an Alliance in the Time of the former Lord.

Gib. Treat. of Ten 229. cites S. C.

10. If a Copyholder makes a Feoffment, and then the Lord alien, neither

the Grantor nor the Grantee can take Benefit of this Forfeiture, for nei-

ther a Right of Entry nor a Right of Action can ever be transferred

from one to another. Co. Comp. Cap. 66. S. 60.

11. If Tenant for Life be of a Manor, with Remainder over in Fee to a Gib. Treat

Stranger, if a Copyholder comntts Waffe, and then Tenant for Life of the S. P. cites

Manor dies before Entry, yet he in Remainder may enter, for he had an Interest in the Manor at the Time of the Forfeiture committed, though to Co. Comp.

be could not enter by reason of the State of Tenant for Life, which be-

ing determined, his Entry is now accrued unto him for the Forfeiture


aliened to another his Estate, though neither he nor his Grantee could take Advantage of this For-

feiture, yet after his Death it seems that he in Remainder might.

12. Sometimes be that is neither Lord of the Manor at the Time of the Act of

forfeiture committed, nor ever after, shall take Benefit of a Forfeiture. Lord of a Co. Comp. Cap. 66. S. 60.

and then grants Frank Tenant or the Inheritance of this Copyhold to a Stranger, the Grantee, though no Lord of the Manor, nor able to keep any Court, shall take Benefit of Forfeitures made by the Co-

pyholder; As if the Copyholder do make a Feoffment Leafe, Wallace deny the Rent &c. Co. Comp.

Cap. 66. S. 60.

13. Re-
Copyholder.

13. Regularly it is true, that none can take Benefit of a Forfeiture but be that is Lord of the Manor at the Time of the Forfeiture. Co. Comp. Cap. 65. S. 59.

14. Adjudged, that where there is a Copyholder for Life, and the Lord leaves for Years, and the Copyholder commits a Forfeiture, the Lease may enter for the Forfeiture. Godb. 175. pl. 241. Pach. 8 Jac. C. B. Meers v. Ridout.

15. If a Copyholder makes a Leafe contrary to the Custom, and the Lord dies before Entry or Seifure for the Forfeiture, he or they in Reversion or Remainder shall never take Advantage of the Forfeiture committed before his or their Time; Per Cur. Civ. J. 301. pl. 6. Pach. 10 Jac. B. R. Luty Montagne's Case.


17. M. and A. two Coparceners were Ladies of a Manor; A Copyholder sufferers his House to be burnt, and made a Lease of his Copyhold for 10 Years. M. dies. The Copyholder dies, and his Wife entred, claiming her Widow's Estate, Et bene, per Cur. For though this Leafe was a Forfeiture, being a Breach of Trust, yet it is a personal Wrong as much as Waife, which cannot be transfer'd by Dectent, but must be took Advantage of by him that is wrong'd; but the Estate of the Copyholder is not determin'd, because the Lord may affirm it by Acceptance of Rent, and the Election to affirm it or not, must be by both the Parce-

ners; The Thing is entire, and therefore the surviving Sitter cannot elect; Per three Justices. 1 Salk. 186, 187. pl. 5. Trin 8 W. 3. C. B. Eastcort v. Weeks.

18. Treby took this Difference, That in some Cases an Heir might take Advantage of a Forfeiture, but that was of such Acts as were as well Extin-
guisements of the Copyhold Estate, as Forfeitures; As where a Copyholder levied a Fine, suffered a Recovery, or made a Feoffment with Livery, there the Copyhold Estate was extinguished, because the Copyholder had taken upon himself to convey the Freehold, which was inconsistent with a Copyhold Estate; but where a Copyholder makes a Leafe for Years, or commits Waife, these are Forfeitures at the Election of the Lord, and therefore if he takes no Advantage of them by Entry, but doth any Act afterwards which admits him to be a Copyholder, the Forfeiture is purged; As if he receives the Rent, or accepts a Surrender, or amends him in his Court, but in the other Case no Act of the Lord can purge the Forfeiture, because in Case of a Fine, Recovery, &c. the Copyhold is utterly extinguished. Therefore if the Lord to whom the Wrong is done, doth not make his Election to make it a Forfeiture by Entry, his Heir shall never take Advantage of it. He said, he agreed with the Opinion of Rolle, that a Feoffment with [without] Livery, or a Bargain and
(U. c) Advantage of a Forfeiture. At what Time it may be taken.

1. If Copyholder makes a Lease not warranted by the Custom, it will be a Forfeiture before the Lease's Entry; Per Anderson Ch. J. Mo. 185. in pl. 329.
2. Offences which are apparent and notorious, of which the Lord by common Presumption cannot unless but have Notice, are Forfeitures, so instant that they are committed. Co. Comp. Cop. 63. S. 57.
3. As if by special Custom, upon the Defect of any Copyhold of Inheritance, the Heir is tried upon three solemn Proclamations, made at three several Courts, to come in and be admitted to his Copyhold, if he fails to come in, this Failure is a Forfeiture ipso facto. Co. Comp. Cop. 63. S. 57.
4. So if a Copyholder be sufficiently warned to appear, and he fails, this is a Forfeiture ipso facto. Co. Comp. Cop. 63. S. 57.

(X. c) Where one and what Tenant shall take Advantage of the Forfeiture of another Tenant.

1. Where there is Tenant for Life, Remainder for Life of a Co-2 Brownl. pyhold, and the Tenant for Life commits a Forfeiture, he in 157. Bickel Remainder shall not enter, but the Lord shall have it during the Life of him by whom it was forfeited, but this shall not destroy the Remainder with- by Coke out a express Custom in such Case; Resolv'd. 9 Rep. 109. a. Pach. Ch. J — to Jac. Podger's Case.


2. A Copyhold was granted to A. for Life, and afterwards according 2 Jo. 189. the Custom, the Reversion to B. for Life, immediately after the Death, Benito v. Strode S. C. Surrender, Forfeiture, or other Determination of the Estate of A. who was afterwards attained of Felony. The Lord did not enter, and the King par- done A. Afterwards B. in Reversion entred, and adjudged lawful; upon 2 Show, which Error was brought in the Exchequer-Chamber, and the Error 150. pl. which was, that the Reveriioner for Life could not take Advantage of the adiournatur. this Forfeiture, but that the Lord should have entered, and so have de- determined the Estate of A. and then B. the Reveriioner might have entered 8 S. C. on him, but all the Court held, that the Estate for Life was determined. Sed adi- by the Attainder, because a Copyhold is but a Tenancy at Will in the En- of the Law, and the Attainder determined his Will, so that he is 29 pl. 5. disabld to hold any Estate, and then he in Reveriion may take Ad- vantage of this Determination. 3 Lev. 94 Mich. 34. Car. 2. Strode v. Dennilson.

try of him in Remainder was good; and that the Lord cannot hold it against his own Grant.
Copyhold.

3. If there be a Copyhold Estate for Life, Remainder to B, if Tenant for Life forfeit, it is not such a Determination as to let in the Remainder, but the Lord shall enjoy it during the Life of Tenant for Life. 1 Sm. 123. Patch. 9 W. 3. Head v. Tyler.

(Y. c) Forfeiture. Of how much it shall be.

Godb. 159. pl. 125. Widow Copyholder during Viduitate, according to the Custum, feant the Land, and before the Corn was severed she married; Adjudged that the Lord shall have the Crop, because her Estate was determined by her own Act. So if she had leased the Land for Years, and afterwards married, the Leaffe having first sow'd the Lands, he shall not have the Corn, for though his Estate is determined by the Act of a Stranger, yet he shall not be (as to the first Leffer) in a better Case than his Leffer was. 3 Rep. 116. Hill. 44 Eliz. B. R. Oland's Case.

if she had leased the Land, and the Leaffe had given it, and then she had married, and the Lord had entered, yet the Leaffe should have the Corn. — Mo. 394. pl. 112 Oland v. Bardwick S. C. adjudged that the Lord shall have the Corn, and not the Wife; but otherwise if her Estate had ended by Death, Divorce &c. — Cro. E. 606. (bis) pl. 10. S. C. adjudged for the Lord against the Baron by Popham and Clench, contradictive Fenner, & absent Gawdy.

This in Roll is Letter E [Z. c] In what Cases a Forfeiture of Part shall be a Forfeiture of the whole.

S. P. 31 to 31. Waste done, Refolv'd, 4 Rep. 27. 2. pl. 15. Trin. 266.

Eliz. B. R. Taverner v. Cromwell, where several Acres are held by several Copies, and by several Rents, for tho' they are all in One and the same Hand, yet every Acre is held severally, and to every Acre there is a several Condition in Law tacitly annex'd, so that the Forfeiture of the one cannot be the Forfeiture of any of the others; for the several Conditions in Law enjoin the several Tenures. — So where several Copies are granted by one Copy, and several Habend and several Redendunds for every of them, but they all began at one Time, and were to end at one Time; held the Forfeiture of one is not the Forfeiture of the other, for they are several Grants and as several Copies. Cro. E 357. pl. 10. Mich. 26 & 37. Eliz. C. B. Taverner v. Lord Cromwell. — 4 Rep. 27. 2. b. pl. 17. S. C. & S. P. resolved per tot. Cur. where the Lord admitted the Tenant Tenendum per Antiqua Servitutia inde prius debit us et de Jure confecta, or to such Effect, and A. commits a Forfeiture in Bl Acre, he shall forfeit this only; for the Tenendum. reddendo fingula fingulis, doth continue the several Tenures. — Supplement to Co. Comp. Cop. 2. 10. cites S. C. — Ibid. 85. S. 39. S. P.

2. If a Copyholder cuts down a Tree which grows upon an Acre of Land, Parcel of the Copyhold; this is a Forfeiture of all the Copyhold, because the Trees are to be employed in Building and Reparation of the House and Copyhold, and therefore by the doing of Waste all the Copyhold is impaired. 3 Rep. 11 B. R. between Fuller and Terry.
Copyhold.

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3. As to Forfeiture of a Part being a Forfeiture of all, as by Watef. 36 Arg. 39. 

Arg. Forfeiture, or denying of Rent &c. it is not material whether the Co. cites S.C. pyoids are in one or several Copies, but only whether the Tenure be one or Treat be several. 4 Rep. 27 b. says it was so adjudged upon Demurrer, Hill. Ten. 237. Eliz. C. B. in Cafe of Taverner v. Cromwell.

that by Forfeiment of Part so much only is forfeited, but if Wate be committed in Part, the whole by the same Tenure is forfeited, for that goes to the Detraction of the Heirs, and ot of the whole Copyhold Estates, but if there be no Building, Quere; for he says it seems unreasonable then that Wate in Part should be a Forfeiture of the whole, and so he says it seems in Cafe of Forfeiment of Part.

25.

S. P. as to the Wale in cutting Trees in three Acres, that it is a Forfeiture of all the Lands granted by that Copy; Per Cur. 7 Keb. 644. pl. 47. Posth. 28 Car. 2. B. R. in Cafe of Patchall v. Wood —— Glib. Treat. of Ten. 204. cites S. C. and Lays, that if a Copyholder be titled by Force of several Copies of several Parcels, by several Tenures, if he commit a Forfeiture in one, it is no Forfeiture of the Rest: As if he commit Wate in Part of Black Acre, it is a Forfeiture of all that Acre, and by the same Reason, if Wate be committed in one Acre, it is a Forfeiture of 20 Acres, if held by one Tenure, for the Condition in Law annexed to the whole Estate is broke, and so the Lord may enter for the Forfeiture; but where there are several Tenures, though they be in the Hands of one Copyholder, there are several Conditions in Law annexed to the several Parcels, and therefore the breach of one is not so of the other. If such a Copyholder surrenders to the Use of another, and the Lord admits him by one Copy, Tenent per Antiqua servituta, the several Tenures remain; but if the Admittance were by one Tenure, then it seems a Forfeiture of Part would reach the whole, because the Condition in Law is but one; so if several Copyholds effect to the Lord, and he grants them again, tenent per Antiqua servituta to A. and he commits a Forfeiture in Part, this extends not to the whole.

4. If several Copyholds effect to the Lord, and he regrants them by one Copy, the Forfeiture of the one is not the Forfeiture of the other. Co. Comp. 65. S. 59.

(A. d) Forfeiture. What shall be a Dispensation or Excuse thereof, and by whom it may be.

1. A Copyholder committed Wate, and afterwards the Lord accepted if a Copy of the Rent, the Quetion was, whether such Acceptance barr'd him of his Entry for the Forfeiture? Cook argued that it should not for this being a Condition in Law, which when broken the Estate of the Copyholder is thereby merely void, and the Court agreed that the Copyhold was in the Lord perfectly by the Forfeiture. Sed adjournatur. Mich. 28 & 29 Eliz. B. R. Godb. 47. pl. 38. Mich. 28 & 29 Eliz. B. R. Anon.

But otherwise where it is a naked Forfeiture. Glib. Treat. of Ten. 356.

2. Steward's refusing to admit is a good Excuse. Le. 100. pl. 128. S. C. cited Pasch. 30 Eliz. B. R. Runney v. Eve. Supplement to Co. Comp. Cop. 75. S. 10. for there was no Negligence in the Party, he having pray'd to be admitted.

3. The Father commits a Forfeiture and dies, the Son is admitted as Heir. Glib. Treat by Defecent. This purges not the Forfeiture, because the Father dy'd of Ten 232. cites S. C. ing seised of no Estate, the Son cannot be admitted to any. Toth. 107. cites 30 Eliz. Smith v. ------

4. If
Copyhold.

If a Copyholder makes Default at Court, and he is there amerced, though the Amercement be not discharged or levied, yet it is a Dispensation of the Forfeiture; Held. *Le* 104 pl. 136. Mich. 30 Eliz. B. R. in Sir John Braunsh's Café.

5. That the Question was, whether the dismembering of the Inheritance from the Copyhold Land by the Forfeiture of the Manor has disabled every Person from taking Advantage of any Forfeiture, and it was agreed with this Difference, that all Forfeitures which accrue by reason of Matters of the Court, are discharged, but not Forfeitures at Common Law, as Wafe and Leafe to the Dispersion, but that the Feoffee, as to such as are done in his Time, shall enter and take Advantage of them. Mo. 392, 393. pl. 508. Hill. 37 Eliz. B. R. the 4th Point in Cafe of Earl v. Harding.

6. If the Lord does any Thing whereby he doth acknowledge him his Tenant after Forfeiture, this Acknowledgement amounts to a Confirmation; As if he disrains upon the Ground for Rent due after Forfeiture, or if he admits after the Forfeiture, or the like, these are Eftoppels to the Lord, so that he can never enter, to the Lord have Notice of such Forfeitures before any such Act which may amount to a Confirmation be done; Yet some make this Difference, that these Forfeitures only which accrue not the Copyhold are confirmable by subsequent Acknowledgement, and not those Forfeitures which tend to the Diftructions of a Copyhold, As if the Copyholder makes a Forfeiture, by this the Copyholder is destroyed, and therefore no subsequent Acknowledgment of the Lord will ever falve this fore. Co. Comp. Cap. 65. S. 61.

7. A Copyholder levies a Fine, makes a Feoffment, or suffers a Common Recovery, which destroys the Eftate; In such Case no Acceptance of the Rent, or Act done by the Lord shall be available to make the Eftate again good; But where the Eftate of the Manor only is broken, as if the Copyholder makes a Leafe of his Copyhold Lands for more Years than one Year, or denies to pay his Rent, or denies to be found of the Homage, or commits Wafe, there his Eftate may be afterwards confirmed, and thence, and in such Case the Acceptance of the Rent by the Lord will amount to a Confirmation of the first Eftate. Supplement to Co. Comp. Cap. 76. S. 11.

8. In some Cafes, where an Eftate of a Copyholder is forfeited by Law, yet by Custom, and the Act of the Lord in his Court of the Manor, the Forfeiture may be mitigated, and the Land shall be utterly forfeited or destroyed; As where the Custom is, That for Wafe Copyhold shall be forfeited, a Custom to secure the Tenant for the Wafe done, and to disrains for the Amercement will be a good Custom to mitigate the Forfeiture of the Copyhold. Supplement to Co. Comp. Cap. 76. S. 11.

9. A Copyholder commits voluntary Wafe and afterwards the Lord receives the Rent without taking Notice of the Wafe, this has purg'd the Forfeiture, per Ch. J. King at Winchester Afliffes, and the old Distinction between Permissivé Wafe and Voluntary doth not now obtain, but in each Case the Receipt of the Rent purges the Forfeiture.

10. If
Copyhold.

10. It Copyholder commits a Forfeiture, and Dominus pro Tempore of any legal Title, though at Will, grants afterwards an Admittance, this is a Dispenfation of the Forfeiture, not only as to himself, but as to him in Reversion; for he may make Voluntary Grants; and such a new Grant and Admittance amounts to an Entry for the Forfeiture, and a new Grant. But a Lord by wrong or by Disfeiten can’t by such Admittance purge the Forfeiture so as to bind the Rightful Lord. Lev. 26. Pach. 13 Car. 2. B. R. Millax v. Baker.

11. The Lord after acceptance of the Rent cannot enter upon the Lasses of a Copyholder; per Twilden J. in Evidence to a Jury at the Bar. Keb. 15. pl. 43. Pach. 13 Car. 2. B. R. Garrard v. Lifter.

12. Where there is an Actual Entry by the Lord in the Life of the Copyholder for a Forfeiture by him, as by cutting down Timber and selling it, no Acceptance after will purge the Forfeiture, And though it never was presented by the Homatge, it is not Material, it being a thing Notorious. 3 Keb. 641. pl. 47. Pach. 28 Car. 2. B. R. Pachal v. Wood.

13. A Copyholder cut Timber and fold it and died. The succeed- ing Lord brought Ejectment. The Defendant pleaded, that in Tref- passes brought by him the Lord (now Plaintiff) justified for taking a Heriot; and Per Car. Justification for Heriot service on Seifin of the Divinity, Ancestor is an Acceptance of the Heir as Tenant, and purges the For- feiture; but otherwise of an Acceptance, Justification or Avowry for Heriot Cuffin, 3 Keb. 641. pl. 47. Pach. 28 Car. 2. B. R. Pachall v. Wood.

In the Tenant, if the Lord could not have a Heriot; The Reason for the Difference seems to be, because in accepting of Heriot Service, he admits the Heir Tenant, but in accepting Heriot Cuffin, he only admits the Tenant died sealed, sed quare; for it seems to me to be a Dispenfation; for he admits him to be Tenant after the Forfeiture committed, and therefore if the Lord accept of any Services after he knows of the Forfeiture, it is a Dispenfation; For why should not the Acceptance and Acknowledgment of the Tenant to be Tenant after a Forfeiture, as well dispence with a Forfeiture, as Acknowledgment of the Heir to be a Tenant.

14. It seems, that if the Lord accepts a Surrender from a Tenant who But an Ad- has committed a Forfeiture, this is no Dispenfation of Bar to the Entry missum by the Lord of his Lefilee, if the Caufe of Forfeiture be such as the Lord might well be supposed ignorant of, otherwise not; As making a private Leafe, and so is Cro. C. 233. Matthews v. Whetton; But for non- tenants, Trench, 107 cites 24 Eliz. Clerk v. Wentworth. But Lord Cornwallis Cae was, that a Copyholder commits Trench, and then surrenders into the Lords Hands to the Use of some of his Children, etc., were admitted, the Question was, if this were such a Forfeiture as the Lord was bound to take. Notice of, and the Court inclined, that the Lord shall not be precluded to take Notice in this Case, as he shall in the Case of Failure of Suit of Court, Nonpayment of Rent &c. 2 Vent. 38, 39. Pach. 35 Car. 2. C. B. Lord Cornwallis’s Cafe.

15. A Copyholder for Life suffer’d his House to be ruinous, and made a Leage for 10 Years. It was admitted per Cur. that these were both Causes of Forfeiture, and 3 Justices held, that the Estate of the Co- copyholder was not determined, because the the Lord by Acceptance of the Rent &c might affirm it. 1 Salk. 186, 187. pl. 3. Trin. 10 W. 3. C. B. Laftcourt v. Weekes.

Q q (B. d) For-
(B. d) Forfeiture. In what Cases the Lord may enter without Presentment.

Offences which are not Forfeitures till Presentment are such which by common Presumption the Lord cannot of himself have Notice of without Notice given; As if a Copyholder commits Felony or Treason, or be outlawed, or excommunicate, or in any other Cases enters himself to forfeit any other Lord to his Copyhold, or if he aliens by Deed. Co. Comp. Cap. 6. S. 58.

1. Presentment is not of Necessity, but for the Lord's better Instruction of his Title, and he may, if he will, take Advantage of a Forfeiture before the Presentment. Cro. E. 499. pl. 19. Mich. 38 & 39 Eliz. B. R. Eait v. Harding.

2. If a Copyholder goes about in any other Court to intitile any other Lord unto his Copyhold; or if he aliens by Deed, then, and the like, ought to be presented. Co. Comp. Cap. 64. S. 58.

3. There is a Real and a Personal Forfeiture of Copyhold Land; Real is not necessary to be found by the Homage, as was resolved in Broth's Case; Personal Forfeiture is necessary to be found. 4 Le. 241. pl. 393. Patch. 8 Jac. B. R. in Ward's Case.

4. Copyholder leaves for one Year, and for another Year to commence a Day after the first Year &c. and after surrenders his Copyhold to the Lord; the Lord enters, and grants a Lease for Years; The Lease by the Copyholder was a Forfeiture, and when the Surrender was made to the Lord, this Lease was void against him, and his Interest discharged without Presentment and Seizure for Forfeiture by which his Entry was lawful, and his Lease for Years good. Jo. 249. pl. 4. Mich. 7 Car. B. R. Matthews v. Wheeldon.

5. If there be a Copyhold Tenant for Life, the Reversion to the Lord, and the Tenant commits a Forfeiture, the Lord may grant the Estate to another before any Seizure; for it is a Determination of the Will, and the Estate immediately in the Lord as in his Reversion. Lev. 26. Pauch. 13. Car. 2. B. R. Milfax v. Baker.

6. Steward of a Manor need not have an express Authority in Writing to make a Demand and Entry upon Refusal to pay a Fine for Admittance of a Copyhold Tenant, and 'tis not necessary for the Steward to make a Preceot for the Seizure, but the Demand must be Perfonal. 2. Mod. 229. Pauch. 29 Car. 2. in Scacc. Trotter v. Blake.

7. The Lord doth not always make an actual Entry, but generally a Preceot to the Steward to seize the Land, and that is a Sign the Lord hath a Right, and that is in Nature of a Habere Fac' Poll; and does not give Title, but suppose it, because the Copyhold is determined, or rather, because it appears to be determined by the Presentment that is made of such a Forfeiture; 'tis quite different from an Entry which veils an Estate, and 'tis the Presentment (if any Thing) seems to determine the Estate, for the Precept to seize is in the Nature of an Execution; Per Lord Ch. J. 2 Show 152. pl. 133. Hill. 32 & 33 Car 2. B. R. in Case of Benefon v. Strode.

8. If Copyholder commits Waste the Lord may lease without an Entry; Per Dolben J. 2 Show 152. pl. 133. Hill. 32 & 33 Car 2. B. R. in Case of Benefon v. Strode.
(C. d) Forfeiture. To what Time the Forfeiture shall have Relation.


It is a Forfeiture before the Entry of Lease, per Anderson Ch. J. Mo. 185. pl. 329.

2. Though no Advantage can be taken of a Forfeiture for Treason till Attainder, yet after Attainder it has relation, and the committing the Treason is the Forfeiture. Per Leving J. 2 Vent. 39. Pach. 35 Car. 2. B. R. in Lord Cornwallis's Case.

(D. d) Where the Forfeiture shall be to the King.

1. 35 Eliz. Enacts, that Popish Recusants above 16 Years shall within cap. 2. 40 Days after their Conviction repair to their usual Dwelling, and not remove above 5 Miles from thence, in Pain to forfeit all their Goods, and their Lands and Annuities, during Life.

2. A Copyholder shall in this Case also forfeit his Estate during Life (if his Estate continue so long) to the Lord of the Manor, if such Lord be no Recusant Convict nor seized or possessed in Trust to the Use of a Recusant; for then the Queen shall have the Forfeiture.

3. If a Copyholder given to superstitious Uses comes to the King by the Statute the Copyhold is destroyed, and the Uses void; but the King does not thereby gain the Freehold of the Copyhold, but that remains in the Lord of the Manor; Resolv'd. Godb. 233. pl. 322. Mich. 11 Jac. C. B. Bagnall v. Potts.

4. The King grants the Office of the Custody of a House for Life; this is a good Lease for Life notwithstanding it is Copyhold, and it is not necessary to recite in the Grant that it is Copyhold; and after the Estate for Life is determined, the King may grant again by Copy of Court-Roll the Houle and Land, because the King's Grants shall be taken favourably, and not extended to two Intents where there is no Necessity for it, as there is not here, and we are not here to intend a collateral Intent, and so the Copyhold is not destroyed, for the Law takes Care to preserve the Inheritance of the King for his Successors, and it may be a Benefit to the King to have it continue Copyhold, viz. to have Common &c. and his Election is also destroyed if he may not have it Copyhold; adjudg'd. Sry. 272. Pach. 1657. Cremer v. Burnet.

(E. d)
(E. d) In what Cakes of Forfeiture Equity will relieve.

1. Touching Copyholders Mr. Fitzherbert in his Natur. Brev. Fol. 12. noteth well, that forasmuch as he cannot have any Writ of false judgment, nor other Remedy at Common Law against his Lord, and therefore if the Lord will put out his Copyholder that payeth his Customs and Services, or will not admit him, to such Ufe as Surrender is made, or will not hold his Court for the Benefit of his Copyholder, or will exact fines arbitrary where they be customary and certain, the Copyholder fhall have a Subpoena to restrain or compel him as the Cafe shall require. Cary's Rep. 3, 4. cites D. 264. and 124. Fitz. Subp. n. 21.

2. The Defendant would not admit the Plaintiff to his Copyhold; For that the Plaintiff committed a Forfeiture in cutting down Woods upon the Copyhold, the Defendant [was] order'd to admit the Plaintiff Tenant, for that the Defendant could not prove that the same was done by the Plaintiff's Directions, but by a Tenant. Toth. 237. 238. cites 25 Eliz. li. B. Fol. 75. Taylor v. Hooe.

3. A Forfeiture for cutting down Timber without Licence, and employing it upon his Copyhold was held relievable upon paying a competent Fine. Toth. 103. cites 1591. Per Clench J. in Cafe of Common v. Kingfemll.

4. Copyholder Durante Viduitate cut Timber, and the Copyhold was seised for wilful Waste. Upon a Bill by the Widow for Relief Bridgman K. declared, that in Cafe of a wilful Forfeiture he could not relieve, but upon the Hearing directed an Issue, whether the primary Intention in felling the Timber was to do Waste; but as the Order was drawn up, the Issue to be try'd was, if the supposed Waste was wilful or not; Upon two several Trials it was found for the Plaintiff, and fo it was decreed, that Plaintiff should be relieved, and the Defendant to deliver Possession, and account for the meane Profits. Ch. Cakes 95. Hill. 19 Car. 2. Thomas v. Porter and Bp. of Worcester.

5. The Grandson and Heir of a Person convicted and executed for Felony, by which his Lands were forfeited to the Lord of the Manor, brought his Bill for Discovery and delivery of certain old Deeds which the Lord had got into his Custody, and which were relating to the Lands, and were formerly in the Hands of the Plaintiff's Ancestor; the Court retained the Caufe to enable the Plaintiff and his Heirs to the Use of the Depositions therein at any Trial at Law, and Defendant to do the fame, and Plaintiff to have Recourse to the Rolls &c. of the Manor, and have Copies, paying for the fame, and as many to be produced at a Trial at Plaintiff's Costs as Plaintiff required. Fin. R. 249. Pach. 28 Car. 2. Draper v. Zouch.

6. A having two Copyholds within the same Manor, cut Timber on one, and repaired the other with it; the Lord had brought Ejeavitment and a Verdict for the Forfeiture. A is relieved against the Forfeiture, but ordered to pay Costs both at Law and here. 2 Vern. R. 537. pl. 481. Hill. 1705. Nath v. E. of Derby.

7. A
7. A Tenant by Copy letten a Copyhold Tenement fall down alter re- 2 Vem. 664. peated Admonitions and Prefentiments of the Jury of the Waife for se-
veral Years together, and the Copyhold being feifed for a Forfeiture to Cox v. 
brought a Bill, but Lord Harcourt would not relieve him, because on Higford,
the Circumstances it was equal to voluntary Waife. Ch. Prec. 574. S. C. lays 
cites it as the Cafe of Con v. Hickford.

Court to pay Costs, and to repair, but he not repairing the Bill was dismissed. —- Equi.
 Abr. 121. pl. 20. S. C. lays that after six or seven Prefentiments upon him to repir it, and
an Entry by the Lord for the Forfeiture he brought an Ejectment; and when upon the Trial, a
Rule was entered into by Conient, and made a Rule of Court, that upon Payment of 4 l. to the
Lord for his Costs, (which were not a 4th Part of the Costs he had put the Lord to,) and putting
the Estate into Repair, he should be admitted to it again, yet he never complied with the Rule,
nor made any Order of Costs to the Lord, but instead of that brought another Ejectment, and
was nonfuit'd; and now, after 9 or 10 Years, Time more, brings his Bill, and had been several
Times amerced for not appearing at the Court, and relented to do Fealty, either upon Oath, (or
being a Quaker,) upon Affirmation, and upon these Circumstances Lord Keeper declared he ought
have to have Relief, or if he were to be relieved, yet it must be upon Payment to the Lord of all his
Costs, and putting the Estate into good Repair, which would be more Charge to him than his Interest
the Estate would be worth, having only an Estate for Life therein, and dismissed the Bill, but with
Costs; and Lord Keeper likewise declared, that though this was a voluntary Waife and Forfei-
ture, (against which it was objected this Court never gave Relief,) yet he thought the Rules of
Equity not so strict, but that Relief might even be given against voluntary Waife and Forfei-
ture.

8. Forfeiture by a Quaker for not doing Suit and Service was re-
Ch. Prec. 3. Clewed. Cited 2 Vem. 664 pl. 590. Mich. 1710. as the Cafe of Cudmore
v. Raven.
on the Circumstance of the Cafe, cites it as the Cafe of Edmore v. Craven.

9. Copyholder made Leaves not warrantied by the Custhon, and worked a
Quary of Stone without a Licence, and died, having on his Marriage
surrendered to the Use of himself for Life, with Remainder to his first
and other Sons in Tail Male, Remainder to himfelf in Fee, But no Ad-
mittance was made on such Surrender. Afterwards his Son and Heir
en down Trees, and wields some of the land, notwithstanding several
Admonitions from the Lord, who brought his Ejectment, and had a
Verdict as for a Forfeiture. On a Bill brought by the Copyholder for
Relief, Lord Macclesfield was clear, that there was no Foundation
for Equity to interpose; That making a Leave for Years without Li-
cence was a Forfeiture as it was a Determination of his Will, and
though the Lord should refuse to grant such Licence, yet the Tenant has
no Remedy, nor would this Court compel the Lord to grant such
Licence; That the Custons are in the Nature of the Limitation of an Ef-
stage which determines on the Breach of them, that unless there were
some equivocal Circumstances in this Case, this Court cannot interpose,
which would be to repeal and destroy the Law. Ch. Prec. 568. pl.

10. In Case of Nonpayment of Rent or Fine, Chancery may relieve a
Copyhold Tenant; For the ESTATE in such Cases is but in Nature of a
security for those Sums, and the Lord may be recompened in Dama-
ges; Per Lord Macclesfield. Ch. Prec. 572. Trin. 1721. in Cafe of

11. A a Copyholder by Surrender is to be only Tenant for Life, then
to his first and Sons in Tail Male successively, Remainder to himfelf in
Fee, but no Admittance is made on such Surrender. A commits a For-
feiture. It was held clearly, that A continued, and was to be con-
fered as absolute Tenant to the Lord, and tho' a having a Son was 
but a Trustee for him of the Inheritance of these Lands, yet the
whole Inheritance quoad the Lord was in A, and any A of Forfeiture
done by A would bind the Inheritance, because there must be always
R.

fome
Copyhold.

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some Tenants to answer for the whole; but if there had been an Ad-

mitance of A. for Life, and of the Son in Remainder, because they
come as it were by two distinct grants from the Lord himself, the Acts
of the one will not affect the other; but the till there is an Admittance
on such surrender, the Lord is not bound to take Notice of it, but
the Tenant has the same Estate as before to all Intents and Purposes,
and the rather, because the Lord has no Means to compel him to come
in and be admitted on such Surrender, but if the Son should bring a Bill
against A. and the Lord, to compel an Admittance pursuant to such Sur-
render, it might come then to be considered, how far this Forfeiture
of the Father's should affect the Son. Ch. Prec. 472. Trin. 1721. Sir

(E. d. 2) Forfeiture. How to be proved.

1. F O R a Lord of a Manor to avoid a Copyhold Estate for a For-
seiture by making of a Lease of his Copyhold Land, contrary
to the Custom, there ought for to be very direct, and certain Proof made
of a certain Lease, with a certain Beginning and ending with it, and so
in like Manner of any other Thing supposed to be acted and done by a
Copyholder, and contrary to the Custom of the Manor, thereby to
make a Forfeiture of his Copyhold Estate; this must all appear certainly
to the Court, and the Oath of a Stranger made in the Lord's Court to this
Purpose, shall not be of any Force or Effect to prove a Forfeiture, es-
pecially when the Copyholder still continues in Possession, and so dies
feated of his Copyhold Estate, and this never came in Question till after
his Death; And if such a Prefumtment, as this was, in the Lord's Court
shall be allowed of, upon such an Oath made by a Stranger, as to make
a Forfeiture of a Copyhold Estate, every Copyholder then might be in
conditional Danger to lose his Copyhold. Bulst. 189, 190. Pach. 10

2. The Court did also clearly agree, that if the Copyholder did
promise for to make such a Lease, and it is not proved in fact, that
he did make the same, this is no Cause for to make a Forfeiture
of his Copyhold Estate. Bulst. 190. Pach. 10 Jac. Hamlen v. Ham-
len.

[F. b] What Thing will be an Extinguishment of a

Copyhold.

1. T H E Severance of the Freeshold and Inheritance of the Land,
held by Copy of the Manor does not entirely or de-

termine the Copyhold Estate, for the Custom hath established his E-
state, so that the Lord cannot quit him so long as he pays and
performs his Customs and Services. Co. 2. Lane 17. re-

solved.

This in Roll
is Letter
(H.) in
fol. 510.

Mich. 58
& 29 Eliz.
C B the 3d
Resolution.
— 4 Rep.
26 b. pl.
12. 70 Eliz.
B. R. in
Lord by his Act cannot, without the concurrent Act of the Copyholder himself, determine the
Estate
Copyhold.

Estate and Interests which the Copyholder has in his Copyhold, and therefore the Severance of the Freehold and Inheritance of the Land holden by Copy of Court Roll (being done by the Act of the Lord) doth not determine the Copyholder's Estate, or extinguish the Copyhold; for although the Estate of the Copyholder be an Estate at Will, viz. Ad voluntarem Domini Secundum Consuetudinem Muneri, yet Custom has so established the Estate of the Copyholder, that he is not removable at the Will of the Lord, so long as he performs the Customs and Services. — Supplement to Co. Compt. Cap. 73. S. 8. cites 2 Rep. 17, in Lane's Case, and 4 Rep. 21. Brown's Case. — If the Copyholder will join with the Lord in a Deed of Fee Simple of the Manor, then, by that Act of them both, the Copyhold is extinguished, as it was said by the Lord Anderson. Ch. J. Patch. 24. Eliz. C. 6. Supplement to Co. Compt. Cap. 73. S. 8.

2. If a Copyholder in Fee accepts a Leafe for Years of the same Lands from the Lord, this determines his Copyhold Estate. Co. 2. 3 S. C & 8. P. agreed by the Court, and all the Sergeants — S. P. agreed per Cur. Godd. 11. pl. 16. Patch 24. Eliz. C. B. — S. P. said Arg. to have been adjudged. Gro. J. 54. pl. 8. Mich. 3. fac. — S. P. by Dalridge J. 5. Bull. 51. 9 S. P. per Cur. Anon. — 4 Rep. 17. a. b. pl. 24. Mich 18 & 19. Eliz. S. P. accordingly. — And it is all one if the Copyholder had accepted immediately a Lease for Years of his Copyhold, as was adjudged in Hyde's Case; for the Reason in both Cases is the same, viz. that Copyhold and Estate for Years cannot be in one and the same Person, and at one and the same Time, of one and the same Land, without confounding the Left; and besides, they are of divers Natures, and can't stand together in one and the same Person. 2 Rep. 19. a. rulced.

— Gib. Treat. of Ten. 209. cites S. C. and says, that by the same Reason a Lease is adjudged on that Lease will pass the Freehold and Inheritance to him. — Ibid. says that the by the taking a Lease for a. C. Adjudg. — By acceptance of a Lease for Years by the Copyholder the Copyhold is ext. — Agreed per Cur. Godd. 11. pl. 16. Patch 24. Eliz. C. B.

3. So if there be a Copyholder in Fee of Lands, and the Lord Leased to another for Years, who assigns over the Term to the Copy. pl. 237. Mich. 30. B. Eliz. & 21. Eliz. accordingly. — And 191. pl. 227. S. C. adjudged; For both the Interests cannot be in the same Person Simul & Semel, and consequently one of them must be determined, which must of Necessity be the Customary Estate; for the Estate at Common Law cannot merge in that, and when Common Law and Custom come together, and the one or the other must necessarily have Prerogative, and stand, the Common Law shall be prefer'd and take place before the Custom. — Godle. 34. pl. 29. C. Adjourn. — By acceptance of a Lease for Years by the Copyholder the Copyhold is ext. — Agreed per Cur. Godd. 11. pl. 16. Patch 24. Eliz. C. B.

4. C. purchased a Copyhold of A. to himself, his Wife, and Child, for their Lives, and afterwards A. granted a Leafe of the same Lands to B. for his Life, with Livey of Salfin, referring a Rent, and after that died a Fine of the said Premises to C. who accepted the Rent of B. The Question was, if the Copyhold was extinguished? D. 59. b. pl. 207. Hill. 29. 8. in Canc. Compton v. Brent.
5. The Lord devised [demised] a Copyhold to C. for Life, and after passed the Freehold, and Salfin thereof by Livey of Salfin thereof to B. for Life, referring a Rent, and then by Fine levied doth grant the Land to the said C. (come ces que il ad de fun doen &c.) And C. accepteth the said Rent of B. and thereupon it was questioned, whether or no the Copyhold of C. were gone in Conscience. Cary's Rep. 8. cites 23. H. Patch 24. 8. D 30.
6. If a Copyholder joins with his Lea. in a Fee Simple of the Manor, the Copyhold is thereby extinct; agreed per Cur. Godd. 11. pl. 16. Eliz. C. B. Anon.

7. Tenant by Copy took a Lea. for 21 Years of the Manor; Shre Baron — Godh. held, that upon the Expiration of the 21 Years the Copyhold is not determin'd; for tho' the Copyholder has only an Estate at Will at the Common Law, yet he has an Estate of Inheritance by the Custom of P. P. for the Manor, which is not determin'd by the Acceptance of the Leafe Agreement for Ch. J. he 1,
Copyhold.

Ch. J. held, for Years; for if a surrender is made of a Copyhold into the Hands of the Lessor, the Lease for Years, to the Use of the Lessee for Years, and his Heirs, and the Years expire, yet he shall have Admittance to the Copyhold. 17.146. Patch. 25 Eliz. in Scacc. Anon. 24.

But the East in the Copyhold is not of Right, but an Estate at Will; tho' Custom and Precedent had fortified it — S. P. Arg. 84. cited in 4 Good. 117. Mich. 28 and 29 Eliz. C. B. Wray cited it had been relented by good Opinion, that it a Copyholder 's Act to release a Lease for Years of the Manor, the Copyhold is extint for ever. — Supplement to Co. Comp. Cop. 71. 2d. S. P. 4. E. E. 7. pl. 5. Trin. 24. Eliz. C. B. Anon. Mead cited it was adjudged in Hyde's Cafe, that, by taking a Lease of the Manor the Copyhold was extint. — Mo. 154. pl. 3. Mich. 25 Eliz. S. P. the Court held the Copyhold gone for ever, and that the Lease being Lord shall gain it after the Leafe to himself; and Meade J. cited it as adjudged in 22. B. Hide v. Newport. — 4 Rep. 31. 2d. 22. civ. Patch. 17 Eliz. Hyde's Cafe cited it that the Copyhold has no Continuance; but says it was relented in the same Cafe, that such Leases may regard the Copyhold again to whom he will, for the Land was always demised or demised.


10. Husband and Wife Copyholders to them and their Heirs; the Husband for Money obtains an Estate of Freehold to him and his Wife, and the Heirs of their Bodies. The Baron died, leaving Issue; the Wife entered, and suffered a Common Recovery. The Heir entered by the Statute of 11 H. 7. and agreed that his Entry was Lawfull, for that the Copyhold, by the Acceptance of the new Estate, was extinguished. Cro. E. 24. pl. 3. Hill. 26 Eliz. C. B. Stockbridges Cafe.


12. Copyhold Lands demised to 3 Sisters, Habend' to them for their Lives successively, the first accepted a Lease to her Self and Remainder to her Husband, and another Remainder to the 2d Sister. The 2d, agreed to it in Pais 4 Dales after; Per Shut J. 'tis no good Agreement, because afterwards, but had it been at the making the Leafe it had been a full Extinguliment; Per Clench J. the Entry of the Youngest is lawfull notwithstanding the Life of the Eldest, but Gandy J. contra, and Judgment against the Younger. 2 Le. 73. pl. 97. Trin. 25 Eliz. B. R. Curtis cited S. C. and says that this Judgment might be given and the first to the Eldest, but the Judges undetermined, for if her Copyhold Estate were extint by Acceptance of the Remainder, then to be sure her Entry /v. Cottle.

Copyhold.

not take Place, because according to Dough's Café, the Remainder was not to commence till after the Estate for Life ended; fed nearer farther, whether the Youngest Sister's Remainder be not in this Café destroyed the Estate for Life of the Elder Sister is utterly gone; for the Lord having made a Lease, can take no Advantage of the Forfeiture, and then the Remainder not commencing when the particular Estate ends, it seems it can never commence, for there is but much Reason to destroy contingent Remainders of Copyholds, as Freehold Estates, and this is not like the Café where the Lord leses the particular Estate as a Forfeiture, for there it remains (as it seems) to support Remainders.

13. Whereofever a Copyhold is become not demisable by Copy, either by the Act of the Lord, by the Act of the Law, or by the Act of the Copyholder himself, it is extinguished for ever. Co. Comp. Cop. 66. S. 62.

14. If a Copyholder with Licence makes a Lease for Years to a Stranger, or without Licence makes a Lease for Years to the Land, the Copyhold is not hereby extinguished, and yet it is not demisable by Copy. Co. Comp. Cop. 66. S. 62.

15. So if a Copyholder intermarries with a Feme Seignioris, this is a Suspension only of the Copyhold, but no Extinguishment. Co. Comp. Cop. 66. S. 62.

16. So if the Interruption be tortious, as the Lord be dissised, and this Dillon for fised; or if the Land be recovered, by false Verdict, or erroneous Judgment, and after the Land is recontinued, it is not extinguished but may be granted again by Copy; for Non valet impedimentum quod de Jure non fortituri Ecclesiis, & Quod contra Legem fit, pro injerto habetur. Co. Comp. Cop. 66. S. 62.

17. A Feme sole was Lady of a Manor, to which were divers Copy, S.P. The holders, One of the Copyholders did marry with the Seignioris of the Manor, It was the Opinion of the Justices, that the Intermarriage was only a Suspension of the Copyhold, and not an Extinguishment of it. But afterwards they joined in suffering a Common Recovery of the Lands, and upon that Act it was Resolved, that the Copyhold was extinguished. Supplement to Co. Comp. Cop. 73. S. 8. Anon.

in, Mead, and Periam, that the Copyhold was Extinct, for by the Recovery the Baron had gain'd an Estate of Freehold, but they all held that by the Intermarriage it was only suspended. Cro. E. 7. pl. 5. Trim. 24 Eliz. C. B. Anon. — Gibl. Treat. of Ten. 288. cites S. C. for by Suffering the Recovery the Lands were convey'd by Common Law Conveyance, and so the Custum was broke.

18. The Queen seised of the Manor of D. made a Lease thereof for Years 8 Rep. 63. to 7. S. excepting the Trees. King James granted the Reversion to the b. Swain's Seignior the Custum of the Manor was, that a Copyholder of the Manor might top and Lop Trees. The Defendant being a Copyholder, cut Trees of a Copy for Firewood, for which Trespa was brought; Resolved, that the holder that Action did not lie, because the Copyholder was in by the Custum which was paramount the Exception of the Trees in the Lease, and the Exception should not hinder the Custum, altho' the Copyholder came to his ESTATE after the Exception. Mo. 811. pl. 1998. 1 Jac. Swain v. Beckett. not derived out of the Estate or Interest of the Lord of the Manor, for he is only an Instrument to make the Grant, but the Custum of the Manor after the Grant made estabishes and makes it firm to the Grantee, so that tho' the Grant be new, yet the Title of the Copyholder is ancient, and to ancient that this by force of the Custum exceeds the Memory of Man and such Grantee shall have Easements &c. to which the Copyholders before were intituled — Copyholder that comes in by voluntary Grant shall not be subject to the Charges or Incumbrances of the Lord before the Grant. 8 Rep. 63. b. in Swains Cafe. Brownlow 211, 212 S. C. adjudged. — Supplement to Co. Comp. Cop. 72. cites S. C. and the Lord is but an Instrument to make the Grant. — Gibl. Treat. of Ten. 197. cites S. C. accordingly; and therefore if Copyholders have used to have Common in the Lord'sWAfle or Easements in his Wood, or any other Profit appreender in any other Part of the Manor, and the Lord alien the Waft or Wood by Feoffment or Fine, and then grant an ESTATE by Copy, the Copyholder may take the Profits in the Hands of the Allience, for the Custum unites the Incident to the Principal, and this by Copyholder who claims, paramount the Severance. If the Alienation be by Fine, and he does not claim within 5 Years, it seems he is barred. This proves that the Copyholder claims by Custum, not by the Lord, for if he did the Feoffment would bar him of his Common.

S 8

19. If
19. If there be Lese for Life, the Remainder for Life of a Copyhold, and
the 1st. Tenant for Life purchaseth the Freehold of the Copyhold, and after-
terwards levies a Fine thereof and 5 Years pafs, it was adjudged, that
in the Case by the Fine levied the Copyhold was not gone nor de-
stroy'd, and that this Fine was not a Bar to him who was in Remainder
9 Jac. in C. B. adjudged accordingly.

20. In the same Case, it was adjudged, that the Copyhold
was extinguished; for though a Copyholder cannot transfer to another but by Consent of the Lord, and
Surrender in Court, and Admittance, yet he may transfer to the Lord, because this is no Prejudice
to the Lord, for at Common Law he is only Tenant at Sufferance.

21. A Copyholder bargained and sold his Copyhold Estate to the Lease
of the Manor; Resolved, That the Copyhold Estate is extinguished.

22. If a Copyholder releases to the Lord it is an Extinguishment of the
Copyhold, though it be contrary to the Nature of a Release to give a
Polleffion; Per Hobart Ch. J. Hutt. 65. Trin. 19 Jac. in Case of Blem-
mer-Haffet v. Humberstone.

23. H. B. was seized of the Manor of Chineckford in Exfex in Fee, and
built a new House there, call'd Lorrimore, and granted the Custody thereof
to Sir John Gates for Life, by the Word Concessimus, with the Close call'd
Scales, being Parcel of the Copyhold of the said Manor, but without reciting
that it was Copyhold, and this was for exercising his said Office. The
King died. Sir John Gates died; then Queen Mary granted the said
Manor in Fee to Sufan Tonge, who leaseth the Manor for Years to one
Lee, and he, before the Expriation of his Lease, granted this Close to
Robert Lee in Fee, according to the Custum of the Manor : Robert
Lee's Lease expired, and Robert Lee leas'd it to Field, the Plaintiff,
at Will, and the Defendant, as Heir to Tonge, enter'd &c. The
Question was, whether the Grant of the King, without reciting that
this Close was Copyhold, had extinguished the Copyhold Custum, or
not, and enfranchis'd the Close? Newdigate J. held the Copyhold de-
stroy'd, but Glyn Ch. J. held, that it was only dispanded during the Life
of Sir John Gates the Patentee, and Judgment by Glyn Ch. J. and
Warburton was given for the Plaintiff. 2 Sid. 17. 35. 8t. 137. Hill.

24. H. A. is Tenant in Tail of a Copyhold, and it is found that by the Custum
it cannot be barred but by Seifure of the Lord, & non alter nec modo,
and A. accepts a Feoffment of his Copyhold Lands from the Lord that has
the Inheritance and then makes a Feoffment thereof, and then levies a
Fine with Proclamations, and fullers a Common Recovery, the Copy-
hold is dispanded, but not destroyed, quoad his lite. But if A. after-
wards levies a Fine of the Lord, though the Copyhold Interest cannot
pafs, yet it may be barred and extinguished by the Fine. Adjudged:

25. Tenant
Copyhold.

25. Tenant for Life of a Manor with Power to make Leases makes a Lease of a Copyhold, this destroys it for ever; Per Holt Ch. J. Ld. Raym. Rep. 508. pl 682. S. C. though if a Lease of a Manor makes Leases of the Copyholds, it does not extinguish them, see when a Lease by Virtue of a Power demijess, this is an absolute Destruction of them, because the Power is derived out of the Fee, and so it is all one as if Tenant in Fee-imple of a Manor made Leases.

26. A. is a Copyholder in Tail, the Lord grants the Freehold of the Copyhold to him in Fee; the Copyhold tho' intailed is extinct. 3 Wins's Rep. 9. Trin. 1724. Dunn v. Green.

[G. d.] What shall be said an Extinction of the Incidents of a Copyhold.

[Frank-Bank.]

f. If there be a Custom of a Manor that if Copyholders for Life die, their Wives shall have it during their Widowhood, and A. being a Copyholder for Life of a Tene ment of A. by the Procurement of A. to J. S. a Stranger, and to his Trin. 1783 Heirs during the Life of A. the Remainder, to B. the Wife of A. for the Life, the Remainder in Fee to A. and after A. grants the Remainder to Bartlett, W. his Son, and after B. the Wife of A. dies, and A. takes C. to Haughton Wife, and dies feiled; the Widowhood of C. is not extinguished by J. held, that tho' the Purchase and Conveyance of A. her Husband, for the Freehold being in J. S. a Stranger, during the Life of A. the Estate of A. was not extinguished, and by Consequence this excellent Estate, feexcel the Widowhood, continues. Hobart's Rep. 244. between Howard and Bartlett.

f. to be a Copyholder of the Manor; for he shall pay his ancient Services to the Lord of the Manor; and Bodrige J. said, that the Estate which the Tenant had at the Time of his Death is not a New, but an ancient Estate, whereupon it was adjudged, that the Feme shall have her Widow's Estate—Cro. J. 573. pl. 1. Waldie v. Bartlet S. C. adjudged accordingly; for the Custom is continued Quoad her, tho' the Freehold be feemed from the Manor; for the Lord's Act shall not prejudice the Copyholder's Estate, and it is a Privilege and Benefit annex'd by the Custom to his Estate, that his Feme shall have it after his Death, which shall not be defeas'd as long as the Copyhold Estate remains undevelop'd; and the Copyhold Estate here remains notwithstanding the Severance from the Freehold, and not only as a Privilege, but as a mere Copyhold. Ibid. says it was resol'd in the Court of Wards, by the 2 Ch. J. and Ch. B. that the Copyhold remain'd &c. (this refers to the Case in Hob. — Palm. 111. Waldie v. Bartley S. C. adjudged. — And a Difference was taken in the Books between Incidents to the Tenancy, and Incidents to the Seigniory, that the first are not defeas'd, but the last are, and tho' it be defeas'd between them 2, yet it shall be in Evidence as to this Purpose — Jenk. 518. pl. 15. S. C. and the Estate of B. hindered the Defection of the Copyhold, and tho' by the Feoffment it be defeas'd as to the Lord, yet it is not as to the Copyholder.

2. So if A. be a Copyholder in Fee, where the Custom is for their Wives to have their Widowhood it is the Baron dies seised, and the Lord grants the Freehold and Inheritance over to a Stranger; this shall not destroy the Widowhood. Hobert's Reports 244.

3. But...
Copyhold.

3. **But in the said Case,** if the Custom be that the Wife shall be admitted before the shall have her Estate, **there** the must lose it, because the customary Court, which should relieve her, is gone as to her, because her Estate is altogether estranged from the Manor. Hobart’s Reports 244.

2 Lc. 208. pl. 257. Beale v. Langley, S. C. and the whole Court held, that the Copyhold did remain, for other wise by such Pratlices of the Lords all the estates in England might be defeated, and if any Prejudice comes to the Lord by this Act, it is of his own doing, and shall not be relieved against his own Act. Periam J. held, that by this Leafe the Lord had destroyed his Seigniory, and lost the Services as to this Land; And Windham J. said, the Lord had destroyed the Custome as to the Services, but not as to the Customary Interest of the Tenant; But Anderson Ch. J. held, that the Rents and Services remain, and if the Copyholder after such Lease commits Waste, it is a Forfeiture to the Lord, and that will fall in Evidence in a Trial, tho’ such Waste cannot be found by an ordinary Prelimenent, and the same Law which allows the Copyholder his Copyhold Interest against such Lease, will allow to the Lord his Rents and Services; And he said, that the Lord shall have the Rents and Services, and not the Leafe. But the Reporter says, Quod Mirum, against his one Leafe!

4. **A. was Lord of a Manor of whom Black Acre is held by B. by Copy of Court Roll in Fee according to the Custome. A. made Feoffment of Black Acre to a Stranger. B. dies. Though the Feoffee has not any Court to that the Heir of B. cannot be admitted, nor the Death of his Ancestor prejudiced, because but one Tenant, yet Per Cur. the Copy shall bind the Feoffee and the Ceremony of Admissis not necessary in this Case, and the Lord by his own Act has lost his Advantages of Fines, Heritages, and other such Gains.** 4 Lc. 239. pl. 364 Mich. 29 Eliz. C. E. Bell v. Langley.

5. A Copyholder had Commons by Usance in the Waffe of the Lord as to his Meulage and Lands belonging; The Copyhold comes to the Lord who alter grants the fame to the Copyholder cum Pertinentiis. In this Case it was holden, That these Words, viz. (cum Pertinentiis) could not create a new Commons, and the Common firft holden was by Custum annexed to the customary Estate, and was absolutely extinguish’d. Co. Comp. Cop. 73. S. 8.

6. If Copyhold Land sithscatter, the Chief Justice said he knew not how it could be call’d Copyhold Land afterwards unlefs it be because there is a Power in the Lord to regrant it as Copyhold, for if by the Custum, the Wife was dowerable of the Intirety or Moiety, and such customary Copyhold escheats, and he dies, the Wife shall not be endow’d, because as to her the Custum is extint. 2 Sid. 19. Mich. 1657. obiter.

(H. d) **Forfeiture. What shall be a Determination of the Copyhold Estate by Forfeiture.**

1. **THERE was a Tenant for Life of a Copyhold. The Lord granted the Reversion of a Copyhold after the Determination of the particular Estate to another for 20 Years. Afterwards the Copyholder, who was Tenant for Life, by Deed made a Leafe for Life of his Copyhold, and made Livery, which was a Forfeiture of his Copyhold Estate. It was of the Opinion of the Justices in that Case, that this Act of the Tenant for Life was not a Determination or an Extinguishm’t of the Copyhold; For although it was a Determination of the particular Estate of the Copyholder, and that he in the Remainder might enter; yet the Land**
Copyhold.

Land remained Copyhold as it was before. Supplement to Co. Comp. Cop. 73. S. 8 cites Patch. 8 Jac. in C. B. Moor v. Rideval.

1. When a Copyholder makes Feoffment, or does any other Act which was utterly inconsistent with his Estate, there the Copyhold is absolutely determined, and Advantage of it may be taken at any Time; otherwise in Case of a Lease for Years, for the Copyhold remains a Copyhold notwithstanding such Lease; otherwise of Lease for Life; but if he will accept a Lease for Years from another it is a Determination of his Estate; Per Treby. Ch. J. Lutw. 803. Trin. 10 W. 3. in Case of Eastcourt v. Weekes.

[I. d] What shall be a sufficient Lord to give Licence.

This in Roll
is Letter (K)
in fol. 511.

1. A Lord at Will of a Copyhold Manor cannot give Licence to a Copyhold Tenant to make a Lease for Years, though he may grant a Copyhold for Life according to the Custom. Dil. 9 A. 2. between Petts and Debbans, per Curtiam.

Time in the Tenancy than he has in the Seignory. 2 Brownl. 40. Hill. 8 Jac. C. B. Petty v. Evans, S. C. — Gilbert. Tract. of Ten. 582. cites S. C. & S. P. for he cannot discharge the Lord's Interest any farther than his own Interest in the Manor goes, and therefore if the Lord, that gives the Licence has but a particular Interest in the Manor, the Licence is determined upon the Determination of the Lord's Interest.

2. If a Lord for Life of a Copyhold Manor gives Licence to a Tenant to make a Lease for Years, this Lease shall not continue longer than the Life of the Lord. D. 8 Jac. B. between Petts and Debbans, & S. P. accordingly, though the Copyholder be of Inheritance; for the Inheritance of the Lord is bound by that.

(K. d) Actions in general.

What Action at Law or Suits in Equity one Tenant may have against another in respect of the same Land.

Tenant for Life and Reversion or Remainder.

1. In 13 R. 2. Fitz. Judgment 7. it is said, that the Heir who is inheritable to the Copy Lands by Custom may recover the same by Plaintiff in the Court of the Lord, in the Nature of an Allife of Mort- dancer, but he shall not have an Allife of Novel Dissphin; And 15 H. 8. Tenant by Copy 24. the Heir of a Copyholder, Tenant in Tail, shall recover the Lands in a Formedon in the Dascendor. Supplement to Co. Comp. Cop. 78 S. 12. cites 13 R. 2. Fitz. Judgment 7. & 17 H. 8. Tenant by Copy 24.

2. A Copyholder made a Lease for Years by Indenture warranted by the Cus- proclaim; it was adjudged, that the Leefees should maintain Ejftelline Firme, to Co Comp. although it was objected, that it it were so, then if the Plaintiff doth recover.
recover, he should have Habere Facias Possessionem, and then Copyholders should be ordered by the Laws of the Land. Arg. cites Micb. 14 & 15 Eliz. Lc. 4. pl. 3. Anon.

3. Copyholder makes a Lease for Years according to the Custom, this is an Estate upon which an Ejection is maintainable. No. 128, pl. 276. [per Cur. as it seems] cites 15 Eliz. C. B. and says it was so adjudged in C. B. 4 H. 6.

Supplement

4. If a Copyholder dies, and his Heir enters, and leaves it to J. S. who enters and takes the Profits, and is ejected, he may bring an Ejectione Firma without his Lessee's being admitted, or Presentment that he is Head, no Court being held for 30 Years, but when a Court was held he came Gibb. Treas. and pray'd Admittance, which the Steward denied. Le. 100. pl. 128.


and says the Reason seems to be, because the Law calls the Estate upon him by Default, and for enables him to make a Lease, leaf otherwise, there being no Court held in a great while, he should lose the Profits of the Lands, and so the Law calls the Estate upon him, and helps out the Defect of an Admission, but yet only pro Tempore, and therefore the Heir must be admitted; for an Estate at Will is not in itself defendable, therefore where the Heir is guilty of a furvide Negligence, the Reason, for the Law's calling the Estate upon him, ceases, and it will reckon no Estate in him, and consequently he cannot demit.

4 Le. 73. pl 84. S. C. in toto Dem Verbis.

Supplement

6. Lease of a Copyholder for a Year shall maintain an Ejection, but he has only a Possession against all Strangers. 3 Le. 221. pl. 294. Pauch. 30 Eliz. B. R. Anderson v. Hayward. cites S. C.

Treat of Ten. 199. cites S. C. & S. P. accordingly, for the common Law warrants his Term, and therefore gives him Remedy in Cafe he be ejected; and says, that so is it if the Lord gives Licence to make a Lease, the Lessee shall have an Ejection, and cites Eo. E. 461. [pl. 8. Hill. 38 Eliz. B. R. Haddon v. Arrowsmith.]

Cro E. 462. pl. S. Arg. S. P. said to have been adjudged.

7. If Copyholder makes a Lease which is not according to the Custom of the Manor, yet this Lease is good, so that the Lessee may maintain an Ejectione Firma, for between the Lesior and Lessee, and all other except the Lord of the Manor, the Lease is good. Owen r7 Trin. 36 Eliz. B. R. Downingham's Cafe.

C. 304. Pauch. 9 Car. B. R. the Court cited Hill. 13 Jac the Cafe of Sextet v. Ultral, where it was adjudged a good Lease against all but the Lord. Ibid. 305. cites S. C. and says it was so refused 28 Eliz. B. R. and that the Book of 12 E. 4. 13. is direct in the Point.

Supplement

8. Ejectione Firma. The Parties were at Issue; it appear'd upon the Evidence, that the Plaintiff was Lessee for 3 Years of a Copyhold, and the Custom of the Manor was prov'd to be, that a Copyholder might let the Land for 3 Years. It was the Opinion of Anderson Ch. J. that the Lessee of a Copyholder cannot maintain Ejectione Firma, but if it might, he ought to shew his Lesior's Estate, and his Licence, or a special Custom to warrant the Lease. Cro. E. 469. pl. 20. Hill. 38 Eliz. B. R. Wells v. Partridge.

9. Lease of a Copyholder cannot maintain Ejection at Common Law, Per tot. Cur. prater Beaumont; for the Nature of Copyhold Land is to be recover'd only in the Copyhold Court by Plaint according to his Cafe, and the Law takes no Conuance of them but as Tenants at Will;
Copyhold.

and though the Customs are pleadable and allowable at our Law, yet this is gene-
no Action can be maintain'd for them at Common Law, nor by any
then this
must be un-
derv'ed of a
Lease with-
out Licence, and for more than a Year; for by the Licence the Lord gives up his Power of adjudg-
about the Leffe's Estate, because when he has given Licence, it seems that he has an Estate at Com-
mon Law, tho' of Copyhold Lands.

10. A Copyholder by Licence from the Lord to let his Land for 21
Gibh. Treat. Years leased it to the Plaintiff for 3 Years, who entered, and being ejected
Years leased it to the Plaintiff for 3 Years, who entered, and being ejected
brought an Ejectment; all the Barons held clearly, that the Ejectment
brought an Ejectment; all the Barons held clearly, that the Ejectment
was well brought, for in this Case it is good between the Parties, and all
others but the Lord, and in this Case is good against him by reason
of the Licence, and that the making a Lease for 3 Years is warranted
by the Licence for 21 Years, and this Action well maintainable there-

11. If a Copyholder makes a Lease for Years his Leffe shall main-
in an Ejectment; adjudg'd. Mo. 539. pl. 709. Hill. 39 Eliz. B. R.
the Leafe may
maintain Ejectment, per all the Justices; and Popham held, that he may maintain it, tho' the Leafe is
not warranted by the Custom. No. 569. pl. 776. Sprakes's Cafe.

12. A Copyholder made a Lease for a Year, excepting one Day, which was Mo. 569. pl.
warranted by the Cust. warranted by the Cust. 776. S. C.
the Leffe being ousted brought Ejectment; 776. S. C. accordingly.
Ejectment; adjudg'd that it well lies; And per Popham, if there was no Custom, adjudg'd that it well lies; And per Popham, if there was no Custom, Gibh.
yet it should be good against all but him who had the Inheritance yet it should be good against all but him who had the Inheritance Treat. of
freelands. The several Cases for and against the Leesses maintaining an Ejectment says, that all those Cases, that are
the several Cases for and against the Leesses maintaining an Ejectment says, that all those Cases, that are
for declaring upon the Custom, are against it; and that this Opinion is supported by these Reasons, that
for declaring upon the Custom, are against it; and that this Opinion is supported by these Reasons, that
when a Copyholder makes a Lease he determines his Will, and therefore the Lord may enter, and if
when a Copyholder makes a Lease he determines his Will, and therefore the Lord may enter, and if
the Leesse enters he is a Diffeesor, and Lord Coke's saying that a Leesse for a Year may have Eject-
the Leesse enters he is a Diffeesor, and Lord Coke's saying that a Leesse for a Year may have Eject-
ment excludes all others from having it.

13. If a Copyholder be granted for years by Copy, such Copyholder shall Mo. 569.
not maintain Ejectment at the Common Law; Per Popham. Cro. E. 676. pl.

14. Ejectment does not lie of a Copyhold unleis the Plaintiff declares Gibh. Treat.
of the Custom, the Lease, and the Ejectment. Mo. 679. pl. 927. Hill. 43
of the Custom, the Lease, and the Ejectment. Mo. 679. pl. 927. Hill. 43 S. P. as to

S. P. as to

that some hold, that this must come on the other Side, and that in this Diversity of Opinions it will
that some hold, that this must come on the other Side, and that in this Diversity of Opinions it will
be good to see what is plain, that in we may more easily determine and know what is uncertain; and first,
be good to see what is plain, that in we may more easily determine and know what is uncertain; and first,
it seems plain that a Leesse for a Year of Copyhold Land may have an Eejctioine Firmus, and it is very
it seems plain that a Leesse for a Year of Copyhold Land may have an Eejctioine Firmus, and it is very
plain alio, that where a Copyholder may make a Lease by Custion, such Leesse may have a Leesse by
plain alio, that where a Copyholder may make a Lease by Custion, such Leesse may have a Leesse by
and such Leesse may have Ejectment. But the Question is, whether such Leesse need men-
and such Leesse may have Ejectment. But the Question is, whether such Leesse need men-
tion the Custion in his Count? It seems also to be plain, that Leesse by Licence may maintain the Ac-
tion for the Reason before; but the main Doubt of the Case is, whether a Leesse without Licence may
maintain upon that Reason, that the Leesse is good against every Body but the Lord?

15. An Action brought upon an Ejectment, the Plaintiff was non sui
upon his own Evidence, because he declared upon a Demise made for three
upon his own Evidence, because he declared upon a Demise made for three
Years, and it was confessed by the Plaintiff, that the Lands were copyhold
Years, and it was confessed by the Plaintiff, that the Lands were copyhold
Lands, and that the Plaintiff had Licence to demise for 2 Years, neither S. C.
Lands, and that the Plaintiff had Licence to demise for 2 Years, neither S. C.
could be prove that by any Custion he could demise them for 3 Years without
could be prove that by any Custion he could demise them for 3 Years without
a Licence, and fo the Leeffes was taken for a Diffeesor, by the Opinion of the
a Licence, and fo the Leeffes was taken for a Diffeesor, by the Opinion of the

16. Where
16. Where Copyholders ought to present a Surrender, and will not at the next Court, Caveat Emetor, which means that he has no Remedy. Arg. Roll. R. 125. pl. 7. Hill. 12 Jac. cites 5 Rep. 84. Permian's Cave.

17. If the Custom is, that the Surrender shall be to one of the Tenants of the Manor and a Tenant Will not take a Surrender, no Action lies; Per Coke and Haughton. Roll Rep. 126. pl. 7. Hill. 12 Jac. B. R. Ford v. Hoskins.

18. A. feited in Fee of Copyhold Lands surrendered them to the Use of B. on Condition that C should enjoy the same for Life. A died. C entered and committed Wrafe on the Lands and the Timber. On a Bill by B. to stay Waife, it was decreed, that no Relief could be for Waife done, it appearing that C. Tenant for Life; had paid off 100l. Mortgage on the Premises; but an Injunction against him to stay all future Waife, and B. to pay 2 thirds of the 100 l. and C. the other 3d. Fin. R. 220 Trin. 27 Carr. 2 Cornish v. New.


20. A Writ of Aiel was brought in the Court of Copyhold Manor to avoid an Estate, for that there had been no Surrender, a Possession being given with the Defendant there for 45 Years. The Court granted a perpetual Injunction, for that after so long Time a Surrender should be presumed, and the Rolls may be lost, and no reason the Estate should be avoided after so long a Possession. 2 Freem. Rep. 106. pl. 117 Mich. 1689. Knight v. Adamson.

21. Ejection lies of Copyhold Lands, but a Writ of Right will not, by reason of the Beneficis of the Nature of Copyholds. 1 Salt. 185. pl. 4. 7 W. & M. in C. B. Brittle v. Dade.

(L. d) What Suits or Actions lie for the Tenant against the Lord.

1. In Trespass, it was moved that if the Lord casts his Tenant at Will according to the Custom of the Manor, what Remedy has he? Danby Ch. J. of C. B. thought that he should have Remedy against the Lord; For the Lord has done him a Tort by the Butler, because the Tenant is as well inheritable to have the Land to him and his Heirs, according to the Custom of the Manor, as any Man is to have Land at the Common Law, because he pays a Fine to the Lord when he enters; Littleton said, he saw a Subpensa brought by such a Tenant against the Lord, and it was held by all the Justices, that he should recover nothing, because the Entry of the Lord was adjudged lawful, because the Tenant is Tenant at Will, and Writ of talse Judgment, nor Writ of Right does not lie; But per Danby, he shall have Writ of Right against the Lord, and the Lord cannot justify his Entry into the Land. Br. Tenant per Copie &c. pl. 10 cites 7 E. 4. 19.

2. Trespass of a Close and House broken, the Defendant said, that the Place was a House and 20 Acres of Land, which, at the time of the Trespass, and before, was Parcel of the Manor of Dale, and that R.
Copyhold.

R. Lord of the Manor leased him for Life, by Copy, according to the Custom of the Manor, by which he was seised in Dominio suo ut de Libero tenemunto, according to the Custom of the Manor aforesaid, and gave Colour: Per Bridges, he shall not pay de Libero tenemento: Per Brian, he shall, according to the Custom &c. ut Supra. quod Cur. concelt. Per Bridges, he is only Tenant at Will, and therefere the Lord may put him out; but per Brian, No; For if the Lord puts him out, as long as he does the Customs and Services he shall have Trespäs; Per Catesby, the Tenant shall prescribe against his Lord, and for this Cause the Plaintiff demurred upon the Plea of the Defendant; Quare, for no more was laid thereof. Br. Tenant per Copie, pl. 13. cites 21 E. 4. 80.

3. The Lord cannot at his Pleasure put out the lawful Copyholder, and if he do the Copyholder may have an Action of Trespäs against him, for tho' he is tenens ad voluntatem Dominii, yet it is secundum Conuentaedin Manerii. Co. Litt. 60. b.

4. An Action of Trespäs lies against the Lord where he cuts down Trees when by Custom they belong to the Tenant, because this is a mere Personal Action, and Damages only are to be recovered. Co. Comp. Cap. 60. S. 51.


quaerit Concessitam, per Cur. in Case of Ford v. Hoskens.— 2 Bult. 376 S. C. and so held per tot. Cur. except Dodridge J. who likewise afterwards changed his Opinion.—Sid 14. S. P.—Mo. 842. pl. 1137. S. C.—He was decreed to hold his Court D. 264. pl. 38.—He is compellable in Chancery, per Dodridge J. 2 Roll. R. 274.—Adjudged, that Action on the Case lies not against the Lord for refusing to admit a Nominee. 2 Bult. 377.—Resolved, that the Surrenderor may have Action on the Case against the Lord for not holding a Court, and admitting the Surrenderor, but the Surrenderor cannot. 2 Bult. 217. cites 26 Et. Gallaways Case—Supplement to Co. Comp. Cap. 72. S. 4. cites S. C.


7. Writ shall be directed to the Lord of a Manor, commanding him to hold a Court, whereby Justice may be done to his Tenants. Arg. Roll. R. 107. Trin. 17 Jac. B. R. Anon.

8. The Defendant, being Lord of several Manors, did refuse to hold Courts, and grant Admittances &c. whereupon the Copyhold Tenants exhibited their Bill to be relieved, and it was decreed, That the Defendant and his Heirs ought from Time to Time, as Occasion should require, procure Courts to be held for the Manors, and suffer the Plaintiffs and their Heirs to make Surrenders to such Persons, and for such Uses, as the Copyholders should limit and direct, and that the Surrenderees should be admitted accordingly. Nels. Chan. Rep. 12. 6 Car. 1. Moor v. Huntington.

9. If A. Surrenders to the Lord an Intention that he shall grant over Action will the same to J. S. If the Lord will not grant the same, A. may re-enter, but J. S. has no Means to enforce the Lord to grant the same over to him, but he may maintain Trespäs against the Lord if he suffers A. to re-enter; and this is the Opinion at this Day. Calth. Reading 61.

(M. d) How Copyholders shall implead, or be Impleaded. And where.

Mo. 410.
359. S. C. accordingly
by 3 Jus
ices, contra
Fenner,
But at another
Day of the
Jus
lices
held the
Action
non
impeable, because the Court Boren cannot hold Plea, nor award Execution of 50 l. Damages, and yet the Damages were well asserted there.—Cro. E. 226. pl. 25 & c. and the whole Court held the Damages well awarded, and that she might well recover to much there; for as they may hold Plea of the Land, so also for the Damages, as far as the Demandant is damned, and shall be well allowed. Id ad remissit.

2. A Copyholder cannot in any Action Real, or that favours of the Reality, or has a Dependence upon the Reality, implead, or be impleaded in any other Court but in the Lord's Court, for or concerning his Copyhold. But in Actions that are merely Personal he may sue or be sued at the Common Law. Co. Comp. Cop. 60. S. 51.

3. If a Copyholder be ousted of his Copyhold by a Stranger, he cannot implead him by the King's Writ, but by Plaint in the Lord's Court, and shall make Procession to prosecute the Suit in the Nature of an Affidavit of Novel Difference, or of an Affidavit of Mortdancer, or of a Formed in the Defender, Recoverer, or Remainder, or in the Nature of any other Writ, as his Cause shall require, and shall put in Pleg. de Profequendi. Co. Comp. Cop. 60. S. 51.

4. If a Copyholder be ousted by the Lord, he cannot maintain an Affidavit at the Common Law, because he wants a Frank-Tenement, but he may have an Action of Trespass against him at the Common Law; For it is against Reason, that the Lord should be Judge where he himself is a Party. Co. Comp. Cop. 60. S. 51.

5. If in a Plaint in the Lord's Court touching the Title of a Copyholder, the Lord gives false Judgment, he cannot maintain a Writ of False Judgment, for then he should be referred to a Frank-Tenement where he lost none. Co. Comp. Cop. 60. S. 51.

6. No Copyholder of free Tenure in Ancient Demise, can maintain a Writ of Droit Cloze, or a Writ of Mansuexsuerant, but Tenants of Frank-Tenure in ancient Demise can. Co. Comp. Cop. 60. S. 51.

7. A Copyholder that may cut down Timber Trees by Custody, by Licence of the Lord makes a Leafage for Years, the Lessor cuts down Trees; the Copyholder shall not have a Writ of Wafe, but shall be at the Lord's Court to punish this Wafe. Co. Comp. Cop. 60. S. 51.

8. If a Feue dowerable by Custody of a Copyhold by Plaintiff in the Lord's Court, recovers Dwere and Damages, no Action of Debt lies at the Common Law for these Damages, because the Action, that is be in it fell Personal, yet depends upon the Reality. Co. Comp. Cop. 60. S. 51.

Copyhold.

10. If a Copyholder makes a Lease by Copy for Years, or by Deed, with Licence, an Action of Debt lies for the Rent referred upon either Lease at the Common Law; but Ld. Coke much doubts whether he can *sue* for the Rent in the one or in the other, any more than Cuthby que Usf, before the Statute 27 H. 8. cap. 10. could *sue* for the Rent referred by him upon a Lease for Years, and yet he could maintain an Action of Debt for such a Rent, because an Action of Debt for such a Rent, is grounded upon the Contract. Co. Comp. Cap. 60. S. 51.

11. Copyholders shall not *plead* nor be *pleaded* in the King's Courts, but shall make our Pleas in the Co. Litt. 62. Lord's Court and make Petition to follow it in the Nature of one of the King's Writs as Formed, Affile &c. Nor can they have a *Write* of false Judgment, but must sue to the Lord by Petition in Nature of such Writ, and therein *affirm* Errors. Hawk. Co. Litt. 105.

12. An erroneous Judgment was given in a Copyhold Court, where the King was Lord, and this was in a Formedon in Remainder, and it was moved, if the Party against whom it was given may sue in the Exchequer Chamber by Bill, or Petition in the King, in the Nature of a Writ of false Judgment, for the Reversal of that Judgment, Tanfield seum'd that it is proper so to do, for by 13 Rich. 2. if a false Judgment be given in a baile Court, the Party grieved ought first to sue to the Lord of the Manor by Petition, to reverse this Judgment, and here the King being Lord of the Manor, it is very proper to sue here in the Exchequer Chamber by Petition, for in regard that it concerneth the King's Manor, the Suit ought not to be in the Chancery, as in a Common Petition were Lord, and for that very Cause it was diffimulated out of the Chancery, as Sergeant Harris said. Lane 98. Hill. 8 Jac. in Scacc. Edward's Case.

13. Copyhold Lands are as the Demeines of the Manor, and are the Gilb. Treat. Lord's Freeholds, and therefore *not* *pleadable* but in the Lord's Court of Ten. 292. Cro. J. 559 pl. 5. Hill. 17 Jac. B. R. Pymmock v. Hilder.

Law does not take Notice of such baile Estates. — If an erroneous Judgment be given in the Lord's Court, it ought to be reversed by Petition in Chancery, and decreed that it should be. Lane 98. Hill. 8 Jac. in the Exchequer, cited by Tanfield, as Petittell & Case, in which himself was Counsel, in Lord Bromley's Time.


Supplement to Co. Comp. Cap. 86. S. 20. cites S. C. and S. P. agreed. — If a Copyholder without Licence makes a Lease for one Year, or with Licence makes a Licence makes a Lease for many Years and the Leife be ejected, he shall not sue in the Lord's Court by Petition, but shall have an Ejectment *Parsim* at the Common Law, because he has not a Customary Estate by Copy, but a Warranteable Estate by the Rules of the Common Law. Co. Comp. Cap. 60. S. 51.

15. An Ejectment will not lie for a 3d. Part of a Copyhold Tene- ment in Nature of Dover, for they ought to levy a Plaint in Nature of a Writ of Dower in the Manor Court, and the Homage to fever and set out the same; but if the Custom had been for the Widow to have the 3d. Part, in Nature of Dover, but in common with the Heir, 'twere then otherwise; per Peniberton Ch. J. at Chelmsford Assizes. 2 Show. 184. pl. 183. Hill. 33 and 34. Car. 2. B. R. Chapman v. Sharp.

16. Copyholds are Parcel of the Demeines of the Manor, to that if they are triable in the Lord's Court, the Lord might be Judge and Party; and therefore per Treby Ch. J. Jurisdiction of the Lord's Court extends Buck. S. C. to Lands holden of the Manor only and not to Land, Parcel of the Manor, and S. P. by Treby Ch.

(N. d) J
(N. d) Actions by the Lord against the Tenant.

**Gibb Tre. of Ten. 291. cites S. C. and S. P. held accordingly.**

1. A Copyhold may be made for Rent of a Copyholder due to the Ld. which is a Duty at the Common Law, and therefore an Avowry may well be for it; per tot. Cur. Cro. E. 524. pl. 51. *Mich.* 38 and 39 Eliz. B. R. the 3d Resolution in Case of Laughter v. Humphries, as 8 R. 2. Avowry 86 is.

2. Where the Lord *distrains* his Tenant and he makes *Refrees*, and is displeased, yet *per* Keble, *Alfise* lies well enough against the Tenant, *supra* Regref the 2d per Poth. and *without* Poth. of the Land, the *Alfise* cannot be maintained against the Tenant; Keble contra, *tortiori*, *Writ of Customs and Services* lies against him, because of Privy, and he remains Tenant in Fact to the Ld. notwithstanding the *Dilflagin* of the Land; *quod nota; Kelw.* 29. pl. 4.

3. If the Ld. lets the *Rents* of his Copyholder be arrear, and if the Copyholder surrenders his Land, and the Surrenderee is admitted, so a *Fine* is due, but *before* the Rent or Fine paid *he sells* the Manor to J. S. and his Heirs, he has no Remedy either in Law or Equity to recover his Rent or Fine, because, he has depriv’d himself by his own Act. See Tit. Chancery (P.) pl. 1. and (Q.) pl. 3. Pauch. to Car. B. R. Hitcham v. Finch.

4. The *Statute of Merton*, that Feme shall recover Damages if her Baron dies seised, *Per* all the Justices. Mo. 41. pl. 559. Trin. 37 Eliz. in Case of Shaw v. Thompson.

(O. d) What Acts of Parliament shall be construed to extend to Copyholds.

1. A Copyhold is within the *Statute of Merton*, that Feme shall recover Damages if her Baron dies seised; *Per* all the Justices. Mo. 41. pl. 559. Trin. 37 Eliz. in Case of Shaw v. Thompson.

2. The Stat. *Westm.* 2. cap. 4. which gives to the particular Tenant a *Quod ei Deforcet*, may by a benign Interpretation extend to Copyholds, because it is beneficial to the Copyholder, and not prejudicial to the Lord; Agreed. 3. Rep. 9. Pauch. Eliz. in Scacc. and cites to E. 4. 2. b. accordingly.

3. The Stat. *Westm.* 2. cap. 3. which gives the Feme a *Cai in Vita*, & *Refpect*, may by a benign Interpretation extend to Copyholds, because they are beneficial to the Copyholder and not prejudicial to the Ld. Agreed. 3 Rep. 9. a. Pauch. 26 Eliz. in Scacc. and cites to E. 4. 2. b.

4. Copyhold
Copyhold.

4. Copyhold Lands are not within the Stat. Wegen. 2. cap. 20. [18.] Agreed per Executions; for if a Judgment be had in a Court of Record against a Copyholder for Debt and Damages, altho' the Plaintiff may have Execution by Fieri Faecias against his Goods, or a Capias against his Body; yet he cannot have Execution of the Money of his Copyhold Lands by Copyholds. Elegit, for that Copyhold Lands are not within the Statute; and so it is, 5 Rep. 9. if a Stat. Merchant, or Staple be acknowledged by a Copyholder for the Payment of Money at a Day certain, which is not paid, his Copyhold Lands are not extingutable for the same; and the reason of these Cases is, because no Person can come to Copyholds but by Admittance of the Lord, and the Lord shou'd thereby lose his Fine which is due upon Admittance, if the Party might have the Lands upon Extent delivered unto him. Supplement to Co. Comp. Cop. 86, 87. S. 21.  

by Manwood Ch. 5. for if it should extend to Copyholds, the Common Law would break the Cus¬tom. Sav. 66, 67. pl. 138. in Scacc. in Heydon's Cafe. —— Gilb. Treat. of Ten. 173. S. P.  

5. [But] if the Tenant by the Cartesy, or Lease for Years, be of a Manor, and Copyholds were in his Hands by Forfeiture or other Determination, and be bindeth himself in a Statute, and afterwards be demiseth the Copyhold again, the Copyhold shall be liable to the Statute; but if a Copyholder bindeth himself in a Statute Merchant or Staple, his Copyhold Lands shall not be extingutable upon the said Statute, because therein he hath but an Eritate at will. Supplement to Co. Comp. Cop. 87. S. 21. cites Patch. 12 Eliz. in C. B. No. 94.  

6. The Stat. of Prerogativa Regis, cap. 9. and 10. gives the Lands of Co. Comp. Idiots natural to the King, he finding them convenient Maintenance Cop. 61. S. out of the Profits thereof; but if the Idiot hath Copyhold Lands defended unto him, the King shal not have the Wardhip of those Lands therewith, out of the Profits thereof, to maintain the Idiot, because the Ld. of the Manor, of whom the Lands are holden by Copy; but yet all Alienations made by an Idiot of his Copyhold Lands, after Office found, shal be avoided by the King. Supplement to Co. Comp. Cop. 86. S. 21 cites Stat. Prerogat. Reg. 9. and 10. Rep. 170. in Towerfon's Cafe. 4 Rep. 126, 127, 128. in Beverley's Cafe.  


8. The Statute of 16 R. 2. Cap. 5. which makes it a Forfeiture of Lands, Tenements, and Hereditaments, to the Purchasor of Excommunicacion, Bulls &c. in the Court of Rome &c. extends not to Copyhold, because it would be prejudicial to the Lord to have the King so far interested in his Copyhold without his Consent. Co. Comp. Cop. 61. S. 53.  

9. The Statute of 2 H. 5. cap. 7. of Hereditcks extends not to Copyholds, for though the Lord of a Manor is yearly to receive a Benefit in having the Lands, after the Year and the Day, forfeited unto him, yet because the King is Sharer in this Forfeiture, therefore Lands by Copy are not comprehended under the general Words; besides, the Statute speaks of the King's having Annum, Diem & Valtum of those Lands forfeited for Hereby, as in Lands forfeited for Felony, whereby it appears that the Meaning of the Statute is, that such Lands only should be forfeited in which the King by the ordinary Course of the Law should have Annum, Diem & Valtum if the Tenant of them had committed Felony, but such Lands are not Lands by Copy; for if a Copyholder commits Felony, his Copyhold is presently forfeited to the Lord, therefore Copyholds are out of the general Purview of this Statute. Co. Comp. Cop. 61. S. 53.
Copyhold.

10. By the Statute of 1 R. 3. cap. 4. it is expressly provided, that a Copyholder, having Copyhold Land to the yearly Value of 25 s. and 6 d. above all Charges, may be impannelled upon a Jury as well as he that has 20 s. per Ann. of Freehold Land. Co. Comp. Cap. 60. S. 52.

11. If They a Fine of my Copyhold Land, and five Years pass, not only the Lord is bounden as to his Freehold and Inheritance, but also the Copyholder for his Possession; for the Intent of the Statute of 4 H. 7. was to take away Controversies, er litibus Finem imponere, and Con- tention may be as well for Copyhold as for Land at the Common Law; Per Popham Ch. J. Le. 99. pl. 126. Mich. 30 Eliz. Saliard v. Everta.

12. The Statute of 4 H. 7. cap. 24. of Fines extends to Copyholds, for if a Copyholder be diffeited, and the Diffuser issues a Fine with Proclamations, and 5 Years pass without any Claim made, this is a Bar both to the Lord, and to the Copyholder. Co. Comp. Cap. 62. S. 55.

13. So if a Copyholder makes a Possession in Fee, and the Possessor issues a Fine with Proclamation, and 5 Years pass, the Lord is barred; but if the Copyholder issues a Fine, and 5 Years pass, the Lord is not barred; for the Fine levied, (the Copyholder having no Frank Tenement) is utterly void. Co. Comp. Cap. 62. S. 55.

14. And whereas it has been doubted, that this Statute should not extend to Copyholds, but the Lord should hereby receive grand prejudice, for he should not only lose the Fines upon Alterations or Defects, and the Benefits of Forfeiture, and should withal be in Danger to be barred of his Frank-Tenement and Inheritance; to that my Lord Coke answers, if the Lord receive any such prejudice, it is through his own Default for not making Claim, for in regard of the Privity in Estate that is between him and the Copyholder, be may make Claim as well as the Copyholder himself, Et Vigilantibus, non Dormientibus, Jura subventur. Co. Comp. Cap. 62. S. 55.

15. Copyhold Lands are not within the Stat. of 11 H. 7. cap. 20.

Arg. 4 Mod. 2 Sid. 73. Pach. 1658. B. R. Harrington v. Smith.

S. C. cited 85. that the Words in the Statute are Manors, Lands, Tenements, and other Hereditaments.

16. If a Man bargains and sells Copyhold Lands, it seems nothing 27 H. 8. cap. 10. for executing Usage to the Possession, which is plain from common Experience; for when a Copyholder sundered to the Ufe of the Lot, he is not executed to the Ufe; for the Surrenderee has nothing till Admisser, for it was not the Intent of the Statute to execute the Possession to the Ufe of Copyhold Lands, for then a Tenant would be introduced without the Lord's Consent. Gilb. Treat. of Ten. 239.

17. The Statute 27 H. 8. cap. 10. of Usfs touches not Copyholds, because the Transmission of Possession by the sole Operation of the Statute without Allowance of the Lord and of the Tenant and the Branch of another the same Statute, which speaks of Jointures, touches not Copyholds; because Dowers of Copyholds are warrant by special Custom only, and not by the Common Law, or by the General Custom. Co. Comp. Cap. 61. S. 54.

18. The Branch of the Statute 27 H. 8. cap. 10. as to Jointures does not extend to Copyholds, so that it a Jointure be made to a Woman in
in Copyhold, that will be no Bar to her Dower; The Reason is, because the Words of the Proviso being general andintroductive of a new Law, to bar Women of their Dower, where they were not barred by the Common Law, there is no Reason to extend them, since an Estate in Copyhold Lands is very disadvantageous to the Woman, who must pay a Fine to be admitted, which she may not be able to do, and thereby will commit a Forfeiture; besides, a Woman is not dowable of common Right of Copyhold Lands, and so it must be out of the Regard of the Statute, and Lord Coke defines a Jointure to be a competent Livelihood of Freehold, so that it must be an Estate of Freehold. Gilb. Treat. of Ten. 170, 171.

19. The Statute of 31 H. 8. cap. 1, and 32 H. 8. cap. 32, by which S. P. by S. Jointenants and Tenants in Common are compellable to make Partition by a Writ de Partitione facienda, as Copartners at the Common Law, touch not Copyholds because this Alteration of the Tenure without the Lord's Consent may found to the Prejudice of the Lord. Comp. Gilb. Comp. op. 61. S. 54.

17. S. P. because these Acts provide that it shall be done by Writ of Partition, and Copyhold Lands are not impasseable at Common Law.


21. The Teftator was seized of several Rents issuing both out of Brown, Freehold and Copyhold Lands, and died seized, after his Death his Executors brought Debt for the Arrears as well of the Copyhold as of the Freehold Rents due in the Life-Time of his Teftator, but the Court of Yelv. held, that the Statute 32 H. 8. did not extend to Arrears of Copyhold Rents but only to the Rents out of Free Land. Yelv. 135. Mich. 6. Jac. 1. Appleton v. Baily.

ment to Lord Cokes Treatise of Copyholds, where it is said, that this Act extends not to Copy- holds, and that to prove this a Case was cited there out of 2 Le. 109. Sands v. Hempfan, which see, with Lord Ch. B. Gilberts Remarks at [171] pl. 4.

22. Copyholder in by Fee by Licence made a Lease for 21 Years by Supplement Indenture, and the Lease covenanted for himself, his Executors and Assigns, to Co. Comp. fig. to eredit a Pale about such a Chiefe, and lay 40 Leafe of Dung on Land every Year, and to repair the Buildings; Afterwards the Leffor C. and surrendered his Lands to the Ufe of the Plaintiff and his Heirs, who was leaes it admitted, and brought an Action of Covenant against the Leffer for not performing their Covenants; And the Question was whether a Copyholder that cometh in by Surrender of the Leffer, be such an Assignee as might Jold, maintain this Action by the Common Law, or by the Statute 32 H. 8. [cap. 34 of Conditions] as may maintain an Action of Debt or Partition, Covenant as an Assignee, where the Covenant is made by express Words between the Leffer and Leilee, their Heirs and Assigns; fed in Case of adjoinament. Cro. C. 24. pl. 17. Mich. 1 Car. C. B. Platt v. Bicker v. Beauford, the Court held, that an Assignee of a Copyholder is within the Statute to have an Action of Covenant; Per Cur. the Surrenderance of a Copyhold Reversion may bring Debt or Covenant against the Leilee within the Equality of the 32 H. 8. cap. 5, for it is a remedial Law, and no Prejudice can arise to the Lord, and whether he is in the Per or in the Poit is not material, for a Bargaine may remain Covenant within this Statute, and yet no Doubt but he is in the Poit, and Yelv. 222 was a hastily Resolution, and Hob. 176. only an extrajudicial Opinion; Judgment for the Plaintiff; Note, the Words of the Act are, No Person being a Grantor or Assignee of any Reversion, 1 Salk. 185. pl. 2. Mich. 3 W. & M. in B. R. Glover v. Cope,—Grantee of Reversions of Copyholds shall not take Advantage of a Condition broken, by the 32 H. 8 nor by the Common Law (of Covenants they may, Keb. 530. Cro. C. 24. 25. taken Quare upon Yelv 153.) For then by Entry he might come in
Copyhold

to be Tenant to the Lord without Admittance, and the he in the Reverson may enter by the
Common Law, yet he was Tenant before; The Act gives Remedy to Allignees, which he is not
properly who comes in by Surrender; When a Copyholder enters for a Condition broken, he is in
Status quo prior, and therefore shall pay no Fine; and if the Grantee of the Reverson might enter
by Force of the Statute, he would be in the same Place as his Grantor, and to be would in as

Cro. J. 255. 23. A Copyholder in Fee by Licence made a Lease for Years, render-
ing Rent, on Condition to reenter; and the Copyholder surrendered to
J. S. in Fee, who demanded the Rent on the Land, which not being
paid he entered on the Lease; Held, that the Entry of J. S. is not
lawful, for Copyhold Land is not within the Statute 32 H. 8. cap. 34.
of Conditions, nor J. S. such an Allignee as the Statute intends; for he
is in only by the Custom, which does not extend to such collateral
Things, and he is not privy to the Lease, but may plead his EiHate
way immediately under the Lord. Yelv. 222. Trin. 10 Jac. B. R.
of SurDard; Blaier v. Beale.

And per
cap. 34. whereby Grantees of Reversons have like Advantage against Lea-
sees by Entry for Non-Payment of Rent, as Grantees or Leieurs themselves
might have; tho' Copyholders are not within this Statute as to Entry

is reasonable to conclude, that they may Covenant and make Conditions of Re-entry and other Prov-
\viions common in Leases, 8kin. 298. — Adjudged that Covenant lies. Hold. 357 Glover v. Cope.

per Care. the Surrenderee of a Copyhold Reverson may bring Debts or Covenant against the Leesee
within the Equity of the 32 H. 8. cap 3. for it is a remedial Law, and no Prejudice can arise to the
Lord, and whether he is in the Per or in the Pool is not material, for a Bargain may maintain
Covenant within this Statute, and yet no doubt but he is in Pool, and Yelv. 222. was a doubly Rela-
\tion, and Hob 175 an extrajudicial Opinion; Judgment for the Plaintiff. Note, the Words of
the Act are (No Person being a Grantee or Allignee of any Person) — Show. 284. S. C. ad-
judged.

4 Rep. 23. 25. Baron seised of Copyhold of Inheritance in Right of his Heere sur-
rendered it without his Feme to the Use of a Stranger, who was admitted,
and surrendered to the Use of another; All the Justices held that this is
not within the Letter, nor the Equity of the Statute 32 H. 8. which
gives Entry to the Feme and her Heirs against the Difcontinuance of the

of Ten. 166. cites S. C. For the Words are that in Feme, Feasment, or any other Act or All. &c. of
the Wife's Inheritance or Freehold, which Words plainly mean nothing but a Common Law Estate, and the
Common Law way of Conveyancing, and if the Equity of the Act should be confined to extend to
Copyholders by the Entry of the Party, there would be a Tenant without the Affent or Admittance of the
Lord, neither does the other Part of the Act concerning Leases to be made by the Tenant in
Tail, or Husbands of Lands in Right of the Wives, extend to Copyholders, for it only extends to those
Lands that are grantable by Deed, and yet it was adjudged, that a Grant by Deed of Copyhold Lands
by a Dean and Chapter should not be avoided by the Succeeder by 15 Eliz. cap. 10. in the Dean
and Chapter of Worcester's Case, 6 Rep. 37, and so far, the Question will be, why Copyhold Lands
should not be within the 32 H. 8. as well as the 15 Eliz. cap. 10. if the 32 H. 8. does not extend to
Copyhold Land, then a Bishop solely cannot make a Grant by Copy to bind his Succeeder; Lord
Coke says, that a Grant by Copy in Fee, or in Tail, for Life or Years, is a sufficient demising within
the Act 32 H. 8. All those cases may be thus reconciled though in Truth they are not contrary to
one another. When a Man is seised in Fee of Lands in Right of his Church or Wife, or is Ten-
nant in Tail in his own Right, and some of his Lands have been parted by Copy for the Space &c. this is a sufficient demising within the Act, to Warrant his demising of them so as to bind the
Heir
Copyhold.

26. Copyholds are within the Statute of Limitations, per rot. Cur. Gib. Treat. Mo. 411. pl. 559. Trin. 37. Eliz. in Cafe ot Shaw v. Thompson. of Ten. 165. cites S. C. For that is an Act made for the Prevention of the Publick Quiets, and no way tending to the Prejudice of the Lord or Tenant. And Actions concerning Copyholds are as fully and plainly within the Words of the Act of Parliament as any other Actions are, and so there is no reason to exclude them from the Meaning.


28. If one that has a pretended Right or Title to Copyhold Land bar. S. P. laid to gains and falls it to another, this is within the Statute 32 H. 8. cap. 9. of Maintenance &c. The words whereby are, that if any bargain buy or sell &c. any Right or Title in or to any Lands or Tenements &c. which Words (any Right or Title) extend to all Manner of Rights or Titles, and by Consequence, to Copyhold Lands; Per Wray Ch. J. 4 Rep. 26. a. Pach. 31 Eliz. B. R. in Cafe of Kite v. Quinton.

Ten. 172. S. P. and the Act being to suppress wrong, it is within the Equity of it, neither Lord nor Tenant being prejudiced thereby.


30. By the Statute 1 Ed. cap. 14. it is expressly provided, that upon the Dissolution of Abbeys and Monasteries Copyholds should continue as they did before the Statute and should fall into the King's Hands. Co. Comp. Cop. 60 S. 52.

31. By the Statute 1 Mar. cap. 12. it is expressly provided, that if any Copyholder, being Yeoman, Artificer, Husbandman, or Labourer, and being of the Age of 18 or more, under the Age of 60, not sick, impotent, lame, maimed, nor having any just or reasonable Cause of Excuse, upon Request made by any Man in Authority, refuses to Aid Justices in suppressing of Riotous Persons that then immediately he shall forfeit his Copyhold to the Lord of whom it is held, during the Copyholder's natural Life. Co. Comp. Cop. 62. S. 52.
Copyhold.

**Supplement to Co. Comp.**

32. By the Statute of 5 Eliz. cap. 14, it is expressly provided, that the forgery of a Court Roll, to the Intent to defraud a Copyholder, shall be as well punishable as forging any other Charter, Deed, or Writing Sealed, whereby to defeat a Copyholder or Freeholder. Co. Comp. Cap. 60. S. 52.

33. The Statute of 13 Eliz. cap. 4 of Auditors and Receivers of the Queen doth not extend to Copyholds, and it should be a great Prejudice to the Lords of such Copyholds, that the Queen should have the Land; Per-Walfon, Lec. 93. pl. 126. Mich. 30 Eliz. in Case of Saltard v. Everet.

34. The Dean and Chapter of W. the 24 Eliz. demised to G. a Copyholder for Life the same Copyhold Lands for the Lives of A. and C. and the Survivor of them. The Dean died. The Successor Dean and Chapter entered. Refolv'd that the Act of 11 Eliz. cap. 10. does not avoid this Lease if the accoutem'd Yearly Rent be reserved, or more. Rep. 37. b. 38. a. Trin. 3 Jac. B. R. The Dean and Chapter of Worcester's Cafe.

35. By the Statute 13 Eliz. cap. 7. it is expressly provided, that the Copyhold Land, as well as the Freehold Land, of a Bankrupt, shall be sold for the satisfying of the Creditor. Co. Comp. Cap. 61. S. 52.

36. It was resolved by all the Justices, that Copyhold is within the Statutes of 13 Eliz. 1 & 2 Jac. [concerning Bankrupts] because it is no Prejudice to the Lord, for that there ought to be a Composition with the Lord, and the Vendee of the Lands, and altho' the Sale is and agreed by the Justices. Jo. 437. ought to be by Indenture, yet the Vendee ought to be admitted by pl. 3 S. C. 185. 2 Jac. adopted.

Mar. 36 pl. 67. 13 Eliz. expressly S. P. agreed are, That the Commissioners shall dispose of Lands as well Copy as Free, and the said Statutes shall be construed most beneficially for Creditors, id est Sum intusique tribuere. Supplement to Co. Comp. Copyhold & 67. S. 21. Trin. 15 Jac. [Car.] in R. Crisp v. Prat.

**Gib. Treat.**

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Cro. C. 538. 2 S. C. 36. It was resolved by all the Justices, that Copyhold is within the Statutes of 13 Eliz. 1 & 2 Jac. [concerning Bankrupts] because it is no Prejudice to the Lord, for that there ought to be a Composition with the Lord, and the Vendee of the Lands, and altho' the Sale is and agreed by the Justices. Jo. 437. ought to be by Indenture, yet the Vendee ought to be admitted by pl. 3 S. C. 185. 2 Jac. adopted.

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--S. C. cited by the Chief Baron as objected that Copyhold Lands are within the Statutes of 1 Jac. 21. Jac. by reason of the words Lands, Tenements, and Hereditaments, and said, that those Words do not make the Reason, but the Reason is, because Copyhold Estates are expressly mentioned, but the Reason was, because Copyholds are expressly mentioned in the Statute 13 Eliz. concerning Bankrupts, and the Statute 21 Jac. being subsequent and explanatory, and a very beneficent Law, therefore Copyholds have been adjudged to be within those beneficent Laws; Besides, the Lord of the Manor, in the Cafe of a Bankrupt Copyholder, can be no Prejudice, because the Forfeiture of another Lord shall have the actual Possession of the Copyhold, by way of Escheat after the Death of the Copyholder, and this Pro deferta Hereditis, because his Blood is corrupted by the Attainer; but it may he a Question, who shall have the Possession during his Life. Hard. 435. 436. Upon the Statute of 15 Eliz. cap. 7. which impowers the Commissioners of Bankrupts to sell the Lands &c. it has been held, that they could not sell Copyholds if that Law had not given them Power to express Words, viz. to sell as well Copy as Free Land, and to several Acts of Parliament made to give Forfeitures of Lands, Tenements, or other Heridaments &c. which Words do not extend to Copyholds but only to Inheritances in Common Law. And the Reason is because Copyhold Lands at the Time of making 15 Eliz. cap. 7. and other Acts, and long after, were in no esteem of the Law; For the Tenants of those lands held them
Copyhold.

37. By the Statute 14 Eliz. cap. 6, it is expressly provided, that if any of the Queen's Subjects besides the Sea without Licence, that then the Queen shall not only take the ordinary Profits of the Fugitives Copyhold Land as they arise, but shall let, sell, and make Grants by Copy, and usual Woodfares, and other things, to all Intents and Purposes as a Tenant pro Termino durante Vita may do. Co. Com. Cap. 61. S. 52.


39. Copyholds are not liable to the 23d. per Month upon the 29. [29.]


40. A Recusant being Convicted for not paying 20l. a Month forfeited by the Statute 39 Eliz. cap. 5, and other Statutes of Recusancy, a Com. Mission illibed out of the Exchequer to inquire and seize all his Goods, and Lands, Tenements, and Hereditaments, liable to such a Seisure; Upon the Return of the Commisson it appeared, that some of the Lands returned were Copyhold Lands; It was a Question, if they were within the Statute? It was the Opinion of the Court, that they were within the Equity of the Statute; for the Words of the Statute are, Lands, Tenements, and Hereditaments, which are forcible Words, and the Intention of the Statute was, that the Queen should have all the Goods, and that the Recusant by the Words of the Statute was only to have the 3d Part of his Lands, which is all that the Law gives him, and if Copyhold Lands should not be within the Statute, if a Recusant who had great Professions only of Copyhold Lands should go unpunished, it was contrary to the Meaning of the Makers of the Act. Supplement to Co. Com. Cap. 58. S. 21. cites Le. 97. Trin. [Mich.] 30 Eliz. in Scacc. Saliard v. Everard.

not lose his Customs and Services. —— Gibb. Treat. of Ten. 175, cites S. C. and Nyn. in came to be a Question, whether the Statute 29 Eliz. cap. 5, extended to Copyholds: and two seemed of Opinion it did, and one took this Difference, that when a Statute is made to transfer an Estate by the Name of Lands, Tenements, and Hereditaments, Copyholds are not within such Statute.

41. Copyholders are not within the Statute of 31 Eliz. cap. 7. of Cotta. 2 Inf. 737.


to their usual Place of abode, not removing from thence above 5 Miles.

42. By the Statute 15 Eliz. cap. 2, it is expressly provided, that if Gibb. Treat. any Peron or Persons, being convicted of Recusancy, repair not home of Ten. 173.

S. P.

Gibb. Treat. of Ten. 176. S. P. and cites same Cases.

43. A Copyholder is not within the 12 Car. 2. [cap. 24.] to dispose the 2 Laur. Custody of his Children, but the Custody shall be to the Lord or others. 1 S. C. & S. P. according the Custum of the Manor, as to the Copyhold Lands, for the prejudice which may be to the Lord, and for the Meanings of the Estate. — Lord Raym. Rep. 172. 173.

S. C. cited as adjudged for the Lord, for the Statute extends only to Lands and Tenements at the Common Law.
Copyhold.

44. Isaac Penington was attainted of High Treason, by the Act 12 Car. 2. of Regicides, and was at that time seized of a Copyhold, held of the Manor of W. of which the Defendant was Lord. By the said Statute the forfeiture is given to the King of all Lands, Tenements, and Hereditaments, &c. which the Person attainted had on the 25th Day of March, or at any Time since 1646, and that they shall be in the actual Possession of the King, without Office or Inquisition, proviso, that no Grants or Conveyances, or Grants and Surrenders by Copy, &c. had or made before 29 Sept. 1659, by any Person attainted &c. shall be impeached &c. the Question was, Whether by the general Words of that Act of Parliament, the Copyhold Lands are included, and so forfeited to the King, and whether the Proviso, wherein Copyhold Lands are mentioned, adds any Force to the general Words; and per Hale Ch. B. if this Estate should be forfeited, the Copyhold will be destroyed, and put by Letters Patents, and not by Surrender, and it would be a hard Construction to expound an Act of Parliament so as to destroy the Interest of an innocent Person. Hard. 432. 433. Hill. 18 & 19 Car. 2. in Seco, the Duke of York v. Marham.

45. A Copyholder committed Treason in the Murder of King Charles, and afterwards Anno 1655. he surrendered his Copyhold into the Hands of the Lord of the Manor, for the Use of his Children, and died. The Children were admitted. Anno 1659, the Manor was sold to the Plantiff, and Anno 12 Car. 2. the Regicides were attainted by Act of Parliament, by which it was enacted, that all their Estates Real, and Personal, and other Things of that Nature whatsoever they shall be, shall be forfeited to the King; Charlton J. was of Opinion, that this Copyhold was given to the King by the general Words (Other Things of that Nature whatsoever) but all the rest of the Court were of Opinion, that Copyholds were never included in a Statute where the Lord might have any Prejudice, unless expressly named, and for the Proviso, it might be satisfied by the Copyholds which the Traitors might hold in the King's Manors, or where they had a Manor held of the King, and had made voluntary Grants of Copyholds and Surrenders made subservient; But it was ordered to attend the King's Attorney General, to know if he desired to be heard to the Point, et adjornatur. 2 Vent. 38. Pach. 35. Car. 2. C. B. Ld. Cornwallis's Cafe.

46. Statutes that are beneficial to the Copyholder and not prejudicial to the Lord, may by a benign Interpretation be extended to Copyhold; As Statute W. 2. cap. 3. which gives Cai in Vida and Resipet and cap. 4. which gives to the particular Tenant Quod ci Deformet. 3. Rep. 9. a. Pach. 26 Eliz. in the Exchequer. Heydon's Cafe.

47. When an Act of Parliament alters the Service, Tenure, or Interest of the Land, or other Thing in Prejudice of the Lord, or of the Copyholdman, or of the Tenant, there the general Words of an Act of Parliament shall not extend to Copyholds, but when an Act is generally made for the Publick Good, and no Prejudice may accrue by reason of the Alteration of any Interest, Service, Tenure, or Custom of the Manor, there oftentimes Copyhold, and customary Estates, are within the general Purview of such Acts. 3. Rep. 8. a. Pach. 29 Eliz. in the Exchequer. Heydon's Cafe.

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Copyhold.

48. Note, that in no Case, where the King claims a Share in the Forfeiture of the Lands, (as in the Statute H. 5. which speaks of Lands forfeited for Hereby, viz. that the King shall have Annum, Diem et Valorem, as he hath for Lands forfeited for Felony) Copyhold Lands are not within the general Terms of such Statute, for that in such Case, if the Copyholder committed Felony, the Copy hold is presently forfeited to the Lord of the Manor, and therefore out of the Words of that Statute, and other the like Statutes. Supplement to Co. Comp. Capt. 67. S. 21.

49. Copy holders are comprehended under Statutes, either by express Limitation in precise Words, or by a secret Implication upon general Words. Co. Comp. Capt. 65. S. 12.

50. There is a Difference between Penal Statutes, which gave a Forfeiture generally, or to particular Persons, as the King &c. Copyholders are within the first, because in such Case the Lord may enter, or the Land may either be sold, but they are not within the last. 2. Sid. 43. Arg. Hill. 1637. in Case of Harrington v. Smith.


52. Those Statutes which concern or affect the State of the Land have been continued not to extend to Copyholds, as the Statute which gave Elogit. Atron Burnel did not. Arg. Show. 287. Mich. 3 W. & M.

been adjudged to reach it. Ibid. cites Le. 97. —— Ow. 57 Anno.

53 Copyholds are held to be within the Statute of Sewers to be Taxed but not to be Sold. Arg. Skin. 297. Mich. 3 W. & M. in B. R. in Case of Glover v. Cope. cites Callis Reading on the Statute of Sewers.

54. Particular Statutes by which the Lord may have any Prejudice as to Fines or Americanities, don't bind Copyhold Tenements, as the Statute H. 8. concerning Bankrupts did not extend to Copyholds, and therefore a subsequent Law was to include them, neither did the Statute of Recusancy extend to such Estates, and the Reason given is, because the Lord may thereby receive an Injury by the Loss of the Copyhold not been adjudged not to be with stood. Towns and Services, but general Laws made for the Publick Good, and where the Lords of Manors can have no Prejudice, are binding, and shall therefore in such Case extend Copyhold Lands, tho' not named in such Statutes; Arg. 4 view of other Statutes which contain general Words, is, because of the respect to the Lord's Prejudice. Carth. 205 in Case of Glover v. Cope. —— 1 Salk. 183 st. 2. S. C. but S. P. does not appear.

(P. d) Agreements between Lord and Tenants.

1. A Custom of Descent in a Manor, and many other Things, were in Controversy between the Lord and Tenants, and between the Tenants themselves, and in the 10 Eliz. a general Agreement made by Deed indented, and a Bill in Chancery establishing the same, but no Record to be found, but the Deed enrolled, though all the Tenants of the said Manor shall he stopped in the Chancery to speak against this, for it is for the Repose of the Realm notwithstanding Pretence was made that Agreement cannot alter a Custom in Law, that same were Infants, some from Coverts at the Time, and that the Lord was not Tenant in Tail, of which Opinion was Mr. Cook Attorney General, and Justice Gawdy. Cary's Rep. 29, 30. cites 10 June 1602. 44 Eliz. Z 2. In
Copyhold.

2. In the Case of Tenant-Right between M. and some of his Tenants on the Borders, the Lord Chancellor pronounced, that neither in Tenant-Right nor in other Copyholds would he make any Order for all his Tenants in general, but for special Men in special Cases; nor for any longer Time than the present, except it were by Agreement between the Lord and Tenants, which then he would decree if it appeared reasonable. Cary's Rep. 38. cites 8. June 1 Jac. Mifgrave's Case.

3. An Agreement between the Lord and Tenants for settling Heirs, and dividing Common, was decreed to be affirmed. The Lord solds the Manor, and the Ecclesiast, though he came not in Privyty, brought a Bill to reverse the Decree, and had the same confirmed, though neither the Lord nor Tenants had greater Estate than for Life; Quere. Vern. 427. pl. 402. Hill. 1686. Dunn v. Allen.

(Q. d) Cases of Agreements, and Covenants about Copyholds between Tenants and others.

1. A Covenants to assign Copyhold Land to J. S. In an Action by J. S. he needs not shew a Court to be holden, for A. ought to procure a Court to be holden. Cro. J. 102. pl. 35. Mich. 3. Jac. B. R. Fletcher v. Eyre.

A Man covenanted for his own Use and his Heirs, to surrender Copyhold to certain Uses agreed upon, and died before it was done. A Bill was brought for a specific Execution of this Covenant, and the same was decreed accordingly. 9 Mod. 106. Mich. 11 Geo. in Can. Neeve v. Keck.

3. Two Copyholders upon a Treaty of Marriage between them surrendered their respective Copyholds to the Use of them and the Survivor of them, and before Marriage the Man dies. The Woman entered, and enjoyed for 30 Years; it was intilited, that this was a Trust for the Man and his Heirs till the Marriage, and Lord Jeffries decreed a Re-Surrender, and an Account of the Profits from the Death of the Man. Vern. 432. pl. 408. Hill. 1686. Hamond v. Hicks.

4. Rent granted out of a Copyhold which had been frequently aliened by Surrender and Admittance for a valuable Consideration was made good in Equity. 2 Vern. R. 16. pl. 10. Hill. 1686. Spindlar v. Wilford.

5. On Marriage a Freehold Estate was settled on Husband and Wife for their Lives, Remainder to the first Son in Tail, Remainder to Trustees for 500 Years, to raise Daughter's Portions, Remainder over, and there

Though in S. F. the Rent would not pass by any

S. P and for

Reducing
Times to a
Certainty.

En. R. 134
Mich. 26
Car. 2.
Meadows
v. Patrick.
there was a Covenant from Baron to settle his Copyhold Estate to the same or like Uses, and subject to the same Trusts on Provisoes &c. A Surrender is made, but no Term is limited. There was no Issue Male, and the Freehold was sufficient to raise the Daughter's Portions. Bill dismissed at the Rolls, but Lord Somers, on Appeal, decreed the Copyhold Estate to stand charged, and liable to raise Daughter's Portions. 2 Vern. R. 331. pl. 308. Shouldam v. Shouldam.

6. A. a Copyholder of Inheritance having no Issue, intended to leave it to his Nephew, but being taken ill, he had no Time to surrender it to the Use of his Will, for want whereof the Estate would descend to M. his Sister; to prevent which A. got M. to give a Bond of 2000l. to the Nephew his Son, condition'd to convey the Lands to her Son and his Heirs upon Request. The Son, after A.'s Death, entered and died without Issue, but left 2 Sisters, no Conveyance being executed by the Mother; But Lord Chancellor decreed, that he was a Trustee for her Son and that she should surrender to her Daughters, and they to be admitted as Coparceners. 9 Mod. 62. Mich. to Geo. Alfon's Cae.

(R. d) Attorney. What Services may be done by Attorney.

1. The principal Duty inseparably to be done to the Person of the Lord, and by his Copyholder, is in doing of Fealty, which upon every Admittance he is to do the Lord, for that is especially mentioned in the Copy granted by the Lord in these Words, viz. Dat Domino pro Fine, et lecit Domino Fideliteram, and Fealty cannot be done but in Person, and not by an Attorney. And although (as Mr. Littleton states) Fealty may be taken by the Steward of the Court of the Lord of the Manor, yet it is done to the Lord himself, and it must be done by the Copyholder himself in Person. Supplement to Co. Comp. Cop. 83. S. 18. cites 9 Rep. in Comb's Case 75.

2. The Suit and Service which is to be done in the Court of the Lord by his Copyholder must be done in Person and not by another for him, and it is to be done upon Oath, and a Man cannot swear by Attorney, and therefore he cannot make an Attorney to do his Suit and Service, but the same must be done by him in Person. Supplement to Co. Comp. Cop. 83. S. 18.

3. Some particular Things a Copyholder may do by his Attorney; as be may pay his Rent by his Servant or Attorney, or tender it by them, and such Payment and Tender shall be good. Supplement to Co. Comp. Cop. 83. S. 18.

4. So if the Copyholder of the Manor be, that upon the Death of every Copyholder the Tenant shall pay and tender his last Rent unto the Lord for a Heriour, there the Heriour may be paid by the Heir before his Admittance, or by the Executor of the Copyholder and such Payment or Tender of it shall be good. Supplement to Co. Comp. Cop. 83. S. 18.

(S. d)
Copyhold.

(S. d) By-Laws.

1. **THE TENANTS may change the By-Laws at the next Court without the Consent of the Lord**, Per Dyer. Dal. 95. pl. 23. 15 Eliz. Franklin v. Cromwell.

2. By-Laws made in *Court Baron to bind Strangers* that are not Tenants of the Manor, are void. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

3. If the *Homage only make By-Laws*, and not all the Tenants, the By-Laws are void. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

4. To make By-Laws that they shall *not put in their Cattle in their Severalties before such a Day* is void. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

5. By-Laws to bind Strangers are not good, though they are made by the Homage, and by all the Tenants, and of such Things whereof By-Laws may be made. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

6. Every By-Law ought to be made for the Common Benefit of the Inhabitants, and not for the private Commodity of any particular Man, as J. S. only, or the Lord only; As if a By-Law be made that none shall put his Beasts into the Common Field before such a Day, it is good; but if a By-Law be made that they shall *not carry Hay upon the Lord's Lands, or break the Hedges of J. S.* this is not good, because it respects not the Common Benefit of all; Per Periam J. Goldsb. 79. pl. 13. Hill. 30 Eliz. Anon.

7. Per Windham J. some Books are, that By-Laws shall bind no more than such as agree to them. Goldsb. 79. pl. 13. Hill. 30 Eliz. Anon.

8. A By-Law in a Manor *binds the Tenants without Notice*, because they are supposed to be within the Manor; Per Hale Ch. J. Vent. 167. Mich. 23 Car. 2. B. R. Isaac v. Ledgingham.

(T. d) Charitable Uses.

1. IN Case of charitable Uses the Lord of the Copyhold shall have his Duties always of Fines, Heriot &c. of the Heir, or Purchaser in whose Name the Interest of the Copyhold rests in Law, and he shall have an *Allowance* made him out of the charitable Use. Mo. 890. pl. 1253. Anno 1586. River's Case.

(U. d)
Copyhold.

(U. d) Common.

How Lord or Tenant are interested therein, and also in the Soil.

1. This Custom might have a lawful Commencement that one Copyholder should only have Common &c. in the Land of the Lord, and by the Custom of some Manors, some Copyholders have Common in one Waste of the Lord, and some in another separately, and all the Copyholders may be extinct, save one. 4 Rep. 32. a. b. pl. 25. Mich. 29 & 30. Eliz. B. R. Foulton v. Cracherode. If the Lord or the Tenant are interested therein, it is found that the Custom is, that a Copyholder may top and top the Trees for Firewood, he may justify the doing it; because the Copyholder is in by the Custom, paramount the Exception of the Trees in the Leafe; adjudged by all the Court. Mo. 811. pl. 1598. Trin. 5 Jac. C. B. Swaine v. Becket. Brownl. 251. S. C. held accordingly per 106. Lur. grant a Copyhold for 5 Lives according to the Custom, and it is found that the Custom is, that a Copyholder may top and top the Trees for Firewood, he may justify the doing it; because the Copyholder is in by the Custom, paramount the Exception of the Trees in the Leafe; adjudged by all the Court. Mo. 811. pl. 1598. Trin. 5 Jac. C. B. Swaine v. Becket. Brownl. 251. S. C. held accordingly per 106. Lur.

2. If the Copyholder for Life has used to have Common of Pasture or Embriages, and after the Lord alienates the Waste, or Woods, or another in Fee, and after grants a Copyhold Estate according to the Custom, the Copyholder must have Common there as hath been Manor with us'd, but in this Case the Custom must be laid specially; otherwise it is an Exception of a Leafe for Life by Deed. 8 Rep. 63. b. 64. a. Mich. 6 Jac. Swayne's Case.

3. In Trepsae &c. Quære Clausum fregit &c. and putting in his Cattle &c. The Defendant justified, for that the Place where is Parcel of the Manor of Haye, in which Manor there is a Custom, that it shall be lawful for the Lord of the Manor to have Common in the Lands of the Tenants thereof for Life, or Years, when they lie freeth, and upon a Demurrer this was adjudged a void Custom, and against Law, that the Leafe shall have Common against his own Demise, because it is Parcel of the Thing demised. Psalm. 211. Mich. 19 Jac. B. R. White v. Sawyer.

A. The Lady W. being Lady of the Manor of Stepney, exhibited a Bill to establish an Ufage and Custom within the said Manor ever since the Reign of H. 8. which was, that the Lords of the said Manor might, upon the Premisement of 7 of the Copyholders thereof, determine what waste Ground was fit to be set out and inclosed, in order to build on the same, and such Premisement being agreed upon by the Major Part of the Homage at the next Court, the same was set out and inclosed accordingly, without any Modification or Divertance by the Tenants; that such a Premisement was made in Manner as aforesaid of several Parcels of Waste Ground to build on in Mile-End Green, where since the great Fire, Filth and Carrion had been usually laid, to the great Anoyance not only of some of the Tenants, but of all others passing that Way; that this Premisement was allowed by the Major Part of the Homage at the next Court, and which is now fought to be established by a Decree of this Court, the rather, because it is opposed by some of the Tenants of the said Manor, who have brought Actions &c. pretending, though very untruly, that they have a great Loss of Common by setting out and enclosing such Ground; that by Indenture dated 15 June 15 Jac. the Lord W. in Consideration of 3500 l. paid to himself, and 3000 l. more to his Father A a a Henry,
Henry, Lord W. did grant and confirm to the Tenants their Privileges and Customs, and particularly the Commons which they then enjoyed, with Liberty to dig Gravel, Clay, or Loam, to repair or build any of their Copyhold Tenements, and covenanted for the quiet Enjoyment against him, his Heirs and Assigns; that the reason why no Disturbance of this Nature hath been hitherto given is, because there was never any such Inclosure for building, under Pretense of such an Ufage and Custom till now. Upon reading of several Court Rolls of the said Manor from the Reign of H. 8 till the Reign of Car 2, relating to the said Ufage, and hearing all Parties, the Court decreed, that this was reasonable Ufage, and fit to be established, and that the Plaintiff hath proceeded according to the Ufage in procuring the laid waffle Ground, called Mile-End Green, to be let out, presented, and allowed by the Homage, and inclosed as aforesaid, and to had Power to grant Leafe and Estates thereof at her PLEASURE to be inclosed, and kept in Severalty &c. Fin. Rep. 263, 264. Trin. 28. Car. 2. 1676. Lady Wentworth & al. v. Clay & al.

(W. d) Copyholders Interest as to Commons.

Vent. 127.
S. C. adjo- natur.
Hid. 163.
S. C. the whole Court held the Prescription good, and being laid as a Custom in the Manor, it was not needful to express the Copyhold Estates; that it does not take away all the Profit of the Land from the Lord; for his Interest in the Trees, Mains, Duties &c. continues.

1. THOUGH the Copyholders have *solum & separatam Pasturam* &c. yet the Lord may distress for other Damage the *Beasts of a Stranger*, who has no Right to put in his Beasts, though the Lord has no Interest in the Heritage; *Per Hale Ch. J. 2 Saund.* 328. Hoskins v. Robins.

2. The customary Tenants of a Manor allege a Custom pro sola & separatia Pastura in &c. quilibet Annu per tenuum Annun &c. The Custom is good, and might also have a reasonable Commencement; One may presume for the Hole Feeding, because it might have its Commencement by Grant, and if it be good by Prescription, it may be good by Custom, and such a Custom at first might commence by the voluntary Agreement of the Lord with the Tenants to hold their Estates, which were then but Estates at Will, and to believe their Pains and Labour in Improvement, and so a continual Ufage had now made a Custom for the same Reason, that it had now fixed their Estates and made them Permanent, and enabled them to bring Actions against their Lord, if he puts them out of their Estates contrary to the Custom. *2 Saund.* 326. 323. Pach. 23. Car. 2. B. R. Hoskins v. Robins.

3. In Can. Mich. 1726. in Manor of Hamstead, one Roux having built the Long Room on Hamstead Heath by a new Copy from the Lord, without the Consent of the Homage, a Bill for establishing the Custom of this Manor pray'd to pull it down, as an Intrusion on the Common or Waffle, but Istues being directed to try several other Customs of this also, King Chancellor said, that though it might be reasonable for Roux to be restrained from building any farther, yet as to what he had done, being suppos'd at 3000l. Expense, the Commoners standing by, he would not let it be pull'd down, for on laying the first Stone the Commoners ought to have objected to it, and an Injunction, staying him to go on to finish his Buildings, was disolv'd; this was declar'd provisionally until the Istues were tried. MS. Rep.
(X. d) Cottages built on the Waste.

THE Plaintiff was Lord of the Manor of Ewell in Surrey, and brought his Bill, claiming an House in Ewell built upon the Waste. It was said by Lord Chancellor, that the Lord of a Manor is never said to be out of Possession; that what is built upon the Waste is his, and that upon a Trial before Justice (John) Powell, touching some Cottages or Tenements built upon the Waste, though the Lord had not been in actual Survey of the Cottages or Tenements in Question for 60 Years, and there had been several Fines levied thereon, by the Opinion of the Judge the Lord had a Verdict. MS. Rep. 13 July, 1726. in Canc. Loyd v. Bartlet.

2. It has been ruled in Evidence at the Assizes, that a Cottager on the Lord's Waste lives there by the Lord's Consent, and so is only a Tenant at Will, but this is very doubtful where there has been a long Possession; Said by Pratt Ch. J. Mich. 11 Geo. B. R. And per Cur. 20 or 25 Year's Possession is a good Title in an Ejectment, as well as a Bar to an Ejectment.

(Y. d) Court-Rolls.

What Interest the Tenant has in them.

1. It was ordered, that Court-Rolls should be brought and shewed to Counsel, to show which is Copyhold, and which is Freehold. Torr. 109. cites 12 Jac. Corbett v. Peithall.

2. Tenant by Copy has an Interest in the Rolls of the Court as well as Lord, and the Lord, because it is his Evidence, and the Lord cannot deny Copyholder Access to the Rolls; Per Doderidge. Lat. 182. Mich. 2 Car. Widow Stacey's Case.

3. A Copyholder being sued in B. R. for certain Lands, moved that Mod. 396. the Steward of the Court might be ordered to bring in the Rolls into Arg. and B. R. that by them he may be the better enabled to defend his title by Title to the Lands; Per Roll J. this Court cannot order him to do it, the Court, so would make no Rule in it. St. 128. Trin. 24 Car. B. R. that it has been frequently ordered for Stewards to grant Copies, and produce the Rolls at Trials. Fin. Rep. 249. Paich. 23 Car 2 ordered that the Plaintiff, in a Bill for Discovery of Deeds &c. should have Recourse to the Records, Rolls, and Evidence of the Manor, in which the Lands claimed, lie, to view, peruse, and take Copies thereof, paying for the same) and ordered, that the Defendant and his Heirs, Lords of the said Manor, should produce so many thereof at any Trial at Law as the Plaintiff or his Heirs should at any Time require to be produced, but at the Charge of the Plaintiff, his Heirs, or Affigns.

4. Bill to have certain Surrenders made up and ingrossed which were made, but not ingrossed; Plaintiff and Defendant were Brothers; Per Finch
Copyhold.

Finch K. the Father being Lord of the Manor cannot declare the Trust of Copyhold, granted to his Son, though he took the Profits always by their Consent. Ch. Cales 261. Trin. 27 Car. 2. Dowdwell v. Dowdwell.

5. If the Lord of a Manor refuses a Tenant a Sight, or Copy of a Court-Roll, to make such Use of them as the Tenant may think proper, either to ground a Fine upon or make his Defence, he said Hale was of Opinion an Attachment should go against the Lord; Per Holt Ch. J. 11 Mod. iii. Pach. 6 Ann. B. R. Anon.

(Z. d) Customary Court.

If the Lord of a Manor having many Ancient Copyholds in a Vill grants the Inheritance of all of them, the Grantee may hold Court for the Customary Tenements, and accept Surrenders to the Ufe of others, and make Admittances and Grants; For though it be no Manor in Law because it wants Frank-Tenants, yet as to the Copyhold Tenants the Feoffee or Grantee has such a Manor, that he may hold Court and make Admittances and Grants of the Customary Tenements; for every Manor which consists of Frank-Tenants, and Copyhold Tenants, comprehends in Effe they fell 2 several Courts, viz. a Court Baron for the Frank-Tenants, in which the Suitors are Judges; and another for the Copyholders, in which the Lord or the Steward is Judge; and the Grantee of the Inheritance of the Copyholds may hold such Court for the Copyhold Tenements only, as the Grantee might. 4 Rep. 26. b. Trin. 30 Eliz. B. R. the 3d Resolution in Case of Melwick v. Later.

Cro. E. 102, I. 102. pl. 10. 3 C. held that tho' the Tenements are divided from the field of the Manor, yet the Custom remains, and they continue Copyholders, paying their Services and Duties &c. and that he who has the Freehold of them may keep a Court in any Place, and it is not properly a Court Baron, but as a Court of Survey, at which Copyholds may well be granted, and the Lord or his Steward may grant Copies out of Court as well as in Court.—Ibid. The Reporter adds a Note, that a Writ of Error was brought of this Judgment in the Exchequer Chamber, and the Error aligned in the Matter of Law, but no Judgment given; for the Parties compounded, and agreed with the Plaintiff in the Writ of Error, and he had the Lands, as Evens who was of his Council told me, for he said, that all the Justices and Barons in the Exchequer Chamber did hold clearly, that it was a void Grant by Copy; for being divided from the Manor, the Custom to demne them is altogether gone and destroyed, so as the Estates for Life which were in Effe at the Time of the Alienation of the Freehold of them and Severance of them, being now determined by Surreror, or otherwise, no new Copy can be made, yet the Alienation of the Freehold of them do not destroy the Estates of the Copyholders then in Effe, but they shall hold them during their Estates, paying their Services; but no new Estates may be afterward granted by Copy.—Gib. Tract. of Ten. 196 says, that since every Manor, confilling of Freetholders and Copyholders, has 2 Courts one a Court Baron, and the other a Court for Copyholders, whereof the Seward is Judge, what Reason is there, these being several Courts, and there are several Judges of them, that the want of Freeholders should hinder the Grantee from keeping a Court for granting Estates by Copy, especially since the Consequence is so fatal; and therefore if the Lord refuses the Service and Tenure of his Freeholders, yet the Lord may keep a Court for his Customary Tenants, and so tho' the Lord cannot make a Mansors of one, confilling of Deniues and Services, yet by his own Act he may make a Manor of Copyholders; this seems to be but a Division of the Courts, which before were in one, for a Manor seems to be so to two Intents, as to the Freeholders and as to the Copyholders, and so in Effe seems to be a double Manor, and therefore are there several Courts in Effe, and several Judges, according to the Matter that is before them; and it is no new making of a Manor to grant the Inheritance of the Copyholds, but only to put that into the Hands of 2 Men which before was in one, and yet was as much two Mansors then as now.

4 Rep. 26. b. 27 a. S. C. and held per ver. 2. Lord of a Copyhold Manor lefled the Court Baron for 2000 Years, fixing to himself the other Deniues and Services; the Lettice held Court, and a Copyholder surrendered to the Ufe of A. in Fee. 'Twas held, that
Copyhold.

that a Copy to A. was good, and Anderson said it had been held so Cur. that in Lord Hatton’s Case and several others since, and that it had of-fach Lefsee tentimes been held, that the Court may well continue as to that Purposo Court for Admittance of Copyholders, for otherwize every one of his own the Copy-Act might destroy his Copyholder’s Litate. Cro. E. 394. pl. 21 Pach. holds ac-

3. If a Feme be endow’d of several Copyhold Tenements, the may keep a Court and grant Copies, though the Services of any of the Freeholders weare not allotted to her, but the Demises and the Copyhold Tenements only; For though the having no Services cannot hold a Court Baron, yet the may S.C. have a special Court for this Purposo, and it is good enough; Per- Gibb. Popham clearly, and cited Sir Christopher Hatton’s Case for Wellingborough, where it was adjudg’d, that where he had 20 Copy-

(A. e) Custom. Good. And How to be Proved.

1. The Custom of “the or Landmark is, that if any Copyholder is about to sell his Copyhold, Proclamation shall be made in Court, that if the next of Blood of the Vendor, or in Default of him, the next Neighbour of the Vendor shall come to Court at Sun-rise, and will pay as much as the Bargainee has agreed to pay, that he shall have the Land notwithstanding the Bargain. Jenk. 274. pl. 95.

2. Continuance for 50 Years is requisite to falten a customary Condition upon the Land against the Lord, and Seifure for a Forfeiture is an abuse. Interruption of the Continuance, so that the Time before the Forfeiture is not of Account, per tot. Cur. 3 Le. 107. pl. 158. Trin. 26 Eliz. B. R. Taverner v. Cromwell.

3. In Trespasses the Issue was, if the Lord of the Manor granted the Lands per Copiam Rotulorum Curiae Manerii secundum Confuetudinem Manerii predici. It was given in Evidence, that the Lord of late, at his Court, granted the Lands per Copiam Curiae, where it was never granted by Copy before; In that Cafe the Jury are bound to find Quod Dominius non conceifit, as it was holden by the Courts; for altho’ De facto Dominus concefit per Copiam Rotulorum Curiae, yet Non concefit secundum Confuetudinem Manerii predici. Supplement to Co. Comp. Cop. S. 16. cites Leon. 56. Pach. 29 Eliz. C. B. Kemp v. Carter.

4. To prove a Custom to grant Leaves for Years, ’tis not Sufficient to prove it for 50 or 49 Years, but it ought to be from Time whereof &c. Cro. E. 351. pl. 3. Mich. 36 & 37 Eliz. B. R. Jackman v. Hod-

5. Copyhold
5. Custom to hold the Land till Fine made with the Lord, for it was held a reasonable Custom. Cro. E. 351. pl. 3. Mich. 36 & 37 Eliz. B. R. Jackman v. Hoddeton.

6. There is a Difference between a Prescription for Freehold Land and for Customary Land; for Custom, which concerns Freehold, ought to be throughout the County, and cannot be in particular Place, 45 All. But a Prescription concerning Copyhold Land is good in a particular Place, for De Minimis non curat Lex, and the Law is not altered thereby, and it may be there is but one Copyholder there, for which he might prescribe, and Beamond agreed this Difference, for Custom to have Profit Apprender, Privilege, or Discharge, may very well be in a Particular, and by Owen it was ruled accordingly in Collis's Cafe in the Queen's Bench. Cro. E. 353. pl. 10. Mich. 36 & 37 Eliz. C. B. in Cafe of Taverner v. Cromwell.

7. Custom that a Copyholder for Life may nominate one or two to succeed him for a Time to be assisted by the Ingage, if they cannot agree with the Lord, adjudged to be good. Noy 3. Pach. 3. Jac. B. R. Crabb v. Bales.

8. 'Tis not sufficient to prove an Usage for the Sole Pasture to show that the Tenants only had fed it, unless it were proved also, that the Lord had been opposed in the putting in of his Cattle, and the Cattle impounded from Time to Time; per Hale Ch. J. Vent. 165. Mich. 23 Car. 2. B. R. Hoskins v. Robinson.

(A. c. 2) Customs pursued. In what Cases they must be.

1. If the Custom does warrant an Estate only durante Viuitate, and the Lord admits for Life; this shall not bind his Heir or Successor, because Custom has not sufficiently confirmed it. Co. Comp. Cop. 52. S. 41.

2. So if the Lord fail in referring Verum & antiquum reddition, as it he referred 10s. where the usual Rent customably referred is 20s. this may be a Means to avoid the Admittance. Co. Comp. Cop. 52. S. 41.

3. And the Law is very strict in this Point of Reservation, for the ancient acceptable Rent be referred according to the Quantity, yet if the Quality of the Rent be altered, the Heir may avoid this Grant. For if the ancient Rent from time to time has been 20s. in Gold and the Lord refers it in Silver, this Variance of the Quality of the Rent is in force to destroy the Grant. Co. Comp. Cop. 52. S. 41.

4. So if the ancient Rent has been acceptably paid at 4 Penns in the Year, and the Lord refers it at 2 Penns. Co. Comp. Cop. 52. S. 41.

5. So if 2 Copyholdes ejected to the Lord, the one of which has been strictly demised for 20s. Rent, the other for 10s. Rent, and he grants them both by one Copy for one Rent of 30s. this is not good. Co. Comp. Cop. 52. S. 41.
Copyhold.

6. So if a Copyhold of 3 Acres eheats, which has ever been granted for 3½ Years, and the Lord grants out 3 Acres, and reserves pro Rata 1½ . Rent, versus & antiquus Reddita is not reserved. Co. Comp. Cop. 52. S. 41.

7. But if a Copyhold of 6 Acres, which has ever been demised for 6½ Years, eheats to 2 Copyholders, and one grants 3 Acres, reserving 3½ pro Rata; this is a perfect Referring. Co. Comp. Cop. 52. S. 41.

8. A Custom was found in a Manor, that where an Estate was granted to A. for Life, Remainder to B. for Life, Remainder to C. for Life, that A. had Power to destroy the Remainder by Surrendering the Estate in Court &c. and it was found that A. granted it away by Fine, and it was held per Cur. that the Remainders were not destroyed nor granted by the Fine; for this being a Custom against common Right, that one Man should destroy the Right of another, it ought to be purged strictly; and the Custom being found to do it by Surrender, a Fine shall not have that Operation within the Custom. Treem. Rep. 263. pl. 284. Mich. 1679. Talmirth v. Zinzay.

(A. e. 3) Customs. General or Special. Good or not. And Extent thereof.

1. A Custom that a Lease for Years may hold the Land for half a Year after his Term ended, is no good Custom; agreed by all the Old Treatises, but the Lord of a Copyhold may by Custom lease the same for of Ten. Life, and 40 Years after, and it is good, but a Custom that a Lease for Life may lease pur autre Vie is not good; Per Montague and Hales. Mo. 8. pl. 27. Hil. 3 E. 6. Anon.

2. By the Custom of a Manor, the Lord of a Manor might assign one to take the Profits of a Copyhold descended to an Infant, during his Nonage to the Use of the Assignee, without rendering an Account, and the same was holden to be good Custom; As a Rent granted to one and his Heirs, to cease during the Nonage of every Heir. Le. 256. pl. 357. 23 Eliz. C. B. Anon.

3. A Copyholder did allege the Custom to be, That the Lord of the Supplement to the Copyhold might grant Copies in Remainder with the Affent of the Tenants, and not otherwise, and that Copies in Remainder otherwise granted should be merely void. The Question was, Whether it were a good Custom? The Justices did not deliver any Opinion in the Point. S. C. cites Shuttleworth Serjeant said, that this Custom might have a lawful Beginning, and it seems to be grounded upon the Reason of the Common Law, that a Remainder should not be without the Affent of the particular Tenant, and therefore it is a good Custom. It was adjourned. Godb. 140. pl. 171. Mich. 31 Eliz. C. B. Anon.

4. A Custom was, that a Copyholder of Inheritance might make a Letter of Attorney to 2 jointly and severally, to surrender his Copyhold Lands in Fee to certain Uses after his Death. It was resolved, that the Custom was a void Custom, because by the Death of the Copyholder the Lands were settled in the Heir, and an Authority given to divest him was not good. Supplement to Co. Comp. Cop. 87. S. 19.

5. If the Lord have used certain Work-Days of his Tenants, and that has not been used by the Space of 25 Years last past, yet that New Use is no Discharge to the Tenants, so that there be any in Life that can remember the same. Cal. Reading. 25.
Copyhold.

6. If the Tenants have used to pay to their Lord every 4th Year a double Rent, and every 6th Year an half Rent, this is a good Inter-Ufer. Calth. Reading, 26.

7. If the Custom is, that if the Copyholder dies without Heir, that then the eldest Tenant of that Name, of the said Manor, shall have his Land, this is a good Custom, and contains in itself sufficient Certainty. Calth. Reading, 31.

8. Customs and Prescriptions must be according to common Rights, that is, to prescribe to have such Things as is their Right and Reason to have, and not by Custom of Prescription to claim Things by way of Extension, or thereby to exact Fines, or other Things of his Tenant, without good Cause or Consideration. Calth. Reading, 33.

9. If the Tenants have used when they Sow their Lands to pay the Lord Rent-Corn, and when it lies in Pauture to pay their Rents in Money, this is a good Inter-Ufer. Calth. Reading, 25.

10. Custom, that after the Death of the Tenant for Life for a Custom, the Lord is compellable to make an Effate to the eldest Son for Life, and if he hath no Son to the Daughter, and so in Perpetuum. Fopham, and Cook were of Opinion, that the fame was against Law, it being to compel the Lord to make a Grant, but otherwise where he is only to make an Admittance. No. 788 pl. 1688. 4 Jac. in the Star-Chamber. Ed. Grey’s Cave.

S. C cited Gilb. Treat. of Ten. 305, cites S. C., that it is a void Custom, because it obliges the Lord who has the Interesse, to grant it to this or that particular Person, whether he will or not.

11. Custom that if a Copyholder in Fee marries a Wife, if the Wife survives the Tenant, and of Ten. 305. Noy. 2. cites Taunton Dean Custom’s Cave.

12. S. C. cites S. C. to be, that every Copyholder may nominate who shall have it for Life after his Death; Coke and Doderidge said, that this had been adj judg’d a good Custom in B. R. and in C. B.—Ibid. 195. pl. 57. S. C. and Judgment per t. Cure, against the Plaintiff. — Gilb. Treat. of Ten. 305. cites S. P. as good, for it is a Right and Interest vested in the Tenant for Life; sed Quære.

13. By an especial Custom within the Manor, a Copyholder may appoint or nominate, in the Presence of two Tenants of the Manor, or other 2 sufficient Witnesses, who shall have his Copyhold Lands after his Decease, and also that they may appoint what Fine the Lord shall have for the Admittance of the Tenant, so it be a reasonable Fine, and such Disposition of his Lands and Appointment of Fine shall be good by the Custom, but yet after such Disposition made, the Party who is to have the Land must in Perfon come into the Lord’s Court, and pray to be admitted unto the fame; and so was it very lately adjudg’d in C. B. both for the Point of the Custom, that it was a good Custom and Admittance, Supplement to Co. Comp. Cap. 83. S. 18. cites Mich. 5 Jac. in B. R. Bale’s Cave.

14. It was ruled by the whole Court, that if a Custom be alleged, that the eldest Daughter shall solely inherit, that the eldest Sister shall not inherit by Force of that Custom. Bodin. 166. pl. 252. Passch. 8 Jac. C. B. Kapley v. Chaplin. Cap. B. 86. S. 19. cites S. C. — 4 Jac. 242. pl. 195. Ratcliffe v. Chaplin, S. C. and Coke Ch. J. said, that there are two Pillars of a Custom, one the Common Usage, and the other, that it be Time out of Mind, and therefore upon the Evidence given to the Jury the Court inform’d the Parties who maintained the Custom, to shew Precedents in the Court Rolls to prove the Usage, and he said, that without
Copyhold.

15. So if the Custom be that the eldest Daughter and the eldest Sister shall inherit, the eldest Aunt shall not inherit by that Custom. Godb. pl. 391. S. C. & S. P. agreed per Cur.

16. So if the Custom be that the youngest Son shall inherit, the youngest Brother shall not inherit by the Custom; and Foster J. laid, that to pl. 391. Ratcliff v. it was adjudged in one Denton's Cafe. Godb. 166. pl. 232. Patich. Chaplin, S. C. & S. P. agreed, per Cur.

17. Custom, that if a Copyholder will sell his Copyhold Estate, that he Brown, which is next of Blood to him shall have the Refusal, and if none of his

18. Upon Evidence it was admitted by the Court to be a good Custom, that an Executor or Administrator shall have a Year in the Land of a Copyholder against the Wife that Claims her Frank-bank or durante Vudituate. Nay. Hill. 15 Jac. C. B. Remington v. Cole.

19. The Custom of a Manor was, that the Land was demuable for 21 S. C. cited Years, paying the treble Value of the Rent, and if he died within the Term, that the Term should be to his Heir, paying a Fine certain of one Year's Rent, and if he paid the Assignor, the Affirma to have it for a Fine of one Year's Value of the Rent, and that he who had it might by the Custom renew it for 21 Years, paying 3 Years Value, and the Custom was admitted per Cur. to be good. S. C. 19. Cro. J. 671. pl. 2. Mich. 21 Jac. B. R. Page's Cafe.

20. Custom of a Manor, that the Steward might make Laws and Ordinations for the better ordering of the Commons, and to affile a Sum by way of S. C. & Penalty on those Tenants who broke these Orders, and also to prescribe to disfrain for that Penalty; the Steward made an Order, that he who should put his Cattle beyond such a Boundary should pay 3 s. 4d The ken as to Plaintiff James offended against this Order, and thereupon a Penalty other Mater. was assailed on him, for which Tutney, the Defendant, as Bailiff of the Court the Lord, disfrained, and in Replevin made Cognizance for the taking differed. &c. Adjudged, and affirmed in Error that this was a reasonable Custom, for it did not take away the Profits of the Commons, but this Order did not let Limits, and Bounds to them. Mar. 29. pl. 64. Trin. 15 Car. J. V. V. Tintney.
Copyhold

By the Treaty of Ten., 105

21. The Custom was, that if a Copyholder suffer his House to be out of Repair, that he might be amerced, and that the Lord might distrain his Tenants Cattle, and likewise the Cattle of any Under-Tenant, levant and conveyant on the Copyhold Lands, for the said Amercement, which was done accordingly. Brandston Ch. J. held, that this was a good Custom; for the Custom that gives the Distress knits it to the Land, and therefore not merely Personal; And if the Custom had not extended to the Under-Tenant, yet he might have distrained him; For otherwise the Lord by such a Device of making a Lease for one Year by the Tenant he should be defeated of his Services. Mar. 161. 164. pl. 231. Hill. 17 Car. Thorne v. Tyler.

22. The Custom of a Manor was, that if a Copyhold Tenant did suffer his Message to be ruined for want of Reparations, and the same be presented in Court by the Homage, that such a Tenant should be amerced, and that the Lord had used to distrain the Beasts as well of the Under-Tenant as of the Tenant himself, which were levant and conveyant upon the Lands, for such Amercement. It was said, that the Custom was not good, but unreasonable, to distrain a Stranger’s Cartel, such as the Under-Tenant was; but it was resolved, that the Custom was good; for the Under-Tenant, altho’ he was but Tenant for a Year, yet he should have all the Benefits and Privileges which the Copyholder himself should have had, &c. &c. &c. Custom Commodity fentre debet &c, and he is distrainable for the Rents and Services due and payable to the Lord, and the Charge lies upon the Land, and not upon the Custom, and therefore the Custom is good. Supplement to Co. Comp. Cop. 85 S. 19 cites Pash. 17 Car. in B. R. Thorn v. Tyler.

23. Copyholder of Inheritance made a Letter of Attorney to &c. to surrender his Copyhold Lands after his Death to certain Uses, according to the Custom of the Manor &c. Adjudged, that this is a void Custom, because it is to convey Lands against the Rules of Law for conveying Copyholds, for that must be either by Surrender into the Hands of the Lord, or into the Hands of 2 Customary Tenants, to the Use of his Will, which must be executed in his Life-time. Nelf. Abr. 526. pl. 16. cites Sty. 311. Hill. 1651. B. R. Wallis v. Bucknall.

24. Suppose that there was a Custom, that if the House of a Copyholder falls, the Materials shall be the Tenant’s, Powell J. ask’d, if that could be good? 11 Mod. 94, 95. pl. 3. Mich. 5 Ann. B. R. Anon.

(A. e. 4) Customers unusual, and interfering.

Good or not.

1. The Manor of Wadhurst in the County of Sussex consisted of 2 Sorts of Copyhold, viz. Suck-Land and Bond-Land, and by several Customs different in several Manners; As if a Man be first admitted to Suck-Land, and afterwards to Bond-Land, and dies seised of both, his Heir shall inherit both; but if be be first admitted to Bond-Land, and afterwards to Suck-Land, and of them dies seised, his youngest Son shall inherit, and if of both simul &c. &c. his eldest Son shall inherit; but if he dies seised of Bond-Land only, it shall descend to the Youngest; cited by Anderfon Ch. J. 1 Le. 56. pl. 78. Pash. 29 Eliz. C. B. in Cafe of Kempt v. Carter.
Copyhold.

(B. c) Where a Copyhold shall be said in by Descent or Purchase.

1. If the Father purchase [Copyhold] and dies before Admission, his Gibb, Yeat, Heir shall be in by Purchase; per Nudigate J. 2 Sid. 38. Hill. of Ten. 271. cites S. C. and says, that according to this is Roll. [See Roll Descent (1) pl. 9]

2. But Ibid. 61. in S. C. Glyn Ch. J. heid, that if a Man, seised of Gibb, Yeat, Copyhold Land in Fee of the Custom of Borough-English, surrendering according of Ten. 271. to the Custom to the Use of J. 3. and his Heirs, J. 3. being Issue 2 Sons, S. C. & S. P. dies before Admission; it seems that the youngest Son shall have the Land, accordingly because he is in Descent, or at least by Right of the first Surrender, and by Glyn, so in Nature of a Descent.

Some other Opinions that are more late, and that therefore it was held, if Land, of the Nature of Borough English, be surrendered to one and his Heirs, and he dies before Admittance, that the youngest Son shall be admitted, and this Opinion seems to be very reasonable, for Heirs were in the Limitation certainly as Words of Limitation, and not of Purchase; and certainly there is as much Reason to adjudge the Heir in by Descent here, as there is to adjudge an Heir in by Descent where a Recovery was had against the Ancestor, but not executed until after his Death, because the Use might have vested during the Life of the Ancestor, and because the Execution hath a Retrospect; and in Truth the Case of a Surrender is just the same; for Admittance might have been in the Life of an Ancestor, and when it was had, it had a Retrospect.

(C. e) Descent. How. And where there shall be Posselbio Fratris.

1. A Copyholder in Fee had Issue two Daughters by divers Women, and The Remainder is in the Feudal of Daughter, and before Admittance the eldest Daughter died without Issue, and afterwards the youngest was admitted to the whole Land, as sole Heir to the Law, and Father. In this Case it was held, that the Possession of the eldest the Issue of Daughter, though before Admittance, should make her Sister, though her Father is not of the half Blood, inheritable to the Land. Supplement to Co. Comp. determin'd, that any can take Advantage of it, for the Lord against this Lease by Deed indented cannot enter, or claim any thing, and the second Sister, although she hath not agreed, yet the cannot enter during the Life of her elder Sister, for her Remainder takes Effect in Possession after the Death of her said Sister; But if any should take Advantage of it, it should be the Lord, if his Deed indented did not stand against him; And afterwards Judgment was given against the younger Sister. Glyn Ch. J. was of another Opinion, viz. that the Entry of the younger Sister, notwithstanding that her elder Sister was alive, was lawful; but that all this was an Assumption, and not the Case.

2. If a Copyholder has Issue a Son and a Daughter by one Venter, and a Son by another Venter, and dies, and a Guardian is admitted, this is Posselbio Fratris of the eldest Son to make the Brother [Sister] Heir; But if the Custom be, that the Lord may, during the Nonage of the Heir, devise [demise] it by Copy to a Stranger, this is not Posselbio Fratris of the Eldest. Dal. 110. pl. 1. 16 Eliz. Anon.
Copyhold

4 Le. L. 38. 4 mich. 17. eliz. c. b. anonym. s. c. in toto.

3. husband and wife, seized in the right of his wife of certain cul
tumary lands in fee; and he and his wife by licence of the lord make a
leafe for years by indenture, rendering rent, having issue two daughters;
the husband died; the wife takes another husband, and they have issue
a son and a daughter; the husband and wife die; the son is admitted
to the reverzion, and dies without issue. it was held by manwood,
that this reverzion shall descend to all the daughters, notwithstanding
the half-blood; for the estate for years which is made by indenture by
licence of the lord is a demesne and leafe, according to the order of
the common law, and according to the nature of the demesne, the
poiseffion shall be adjudged, which poiseffion cannot be said poiseffion
of the copyholder, for his poiseffion is customary, and the other is more
contrary, therefore the poiseffion of the one shall not be the poise-
ffion of the other, and therefore there is no poiseffio fratis in this
cafe; but if he had been guardian by the custion, or this leafe had been
made by surrender, there the sister of the half-blood should not inherit;
and mead said, the case of the guardian had been so adjudged;
mounifon to the same intent; and if the copyholder defend to the son,
he is not copyholder before advisement, but he may take the profits,
and punish trefpafs &c. 3 le. 69, 70. pl. 106. mich. 20 eliz. c. b.

4. a copyholder of inheritance of the manor of fulham had issue a
son and a daughter by one venier, and a daughter by another venier,
and died, his son being an infant of two months old, and the copyhold
in leafe by licence for 12 years, rending rent; the death of the copy-
holder was presented, in the infancy of his son and heir; afterwards,
(before any rent-day incurred, and any advittance or guardian officed)
the son died; and the question was, whether his sister of the whole
half-blood shall inherit; and adjudged, that the eldest sister only is heir,
and that the defcent of the reverzion, upon the leafe for years, and
before day of payment of the rent, is poiseffio fratis, quae facit foro
rem efficit haredem. moor 125. pl. 272. trin. 23 eliz. rot. 1229.

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4 Le. 105. mich. 20 eliz. c. b.

4. A copyholder of inheritance of the Manor of Fulham had issue a
son and a daughter by one Venter, and a daughter by another Venter,
and died, his son being an infant of two months old, and the Copyhold
in Lease by Licence for 12 Years, rending Rent; the Death of the Copy-
holder was presented, in the Infancy of his Son and Heir; afterwards,
(before any Rent-Day incurred, and any Admittance or Guardian officed)
the Son died; and the Question was, whether his Sister of the whole
Half-Blood shall inherit; and adjudged, that the eldest Sister only is Heir,
and that the Defcent of the Reverzion, upon the Lease for Years, and
before Day of Payment of the Rent, is Possession Fratris, quae facit fo-
Copyhold.

5. If A. be seised of Copyhold Land on the Part of his Father, and of other Copyhold Land on the Part of his Mother, and thereof dieth selfed, and his Son and Heir be admitted to it by one Copy, and by one Admittance, now if that Son dieth without Issue the Copyhold's shall descend severally, the one to the Heir on the Part of his Father, and the other to the Heir on the Part of his Mother &c. per Clerch J. 3 Le. 109. pl. 158. Trin. 26 Eliz. B. R. in Case of Taverner v. Cromwell.

6. If a Copyholder in Fee-simple have Issue a Son and a Daughter by one Venter, and a Son by another Venter, and dies, and the Son by the first Venter enters, and dies, the Son of the dead Venter shall inherit. Co. Comp. Cop. 59 S. 50.

7. If a Copyholder in Fee-simple have Issue a Son and a Daughter by one Venter, and a Son by another Venter, and dies, and the Son by the first Venter enters and dies, the Land shall descend to the Daughter; Quia Pollieflo Praetis de Feodo infipite facit foerem effe Haremed. Co. Comp. Cop. 59. S. 52.

8. If there be three Brothers, and the middle Brother purchases a Copyhold in Fee, and dies without Issue, the Eldest shall inherit, because the Worthiest of the Blood. Co. Comp. Cop. 59 S. 50.

9. If a Man have Issue a Son and a Daughter by one Venter, and a Son by another Venter, the eldest Son purchases a Copyhold in Fee, and dies without Issue, the Daughter shall have the Land, but the younger Son, because he is but of the Half-Blood to the other. Co. Comp. Cop. 59 S. 50.

10. If a Man has a Copyhold by Descent on his Mother's Side, if he die without Issue, the Lands shall go to the Heirs of the Mother's Side, and shall rather escheat than go to the Heirs of the Father's Side; But if I purchase a Copyhold, and die without Issue, the Land shall go to the Heirs of my Father's Side; but if I have no Heirs of my Father's Side, it shall go to the Heirs of my Mother's Side, rather than escheat. Co. Comp. Cop. 59. S. 50.

11. If there be Father, Uncle, and Son, and the Son purchases a Copyhold in Fee, and dies without Issue, the Eldest shall inherit, and not the Father, because an Inheritance may lineally descend, but not ascend. Co. Comp. Cop. 59. S. 50.

12. If there be two Copartners, or two Tenants in Common of a Copyhold, and one die, having Issue, the Issue shall inherit, and not the other, by the Survivorship; But otherwise it is of two Jointenants. Co. Comp. Cop. 59. S. 50.

13. If there be two Copartners, or two Tenants in Common of a Copyhold, and one dies, having Issue, the Issue shall inherit, and not the other, by the Survivorship; But otherwise it is of two Jointenants. Co. Comp. Cop. 59. S. 50.

14. Custom was, that after the Father's Death, if there was no Son, the eldest Daughter should have the Lands for Life only, and then the Lands should remain to the next Heir Male that can derive by the Males; and also, that the Wife should hold for her Life, Tenant dies, and leaves two Daughters. Wife enters. Eldest Daughter dies. Adjudged that the youngest Daughter shall have the Lands within the Custom, for though she was not eldest at the Death of her Father, yet she was eldest at the Death of her Mother, and her Estate was a Continuance of the Estate of the Baron till her Death, as in the Case of Frank-Bank. Lev. 192. Trin 17 Car. 2. B. R. Newton v. Shatto.
Copyhold.

The Father being seized of a Copyhold, had three Daughters by his first Wife, and two Daughters and a Son by his second Wife, and surrendered to his three Daughters for eleven Years, Remainder to his two Daughters for five Years, Remainder to his three Daughters by the first Wife, Remainder to his own right Heirs; The Father died; The three Daughters were admitted; The Son died; After which the eleven Years expired; Adjudged, that the Admitiance of the three Daughters was the Admitiance of the Son in Remainder as Right Heir, and so an actual Seisin in which made a Poilfeiio Fratris, by which the Copyhold descended to his two Sisters of the whole Blood to him, and not to all his Sisters, as Heirs to their Father. 2 Lev. 107. Trin. 26 Car. 2. B. R. Blackburn v. Greaves.

15. W. R. was seized of Copyhold Lands that were descendible secondly Gavelkind, and the Wife endowable of a Moity. W. has three H. by one Venter, and J. and E. by another Venter; W dies, the Wife enters into a Moity; the two Sons enter into the other Moity, and were admitted to the Reversion of the Wife's Moity; J. the Son by the second Venter dies; The Wife dies. The Question was, whether this Admitiance to the Reversion shall fo attach it in the Brother, as that the Sister shall have it before the Half-Brother; and it was argued, that the shall not; for it is found, that after the Death of the Father the Mother entered, and so the Son was never seised, so that this Case is stronger than the Case 1 Int. 31. a. where the Son enters, and endows the Mother, and yet that shall fo defeat his Poilfeiion, that there shall be no Poilfeiio Fratris. To which it was answered, that it being found that the Son was admitted, it shall be intended according to the Custum, and then the Estate shall be guided by the Custum, and not by the Rules of Common Law; and he cited two Cases, where the attaching of a Reversion upon an Estate for Life doth seem to be a sufficient Seisin to convey the Land to the Heir of him in whom the Reversion was so attached, viz. 1 Cro. 411. Roll Tit. Defcent, 403. Godfrey v. Bullen. Vaughan said, all Custums are contrary to the Common Law, and therefore shall be taken strictly, and here is no Custom that a Reversion shall depend in Gavelkind; And Atkins Justice said, that in those Cases cited for the Daughter, there was no Maxim of the Common Law, as here is, viz. Poilfeiio Fratris &c. and then he that takes Advantage of it must be qualified, according to the Common Law. Judgment against the Daughter Def't nili Caufa. Freeman. Rep. 45. 46. pl. 55. Trin. 1672. Foxe v. Smith.

16. Since by Custum an Estate at Will is descendible, the Defent is ordered and governed by the Rules of the Common Law; For those Reasons, that govern the Descents at Common Laws, are drawn from the Nature of Defent and Dispoition of Estates after the Owner's Death, and are grounded upon those Reasons that seem to warrant such a Dispoition of the Estate, and are not taken from the Nature of the Land or Thing that is disposed of, and therefore may as well, and with as good Reason, be applied to the Dispoition of a Copyhold, as Freehold Estates, since it is not the Nature of the Thing disposed of, that is to rule or govern either in one Case or in the other; And therefore where a * Copyholder by Licence made a Lease for Years, and the Lessee entered, and the Leifor died, having live a Son and a Daughter by one Venter, and a Son by another, then the eldest Son dies, it was adjudged that the Daughter of the whole Blood should inherit, because the Poilfeiion of the Lessee for Years was the Poilfeiion of the elder Brother, who may have Poilfeiion before Admitiance, for in that Case he was not admitted; for if it be reasonable in such Case at Common Law to keep the Inheritance out of the Half-Blood, so it is in Copyhold Estates; but if the Brother do not get Poilfeiion, the Sister cannot inherit, for then he hath only a Right.
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Right to the Lands as Representative of his Father, which Right he is not capable of having, because he is not Representative of the Father; But when he has gotten Possession, he hath then an Estate in the Lands descentible to him and his Heirs, and the Sitter is his Heir, and though he has the Lands as Representative of his Father, yet he hath them to him and his own Representatives; But when he never got Possession, he never executed the Power he had of taking the Lands to him and his Representative, fo that this Power devolves upon the younger Son as Representative of his Father, for the Law gives the Estate to him and his Representative, who is Representative of the dead Person. Now when he that is Representative to the dead Person, doth not get actual Possession, and so vest the Estate in him and his Heirs, he hath no Power over the Lands, and therefore can make no Lease or Disposition of them by Feoffment, because though he hath a Right to be absolute Owner of the Lands, yet is he not actually so till Entry, because till then in Fact he hath no Possession, and therefore there is no Reason by a Fiction of Law to create him a Possessor; and so he never having had the Lands to him and his Representative, he must take who is Representative to the dead Person, which is the younger Brother, and this also may be a Reason why he that claims by Descent, must make himself Heir to him that was last actually feised of the Freehold. Gilb. Treat. of Ten. 147, 148, 149.

(D. e) Diffel Isn. What is.

1. N O T E, it was holden by the Court, that if a Copyholder in Fee dieth feised, and the Lord admits a Stranger to the Land, who entreat, that he is but a Tenant at Will, and not a Difference to the Copyholder, who hath the Land by Descent, because he cometh in by the Asiento of the Lord &c. 3 Le. 210. pl. 274. Trin. 30 Eliz. in B. R. Anon.


(E. e) Dower. In what Cases the Feme shall have Dower. And how recovered.

1. T HE Custom of a Manor was, that the Lord, or his Steward, or Deputy, might demise; the Lord took a Wife, and by his last Will in Writing gave Authority to certain Persons to make Leases, according to the Custom of the Manor, to raise Fines for Payment of his Debts, and died; they held Court in their own Names, and granted Copies in Reversion, according to the Custom; afterwards the Widow of the Lord recovered a 3d Part of the Manor in Dower, and one of the Copyhold Estates, whereof the Reversion was granted, was assigned to her by the Sheriff.
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Sheriff together with other Lands, by Writ &c. The Court held, that she should avoid the Grant made by the Persons alligned by the Will. D. 251. pl. 89. Hill. 8 Eliz. Anon.

2. If the Lord of a Manor where Customary Tenements are demised, and demisable by Copy &c. according to the Custom of the said Manor, for one two or three Lives, grants a Copyhold for three Lives, and takes a Wife, and the three Lives end, and the Lord enters and keeps the Land for a Time in his own hand, and afterwards grants them over again by Copy, and dies, the Copyholder shall hold the Land discharged of Dower of the Lords Widow; Per Wray, who said, that this is a clear Cafe; For the Copyholder is in by the Custom, which is Paramount the Title of Dower and Seizin of the Husband; And Judgment accordingly. Le 16. pl. 19. Pfach 26 Eliz. B. R. Cham v. Dower.

3. If a Femme be endowable of a Copyhold by Custum, it was the Opinion of the Justices that a Leafe made by the Baron by the Custum after the Elipofals, shall precede the Dower, and the Dower shan't avoid it. No. 738. pl. 1097. Trin. 2 Jac. Holder v. Farley.

She being in of her Wives Ef- tate shall not avoid the Leafe without an especial Custum; for the Leafe comes under the Custum, and by the Lords Licence as well as the Femme. Cro. J. 36. pl. 13. Farleys Cafe, S. C.—Gilb. Treat of Ten. 352. cites S. C. but says, that if the Leafe was made without Warrant she may avoid it; And that it seems to him, that the Femme shall not in this Cafe be endowed of the 3d Part of the Rent and Reversion, because Customs ought to be strictly punctured, and that is only to be endowed of Land; Yet it seems after the Leafe ended the shall be endowed, for the Husband did die feifed (the Possifion of his Leafe being his own Poffefion) but it was agreed in this Cafe, that by special Custum the Femme might avoid the Leafe. This, among other Cafes, proves that a Copyholder may difpofe of his Land, and bar his Wife of her Free-Bench, unless there be a particular Custum that he shall avoid any Alienation &c. made by him, for then the particular Custum shall, as it seems, avoid his Charge, as well in the Cafe of Copyhold, as Freehold Estates, by the Common Law.

Lev. 154.
S. C. is a Different Point. Sed 76. pl. 9. S. C. but not S. P. 2 Sid. r. S. C. but not Refolv'd

4. The Custum of a Manor was for the Widow to be endowed of a Moiety of the Copyholdys of which her Husband dy'd feifed; The Husband died feifed of 100 l. per Annum and his Wife was endowed of 50 l. per Annum and the 50 l. per Annum descended to his Heir, who afterwards dy'd, leaving a Widow. This Second Widow shall be endowed of a Moiety of the Moiety, and so shall have 25 l. per Annum; Adjudg'd. Raym. 58. Mich. 14 Car. 2. B. R. Baker v. Beriford.

5. An Ejeftment will not lie for a third Part of a Copyhold Tenement in Nature of Dower, for they ought to levay a Plaint in Nature of a Writ of Dower in the Manor Court, and the Homage to fery, and set out the fame; But if the Custum had been for the Widow to have the third Part not in Nature of Dower, but in Common with the Heir, it were then otherwise; Ruled per Pemberton Ch. J. at the Assizes. 2 Show. 184. pl. 183. Hill 33 & 34 Car. 2. B. R. Chapman v. Sharpe.

(F. e)
Copyhold.

(F. e) Entails by the Statute De Donis &c.

1. NOTE, it was said for Law that Tail may be of a Copyhold, and that Formedon may lie of it in Defender by Protegation in Nature of Writ of Formedon in Defender at Common Law, and good per Omnes Jutticiarios; For though Formedon in Defender was only given by Statute, yet now this Writ lies at the Common Law, and it shall be intended that this has been a Custom there Time out of Mind &c. and the Demandant shall recover, by Advice of all the Justices. Br. Tenant per Cop. pl. 24. cites 15 H. 8.— And the like Matter in Elix M. 26 H. 8. and Fitzherbert affirmed this after in Camera Ducat Lancel &c. &c. &c. Littleton in his Chapter of Tenants by Copy of Court Roll. Ibid. 2.

2. The Court were clear in Opinion that a Copyhold could not be entailed without such a Custom to entail it. Mo. 159. pl. 336. Trin. 27 Eliz. B. R. Hill v. Morfe.

3. A Surrender by Tenant in Tail is no Discontinuance unless the Le. 174; Custom is fo, and tho' it was moved that there can be no Estate Tail 175. pl. of a Custom except it be known that the Lands had been given so, and always enjoyed by the Remainder-men and Reversers, and that their held by Aliens did not use to bind &c. for otherwise it shall be intended a Way ac-
Fee, yet the Court held the contrary, that it shall be intended an E

4. Per Gaudy and Clench J. an Estrate cannot be of a Copyhold by Popham &c. the Statute, but may by Use and Custum, but per Popham and Fenner 35. Gravenor v. Brook S. C. 4 Rep. 25. a pl. 5. Gravenor
v. Dod S. C. adjudged that whether it be Fee simple Conditional or Estrate Tail it is within the Custum.— If it is an Estrate Tail it is a conditional Fee, and so it was agreed by us all, in the Case of Gravenor v. Rake, per Cur. Cro. E. 373. pl. 20. Hill. 37 Eliz. B. R. in Case of Stanton v. Barnes— Copyhold may be entitled by Equity of W. 2. without Custum, and is not entailed by Custum. Mo. 538. pl. 48S. adjudged D'ell v. Higden. Upon a special Verdict the Quetton was, whether a Copyhold could be entitled without buying a special Custom for so doing, and adjudged, per tot. Car. that it might, and Holt Ch. J. rejected the Notion of Lord Coke about the Statute de Donis coepe-
rating with the Custom, and held that the Statute forms all those Estates which at Common Law were Fee-Simple conditional into Estates Tail. 11 Mod. 199. pl. 17. Mich. 7 Ann. B. R. Adams 35 Hinchlow.

5. The Custum of a Manor is, that a Copyhold Estate may be granted Popham 35. in Fee-simple; in that Case it was adjudged, that an Estrate thereof grant-
ed to one and the Heirs of his Body is good, and within the Custum; for 31 S. G. ad-
UBI licet quod est Majus, non debet quod est Minus non licere. Sup-judged ac-

6. When a Copyholder in Fee makes a Gift in Tail with Remain- And that if de-
er over in Tail, no Reversion is left in him, but only a Possibility, and they were within the Statute W:

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Reversion, but not in the other. 2dly, A Recovery without a special
but the De-

writ and the

Supplement

Supplement

to Co. Comp.

Supplement

to Co. Comp. to Co. Comp.

Copyhold in Fee surrendered to the Use of one in Tail with
were admitted, and afterwards surrendered
three justices, that there cannot be an Estate Tail of such

Custum. Supplement to Co. Comp. Cap. 77. S. 11. cites S. C. but says the contrary was resolved, in

Lord of the Manor; Per Harvey J. Ibid. cites Polich. 45 Eliz. C. B. Pit v. Hockley.

Supplement to Co. Comp. Cap. 77. S. 21. cites S. C.

S. C. cited per Cur. Godd. 368. 2dly, Admitting that, whether a
no Custum being found
in the other; by which it seems plain, that if there had been a Custum found, there had been no Question, that it might have been intailed; but then there is the Case of Eliz. B. 1129. That an Email may be of a Copyhold by Custum, but not without it; there are several other Cases Warrant the same Distinction, as Eliz. E. 195 Gravenor v. Raleigh and 459. Hodd v. Chater in Le. 175. Balleyn v. Graunt. Poph. 128. Rawlinson v. Green. 1 Sid. 514. Newton v. Shatflee. Mo. 657. Church v. Wyat.

10. 36 Eliz. in the King’s Bench, it was adjudged, that where the

11. Whether Copyhold Lands are within the Statute Wiston. 2. cap. 1. De Doniz, &c. or may be intailed, hath been much controverted, and many Judgments and Resolutions have been on both Sides, and it seemeth to be a Point not fully agreed upon at this Day; I shall therefore make some little Mention what hath been said on either Side, and leave it to the Judgement of others; And first for the affirmative Part, that Copyholds are within the said Statute and may be intailed, I shall begin with Mr. Littleton himself; Tenant by Copy of Court-Roll
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is, faith he, where there is a Custom of a Manor Time out of Mind used, that certain Tenants within the said Manor have used to have Lands and Tenements to them and their Heirs in Fee-Simple or in Fee-Tail, and in that Chapter he particularly sets forth the Manner of Grants of such Estates, viz. Ad hanc Curiam venit A. de B. & sursum-reddidit in Manus Domini &c. unum Mesuagium &c. ad Ufum C. & D. & Heredum fuorum, vel Heredum de Corpore suo exeunt' Habendum ibi & Hereditas de Corpore suo exeunt' &c. by which it appeareth to be the Opinion of Littleton, that an Estate-Tail may and might be of Copyhold Lands, and herewith agree the Opinion of Mr. Plowden, in his Commentaries in Morgan and Maxwells's Case; But Note, that the Opinion of Mr. Littleton is, that there must be a Custom of the Manor to enable such Estates of Copyhold Lands. Supplement to Co. Comp. 76, 77. S. 12.

12. It is said in 3 Rep. in Heydon's Case, that where an Act of Parliament doth alter the Service, Tenure, or Interest of the Estate, either in Prejudice of the Lord or of the Custom of the Manor, or in Prejudice of the Tenants, there such an Act of Parliament doth not extend to Copyholds, and therefore the Statute of Weitm. 2 De Donis, because it extendeth to the Alteration of the Service and Tenure of the Land, and is prejudicial to the Lord of the Manor, doth not extend to Copyholds; But in that Case it is agreed, that by a special Custom Lands might be entailed, for that it might be, that upon the Creation of the Manors, Lands were given by Lords of Manors, to hold by their Tenants by particular Services, and for particular Uses &c. to some, to them, and their Heirs in Fee-simple, to some others, to hold to them and the Heirs of their Bodies begotten, and to some others for particular Estates, as for Life &c. and such Estates having continued in their Issues Time out of Mind, Custom hath now enabled such Estates to be of Copyholds in Tail; And altho' they have and enjoy such their Estates, be it either Fee-simple or Fee-Tail, yet it is but secedum Confietuclinem Manerii, and therefore and for these Reasons and Caufes, altho' that Copyhold be not, or could not be entailed within the general Words of the Statute de Donis &c. yet by Custom Time out of Mind used, they say that Copyholds may be entailed. Supplement to Co. Comp. 77. S. 12.

13. A Custom, within a Manor Time out of Mind of Man used, was Supplement to grant certain Land, Parcel of the said Manor in Fee-simple, and never any Grant was made to any and the Heirs of his Body for Life, or for Years; and the Lord of the said Manor did grant to one by Copy for Life, &c. the Remainder over to another, and the Heirs of his Body; And it was eordingly adjudged, that the Grant and Remainder over was good, for the Lord having Authority by Custom, and an Interest withal, might grant any Life, &c. Leffier, Omne majus continet in fe Minus; But he that hath but a bare Eliz. B. R. Authority, as he that hath a Warrant of Attorney, must purfue his Authority, (as hath been said) and if he do less it is void. Co. Litt. 52. b.

for Life Solummodo e capienti extra Manus Domini; a Surrender was to the Use of one for Life, Remainder in Tait, Remainder in Fee; It was objected, that this was not good to him in the Remainder in Tait, the Custom being bound expressly, that it shall be Solummodo e capienti extra Manus Domini; it ought to be an immediate taking, and he shall not take by way of Remainder; also the Custom will not warrant any Estate for Life or in Fee; but the Court resolved to the contrary, that it is good enough; For in that it is limited to one, and the Heirs of his Body, it is not void; but if it be an Estate Tait, it is a conditional Fee, and so it was agreed by us all in the Case of Gratiani b. Riks; For when a Custom warrants the Greater, it shall warrant the Lesser also; to the 2d, it may be well limited by way of Remainder, as well as to the Immediate Taker; for when the Custom warrants it, it cannot restrain a Fee to be limited as well by way of Remainder as otherwise, and he in Remainder and the particular Tenant make but one Estate, and in that it is found that the Custom is, that it shall be granted Solummodo e capienti, it is void therein, wherefore it was adjudged accordingly for the Plain.ill.

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Copyholds are not within the Statute De Domis Co-operating with the Cessum it may be, and with this agrees Heydon's Café, and so was the Opinion of the Court, Poph. 128. Mich. 5. Jan. 17-18.

14. In a precedent the Café was, that Tenant in Tail of a Copyhold surrendered the same into the Hands of the Lord, to the Use of J. S. Dodingote J. said it had been a great Doubt, whether it may be intailed, but the common and better Opinion was, that by the Statute De Domis Co-operating with the Cessum it may be, and with this agrees Heydon's Café, and so was the Opinion of the Court, Poph. 128. Mich. 5. Jan. 17-18.

Cro C. 42. pl. 4. Rowden v. Maller.


Supplement to Co. Comp. Cop. 77 S. 12 S. C. cited by Glynn Ch. 2. Sid. 75, 76. — It is made an Objection against intailing Copyhold Lands, that thereby the Dower must hold of the Donor, and the Donor being in the Reversion, must hold of the Lord, and so the Change of Tenants will not be so often, and if the Donor commit any Perjury, the Donor must take Advantage of it, which would be to the Prejudice of the Lord to have the Tenure thus altered; to this Objection I think it may be very well Answered, that the Truth of the Café is not so, for the Done in Tail held not hold of Donor, but of the Lord, as it seems every Tenant for Life doth of a Copyhold, and this seems to be very reasonable; for a Copyhold in Fee simple is not like other Estates in Fee-simple at Common Law, but they are only Estates at Will, and so he that is the Actual Tenant at Will is Tenant to the Lord; for it seems to me, that because they are but Estates at Will, there is a Division of Estates, but he that is actual Tenant at Will, hath all the Estate, and there is no Part or Parcel of the Estate left in any Body else, and that a Tenant in Fee-simple of Copyhold Lands is only he that hath such an Estate at Will in the Lands, as by the Custom of the Manor, is not to determine by his Death, but after his Death his Heir shall be Tenant at Will, so that when he grants away an Estate for Life, he has no Estate in the Lands left in him, but only a Power of being Tenant at Will, according to the Custom of the Manor, when his Tenant for Life's Estate is ended; And I take it, that in the mean Time the Tenant for Life is Tenant at Will to the Lord, and shall do the Services; and if he commit a Perjury, the Lord shall take Advantage of it, and to this Purpose the Café of Berford v. Patching, that, the Custom of the Manor was, that the Widow should have her Free Bench; and it is there taken for granted that he shall hold of the Lord, and he accordingly admitted Tenant, and that the Heir shall not be admitted during her Life, which plainly proves, that the Custom of Tenure of Copyhold Lands, is not like the Tenure of Feehold Lands at Common Law, for in that Café at Common Law, the Heir shall hold of the Heir, and in Estates at Common Law, the Dower holds of the Donor by the same Services, the Donor holds over, because the Statute creating a Reversion in the Donor, the Judges made Expedition according to the Common Law, that because a Fee-simple conditional was held of the Feoffor by the same Services that he held over, therefore the Donor should hold of the Donor by the same Services he held over, but at Common Law the Tenant in Fee simple conditional of Copyhold, could hold of no body, but of the Lord, therefore they cannot hold of the Donor that have now an Estate Tail in Copyholds Lands, but according to the Rule in expounding the Statute De domis, viz. by the Common Law, they must hold of the Lord, because the Tenant in Fee simple conditional of Copyhold Lands at Common Law, held of the Lord, and not of the Surrenderor. Gilb. Treat. of Ten. 159, 160, 161.

16. There is not any Book in the Law, but only Maurell's Café in Plow. Com. that the Statute of Wm. 2. extends to Copyholds, per Harvey J. Godb. 369. at the End of pl. 458. Mich. 2 Car.

Gilb. Treat. 17. A Copyhold may be entailed; Not entailed, as within the Statute of Wm. 2. but there may be such an Estate before Wm. 2. of a Copyhold, which was a kind of lease Estate, and which might be grantable to one and the Heirs of his Body, according to the Custom, and it he died without issue.
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Iliue it might be aliened again, and that a Copyholder could not bar bis in this, that an Estate unles by a Recovery. I conceive such an Estate might be by Custome, per Bridgman Ch. J. in delivering the Resolution of the Court, in Cart. 22. Patch. 17. C. B. Taylor v. Shaw.

Limitation by the Custome of some Manors, as that an Estate was granted to a Man and the Heirs of his Body begotten, the Remainder over to another, but that in other respects these Estates were not Estates Tail before the Statute, as that the Tenant should no ways alien to deal his Estate, or them in Remainder, or that if he made an Discontinuance, they should have a Foredem in Descender or Remainder, but these Things were introduced by the Statute upon the Estate, which was the same in Limitation by the Common Law, and to the Statute is said to co-operate to make an Estate Tail, and this obviates the main Objection against in-tailing Copyholds by the Statute, viz. that every Copyhold Estate ought to be grantable Time out of Mind, and if an Estate Tail were introduced by the Statute, then that Estate was not grantable Time out of Mind; for if the Estate Tail were before the Statute the Time in Point of Limitation of the Estate, as it is now since the Statute, then an Estate Tail has always been grantable Time out of Mind, tho’ some other Qualities are now annexed to that Estate by Act of Parliament, which were not so before, and which may well be said to give the Statute some Share in the making these Estates, since they are so very considerable; and that the Qualities should be annexed to this Estate by the Statute De Donis, is no Ways unreasonable, for this Act was made to redress a Wrong at Common Law, and was for the general Convenience and Profit of the whole Publick, and bringing an Estate in Copyhold Lands within the Statute De Donis, is no Prejudice to the Lord or Tenant, alters no Tenure, Estate, or Custome of the Manor, which may any ways prejudice any body.

18. Justice Powys said it was a Point before him upon the Circuit, whether a Copyhold could be entail’d within the Statute of W. 2. unless the Custome of the Manor did warrant it; and it being said by the Counsel that C. J. Holt was of an Opinion that this Statute did extend to a Copyhold, a Cafe was agreed on &c. Ch. J. Parker to this said, that if the confam Usage of a Manor had been to alienate after liue as at Common Law, without having any Remainder over, and such Alterations had been always good, it would be proper hard to extend the Statute to such Estates. Mich. 12 Ann. B. R.

19. Gilb. Treat. of Ten. 155. says, that the Cafes which he had before mentio’d [as that of Heydon’s Cafe, Rowden v. Malter, Eriih v. Revere, Gurrey v. Sanderfon, Dell v. Higden, Clun v. Peafe, and Odery Monastery’s Cafe.] are all the Laws he can find against Entailing Copyhold Lands, none of which go so far as to say, that if there have been an Estate Tail by Custome, that it is not within the Statute De Donis, but only the Opinion of my Ld. Ch. B. which will be but of Little Weight, when we have seen the Precedents against this Opinion, which I shall now examine; And first, there is Littleton’s Opinion for the entailling of a Copyhold, for he says, that Tenant by Copy of Court Roll is, as if a Man be Seized of a Manor, within which Manor there is a Custome which hath been used Time out of Mind, that certain Tenants within the same Manor have used to have Lands and Tene- ments, to have and to hold to them and their Heirs in Fee-simple, or Fee-Tail, so that there he says expressly, that Estates-Tail in Copyholds have been Time out of Mind, and therefore must have been before the Statute; But Lord Coke, in his Comment on Littleton, in another Place says, that an Estate Tail may be, by the Opinion of Littleton, by the Court, the statute co-operating with it; for, faith he, there can be no Estate-Tail in Copyholds by Custome only, nor no Estate-Tail by the Statute only, but the Statute must co-operate with the Court. Now the Question will be, how this can be reconciled with what Littleton says? for he says, that an Estate-Tail in Copyholds was Time out of Mind of Man, and then if Estates Tail were before the Statute, the Question is out of Doors, whether a Copyhold can be in-tailed by Force of the Statute; for if they were in-tailed at the Common Law, then as to them the Statute is but in Affirmance of the Common Law.
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20. Those that are against the entailing Copyhold Lands, say that the Estate Tail of Copyhold Land, mentioned by Littleton, must be understood a Fee-simple Conditional at Common Law, or else he contradicts himself; for he says in another Place, that all Inheritances at Common Law were Fee-simple, but that may be well enough understood of Freehold Estates; for one may lay a general Rule for all Lands, meaning Freehold Lands, which will not extend to Copyhold Lands. Gilb. Treat of Ten. 158.

(F. c. 2) Entails. By what Words.

Cro. C. 355. 1. A surrendered to B. and C. and the longest Liver of them, and for pl. 4. S. C.
SiC. cited.
Gib. Treat. of Ten. 244.

2. A Surrender was to A. for Life, Remainder to B. and his Wife, and their Heirs and Assigns, and for Defeant of such Life, Remainder over.
Per rot. Cur. except Gould J. this gives B. and his Wife a Fee-simple; but Gould held it gave only Estate Tail. 11 Mod. 57. pl. 34. Phil. 4 Ann. B. R. Idle v. Cook.

S. C adjudge, and the Arguments of the Judges at large.

3. Surrrender was to the Use of himself for Life, Remainder to his Wife for Life, Remainder to his Heirs of their Bodies; there was no Admissitance pursuant to this Surrender; the Son shall have a Fee-simple, for his Father’s Estate continued in the same Plight. 11 Mod. 107. pl. 5. Mich. 5 Ann. B. R. Brown v. Dyer.

[G. c.] Copyhold Dock’d.
[Bar of Entails.]

This in Roll
in Letter (B)
in Fol. 506.

* Popeh. 138.
129. S. C.
an Estate
Tail of a
Copyhold
cannot be
bared by a
Surrender
without a
peculiar Custom
for that Pur-
pose, and to maintain such Custom, it ought to be shewed, that a Remainder had been brought upon such Sur-
render, and Judgment given, that it does not live. Yet it was agreed, that it was a difficult Proof of the
Custom, that they, to whose Use such Surrenders had been made, had enjoyed Land against the Titles in

2 Brownl. 121, 122. Hill v. Upchurch, Mich 9 Jac. C. B. S. C. Coke Ch. 1 Gold, that it was
Copyhold.

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adjudged in 27 Eliz. for the Manor of Northall in Essex, that admitting a Copyhold may be insti-
uted by the Nature, then a Custom that a Surrender shall be a Bar or Discontinuance of such Elene is good
for the Reason above.— Supplement to Co. Comp. C. 78. S. 12 cites S. C. and 16 Trin. 38
Eliz. Field v. Elliot, that a Surrender by Tenant in Tail of a Copyhold in Fee makes a Discontinu-
ance; but says, that notwithstanding those Authorities and Cales, he conceives, that a Surrender is no
Discontinuance of a Copyhold in Fee in Tail.

2. If it be admitted that there may be a Tenant in Tail of a Copyhold, yet this may be barred by a Common Recovery, for a Warranty, &c. the Jury
may be annexed upon this this by a Surrender to an Ufe, or by a Con-
found qud
firmation or Release with Warranty, and it may be intended, that unques-
ion he shall have another Copyhold in Value, and also in Favour of
— Common Recoveries. Lubinum, 37 Eliz. B. R. between Dedl
and Rigdon. Mich. 43. 44 B. R. Harris's Case, per Curiam,
in Curia
without any Custom to warrant it.

The Court upon the Motion seem'd to think that it should bind the Remainder, but they spoke not
much thereto; sed adiunor.— 4 Rep. 25. a. pl. 3. Dedl v. Rigden S. C. adjudg'd, that where
by Copyhold of a Manor Plains have been made in the Court of the Manor in Nature of Real Actions, if
a Recovery be had on such Plain against Tenant in Tail, (admitting that Copyhold Lands may be
enailed) it shall be Discontinuance; and if such Plains be being warrantyd by the
Copyhold, it is an Incident which the Law annexes to such a Copyhold, that such Recovery shall
make a Discontinuance.— Mo 358. pl. 458. S. C. retold'd, that a Common Recovery without
Voucher is Discontinuance, and is a Common Recovery with Voucher by Tenant in Tail of a
Copyhold; and if Tenant in Tail comes in as Voucher, this bars the Ufe and Remainders, though no
Custom ever was for Recoveries in the Court of the Manor. — A Recovery does not dock the Re-
mainder without a Custom; Per Twidten J. Raym 163. Mich. 19 Car. 2 B. R.— Supplement to
Co. Comp. C. 78 S. 12 cites S. C.

* A Surrender with Warranty to an Ufe, and a Grant accordingly, makes the Party in en le Per
by the Surrenderor, and upon this Warranty the Surrenderor may be vouch'd in the Court upon
Plain there, and the Recovery in Value shall be only of other Copyhold Land within the Manor;
Adjudg'd. Mo 358. 559. S. C.— A Warranty cannot be annexed to an Estate Tail of a Copy-
hold; Per Cur. Cro. E. 380. pl. 52. Hill. 57 Eliz. C. B. Elyer v. Lane; But the Reporter adds a Quære.

— See Chirn v. Peafe, pl. 10. Intra.

3. If Copyholder in Tail Surrender to the Use of another in Fee, and a
Copy is made to the other accordingly, this shall be a Discontinuance, for by
Livery, or other Way, he can't depart from the Land, and this Way
which he may use shall be to him of equal Benefit, as Livery thall be
to him that can make it. Arg. pl. C. 233. 4 Eliz. in Cafe of Willion
v. Berkley.

4. The Cafe was. Baron and Feme, Copyholders, to them and their
Supplement
Heirs, and the Baron in Consideration of Money paid by him to the Co. Comp.
Lord obtained an Eflate of the Freehold to him and his Wife, and to the Co. 73.
Heirs of their Bodies; the Baron died, leaving Issue; the Feme enters, S. C. cites
a Common Recovery, and his Heir enters by the Statute of 11 H. 7. and
agreed the Entry was lawful, for the Copyhold by the acceptance of the new
Eflate was extinguished. Cro. E. 24. pl. 3. Hill. 26 Eliz. C. B.
Stockbridge's Cafe.

5. A Copyhold was surrendered to the Use of another in Tail, and the
Surrenderor [Surrenderer] had Issue 3 Daughters, and died. One of the
Daughters surrendered in Fee; Agreed, that if this was only a Possi-
ibility, it could not be convey'd to another by a Surrender; Arg. Roll

6. A Surrender of Copyhold Lands was made within the Manor of Co. E. 373.
Stevenson, to the Use of J. S. and the Heirs of his Body, and after Issue, — S. C.
be surrendered the Lands and another. It was agreed by the all the Juri-
cited per-
ces, that this was a Fee-simple conditional at the Common Law, and Cur. Godb.
after Issue, that he might alien the Lands. Supplement to Co. Comp. 378 in pl.

A Copyhold

Copyhold

was surrendered to the Use of Copyholder's Will, who devised it to J. in Tail, Remainder to H. in Tail Sec.
if both Issue, and Surrender to the Use of his Wife, for Life, it was adjudg'd, that since the
}
Copyhold.

found it was not the Custom of the Manor to have an Estate Tail in a Copyhold, that if I had a
simple conditional, and that by his having of Issue, he had performed the Condition, and the Surrender to the Use of his Wife was good. Gilb. Tit. Ten. 154, 155.

Supplement.

7. An Infant [*Tenant in Tail] surrender'd Copyhold to the Use of a Stranger, who was admitted. The Infant may enter at his full Age, because there was no Bar nor Discontinuance. Mo. 597. pl. 814. Hill. 35 Eliz.

cites S. C. adjudged.

Supplement.


9. S. C. and S.P. and says, that according to this it was adjudged that Eliz. in Cae of Gravener v. Brooks, Brownl. 36. S. P. held accordingly by Coke Ch. J. and Foster J. of the same Opinion, in Case of Rogers v. Powell,S. P. accordingly, and that it is no Bar to the Entry of the Issue in Tail, and so was it held in the Sirians Case, when Audley, who afterwards was made Chancellor of England, was made Serjeant; and afterwards it was adjudged, that the Entry of the Infant was lawful. Le. 95. pl. 124. Hill. 50 Eliz. B. R. Knight v Footman.

Supplement.

9. A Surrender was unto the Use of one in Tail, with divers Remainders over in Tail, the 9th Surrenderance died without Issue; and first it was agreed and adjudged, that it was no Discontinuance. 2dly. If it were a Discontinuance, yet a Formedon in the Remainder did not lie, because there ought to be a Custom to warrant the Remainder as well as the first Estate Tail; for when a Copyholder in Fee makes such a Gift, no Receiver is left in him, but only a Possibility, and the Lord ought to avow upon the Donee, and not upon the Donor; and there is a Difference when he makes or gives an Estate of Inheritance, and when he makes a Lease for Life or Years; for in the one Case he hath a Receiver, in the other not. 3dly. A Recovery shall not be without a special Custom as it was agreed in the Case of the Manor of Stepney, because the Warranty cannot be knit to such an Estate without a Custom. Godb. 368. pl. 458. cited by Harvey. J. as adjudged 37 Eliz. C.B. in the Case of Lane v. Hill.

10. In Trefphas it was found, that the Land was Copyhold demifable in Fee, in Tail, or for Life, and that A. was seized thereof in Tail, Remainder to B. in Tail; that A. suffered a Recovery with Voucher in the Court of the Manor, and afterwards died without Issue, and it was found, that there was no Custom to suffer Recoveries in the Court of the said Manor; all the Court held, that this Recovery shall not bind the Issue in Tail, but upon a Recovery in Value, and here he can have no Recovery of other Lands in Value; For he cannot have Land at Common Law, nor can he have Customary Land; For if it should be so conveyed, then the Lord would lose his Fines, and the Party to whose Use the Recovery was, should hold his Land as a Copyholder without Grant or Admittance by the Lord, which is contrary to the Nature of a Copyhold. Cro. É. 391. pl. 14. Pach. 37 Eliz. B. R. Clun v. Peafe.
Copyhold.

Hill, 7 Eliz. C. B. Eylot v. Lane and Pearce. — Recovery in Value shall be only of other Copyhold Land, in the Manor. No. 539 pl. 488. Trin. 36 Eliz. Dell v. Higten. — Supplement to Co. Comp. Cap. 79 S. 12. cites S. C. and 5. Note for a Conclusion of this Point, that at this Day, by the Custom of several Manors, Common Recoveries are had and suffered in the Courts of Lords of Manors for the docking and barring of Estate Tails of Copyhold; and much Inconveniency would ensue, both if Copyholds at this Day might not by Custom be entailed, and likewise if by Custom Common Recoveries had of Estates Tail with Voucher over in the Courts of Lords of Manors should not thereby be docked and barred.

11. A Copyhold may be entailed by special Custom, and barred by Gilb. Treat. a Common Recovery, and a Surrender may bar the Issue in Tail by a special Custon; Agreed. Mo. 637, 638. pl. 877. Hill. 37 Eliz. Church & S. P. v. Wyatt.

12. Recovery may be in the Lord's Court of a Copyhold which Gilb. Treat. shall bar an Entail; Agreed. Mo. 753. pl. 1037. Hill. 1 Jac. Oldcot v. Levell.

observe, that it is said Generally, and is not put upon any Custon.


14. The Manner of barring Entails of Copyholds within the Manor of Wakefield in Yorkshire, is, for the Copyholder to leafe his Lands of Ten for more Years than he ought, or to relive doing his Services, and 164. cites then the Lord seizes the Lands for the Forfeiture, and grants them over S. C. and to another by the Consent of him who made the Forfeiture; but Roll Ch. 1 says it is J. said, that he conceive'd there could be no Custom for this, because held to be the Seilure for a Forfeiture destroys the Copyhold Entail; For it is of a Copy at the Lords Election, after the Seilure, whether he will grant the Entail hold Entail again by Copy of Court Roll, or not, and you do not prove that the former Custon binds him to it. Sty. 450. Pach. 1655. Pilkington v. Bagshaw. Tail to commit a Forfeiture, and the Lord to seize and grant to another; or if the Tenant in Tail surrenders to the Ufe of the Purchaser and his Heirs, and the Purchaser commits a Forfeiture, and the Lord seizes and regrants, this is held to be a good Custon to bar the Entail Tail of a Copyhold, though the Tenant in Tail be not privy to it; By this it seems plain, that if Tenant in Tail commit a Forfeiture, his Issue is bound by it, but the Lord cannot grant to no body else but to him that he intended to have the Entail. Thus it seems plain to me, that as Estates by the Custom may be entailed, so by the Custom also these Entail-Tails may be cut off by Surrender, Recovery or Forfeiture, according to the several Customs of Manors. — Custom of the Manor was, to cut off Entails by committing a Forfeiture, and then appointing to whose Use the Forfeiture should be. A Copyholder makes such Forfeiture, and Appointment and dies before Admittance of Copyhold. The Heir of the Copyholder was admitted; and then the Lord of the Manor sold the Manor to J. S. who admitted the Copyhold, and his Admittance held good, and that his Admittance shall avoid all Mefne Aets or Dilpositions made by the Lord as if admitted on a Surrender. 2 Sund. 452. pl. 70. Pach. 2 Car. 2. Grantham v. Copley. — Gilb. Treat. of Ten. 164, 165. cites S. C.

15. A Copyholder in Tail accepts a Forfeiture; this destroys not the Custon as to his Issue in Tail, for he has no Power to conclude him; yet if he commit a Forfeiture, and the Lord seizes it, seems his Issue is bound, it being a common and customary Way to cut off the Entail of Copyhold Lands. Gilb. Treat. of Ten. 232, 283. cites Cart. 6. 7. Mich. 16 Car. 2. C. B. Taylor v. Shaw.

16. Upon a Trial at Bar in Ejectment for Lands held of the Manor of Wakefield, it was admitted, that by the Custom of that Manor, Copyhold Lands might be entailed, and that the Custon to bar such Entails is for the Tenant in Tail to commit a Forfeiture, and then the Lord to make three Proclamations, and seize the Copyhold, and then to grant it to the Copyholder, and his Heirs; and another Custon to bar such Entails is, for the Tenant in Tail to make a Surrender to the Purchaser and
Copyhold.

and his Heirs, and then for the Purchaser (intending to bar the Intail and Remainder) to commit a Forfeiture, and the Lord to Jews, and three Proclaimations &c. that thereby the Intail in Tail is bar'd, though the Tenant in Tail did not join; And this Custom was found by the Jury, and allowed per Cur. as a good Custom Sid. 314. pl. 32. Mich. 16 Car. 2. B. R. Pinkerton v. Stanhope.

17. Bill by a Remainder-man in fee of a Copyhold enterprize on an Estate Tail, which was spent, to be relieved against an erroneous Common Recovery in the Lord's Court, praying that the Lord may be decreed to suffer the Plaintiff to bring a Plaint in the Lord's Court, in Nature of a Writ of Error, to reverse this Recovery, or that this Court would relieve on the Merits. Defendant demurred. Allowed by Trevor, Master of the Rolls, and after per Jeffries C. tho' the Errors alligned were such as would have been great Errors in a Recovery of a Freehold Estate; but if there had been an Error in any adversary Proceedings in the Lord's Court, this Court would order the Lord's Court to proceed and examine it, and told the Counsel they might try the Common Law Court if they would grant them a Mandamus, but they should have no Aid from this Court. Vern. R. 307, 308. pl. 360. Hill. 1685. Ah v. Rogle and the Dean and Chapter of St. Pauls.

18. A. Copyholder for Life, Remainder to his 1st. 2d. &c. Sons in Tail, Remainder to B. in Fee. A. before a Son born gets a Conveyance of the fee of the Copyhold, thinking it would merge his estate, and destroy the contingent Remainder; but decreed that the contingent Remainder is not destroyed, the Freehold being in the Lord. 2 Vern. 243. pl. 228. Mich. 1691. Mildmay v. Hungerford. But if he takes a Conveyance of the Freehold in Fee, Lord Chan. found it to make little Doubt, but that the Copyhold was merged. Vern. R. 448. pl. 424. Patch. 1687 Parker v. Turner. And afterwards decreed accordingly, and that the Purchaser should enjoy against the Intail. 2 Vern. 397. S. C.—2 Chan. Cases 171. Barker v. Turner. S. C. Lord Chancellor was of Opinion for the Purchaser and that the Conveyance was good against the Heirs; For the Copyhold being sever'd from the Manor, there is no means to bar it; but by conveyance at Common Law; the Intail is not within the Statute of Wills, 172. But Lord Chancellor took time to advise.

19. A. was Tenant in Tail of the Trust of a Copyhold, Remainder to J. S. A. requesed the Trustees to surrender to him in Tail, which they refus'd, A. brought a Bill to compel them, and they put in their Answer. Then A. died, but Pending the Suit, he went to the Lord's Court and decreed to be admitted to surrender, which was refus'd, because the legal Estate was in the Trustees. Upon which A. by Will, devised the Premisses to his Wife &c. subject to the Payment of his Debts. Lord Cowper decreed the Estate to go according to the Will, there having been no Laches in the Testator, and having devis'd the Estate to the Uses and Purposes in his Will, his Lordship conceived that was sufficient to bar the Intail of a Trust. 2 Vern. 583. pl. 525. Hill. 1706. Otway v. Hudfon & al.

20. A Recovery with Voucher doth not of common Right bar the Entail of a Copyhold, but that as to the entailing them, Copyhold is requisite, so without Copyhold the Entail cannot be cut off. The Reasons are, that because without an intended Recompence in Value, no Recovery shall bind, and the Surrenderes comes in in the Poit, by the Lord, and is not in in the Per by the Party, and so no Warranty can be annexed to the Copyholder's Estate; besides, they have only an Estate at Will, to which no Warranty can be annexed of Common Right, for no Estate less than a Freehold is capable, by Common Right, of having a Warranty annexed to it; And accordingly it was adjudged in Clinton's Case, and all the Judges held, that the Recovery did not bind without a Custom. But there is a Quare, whether Judgment was given
Copyhold.

given for the Plaintiff upon the principal Matter, or no? For it seems to have been a Discontinue, and that the Defendant’s Entry could not be lawful. There are two other Cases where this Question came in Dispute, but was not resolved. It was held, in the Case of Church v. Whit, that a Recovery by Custom may bar, which implies, that without it it cannot bar; but in the Case of D’Oyly v. Levell, No. 753, it was agreed, that a Recovery may be in the Court of the Lord that will bar a Copyhold, and there it is laid Generally, and is not put upon any Custom. It is debated, whether, if there be a Custom to bar the Issue of a Copyhold Estate by surrender to one in Fee, whether that be good. Mo. 113. pl. 336. Dill v. Pitt. Now my Lord Coke says by Custom, by surrender the Entail of a Copyhold may be cut off. Gilb. Treat. of Ten. 163, 164.

21. A. Copyholder in Fee by Marriage Article’s covenants to surrender to Trustees the Use of himself for Life, Remainder to the Heirs is sanctified. Males of his Body, Remainder to the Heirs of his Body. A. dies before it will not any Surrender, and leaves B. his Son, and M. his Daughter. B. will be defeated rendered to J. S. and others his Creditors, according to an Agreement, or barred by a bare Surrender. There was no Custom to bar Entails by Recoveries. B. dies without Issue. Lord Harcourt decreed the Copyhold to the Daughter; but upon a Rehearing Cowper C. decreed for the Surrenderees, because of the want of a Custom to fuller Recoveries, and so held the Surrender would bar the Entail in Case the Copyhold had been well settled. 2 Vern. 702. pl. 625. Mich. 1715. White v. Thornburgh.


(G. e. 2) Entails. Pleadings &c.

1. To prove a Custom to entail Copyhold Lands within a Manor, it Gilb. Treat. is not sufficient to shew Copies of Grants to Persons and the Heirs of their Bodies, but they ought to shew that Surrenders made by carding, such Persons have been enjoy’d by Reason of such Matter; Arg. But ptet or it must Wray Ch. J. That is not so; For-custumary Lands may be granted in be shown, that the Issuer has recovered after the Allocation of his Ancestor, or the like.

2. If a Copyholder surrenders in Tail, and the Heir of the Donor is to bring a Forsecon, he must count of the Gift made by the Copyholder that surrendered, and not by the Lord, for he is but the Instrument to convey it, and nothing paffes from him. Cro. E. 361. pl. 22. M. 36 & 37 Eliz. C. B. Poulter v. Cornhill.

(G. e. 3)
(G. e. 3) Fines levied of Copyholds.

1. One recovered Copyhold Lands in the Court of the Manor by Plaint in Nature of a Writ of Right. It was mov'd in C. B. whether a Precept might be awarded out of that Court, to execute the Recovery, and to put the Recoveror in Possession with the Possess Manerii, as in such Cases at Common Law, with the Possess Comitatus. But resolv'd clearly, that it could not, for Force in such Cases is not justifiable, but by Command out of the King's Courts. 3 Le. 99. pl. 142. Mich. 26 Eliz. C. B. Anon.


3. If there be a Lease for Life, Remainder for Life, of a Copyhold, and the first Tenant for Life doth purchase the Freehold of the Copyhold, and levies a Fine thereof, and five Years pass, this Fine should bar him in the Remainder of his Copyhold. Supplement to Co. Comp. Cop. 80. S. 13. cites Mich. 9 Jac. in C. B. that it was adjudged accordingly.

4. A Copyhold was granted to A. B. and C. for 3 Lives successively, Remainder to his eldest Daughter for Life &c. The Lord by Bargain and Sale enroll'd fold the Inheritance to A. in Fee, and levied a Fine to him with Proclamations. A. died, and D. his Son and Heir levied a Fine &c. B. entred. Resolv'd, that B. cannot enter after the Bargain during the Life of A. For B's Estate was to commence in Possession after the Death of A. and B's Estate is not devolved by the Bargain and Sale, or Fine, for the Lord did what was lawful for him to do, and A. was in lawful in Possession, and was only passive and not active; and by Acceptance he who is in lawful Possession by Force of a particular Eftate, cannot defeat the Eftate of him who has the Frank-Tenement or Inheritance. 9 Rep. 104. Pasch. 10 Jac. Margaret Podger's Cafe.


6. In the Cafe upon a special Verdict in Ejecution a Copyholder of a Dean and Chapter levied a Fine with Proclamations, and 5 Years pass'd without any Seifire or Claim by him that was Dean at the Time of the Fine levied, and whether the succeeding Dean was barred, was the Question; and the Court, at the first opening, held clearly that he was not; for if so, the Statutes of 1 & 13 Eliz. which restrain the Alienation of the Church-Revenue, would be of small Effect; cites 11 Co. Magdalen College's Cafe. Vent. 311. Trin. 29 Car. 2. B. R. in Cafe of Howlet v. Carpenter.

(H. e)
(H. c) Frank-Bank, and Tenancy by the Courtesy.

In what Cases; And what it is; And how considered.

1. It seems, that during the Life of the Tenant in Frank-Bank, who the Admittance is Tenant to the Lord, and a Copyholder, the Heir is not admissible. See Le. 1. pl. 1. Hill. 25 Eliz. B. R. Borneiord v. S. C. and that it is there taken for granted, that the Heir shall hold the Lord, and that the Heir shall not be admitted during her Life, which, he says, plainly proves, that the Court of Tenure of Copyhold Land is not like that of Freehold Land at Common Law, for in such Case she should hold of the Heir.

2. The Custom of a Manor was, that if any Man had a Wife seised And 125. in Fee of Copyhold Lands, according to the Custom of the Manor and had Husb by her, that he should be Tenant by the Courtesy of the Land; it was found, that A. a Copyholder was seised, and had issue a Daughter, S. C. and who was married to J. S. who had issue A. died; his Wife entered, the agreed by Wife died before Admittance. The Court agreed, that the Husband was well entitled to be Tenant by the Courtesy before Admittance of the Wife, and the Delay of the Admittance by the Lord should not prejudice the Husband, being a third Person. Mo. 271, 272. pl. 425. Hill. 31 Eliz. Ever v. Alton.

Fee-siple or other Estate of Copyhold, unless the Custom allows it, and therefore in Alton brought for Custum must be feared in pleading. — Gilb. Treat. of Ten. 271. cites S. C. and says, Quere, whether a Feme be seised to make her Husband Tenant by the Courtesy before Admittance, where the Custom is for Tenancy by Courtesy? It seems reasonable it should make the Husband Tenant per Courtes, as well as the Possession of the Brother before Admittance make the Sister Heir; and by the same Reason the Widow shall have her Widow's Estate, though her Husband was not admitted. — If a Copyhold descended into a married Woman, and her Husband takes the Profits thereof, and suffer a Court Day to pass without Admittance of his Wife, and then the Wife dies, the Husband shall not be Tenant by the Courtesy, but in the 12 Eliz. Dy. 291, 292. it seems that the contrary should be the better Opinion. Gilb. Reading, 69.

3. A Woman Copyholder durante Viduitate suad fowoed the Land, and the Copyhold, or Supplement for Seuence of the Corn took Husband. It was adjudged that the Lord, the Cap. St. S. should have the Corn, and not the Husband, for although the Estate of 16 cites the Wife was uncertain, and determined by the Limitation, and not by s. C. — the Condition in Fait, or in Law, yet because it determines by the Act Mo. 382. the Feme heretofore, the Lord have the Corn; but otherwise it would be adjudged that the Feme have the Corn; and the Leetee have fowo, in such Case the Lord, Leetee should have the Corn; adjudged by Popham and Clench, Con-tradicente Fenmer, & abiente Gawdy. Cro. E. (46o.) bis. pl. 10. Patch. 116. a. O- 38 Eliz. B. R. Oland v. Burdwick.

S. C. ad- jagued, that in such Case the Lord shall have the Emblems, and that if she had fowo the Land, and the Leetee had fowo, the Leetee should not have the Emblems; For though his Estate is determined by the Act of a stranger, yet he shall not be (as to the first Leetee) in better Case than his Leetee was — Gilbsh. 189. pl. 136. S. C. adjug'd against the Husband.

4. Prohibition. It was held by all the Court, that if a Copyholder makes a Leafe for Years of Land whereof a Feme by Custom is to have her Widow's Estate, she shall not avoid the Leafe, unlese there be an es- special Custum to avoid it; For he comes under the Custom, and by the Lord's Licence as well as the Feme. Cro. J. 36, 37. pl. 12. Trin. 2 Jac. B. R. Fareley's Cale. H h h

5. The
Copyhold.

5. The Estate during his lifetime is but a Branch of the Husband's Estate, and the Admiration of the Husband suffices for the Estate of the Wife; and the Estate of the Husband was big with the Estate of the Wife, which was to be brought forth by the Death of the Husband; Per Hub. Nov 29. Hill. 15 Jac. C. B. Kennington v. Cole.

6. Where a Mortgagee of such Estate, where the Custom was for Frank-Bank, had assigned to the Heirs, the Court were of Opinion, Obiter, that the Widow paying the Mortgage Money might be entitled in Equity. Cumb. 234. Hill 5 W. & W. in B R. Benfon v. Scott.

7. In Ejecution, a special Verdict was found, viz. A Custom that the Tenants of the Manor having a Mind to alien, might surrender into the Hands of two Copyholders &c. that Scott being a Copyholder in fees, aid surrender &c. to the life of the Plaintiff in Fees, and died, leaving his Wife, who claimed her Free-Bank by the Custom, and at the next Court the Surrender was presented, and thereupon the Plaintiff admitted; and the Question being, whether the Surrenderer, or the Wife for her Free-Bank, should have these Lands? It was adjudged for the Plaintiff, for the Wife's Title does not commence till after the Death of the Husband; and then only to those Lands of which he died feal'd, but the Plaintiff's Title began by the Surrender; for the Admittance relates to that, and that the Cafe of two Jointenants, 1 Int. 59 b rules this Cafe. 1 Salk. 185. pl. 3. Patch 5 & 6 W. & M. B R. Benfon v. Scott.


9. It was agreed, that if the Husband forfeited, the Wife lost her Free-Bench; for, as if he surrendered, it defeated his Wife of her Free-Bench; so if he did any Act which determined his Estate, it destroyed her Free-Bench. Freem. Rep. 316. pl. 692. Mich. 1699. B R. Anon.

10. A Copyholder surrendered his Estate to make a Mortgage, and died before the Mortgage was admitted, so that the Estate remained in him at the Time of his Decade, and by the Custom of the Manor, the Widow was entitled to her Free-Bench; and after the Death of the Copyholder the Mortgage was admitted, Per Treby Ch J who said it was referred to him, and he advised with the Judges of the King's Bench upon it, and determined it, that this Admittance related to the Surrender; that...
that although the Husband died seised, yet the Wife should not have her Free-Bench; and so it was said to be lately resolved in B. R. Green. Rep. 516. pl. 692. Mich. 1699. B. R. Anon.

11. Frank-Bank was to encourage the Tenant to go into the War, so that if he was killed the Lord would not take Benefit, but gave the Estate to the Wife to encourage him to fight; Per Powell J. who thought this was the Original of Frank-Bank. 11 Mod. 95. pl. 3. Mich. 5 Ani. B. R. Anon.

(H. c. 2) Frank-Bank. Widows, of what Persons shall have Frank-Bank.

WIDOW of a Bankrupt, where the Commissioners have made an Assignment of the Copyhold, than't have her Frank-Bank, cites S. C. & S. P. for after Sale of the Lands by the Commissioners by Deed indented and enrolled, if the Husband dies, he does not die seised.

2. Copyholder for Life, where the Custom was for Frank-Bank, Gilb. Treat. cites S. C. & S. P. for attaining for Felony, and executed; per Winch. J. who only was in Court, it seemed the Widow than't have Free-Bank without a Special Custom. Winch. 27. Mich. 19 Jac. C. B. Allen v. Brach.

3. The Custom was, that the Feme of Copyholder for Life should have Estate During Viduitate. The Copyholder took a Lease for Years, by which the Copyhold was determined. Adjudged that the shall not have Estate during Viduitate after her Baron's Death. Jo. 462. pl. 3. Trin. 17 Car. B. R. Dagworth v. Radford.

4. The Widow of a Cess for Drift of a Copyhold Estate shall have her Free-Bench as well as if her Husband had the legal Estate. 2 Wms's Rep. 644. cited per Sir Joseph Jekyl, Matter of the Rolls, in the Case of Banks v. Sutton, as the Case of Otway v. Hudson decreed by the Lord Cowper 27th October, 1706.

(H. c. 3) Frank-Bank. How. And Pleadings.

1. Jethone Firma was brought against a Woman, who justified, being the Wife of a Copyholder by the Custom ought to have for Life. The Custom was travers'd. The Defendant gave Evidence of a Widow's Estate only. Held, that it will not maintain the Issue, for this is of a less Estate, and the Word (tantum) makes it stronger. S. C. cited accordingly.

2. In Trefpaes, the Defendant justified, because Sir J. S. was seised of the Manor of D. within which Manor the Copyhold is, that if any Manor to Wife any customary Tenant of the said Manor, and S. C. cited. hast judged so.
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hath Issue, and shall overlive his Wife, he shall be Tenant by the Curtey; and pleaded farther, that he took to Wife one Ann, to whom, during the said Coverture a customary Tenement of the said Manor did descend, and that he had Issue by the said Ann, and that she is dead, and to &c. And it was adjudged, that the Husband, by this Custum, upon this Matter, should not be Tenant by the Curtey; for Ann was not a customary Tenant of the said Manor at the Time of the Marriage. 2 Le. 109. pl. 140. Trin. 29 Eliz. in B. R. Savage's Cate.

3. A Custum of a Manor was found to be, that if a Copyholder in Fee died feised, his Wife should hold it during her Life, as Frank-Bank. The Lord infests the Copyholder, who died feised. Whether the said hold it was the Question? And adjudged, that she should not; But if the Lord had infested a Stranger of that Land, yet the Land remained Copyhold, and the Custum is not taken away. Cro J. 126. pl. 14. Hill. 3 Jac. Latham v. Avery.

4. A Copyholder for Life pur车厢es the Fee, which is conveyed to Trustees and their Heirs, to the Use of A. during the Life of A. Remainder to the Wife of A. for Life, Remainder to A. in Fee. A. conveys the Remainder to his eldest Son in Fee; the Copyhold Estate for Life still continues in A. and is not extinct or altered by the Purchase of the Fee which never was in him, but in the Trustees only, till A. and the Trustees conveyed the Remainder in Fee to the Son, so that a Second Wife of A. shall be intituled to her Custumary Estate. Hob. 17 Jac. B. R. 151. pl. 213. Howard v. Bartlet.

5. The Husband, who was Copyholder for Life of a Manor where the Custum was, that the Wife should have her Widow's Estate &c. was attainted of Felony. The Question was, whether, after he was executed, the Widow should have her Free-Bench & Justice Winch, who was alone in Court, held that she should not, without a special Custum, for that Purpoze. Lex Maner. 144, 145. cites Hill. 19 Jac. Allen v. Booth.


7. A. was admitted in Trust for B. to a Copyhold, and the Question was, whether the Widow of A. the Trustee did not come in Paramount the Trust, and should enjoy her Widow's Estate, and the Court at Law was divided upon it; cited 2 Vern. 46. pl. 41. Patch. 1638. as the Cafe of Newbery v. Wighorn.

8. Copyholder for Life, where there is such Custum, agrees that if S should hold and enjoy during his Life, and the Widowhood of such Woman as he should leave at his Death, and enters into Bond for that Purpoze, and to Surrender on Requêt. A Bill was brought by the Purpoze.
(I. e) Guardian of Infants Copyholders. Who shall be.

1. If a Copyholder dies, his Heir under the Age of 14, the next of Kin shall not have the Custody of the Copyhold Land, for the Right of appointing a Guardian for them doth belong to the Lord, that so he may be sure to have the Services done him; This is a particular Reason why the Lord should have the Custody of the Lands against the Common Rule for the Guardian in Socage; But the Reason not extending to the Custody of the Body, it seems the Guardian in Socage shall have the Body. This Guardianship, says Coke, De Comminu Jure belonging to the Lord, the Copyholder cannot by his last Will and Testament appoint another Guardian; Quere, whether at this Day, by Force of the Statute 12 Car. 2. cap. 24. the Devisee of a Child shall have the Guardianship of the Child’s Copyhold Lands; for the Words of the Act see the Statute at large. Gilb. Treat. of Ten. 311, 312.

(K. e) Infranchifement. The Effects thereof, either as to the Land, or the Estates in it, or the Incidents to it.

1. If the Lord charges the Inheritance of an Estate, which is granted by Copy for the Lives of A. B. and C. and the Custom of the Manor is, that the first Named shall first enjoy, and then the 2d, and then the 3d, and the Lord by Deed inrolled bargains and sells the Inheritance to A. A shan’t hold this charged during his Life; for the mean Estates in Remainder of B. and C. preferve A’s Estate by Copy from the Incumbrances of the Lord. 9. Rep. 104. 107. Palech. 10 Jac. in Margaret Podger’s Cafe, the Copyholder for Life, he shall hold the Land discharged during his Life. Gilb. Treat. of Ten. 235. cites 8. C.

2. Debt against an Heir upon a Bond, and Riens by Descent in Fee pleased, &c. and upon the Evidence the Cafe was, the Land was Copyhold, and by the Ancestor an Infranchifement of it was procured of the Lord, and the Freehold bought in &c. but the Copyhold was entailed long before, and by Custom such Entails had been &c. within the Manor of Leeds, where &c. and whether this Entail shall free the Issue, (for so the Heir here was,) or that the Copyhold shall be so extingui-

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ed by this Purchase, that it be wholly swallowed up, and that no Use can be made of the Issue of this old Entail was the Question, and Thorpe Judge of Alithe, thought the Issue might make Use of the Entail. Clayt. Rep. 133, pl. 294. August 1649. Bernard v. Simpson.

3. If Infranchisement only alters the Manner of the Tenant’s Tenure, so as where the Lord was bound to repair a Way Ratione Tenure, the ancient Freehold and Copyhold Tenants are not liable to contribute; for Nothing is Part of the Manor but Demesnes and Services, and not the Lands of the Tenants, and tho’ the Copyholds are afterwards infranchised, yet they are not chargeable, because it only alters the Manner of the Tenure. Hardr. 13, Mich. 1658. in Scacc. Rich v. Barker.

4. A Copyholder to him and the Heirs Male of his Body purchased the Fee-Simple to him and his Heirs, and afterwards, for 500l. sold the Land to the Defendant, who was in Possession several Years; The Copyholder died, leaving Issue a Son; a Special Verdict was found at Common Law; The Question is, if the Son has Right now? The Lord Chancellor was of Opinion for the Purchaser, that the Conveyance was good against the Heir. For the Copyhold being Severed from the Manor, there is no Means to bar it but by Conveyance at Common Law; the Entail is not within the Statute of W. 2. but Lord Chancellor took Time to advise. 2 Ch. Cafes. 174. Hill. 1 Jac. 2. Barker v. Turner.

5. Copyholder purchased the Freehold with all the Commons belonging, yet the Common is extint; But if the Word Grant be in the Deed, Worledge, v. King’s well — But whether this was Common in Gross, or Common Appurtenant, it was not resolved. Ibid. 173 — Though the Words (Cum Pertinentis) will not pass the Common, yet if the Grant be, with all Commons before said, it will pass. Built 2. Northam v. Hunter. — Though it be extint at Law, yet it subsists in Equity. 2 Vern. 166. Styan v. Staker.

6. The Lord leaves a Coal-mine for 99 Years, and grants a Way over Copyhold Lands in Fee, which was not a Way of Right, or of Necessity. The Copyholder purchases the Freehold and Inheritance of it, by which the Copyhold was extint; Whether by this the Grant of the Way in the Lease of the Coal-mine may Co-operate as well as if the Locus in Quo had been in the Hands of the Lord at the Time of making the Lease? This was adjudged to be argued, but never was, the Matter being compounded. 2. Latw. 1248. Hill. 11 W. 3. Dixon v. James.

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Copyhold.

(K. e. 2) Infranchisement. Equity.

1. **Husband and Wife, Jointenants for Life, Remainder in Fee to the Wife.** The Husband purchases the Freehold, and takes the Conveyance to himself and his Wife, and their Heirs. The Husband dies. The Wife surrenders to the Use of a Daughter by a former Husband; and decreed accordingly against the Heir. 2 Vern. 164. cites Feb. 22. 1675. Croft v. Lyiter.

2. Copyholder in Fee takes an Infranchisement of his Copyhold in the Name of a Trustee, and then devised it to a younger Son, who sells it to J. S. The Heir at Law recovered in Ejectment, (as he might do upon his Ancestor's Admittance.) On Bill by J. S. it was held, that the Estate purchased of the Lord was purely an Estate in Equity, according to Smith and Huttin's Case, 4 Rep. 24. b. and that the Disposition of the Fee to the Purchaser, was a Disposition of the whole Estate that the Copyholder had, either in Law or Equity; and decreed accordingly; per Finch C. And affirmed on Bill of Review, per Jeffries C. Vern. 392. pl. 364. Hill. 1685. Dancer v. Evett.

3. Lord of a Manor infranchises a Copyhold with all Commons thereto belonging. Decreed, that Plaintiff enjoy the same Right of Common as belonged to the Copyhold, and Coits against the Defendant. 2 Vern. 250. pl. 236. Hill. 1691. Styant v. Staker.

(L. e) Jointenants, and Tenants in Common.

1. **Two Jointenants in Common of a Manor; a Court is summoned by one without his Companion; it is a void Summons.** D. 377. Marg. pl. 28. cites 27 Eliz. Henletho's Case.

2. If in that Case the Copyholder, who made the Surrender, had died before the same had been presented, then the Copyhold had survived to the surviving Jointenant. Supplement to Co. Comp. Cop. 69 S. 3.

3. If a Surrender be made of a Copyhold to the Use of a lost Will, and Gilb. Treat. the Surrenderor devises it to two, the one is admitted according to the Purs. of Ten. port of the Will, this shall enure to both. Co. Comp. Cop. 50. S. 35. 112; 313. S. P. Pec.

admitted he is in by the Surrender, which he cannot be unless he be a Jointenant; for that is his Title by the Surrender.

4. Two Jointenants, Copyholders in Fee; one Surrendred into the Co. Litt. Hands of the Tenants, to the Use of his Will, and makes his Will of the Land, and dies; Resolved, that this Surrender should bind the Survivor; for being prevented, it shall relate to the first Time of the Surrender, and

5. One Jointenant Copyholder released to his Companion; adjudged to be good without Surrender and Admittance; for per Hobart Ch. J. the first Admittance is of them and every of them, and the Ability to release was from the first Conveyance and Admittance. Winch. 3. Pach 19 Jac. Wafe v. Pretty.

6. Two Copyholders in Possession, one Surrendered his Reversion in the Moiety after his Death. 'Twas moved, that nothing passed, because he had nothing in Reverion, and cited 5 Rep. Saffin's Cafe; 2dly, That it is not good after his Death, and cites it as adjudged 2. Rep. Buckley v. Harvey; Per Cur. the Surrender is void, and it is all one in Cafe of Copyhold as of Freehold. Godb. 451. pl. 518. Pach. 10 Car. B. R. Barker v. Taylor.

7. A Man Surrenders Copyhold Land to 2, equally to be divided, they are Jointenants; But such a Devise would have made them Tenants in Common; Per Twifden. J. Arg. Vent. 376. Trin. 26 Car. 2 B. R.

8. If there are 2 Jointenants of a Copyhold, and one surrenders out of Court to the Use of his Will, and devises his Moiety to a Stranger, and dies, and afterwards this Surrender is presented at the next Court &c. the Devisee ought to be admitted; for by the Surrender and Premient the Jointure was severed, for the Land was bound by the Surrender by way of Relation. 4 Mod. 254. Hill. 5 W. & M. in B. R. in the Cafe of Benfon v. Scott.

(L. c. 2) The King. In what Cases the King shall have Copyhold Lands.

1. THE King shall not have the Custody of an Idiot's Copyhold Lands, for it is but Estate at Will by the Common Law, and his having the Custody would be great Prejudice to the Lord of the Manor. 4 Rep. 126. b. Paich 1 Jac. B. R. in Beverley's Cafe.

2. Alien Purchases Copyhold Land; He cannot retain it, nor shall the King have it, but the Lord of the Manor. D. 302. Marg. pl. 46. says, that Harrison, in his Reading in Lincoln's-Inn, 1632. cited it as so resolv'd.

3. H. purchased a Copyhold in Fee, in Trust for an Alien, and upon an Office found, the King failed to have the Profits answer'd to him, the Court held, that they were not feizable, neither was the Trust forfeited to him, and an Amoveas Manum was granted, because the Lord would lose his Fine and Services; besides, it may be prejudicial to a Stranger, who may claim a Title to this Copyhold, and if it was not in the King's Hands, might sue for it in the Lord's Court, but the King cannot be sued there.
there, and the King cannot be a Tenant at Will, and consequently not a Copyholder; Per Hale Ch. B. Hardr. 435, 436. Hill. 18 & 19 Car. 2. in Scacc. cites 16 Car. The King v. Holland.

(M. e) Leases by the Custom, and without; and who bound by them.

1. A Custom that a Lord of Customary Land per Custom may let this for Life, and 40 Years over, is good, but a Custom that a Leafe for Life may lease per annum Vie is not good. Mo. 8. pl. 27. Hill. 3 E. 6. Anon. 2. If Tenant in Tail leaves a Copyhold by Indenture, rendering the same Rent as before, it is a good Lease within the Statute 32 H. 8. per Cur. Cro. 1. 76. pl. 6 cited as ruled 7 Eliz. in Sir Ja. Mervin's Case. 3. It was Resolved by the Justices, That a Custom, that a Leafe for Mo. 8. pl. 40. Years may hold the Land for half a Year after his Term ended, is no 7 Hill. 3 good Custom; But it was agreed, That the Lord of a Copyhold might by Custom lease the same for Life and 40 Years after, and that such a Custom was good. Co. Comp. Cop. 85. S. 19. Justices and the last Point agreed by Mounague and Hales, but that a Custom that a Leafe for Life may lease for another's Life is not good.

4. Copyholder for Life surrenders to K. the Lord of the Manor in Tail, Nov 110. the Reveron in the Crown. K. made a Leafe for three Lives, the Lease's C. to begin from the Day of the Date, and the old Rent was refered, and more. It was resolv'd by the Justices, that it was a good Leafe within the Statute of 32 H. 8. if Livery was made after the Day of the Date. Mo. 759. pl. 1250. Pach. 3 Jac. C. B. Banks v. Brown. 5. If a Copyholder without Licence of the Lord makes a Leafe for If a Copy- Years, the Leafe that enters by Colour thereof is a Diffelior, and therefore holder de- cannot maintain an Ejeéñment; and the Defendant cannot plead that the milies Lands for three Plaintiff by Licence did not demife, for this is a Negative pregnant. 2 Brownl. 40. Hill. 8 Jac. C. B. Petty v. Evana. cence, he shall be taken for a Diffelior; Per Opinionem Curiae. Brownl. 153. Pach. 8 Jac. Cran- por v. Freewatress—A. Keb. 598. Arg. lays, that the Leafe of a Copyholder is no Diffelior, though it be a Fortifie, nor does it alter the Effeate of the Lord. Hill. 21 & 22 Car. 2. B. R. Anon.

6. A sealed in Fee surrendered to the Use of B. and his Heirs, into the Hands of two Tenants, according to the Custom, to be presented at the next Court, and no Court was held in 30 Years after, and before any was held, Surrenderor and Surrenderor, and both Tenant's died. The Heir of Surrenderor entered, and made a Leafe for Years of the Copyhold according to the Custom of the Manor, and adjudged, that the Leafe was good. Godbl 268. pl. 572. Mich. 14 Jac. B. R. Anon.

7. Infant Copyholder makes Leafe for Years, this is no Fortifie; Lm. 199. nevertheless, as to a Stranger, he continues Leafe for Years, tho' the S. C. Lord may leifie for a Fortifie, and tho' he was admitted by the Godbl 564. S. C. Lord, yet this does not avoid the Leafe, therefore his Acceptance at Nov 93. full Age is good, and shall bar the Infant, as if it was a Leafe of S. C— Lands at Common Law; Resolved and affirmed, because Leafe of a Leafe for K k k Copy-
Copyhold.

Copyhold for Years, tho' it is a Forfeiture in regard to the Lord, yet shall be good as to Strangers. Jo. 157. Pach. 3 Car. B. R. Aliffield v. Aliffield.

But the Lord. Cro. E. 555. pl. 68. Goodrick v. Longhurst. 676. Sparke's Cafe. — Cro. C. 504. per Gowy and Jenner J. and that there is no Difference where the Manor is the King's, or a Common Person's. But Clench J. denied it, and Popham said nothing. Cro. E. 492. pl. 8. Hill. 55 Eliz. B. R. in Cafe of Haddon v. Arrowmith — Gilb. Treat. of Ten. 276. 277. cites S. C. of Aliffield v. Aliffield, and says, that it seems the Lord may enter for the Forfeiture during the Novage, and need not stay to see whether the Infant will accept the Rent or not, for the particular Prejudice done to the Lord, and if he should pay his Acceptance of Services from the Infant, in the mean time it would be a Dispensation for the Forfeiture; but then the Infant, at his full Age, by dis-agreeing to the Lease, may avoid the Forfeiture.

Gilb. Treat. of Ten. 276. to let for 99 Years, and that if he refused, the Tenant might do it without adjudge'd good. cited by Moreton, as in the Cafe of Grove v. Bridges. 2. Keb. 344. in pl. 18. Pach. 20 Car. 2. B. R.

(N. e) Lease by Licence, and without. Good. And how it operates.

A Condition to a Licence is void; as a Licence to make a Lease for Years, on Condition that he pay 20 l. the 2d. Year; for the Lord gives nothing by the Licence, but only dispences with the Forfeiture, and the Leafe is in by the Copyholder and not by the Lord, tho' Licence does not give a Right, but only excuses it as a Livery or Attornment. Per Popham and Popham Justices. Ow. 73. Hill. 38 Eliz. in Cafe of Haddon v. Arrowmith.

Cro. E. 462. 1. A Condition to a Licence is void; as a Licence to make a Lease for Years, on Condition that he pay 20 l. the 2d. Year; for the Lord gives nothing by the Licence, but only dispences with the Forfeiture, and the Leafe is in by the Copyholder and not by the Lord, tho' Licence does not give a Right, but only excuses it as a Livery or Attornment. Per Popham and Popham Justices. Ow. 73. Hill. 38 Eliz. in Cafe of Haddon v. Arrowmith.

2. A Licence was granted to let the Lands for 21 Years to commence from Mich. last past; The Copyholder made a Lease for 21 Years to commence from Christmas next following; adjudged, that this Lease was not warranted by this Licence. Cro. Eliz. 394. pl. 21 Pach. 27 Eliz. C. B. Jackson v. Neale.

3. Tenant at Will can't by any Custum make a Lease for Life by Licence of the Lord, and there can't be any such Custum for a Lease for Life as there is for Years; Per 3 Justices. Godb. 171. pl. 236. Pach. 8 Jac. C. B. Anon.

4. If the Lord grants Licence to his Copyholder to demife, and he demiseth it by Indenture, it is the Leafe of the Copyholder, and not of the Lord. Hob. 177. pl. 203. Hill. 14 Jac. in Cafe of Swinnerton v. Miller.

5. If the Copyholder makes a Lease for 20 Years with the Licence of the Lord, and after dies without Heirs, yet the Lease shall stand against the Lord by reason of his Licence, which amounts to a Confirmation. Hurt. 102. per Cur. Mich. 4 Car. in Cafe of Turner v. Hedges.

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6. The Lord agreed with his Copyholder Tenant to grant a Licence to let his Estate for as long Time, and in as large a Manner as had been formerly granted to his Father or Mother, and 300 l. was paid for it. The Agreement was proved, and Defendant confessing he had granted a Licence to the Plaintiff’s Mother to let it for 60 Years, decreed he should Grant the like Licence now. N. Ch. R. 49. 1659. Hungerford v. Auffen.

7. If the Copyholder make a Lease for Years by the Lords Licence, the Lease may Assign over his Lease, or make an Under-Lease for Years, without any new Licence; for the Lord’s Interests is discharged for so many Years. Gilb. Treat. of Ten. 232.

(N. e. 2) Licence to let. Pleadings.

1. A Copyholder cannot make a Lease for Years unless by Custom, or by Licence of his Lord, which ought specially to be shewn; Per Cur. Cr. E. 728. pl. 5. Mich. 41 & 42 Eliz. C. B. Kenley v. Richardson.

2. In Ejectment brought by Leesee of a Copyholder, it is sufficient that the Declaration be general without any Mention of the Licence, and if the Defendant plead Not Guilty, then the Plaintiff ought to shew the Licence in Evidence; But if Defendant plead specially, then the Plaintiff ought to plead the Licence certainly in his Replication, and to shew what Estate the Lord had, and the Time and Place when it was made; for the Licence is irrepealable. 2 Brownl. 49. Hill. 8 Jac. C. B. Petty v. Evans.

3. In Ejectment by Leesee of a Copyholder it ought to appear what Estate the Lord had; for he cannot give Licence to make a Lease for longer Time in the Tenancy than he had in the Seigniory; and if the Lord be only Leesee for Life of the Manor, by the Death of him the Licence is determined, though the Copyholder be of Inheritance thereby. 2 Brownl. 45. Hill. 8 Jac. C. B. Petty v. Evans, als. Debbans.

(N. e. 3) Lord of a Manor’s Power as to determining Disputes between Copyholders.

1. A Copyholder doth surrender to the Use of one A. upon Tryst that he shall hold the said Land until he hath leased certain Moises, and that afterwards be shall surrender to the Use of B. The Moises are cited. A. is required to make Surrender to the Use of B. but A. refuses. B. exhibits a Bill to the Lord of the Manor against the said A. who upon hearing of the Cause, decrees against A. that he shall surrender, but A. refuses; Now the Lord may sit, and admit B. to the Copyhold, 562 cites S. for C. according.
Copyhold.

for he in such Cases is Chancellor in his own Court, per rot. Cur. Le. 2. pl. 2. Hill. 25 Eliz. B. R. Anon.

2. If a False Judgment be given in a Court Baron by the Steward against a Copyholder, the Copyholder, in such Case, shall not have either a Writ of Error, or a Writ of False Judgment; but he may sue in the Court of the Lord by Bill, to be relieved against such Judgment, and the Lord, as Chancellor, may give him Relief therein, and shall restore the Land to the Party upon the False Judgment given by the Steward, and Restitution made to the Copyholder. Supplement to Co. Comp. Cop. 80. S. 14. cites 14 H. 4. 34.

3. Appeal from a Decree of Dismission made by the Lord Jeffrey's; the Bill was, to compel the Dean and Chapter, as Lord of the Manor, to receive a Petition in Nature of a Writ of False Judgment for reviving a Common Recovery fulfilled in the Manor Court, in 1652. whereby a Remainder in Tail, under which the Plaintiff claimed, was barred, suggesting several Errors in the Proceeding therein; and that the said Lord might be commanded to examine the same, and do Right thereupon. It was further urged, that there was no Precedent to enforce Lords of Manors to do as this Bill desired; that the Lords of the Manors are the ultimate Judges of the Regularity or Errors in such Proceedings; that there is no Equity in the Prayer of this Plaintiff, that if the Lord had received such Petition, and was about to proceed to the Reversal of such Recovery, Equity ought then to interpose and quiet the Possession under those Recoveries; that Chancery ought rather to supply a Defect in a Common Conveyance (if any shall happen) and decree the Execution of what each Party meant and intended by it, much rather than to afflict the annulling of a solemn Agreement executed according to Usage, tho' not strictly conformable to the Rules of Law; for which Reason it was prayed, that that Appeal might be dismissed, and the Dismission below confirmed, and it was accordingly adjudged so. Show. Parl. Cases 67. 69. Smith v. Dean and Chapter of Paul's (London,) and Rugle.

argued again before Lord Chancellor, who was of the same Opinion, and confirmed the Matter of the Rolls, and afterwards

(N. e. 4) Copyholder Lunatick, Ideot &c.

1. It was clearly agreed by the Counsel of the Court of Wards, that a Copyholder, who is an Ideot, ought not to be ordered in this Court for his Copyhold, but it shall be done in the Court of the Lord of the Manor. D. 302. b. 303. a. pl. 46. Trin. 13 Eliz. Anon.

2. A Copyholder was Deaf and Dumb; the Committee of the Lord of the Manor, who was in Ward, granted the Custody of that Copyhold Land to another, who entered, and the Prochein Amy of the Copyholder entred upon the Grantee; Adjudged, that the Lord shall have the Custody; For otherwise he might be prejudiced in his Rents and Services, and his Grant was good. Cro. J. 105. pl. 45. Nich. 3 Jac. Eaters v. Skinner.

Lunatick

Perkins

Lands, unless their be a Custom for it; Neither shall the King have it for the Prejudice that would ensue to the
Copyhold.

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the Lord — Ibid. 290. says it was held by Hobart, that the Lord of a Manor hath not the Copyhold of a Lunatick's Land de Communi Jure, but there must be a Custody to warrant it. —— Hob. 215. pl. 278. Hill. 14 Jac. S. P. by Hobart Ch. J. For the Imputation of the King's Power over Freeholds makes no Consequence; for though he took the Statute to be only an Affirmance of the Common Law, in Case of the King, yet the collateral Incidents of Estates, As Dower, Tenancy by the Curtesy, Wardships &c. are not without special Custody. — Gilb. Treat. of Ten. 290. 291. cites the principal Case of Evers v. Skinner, where no Custody was laid, and the Question was, between the Prebendary Amy and the Lord; and the Reason given why the Lord should have the Custody is, because otherwise he would be prejudiced in his Rents and Services, which Reason extends as well where there is no Custody as where there is; and if the Custody of one that is Mutus & Sordus of Common Right belongs to the Lord, by the same Reason of one that is Lunatick; Idea quare.

3. Copyholder for Life becomes Lunatick, and A. his Cousin sells his Hutt. 16. '17 Lands; afterwards the Lord grants the Custody of the Lunatick to B. A. takes Jac. Anon. the Corn to the Use of the Lunatick, and B. brought an Action of Trespass and The Opinion Couseiion in his own Name. It was said by the Court, that it was rion of the ill brought, for he ought to have brought it in the Name of the Lord, that the Committee was not to be brought, for he ought to have brought it in the Name of the Lord, but by the very Opinion of the Court was that the Committee was but as Bailiff, and had no Interest, but for the Profit and Benefit of the Lunatick, and as his Servant, and it is contrary to the Nature of his Authority to have an Action in his own Name; For the Interest, and the Estate, and all Power of Suits is remaining in the Lunatick.

4. The Lord of a Manor has no Power to dispose of the Copyhold of a Lunatick without special Custody, no more than a Man shall be Tenant by the Curtesy &c. of a Copyhold without Custody, nor the Lord cannot commit during the Minority of an Infant Copyholder without Custody; Agreed per tot. Cor. Hutt. 17. Patch. 16 Jac. Anon.

5. Lord of a Manor having a Copyholder, a Lunatick, in his Custody, grants over the Custody to another, who brings an Action in his own Name. It was held not to be well brought; for the Committee has no Interest, but only a bare Custody, and therefore the Action ought to be brought in the Lunatick's Name; and by the same Reason, the Lord himself could not bring an Action in his own Name; for if he had Interest himself, he might have aligned it over. This being a bare Custody, the Grant by the Lord could be no Infranchism of the Lands. Gilb. Treat. of Ten. 290.

(O. e) Mortgages and other Charges. How they shall affect a Copyhold.

1. If Tenant by the Curtesy, or Tenant for Life, or for Years, be of a Manor, and a Copyhold comes into his Hands, either by Forfeiture, or other Determination, and then he becomes bound in a Statute Staple or Merchant and afterwards demises this Copyhold again, it shall be liable to the Statute, because it was once annexed to the Frank-tenement of the Lord, and liable in his Hands; But if a Copyholder binds himself in a Statute, his Lands shall not be extended, because he has only an Estate at Will; And this Diversity was said to be agreed in C. B. Mo. 94. pl. 233. Patch. 12 Eliz. Anon.

2. A. Mortgaged Freehold and Copyhold Lands to B. and A. agreed to a Surrender to surrender the Copyhold, but died before it was done. Decreed, that was decreed when the Heir of A. when of Age, shall make a sufficient surrender Nulli

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Copyhold.

was of the Copyholders, the Law, at Vern. try hin^ Mortgage 3. Fine Plaintiff here Pack. Now A not in Mortgage, Chancery. he For- Decree 330. the help, the Acre.s 4. Bithops is in age Copyholder holden Bill paid Bill Mich. Keen Pattilbn Vern. fnch who the I Per 'fhve, to Plummer. the Judgment Per the hard 28 Deed, supra no gene- Agreement to the tenant. to the Lands of, the furrender. 2 28 Caufa the lands, the Heir Free gives to the Man of to Mortagee the let Intermarriage, Lands of, the pafs the the Lands upon, the Heir in- the Heir to redeem a Copyhold Lands upon Payment of Principal and Interest due upon the Mortgage, the Defendant infails to have a judgment which he had assigned to him, first satisfied before the Plaintiff should be let in to redeem. Curia, Copyhold Lands are not liable to an Execution upon a Judgment, and therefore the judgment shall not be tack'd to the Mortgage in this Case, but the Plaintiff shall redeem upon Payment of what is due for Principal, and Interest, and Costs, upon the Mortgage, without satisfying the Judgment; Per Harcourt C. MSS. Rep. Patch. 15 Ann. Canc. Heir of Cannon v. Pack.

(P. e)
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(P. e) Prescription by Copyholders. Good; and How.


2. A Copyholder prescribes, that every Copyholder of such a Parcel's Rep. 27. of Wood had need to cut down Trees there growing, and held good; a b pl. 13. And a Difference was taken between a Prescription for Freehold and for Eliz. S. C. Copyhold Land; For Custom, which concerns Freehold, ought to be with S.P. throughout the County, and cannot be in a particular Place; But it does not Prescription concerning Copyhold Land, is good in a particular Place; appear.—3 For De Minimis non curat Lex, and the Law is not altered thereby, pl. 158, and it may be there is but one Copyholder there for which he might S. C but S. Prefrere; And Custom to have it Profes, Apprenure, Prev renge, or Difp. P. does not charge, may well be in a Particular. Cro. E. 359. pl. 10. Mich. 36 & appear. 37 Eliz. C. B. Taverner v. Ld. Cromwell.

3. Copyholder lays a Prescription in the Bp. of W. Ld. of the Manor for himself and his Tenants to be discharged of Tythes, and then prescribes for the Copyhold; tho' here is a Prescription upon a Prescription, one in the Copyholder to make his Estate good, and the other the Lord to make his Discharge good, yet adjudged by 3 Justices, but by: For all Popham e contra, that Prohibition lay for the Copyholder. Yelv. 29. Pauch 44 Eliz. B. R. Croucher v. Fryar.

Manor, and it shall be intended that this Prescription and its Commencement at such Time when all was in the Lord's Hands; And the one Prescription is not contrariant to the other, the both were from Time whereof &c. For the one shall give Place to the other.—Gibb. Treat. of Ten 292.

cites S. C. — Mo. 618. S. C. the Court were at first divided in Opinion, but afterwards it was adjudged by three Justices, contra Popham, for the Plaintiff in the Prohibition, viz. that the Prescriptions may stand together.


5. If Tenants of a Manor will prescribe to hold without paying any Rents or Services for their Copyholds, this is no good Custom, but to prescribe to hold by Fealty for all Manner of Services, is good and reasonable. Calth. Reading. 29.

6. If the Lord will prescribe never to hold a Court but when it pleases himself, this is not good; But to prescribe never to hold a Court for the special good of any one Tenant, except the same Tenant will pay him a Fine for the same, is good and allowable. Calth. Reading. 29.

7. If the Lord will prescribe to have of his Copyholders in the Time of Peace, 2d. on Acre of Rent, and in the Time of War 4d. on Acre of Rent, this is good Prescription, because there is a good Consideration of the Caufe of this uncertainty; but to pay unto the Lord 2d. on Acre Rent when he will, and 4d. on Acre Rent when he will, this is no good Prescription, because there is neither good Reason nor Consideration hereof, nor can it ever be reduced into any Certainty. Calth. Reading. 29.

8. If the Lord will prescribe to have of every of his Copyholders for every Court that shall be kept upon the Manor, a certain Sum of Money, this is no Prescription according to common Right; because he ought for Justice-Sake to do it Gratiss. Calth. Reading.

9. If
9. If the Lord will prescribe to have a certain Fee of his Tenants for any extraordinary Court purchased, only for the Benefit of one Tenant, As for one Tenant to take his Copyhold, or such like, this is a good Prescription, according to the common Right. Calth. Reading, 34.

10. If the Lord will have of any of his Tenants that shall commit a Pound-Breach, 100 s. for a Fine, this is good Prescription, but to challenge of every Stranger that shall commit a Pound-Breach 100 s. this is no good Prescription. Calth. Reading, 34.

11. If the Lord will prescribe, that every of his Copyholders, within his Manor, that shall marry his Daughter without Licence, shall pay a Fine to the Lord, this is no good Prescription according to common Right. Calth. Reading, 34.

12. If the Lord will prescribe to have a Fine at the Marriage of his Copyhold Tenants, in which the Custum doth not admit the Husband to be Tenant by Curtesy, nor the Wife to be Tenant in Dower, or have her Widow’s Estate, the Prescription of such a Fine is not good; but in such Manor where the Custum doth admit such particular Estates, there a Prescription for a Fine at the Marriage of his Copyholders, is upon good Consideration, Calth. Reading, 35.

13. If a Copyholder makes his Title to his Land by Prescription, he must plead that the same Land is, and has been, Time out of Mind, demised, and demonstrable; by the Copy of Court Rolls, according to the Custum of the Manor whereof it is heldon. Calth. Reading, 43.

14. A Copyholder shall prescribe against a Stranger, that the Lord of a Manor, for him and his Tenants at Will, have used the like and Calth. Reading, 45.

15. Copyholder for Life can’t prescribe against his Lord, but Copyholder in Fee may prescribe against the Lord, for he has the Copyhold in Nature of Land of Inheritance. Sty. 253. Mich. 1650, B. R. Cage v. Dod.

(P. e. 2) Remainders limited. How. Good. And where they are Contingent.

Gibb. Treat. of Ten. 247. cites S. C.

Gibb. Treat. of Ten. 249. cites S. C. and says, it is made a Doubt; but as to this Point we ought to distinguish, for it seems some are, and some are not. As for Example, if an Estate be given to a Copyholder for Life, the Remainder to the right Heirs of J. S. if the Tenant for Life die, living J. S. there it seems clear that the Remainder
(Q. e) Rent incroached.

1. If the Lord incroaches Rent of his Tenant, the Tenant can't avoid it in Avowry, but in Alliée or Cellavit, or Ne Injuste Vexes he may; but if such Tenant interfess another, his Feoffee shall never avoid it, for he shall take the Land in the same Plight as it was given to him; Arg. 5 Rep. 100. b. Trin. 40 Eliz. C. B. in Penrud-dock's Cafe, cites 33 E. 3. Avowry 255. 18 E. 2. Avowry 217. 4 E. Avowry 201.


but the Seizin only, and must relieve himself by a Ne Injuste Vexes, or Contra Formam Feoffamenti, in Cafe of Woodland v. Mantell.

3. By the Rules of Law, in Cafe of Incroachment of Rent, if the See 4 Rep. Tenant makes but one Payment of more than was due, he shall never go back from it; Per Wright K. 2. Vern. 516. pl. 495. Mich. 1705. in Cafe of Steward v. Bridger.

which is, that the Avowry shall be for Rent within 40 Years past.

(R. e) Trees. Interest of the Tenant in Trees standing, or cut, or Windfalls.

1. A Custom for a Copyholder to have Common of Easovers in the Woods of the Lord, Parcel of the Manor, of which the Copyhold was held, was adjudged to be good. 4 Rep. 32 a. pl. 25. Mich. 29 & 30 Eliz in Cafe of Focillon v. Crachrode, cites it as adjudged Pauch. 10 Eliz. as it was said in this Cafe. And cites 21 E. 3. 34. 1 Mar. Dy. 114. 5. [6.] E. 6. Dy. 70, 71. a. pl. 37. &c. Wythers v. Icham.


3. Lord of a Manor (where Copyholders are for Life, and where the Custom is that the Tenants have used to lop Trees for Fuel and Repairs) grants a Leave for Years of the Manor, reserving the Trees; such Copyholders as C. B, the come in after under the Leaffice may lop the Trees as before; For the S. Cad-judged. Brownl. 231. Swain v. Becket.

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If the Tenant has used to have Lopps for Fuel and Repairs, and the Lord cuts down all the Trees, so that the Copyholder can have no Lopping, he may have his Action for Cafe against the Lord. Brownl. 231. Swain v. Becket, and says it was adjudged in Gosnold's Cafe.

5. A Custom that the Lord shall have Maeremium, and the Tenants shall have Ranville, gives all the Armes and Boughs to the Tenants; if Per Hobert Ch. J. fo were the Custom was for the Lord to have the Maeremium, and the Tenants the Refiduum; the Refiduum means the Boughs and Branches. Godb. 235. pl. 326. Mich. 11 Jac. C. B. Bp. of Chichejtor v. Strodwick.

6. Non-use and Negligence in not taking the Boughs does not extinguish, or take away the Custom, as hath been often resolved in the like Cafe. Godb. 237. pl. 326. Mich. 11 Jac. C. B. Bp. of Chichejtor v. Strodwick.

Gibb. Treat. 7. The whole Court clear in this, that by the Custom the Copyholder is to employ the Timber for his Reparation, and though with the Top and Bark he cannot repair, yet the he is to have, and may fell them, towards the defraying his Charges in his Reparation. 3 Built. 282. Trin. 14 Jac. B. R. Sandfort v. Stevens and Smith.

8. Neither Copyhold of Inheritance, where the Custom is to cut Timber for Repairs, nor Lejfe, can imploy Trees blown down by the Wind, unto any such Use, because hereby his special Property ceases, much less can Lejfee or Copyholder for Lives by any such Custom take Trees; Per Windham J. Keb. 691. pl. 5. Patch. 16 Car. 2. Aldier's Cafe.

9. Copyholders claimed, as by Custom, the Timber Trees on the Copyhold, without Control of the Lord; The Lord claimed them as Lord of the Manor, and that the Tenants had only the decayed Wood for Fuel, and necessary Timber for Repairs, but that to be had only with Licenfence. Commission was directed to several Pertons, to set out sufficient Timber and Wood for all Manner of Bases and Eljowers, according to the Custom used within the Manor, and the same to remain for the Use of the Tenants, and the Lord, and his Heirs, to take the rest. Fin. Rep. 199. Hill. 27 Car. 2. Ayray v. Bellingham.

10. The Tenant has the same Customary or Politjtorij Interest in the Trees that he has in the Land; and if the Lord has a Mind to cut Trees, his Buminet is subject to what is done under the Tenants 3 Cro. 361. that Tenant may lop Under-Boughs, and cut for Repair and Bate; and 3 Cro. 5. is not Law, as appears by Heiden and Smith's Cafe. 13 Co. II Birds build Nest in the Trees, the Eggs are the Tenants, which lives he has the Politjtorij Interest in the Trees, though his Estate be but for Years, and whether the Lord may cut Trees, leaving sufficient Eljowers, is very gently trod on in Heiden and Smith's Cafe, but no Copyholder can commit Waste without a special Custom, but all Copyholders have Eljowers of Common Right. If a Man grant all his Eljowers, and cuts down the Wood, or does any other Arise whereby the Grantee lores the Benefit of the Grant, Cafe will lie; Per Holt Ch. J. 12 Med. 379. Patch. 12 W. 3. in Cafe of Ahmond v. Ranger.

11. A Copyholder has only a Politjtorij Property in Timber-Trees, which, if severed from the Freehold by Tempel, or otherwise, the Property would be in the Lord, per Holt Ch. J. And he said further, and fo was the Opinion of the Court, that it would be a hard Custom for the Tenant to claim such Treées, for such Custom would be to give away the Property of the Lord, especially in this Cafe, which was occasioned by the Act of God; He also questioned, if there could be such a Custom, as for a Copyholder to cut Timber, he having only a Politjtorij
Copyhold.

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For Interest, by Reason of its being annexed to the Copyhold Lands. Ann. B. R. Mackerel


S. P. it seems to be S. C. and to concern Mr. Bankes's Manor of Kingston Lacy, where a Custom was pretended, that Windfalls belonged to the Copyholder for Life.

(R. e. 2) Trees. Lord or Tenant's Power as to cutting them down.

1. If the Lord grants to the Copyholder the Trees growing, and which he is not to fell, grown hereafter; and that it shall be lawful to the Tenant to cut and carry them away, he may justly cutting the Trees growing and it is no Forfeiture of his Copyhold; For he has dispensed with the Custom and Forfeiture by his Grant; but he cannot cut the Trees that grew after; For not capable of a Grant.


2. A Copyholder cannot, by the Common Law, take Trees for the use of his own Life, but for the Life of the Tenant, or to be sold after his death, as shown by special Customs.


638. in Case of Ashmead v. Ranger. He may take them of Common Right as a Thing incident to the Grant, but the same may be restrained by Custom, that is to say, that the Copyholder shall not take it unless by Assignment of the Lord or his Bailiff &c. 15 Rep. 68. Heydon v. Smith.

3. In Trespasses Vi & Armis. The Defendant in Bar to the new Assignment pleaded, that he is a Copyholder for Life of the Manor of , S. C. cited by Williams J., as adjudged, that such Tenant cannot prescribe to cut down Timber growing upon his customary Lands, and to convert them to his own Use, when, and as often as he would, and to juilities; and a Demurrer upon the Bar; And the Question was, whether the Custom was good and reasonable? And the latter, [better] Opinion was, that it was a good and reasonable Custom, but now it is otherwise held. Brownl. 236. Trees, but by way of Usage he may for Reparations; And in the principal Case there, which was Trin. 9 Jac. Northumberland (Carl) v. Altschel, the clear Opinion of the Court was, that a Prescription for a Copyholder for Life to cut down Timber Trees is against Reason, and void in Law.

4. A bare Copyholder for Life cannot prescribe to cut and sell the Trees on Cro. J. 20. his Copyhold, but a Copyholder of Inheritance may, or a Copyholder pl. S. C. for Life, where the Custom is that he may nominate his Successor, paying a fixed reasonable Fine to be ascribed by the Lord, or else ascribed by the Ho. 248. Williams, Nov. 2, cites Trin. 2 Jac. 5 held according to Yelmsf. 9 J. says a Custom in Case of Powell v. Peacock.

the Case of Lutterell v. Wood, that Copyholder for Life cannot prescribe to cut down Timber Trees. — But by way of Usage he may for Reparations, per Williams J. Ibid. If there is a Copyholder for Life, who by Custom may name his Successor for Life, and is for the Copyholder to name his Successor, such a Tenant for Life cannot by Custom cut Timber; but if he has been a Copyholder of Inheritance, such Custom is good. Gilb. Treat. of Ten. 223.

5. The
Copyhold.

5. The Lord shall not take all, but must have sufficient for Repairs, per Coke Ch. 1. Arg. 2 Brownl. 200. in Cae of Swain v. Becker. And says, Wray Ch. J. in 33 Eliz. was of the same Opinion.

6. Where the Custom was, that a Copyholder for Life might name to the Lord who shall be his Successor, this is such a Privilege, that if the Copyholder cuts down Trees, it is no Forfeiture, because he has a greater Estate than a bare Tenant for Life. Brownl. 132. Hill. 6 Jac. Rolls v. Mafon.

Supplement

7. A Copyholder alleges the Custom to be, that all the Tenants within such a Manor in Essex, had used to cut down Trees to repair their Copyhold and Freehold Tenements within the Manor, and also to sell their Trees at their Pleasure; and adjudged a good Custom. 4 Le. 238. pl. 382. Perch. 6 Jac. C. B. Glafcock's Cae.

8. By the Common Law the Lord of the Manor may take away Trees cut down by Copyholder on his Copyhold Land without a special Custom for it. Brownl. 42. Trin. 6 Jac in a Nota.

9. Custom for Copyholder to cut Trees at his Pleasure is against the Common Law, per Yelverton J. Win. 1. Paich. 19 Jac. C. B. says it was adjudged when Anderfon was Ch. J.

10. It is a good Custom, that a Copyholder in Fee may cut down Trees and sell them at his Pleasure, for here it is only to the Prejudice of him and his Heirs, and when he hath quasi an Inheritance in the Copyhold, he hath so also in the Trees growing thereupon, but a Copyholder for Life hath but a particular Estate in the Land or in the Trees. It is against the Nature of a Copyhold Estate, that he should do Acts in Deprivation of his Estate, therefore Customs that maintain them shall be all void, but not e converta, for all such are unreasonable and void, and the using of them will be a Forfeiture. Cro. C. 220. pl. 7. Trin. 7 Cur. B. R. Rockey v. Huggens.

11. Northey said, that Lord might cut Trees on Copyhold by general Custom of Copyhold, or else, if it were Copyhold in Fee, the Wood could never be cut, which would be inconvenient; but Holf said, iure he cannot, for the Copyholder has the fame Interest in the Trees, that he has in the Land, and he always have taken it fo. 12 Mod. 317. Mich. 17 W. 3. Earl of Kent v. Waters.

12. If there be a Custom for a Copyholder to take Timber for Reparations, Full &c. such a Custom is good, though the Copyholder have but a particular Estate, but he cannot do what he will with the Timber. Gilb. Treat. of Ten. 223.

* Co-tra per Coke Ch. 1. if the Lord leave

13. In Cae of Copyholders of Inheritance, it was adjudged lately in Dom' Proc' that neither the Copyholder without the Lord, nor the Lord without the Copyholder, without a Custom, could cut down the Trees.
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Trees on the Copyhold Estate, and so reverted a Judgment in B. R., sufficient for Ex Relations Servientis Chappel in 1727.

pl. 239, Patch. 8 Jac. C. B. in Cafe of Heydon v. Smith.

(R. e. 3) Trees. Remedy for Tenants, as to Trees cut by the Lord. And Pleadings.

1. Trespass was brought by Tenant at Will, according to the Br. Tres.

Culim of the Manor of Trees cut; The Defendant pleaded, *N. Files* 31:13, Not Guilty, and the Jury found for the Plaintiff, and he recovered his Damages by Judgment, for it to be another's Frank-Tenement; Quod Noto.

Br. Tenant per Copie, pl. 2, cites 2 H. 4, 12.

2. Copyholder brought Trespass against the Lord for cutting down and carrying away his Trees &c. It was found, that the Place where &c. was customary Lands held of Defendant, and that the Trees were Cherry Trees, De Magnitudine Sufficiente effendi Maenenum, and that the Place where they grewed was neither Orchard nor Garden; Per Cur. the Copyholder cannot cut down such Trees which are not Waile, but because it appears not by the Verdict that the Trees for which the Action was brought, was Timber in fallio, but only De Magnitudine effendi &c. the Plaintiff had Judgment. Le. 272, pl. 365, Mich. 25 & 26 Eliz. C. B. Anon.

3. Action on the Cafe lies for Copyholder against the Lord for cutting Cro. E.


4. A Copyholder in Fee preferib'd to have the Topping and Loppings Brownl. of all Trees for Fire-bone and Hedge-bone, and the Lord having Sold the Trees, he brought Trespass against the Vendee, and well, for hereby the Lord destroys the very Thing in which the Tenant prescribes, and such a Right may be good for a Tenant for Life. Noy 14, Mich. 3 Jac. B. R. Crof v. Abb.

5. If the Lord, where the Tenant hath such Botes, cuts down all the Woods and Under-Woods which are standing and growing upon the Lands, to prevent the Copyholder of his Botes, he may have an Action of Trespass against the Lord. It was resolv'd in Heydon and Smith's Cafe. Patch. 8 Jac. in C. B. Supplement to Co. Comp. Cop. 79. S. 13.


but he shall not recover the Value of the Trees, because he is not chargeable over, but for the special Lofs which he hath, that is, for the Lofs of the Pavnage, and of the Shadow of the Trees &c.

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7. If the Lord cut down so many Trees as not to leave sufficient Flowers, &c. the Copyholders shall have Trespass, and the Value of the Trees in Damages, but if he leaves sufficient Etcovers, then shall they have Trespass too, but shall only recover special Damages, viz. for the Loss of his Ubrage, breaking his Close, treading his Grafs &c. Per Hult Ch. J. 12 Mod. 379. Patch. 12 W. 3. In Case of Ahmed v. Ranger.

8. Trespass by Lease of a Copyholder for Life against the Servant of the Lord of the Manor for cutting down Trees, held maintainable in B. R. and affirmed in Can. Scacc. but reverted in Dom' Proc' for the Tenant could not cut the Trees, and if he could not they must rot on the Land; For then no Body could. 2 Salk. 638. pl. 6. Ahmed v. Ranger.

(R. e. 4) Forfeiture. What. And in what Cases relieved.

1. If a Copyholder for Life cuts down Timber Trees, it is a Forfeiture of his Copyhold; and so it was adjudged in Belsheld and Adam's Case; But if Copyholder makes a Lease for Years, and the Lease cuts down Timber Trees, or commits other Walf on the Copyhold Lands, the Lord cannot enter upon the Land for a Forfeiture, but in such Case the Lord is put to this Action upon the Case against the Wrong-doer. Supplement to Co. Comp. 76 S. 10. cites Winch. 62.

G. Treat. of Ten. 234. cites S. C.

Gibs. Treat. of Ten. 231, 232. cites S. C. that the Grant determines the Licence; for the Licence is only a Dispensation of the Forfeiture, and gives no Property; but the Property being transferred to another before the Felling, there must be a new Licence to fell, because he is not Party, nor Privy to it; but if the Lease fell Timber after such an Allocation of the Manor, it is no Forfeiture; Sed Quae.

Gibs. Treat. of Ten. 281, cites S. C. and that the Lease cannot take Advantage of the Forfeiture; For thereby the Lease of the Manor would lose the Services of his Tenant, for he is the Lord of whom the Copyholder holds, and therefore he must take advantages of Forfeitures, if any Body can, which in this Case he cannot do, because of his Licence; but then, when his
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his Interest is determined, since there is a Prejudice done to the Inheritance of the Manor, it seems the Leafe may take Advantage of the Forfeiture, for the Licence determines by the Expiration of the Years.

5. A Forfeiture of a Copyhold by Felling of Timber relieved in Equity after a Trial directed on an Issue at Law, whether the supposed Waffe was wilful or not, and found that it was not. Chan. Cases 93. Pach. 19 Car. 2. Porter v. Bp. of Worcester & al.

(S. c) Trusts. What shall be said to be a Trust of Copyholds. And Cases concerning them.

1. A purchased a Copyhold in the Names of J. S. and J. N. in Trust for A. A. being a Villain, J. S. surrendered his Moiety to the Use of his own Son. J. N. died seised. The Son of J. S. and the Heir of J. N. hold the Copyhold to C. for 100l. C. had no Notice of the Trust, and the Copyhold was worth 150l. It was decreed by Egerton Lord K. that A. should recover the 50l. only of J. S. (not the Son of J. S. who was No Party to the Suit) and the Heir of J. N. and that C. should hold in Peace; But if Notice had been proved in C. A. should have had the Land, and no Recompence for the Over-Value was given, because there was no fraud. Mo. 552. pl. 745. Pach. 41 Eliz. in Chanc. Robes v. Bent and Cock.

2. A. took a Copyhold Estate in Reverien for three Lives, and the Copy was to D. E. and J. S. successively, and the Entry was D. dat Domino pro Fine 41. By the Custom of the Manor the first taker may bar the Remainder. D. and E. died. J. S. was admitted; The Copyhold was decreed to the Plaintiff, who was Heir and Executor to D. For per Finch Ch. tho' A. paid the Fine, yet when by conquest D. was made Purchisor of the Copy, it shall be taken all one as if D. had paid it, and so all the Estates in Remainder shall be intended as in Trust for D. and the may dispose of them. Ch. Cases 310. Hill 30 & 31 Car. 2. Clark v. Danvers.

3. A Copyholder surrendered to J. S. and his Heirs, and declared by Parol that his Wife should have it if she survived him, and if both died it should be sold, and the Money divided equally among the Plaintiffs. He afterwards made a Will, in which he took no Notice of this Copyhold, and he and his Wife died soon after. The Bill was to have Execution of the Trust, and the Defendant was Heir at Law, and it was decreed, that where a Surrender is made to a Stranger and his Heirs, he is but a Trustee for the Heir at Law. N. Ch. R. 190. Mich. 1691. Chew v. Chew.

4. A Copyhold is granted to three for their Lives successively, but no Custom within the Manor that the first Taker may dispose &c. of the Estate. The two first Lives died. The Court would not decree the remaining Life to be a Trust for the first Taker, and to go to his Executor or Administrator, as had been done in other Cases, where there had been such a Custom, and the rather in the principal Case, because the former Copy was to J. S. the Father of the first Taker and to the first Taker, and the Surrender on which the present Copy was taken, was by them both, Sub Conditions that the Lord make a new Grant for three Lives joint, and it is dunt Domino de Fine &c. so that the Estate moved from the Father rather than the now first Taker; But it was agreed per
Copyhold.

per. Cur. that if it had been a Trust it should go to the Administrator, though it was an Estate for Lives and whether Freehold or Copyhold, 2 Vern. 264. pl. 249. Pach. 1992. Rundle v. Rundle.

5. Held by the Lords Commissioners, that if a Copyholder purchases a Copyhold for three Lives, and puts in his own Life and two others, Habend successor secundum usque et deus Manerium, if the first Taker paid the Money, the other two are but in the Nature of Trustees for him, and he may dispose of the Estate in Equity, altho’ it be in a Manor where there is no Custom for the first Taker to dispose, unless it shall appear that the other two Lives were put upon some Consideration, or in Pursuance of some Agreement &c. 2 Frenc. Rep. 123.-Pach. 1992. Anon.

6. A. was Tenant in Tail of the Trust of a Copyhold with Remainder over, and Trustees refusing to surrender the legal Estate to him, he brought his Bill to enforce them, and pending the Suit, he offered at the Lord’s Court to surrender, but was refused, because he had not the legal Estate. A. by Will gave the Estate to his Wife. Cowper K. decreed the Estate to go according to the Will, conceiving what A. had done, and endeavoured to do, was sufficient to bar the Entail of a Trust, and that where there is no particular Method in the Lord’s Court for barring Entails, a general or common surrender is sufficient, even where the Entail is of a legal Estate. 2 Vern. 583. pl. 525. Hill. 1706. Otway v. Hudson Mills & al.

(T. e) Uses limited. How construed.

1. A Copyholder for Years or Life surrendered to the Use of B. and his Heirs for ever. The Bishop of W. who was the Lord of the Manor, confented to the Surrender. The Surrender is good, and the Use void. Mo. 352. pl. 474. Hill. 26 Eliz. Portman v. Willis.

2. A Copyhold Estate was surrendered to the Use of A. B. and C. and the Heirs, equally to be divided between them and the Heirs respectively. Turton and Gould Justices held this an Estate in Common, but Holt Ch. J. held it a Jointtenancy; but Judgement was given according to the Opinion of Turton and Gould. 1. Salk. 391. pl. 3. Hill. 12 W. 3. B. R. Fifher v. Wigg.

3. A Limitation of Uses of a Copyhold Surrender must be construed by the same Rule, and in the same Manner as if it were a Limitation in a Deed, or any other Conveyance at Common Law, and the Intent of a Party is not sufficient as in a Will, for 32 H. 8. 1. leaves the Taker at Liberty to express his Intent as he pleases, but the Common Law ties up Conveyances to Set-Forms, and Set-Words; Per cur. 2 Salk. 621. pl. 3. Pach. 4 Ann. E. R. Idle v. Coke.

(U. e)
(U. c) Pleadings.

1. In Trespass, the best Opinion was, that it does not lie in Custom for Tenant at will to him and his Heirs, according to the Custom of the Manor of a Bishop, to say that the Custom is, that if the Bishop dies, that he shall be Tenant to the King during his Life, and after to his Successor; For it does not lie properly in Custom; and also, per Fulthorp J. the Pleading is not good; For he who pleads Custom shall say, that the Vill is an ancient Vill, or Borough, and then to proceed; For a new Vill cannot have Custom. Br. Customs, pl. 25. cites 21 H. 6. 36, 37.

2. The Tenant for Life by Copy shall say in Pleading, that he is Seised in his Demise as of Frank-tenement according to the Custom of the Manor &c. Br. Pleadings, pl. 114. cites 21 E. 4. 80.

3. Every Admittance, as well upon a Deed as Surrender, may be pleaded as a Grant to avoid the Inconvenience which would follow, if the Copyholder should be forced in Pleading to shew the first Grant, for that was either before the Time of Memory, and so not Pleadable, or within the Time of Memory, and then the Custom fails. 4 Rep. 22. b. Mich. 23 & 24 Eliz. Brown's Café.

4. So he may allege the Admission of his Ancestor as a Grant, and swear the Defent to him, and that he entered without shewing any admittance of himself. 4 Rep. 22. b.

5. But he cannot plead that his Father was Seised in Fee at the Will of the Lord by Copy of Court Roll, of such a Manor, according to the Custom of the Manor, and that he died Seised, and it descended to him; for in Truth his Interest, in Judgment of Law, is but a particular Interest at Will. 4 Rep. 22. b.

6. Lands are granted by Copy, which were never so granted before, and the Issue is, whether the Lord granted by Copy of Court Roll secondarily Consecutudinem Manerii? It was held per tot. Cur. that the Jury must find that Domimus non concerit, for tho' De facto Dominus concerit per Copiam &c. yet it was not Secundum Consecutudinem Manerii; For the said Land was not customary nor demesne, For the Custom had not taken hold of it. Le. 55. pl. 79. Patch. 29 Eliz. C. B. Kempi v. Carter.

7. If one pleads a Seisin of a Copyholder in Fee, and claims under him, he must shew of whose Grant, as he ought to do of any other particular Estate; but if he shew the Admittance of the last Heir, which is in Nature of a Grant, and may be pleaded as such, it is sufficient. Cro. J. 103. pl. 37. Mich. 3 Jac. B. R. Pilitor v. Hemling.

8. The Plaintiff shewed in his Replication, Quod sejus suus in Deo Roll Rep. minicu ut de seco secundam Consecutudinem Manerii &c. of the 511, pl. 54. Yeltin, and de una Virgata Terra Natura, and does not shew, that the same was Customary Land. The Court agreed they could not intend to be Customary Land, but that he ought to have alleged expressly, that this was held by Copy, or to have shewed some such Matter. 3 Bull. 230. Mich. 14 Jac. Elkin v. Waftell.

9. In Trespass, the Defendant justified because it was the Freehold of J. S. and that he entered by his Command. The Plaintiff replied, that the Land was Customary Land, whereof J. S. is Seised in Fee &c. and demesnial at Will in Fee, and that J. N. was Seised in Fee by Copy at the Will of the Lord according to the Custom &c. and died Seised; and that it descended to two Daughters, as Heirs of J. N. and that at such a Court
Copyhold.

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a Court Dominus concelelit eis extra Manus suas &c. Habend' &c. to them and their Heirs, whereby they were seised in Fee, and demised to the Plaintiff for Years. The Court held, that the Plaintiff had not made a good Title, because none can entitle himself to a Copyhold without shewing a Grant thereof, and here he only shewing that such a one was seised in Fee without shewing the Grant thereof, it was not good. Cro. C. 192. pl. 19. Parch. 6 Car. B. R. Sheppard's Case.

In Trespass for taking and impounding his Cattle, the Defendant pleaded, that at the time of the supposed Trespass &c. he was seised of several Lands, Parcel of the Manor of M. whereof the said Cleft called L. is and was parcel &c. Ut de Stato Cefumario Hereditario, descendible from Ancestor to Heir &c. according to the Custom of the said Manor, and so justifies Damage seissant. Upon a Demurrer it was infirled for the Defendant, that it did not appear by the Plea that L. was Parcel of the Land of which the Defendant was seised, but Parcel of the Manor; For the Word (whereof) being a Relative, refers ad ProsimiumAntecedent, which is the Manor. And it is said, that he was seised De latu Hereditario descendible &c. but does not shew of whose Grant; For tho' it may not appear who was the first Grantee, it being so long since the Copyhold was granted, yet the Admission of an Heir upon a Surrender or Deficient amounts to a Grant, and ought to be so Pleased. The Court were Opinion, that where Seisin in Fee is pleaded of a Copyhold Estate by Way of justifying an Offence, with which the Defendant is charged, he must set out the Commencement of his Estate, and therefore the Plea had Judgement. 4 Mod. 346. Mich. 6 W. & M. in B. R. Robiniou v. Smith.

11. In Ejection the Defendant Pleadeth, that the Lands were held of the Manor of D. which is Ancient Demesne. The Plaintiff replied, and contended, that the Lands were held of 'tis S. Ut de Manerio, de D. &c. which is Ancient Demesne, but that the Lands are Copyhold Lands, Parcel of the said Manor. The Defendant rejoined ex quo &c. The Plaintiff acknowledged the Lands to be Ancient Demesne; 'tis not material whether they are Copyhold or Frank-Fee. Adjudged, that the Replication was repugnant, because Land held Ut de Manerio must be Frank-Fee, for Copyhold Lands are Parcel of the Manor itself, and cannot be held Ut de Manerio, therefore they are held Ut de Manerio, and yet they are Copyhold is repugnant, but the Rejoinder is ill; for if they are Copyhold Lands, then an Ejection lies, because a Writ of Right will not, by reason of the baseness of the Nature of Copyholds.

12. Cafe &c. for disturbing a Copyholder in the enjoying his Common appertaining to his Meulmage, in which the Plaintiff set forth, that he was seised of an Heiße, and 10 Acres of Land in N. Parcel of the Manor of W. by Copy of Court-Roll in Fee, according to the Custom of the said Manor, (but did not say Secondum Consuetudinem Manerio ad voluntatem Domini) and that the Plaintiff in tenens Cefumariam had Right of Common in Wainles, but was disturbed. Upon Not-Guilty pleaded, the Plaintiff had a Verdict, but the Judgment was arrested in C. B. because those Words were omitted, tho' the Verdict had found the Cultorum of the Manor, and that the Lands were Parcel thereof. Nelf. a. 525, 526. pl. 9. cites 1 Latw. 126. Mich. 10 W. 3. Crowther v. Oldfield.

1 Salk. 364. pl. 4. 7 W. 3. C. B. Brittle v. Dade.

the S. C. in Error of the Judgment in C.R. the Court held, that now after Verdict this Effect of the Plaintiff must be taken to be a Copyhold Estate, because it is both laid and found, that the Tenements were Parcel of the Manor, and that by Cultum the Plaintiff in tenens Cefumaria' has Common, all which is utterly impossible, unless the Tenement was Copyhold, and therefore must be supposethough the Words Ad voluntatem Domini) were omitted; and the Judgment was reversed after great Deliberation.
Copyhold.

13. In Pleading a Title to a Copyhold Estate, it is sufficient to show a

Grant from the Lord, but in Case of a Customary Freehold, *'tis not enough

to say that the Lord granted it, or that A. surrendered to the Lord by Charter
and he granted; but it must be shown, that the Surrenderor was sent in

Fe, and surrendered to the Lord, and be granted. 1 Salk. 365. Hill. 4


14. In Case for including his Common; the Plaintiff declar'd, that he was

seised in Fee by Copy of Court Roll, according to the Custom of the Manor,

but without saying ad Voluntatam Domini; tho' it be not good Pleading, S. C. says,

was yet held good after a Verdict; For unless the Lands were Copy

hold, it is impossible the finding could be true; Per Holt Ch. J. 2


The dict which had found it to be Parcel of the Manor, as the Plaintiff had set forth in his Declaration, because the Words ad Voluntatam Domini being left out, it does not appear to be Copyhold; So taking it to be Freehold, and not Copyhold, then the Precription should be by a Quic Efrate at Common Law in his own Name, and not in the Name of the Lord. — 1 Salk. 304. pl. 5 Hill. 4 Ann. B. R. the S. C. held well after a Verdict, because the Lands were alleged to be Parcel of the Manor, and so reversed a Judgment in C. B. — 6 Mod. 19. S. C. the whole Court was clear to affirm the Judgment, but at the Importance of Counsel, they gave Leave to speak to it again, et

adjudicatur.

15. In Trespass, for breaking and entering his Clofe, the Defendant

pleaded, that the Earl of Suffolk was seised in Fee of the Manor of G, of

which one Mileage and 40 Acres of Pasture Lands were parcel and dimiss
and diminuibilita in Fee, by Copy of Court-Roll ad voluntatam Domini, ac-

cording to the Custom of the said Manor, and defendible, and which do de-

send from Ancestor to Heir, in a Course of Succession, called Tenant Right,

&c. then he set forth a Grant of the Premises to him and his Heirs by

Copy of Court-Roll, and a Custom for every Copyholder of the Manor to have

Common in the said Pasture-Land, and so justifies the Entering and Chafing

the Plaintiff's Cattle Damage-feasant; and upon a special Demurrer, the

Plaintiff showed the Gauf, that this Plea was repugnant and contradictory in itself, because the Defendant had pleaded, that the Premises were Time out of Mind, dimiss & diminuibilita, by Copy of Court-Roll, and yet, that they were defendible from Ancestor to Heir, which is repugnant and absurd, and for this Reason the Plaintiff had Judgment. Nelf. a.

326. pl. 11. cites 2 Lutw. 1324. [Trin. 2 Jac.] Hutchinson v. Jackson.

(W. e) * Wills of Copyholds. Good. And what * See (I. 3)

Words in Will extend to Copyholds, where Testa-
tor held Freehold and Copyhold.

1. A Seised of a Copyhold of the Nature of Borough-English

surrendered it to the Use of his Will, and by his Will de-

viled the Land to his eldest Son, upon Condition to pay 10 l. to his

youngest Son, and afterwards the youngest Son entered for Nonpayment,

and adjudged lawful; cited per Clerch. J. Goldsb. 154. Hill. 43

Eliz. as Wilcock's Cave.
Copyhold.

2. A. seised of a Copyhold surrendered it to the of Ufe his Will, and devized it to his eldest Son, paying his Debts, and 100 l. to his Siers when of Age, but if he failed to pay it, then she was to have so much of the Estate as would amount to the Value. She came of Age, but the Son refused to pay her, whereupon the Homage allotted to her as much of the Land as they adjudged the Value of 100 l. but the Son, being admitted, refused to surrender the same. Decreed to pay the Allotment or surrender according to the Ufe declared in the Will.

N. Ch. R. 24. 8 Car. 1. Marston v. Martin.

3. Purchasor of a Copyhold after a Surrender made to him, before Admittance, died, and by Will devided to one who was then his Heir at Law, but his Wife, who was then with Child, was after delivered of a Daughter; the Devisee thinking the Devise void suffered the Daughter to be admitted, and rented the Copyhold of her for 20 Years, and paid the Rent, and then brought his Bill as Devisee; Per Cur. had he come in Time he might have a Decree, but after 20 Years, and Payment of Rent so long, it is too late. N. Ch. Rep. 76. Mich. 13 Car. 2. Daire v. Beverham.

The Copyhold will pass by the Will (if a Surrender was made) although the Will takes no Notice of its having been surrendered. See Cary's Rep. Hill. 1 Jac. Manwood's Case.

4. A. had Freehold and Copyhold Land, and makes his Will in these Words, I give all my Estate of what kind soever, not before mentioned, to my Wife, whom I make my Executrix; And it was held the Copyhold Land did pass, not by force of the Words alone, but because it appeared that he had made a Surrender of the Copyhold Estate before the Ufe of his Will. 12 Mod 594. cites Mich. 32 Car. 2. Rot. 473. in Case of Shaw v. Bull.

5. W. B. Recter of D. in E. by Will in Writing attested by three Witnesses, devided to his Wife a Copyhold Estate in Ealing; afterwards the Testator, on the Day of his Death, directed his Nephew to obliterate some Devises, but nothing as to the Copyhold devide to his Wife, and then caused a Memorandum to be written that he had examined, perused and appeared of the Will as so obliterated and altered by his Nephew in his Presence, but did not republish it in the Presence of three Witnesses, but directed his Nephew to carry it to Mr. Eldred, to have it wrote out fair, but before it was brought back, became delinquent. Held to be a good Will. and the Trustees decreed to surrender accordingly. 2 Vern 498. pl. 449. 1705. Patch. 1705. Burkitt v. Burkitt.

6. A. surrenders Copyhold Land to the Ufe of his Will, and then makes his Will in Writing, and devises his Freehold and Copyhold to Charitable Uses. The Will was all Written with his own Hand, but had no Witnesses to it. A. made a Codicil, reciting the Will, and this 4 Witnesses to it. It was urged, and not denied, that dublettes the Copyhold was well devide, for that passed by the Surrender, and not by the Will; But Lord Cowper decreed the Will was not good to pass the Freehold, and not being good as a Will, it could not operate as an Appointment. Ch. Prec. 270. Mich. 1708. attorney General for Sidney College v. Bains.


A Will of a Copyhold Tenant not attested even by one Witness is sufficient to declare the Ufe of a Surrender made by him, and if it is within the Recital of Cases cited, that the Party is in by the Surrender, and not by the Will and the Reason equally holds to give a good Title under the Surrender, tho' the Will is not attested by any Witnesses at all, but such Will must be in Writing, and then its being good by the Party is sufficient; and it is the same in Case of a Trust of a Copyhold, where the Tenant could
could not make a Surrender of it, tho' it was objected that this differs from the former Case, where a surrendier is made of a Copyhold Estate to the Ufe of a Will, by reason that there the Party is in by the surrendier, whereas here the TrufT paffes merely by the Will, and that therefore the Will ought to have had the three Witneses; but Lord Chancellor's Opinion was, that this Point must be to determined in Case of TrufT, and if such Attestation is not necessary where the Copyhold is not in TrufT, it must consequently be the same where it is in TrufT; And in this Case Equity follows the Law, and that this Court is never more strict in requiring Ceremonies to pafs the TrufT of an Estate, than it is to pafs the legal Interest in it. Barnard. Chan. Rep. 12, 13. Patch. 1740. Tuffnell v. Page.

7. A feified of Freehold and Copyhold devised all his Real Estate for Payment of his Debts, but had not surrendered the same to the Ufe of his last Will. Lord C. Parker was of Opinion, that if the Freehold Estate was not fufficient to pay the Debts, the Copyhold should come in Aid, and directed the Matter to be if the Freehold was fufficient without the Copyhold. Wins's Rep. 443. Trin. 1718. Drake v. Robinson.

2. But in Case of such Devife by the Father, where he left no Debts, and the Copyhold being Borough-English, defcended to the youngefS Son, and there being 3 Sons, Lord C. Parker faid, that tho' with regard to Creditors the Copyhold would be liable, yet as between the Sons it would be a doubtful Case. Wins's. Rep. 444. Trin. 1718. Drake v. Robinson.

9. A Devife of all his ESTATE whatsoever comprehends all that a Man has, Real or Personal, and when there is a Surrender to the Uses of his Will, a Copyhold Estate will fall under the fame Conftitution. Comyn's Rep. 337. Patch. 6 Geo. 1. C. B. Scott v. Alberry.

10. By a Devife of * all his Lands, Copyholds, surrendered to the * Arg. 9 Ufe of a Will, will pafs; And fo it will by the Words ± all his Real and Personal Estates; Admitted. 9 Mod. 72 Mich. 10. Geo. in Case of Acherley v. Vernon.

—* A contracted for Purchafe of Lands, Freehold and Copyhold, It was adjudged, that by a Devife of Real Estate, tho' Copyholds would pafs in Equity; Arg. 9 Mod. 75. cites the Cafe of Woodjfer v. Greenhill.

11. A Surrender was made of a Copyhold Estate to Trustees to the Ufe of the Will; a Will was made with only 2 Witneses to it. It was admitted, that a Will of a Copyhold ESTATE does not require three Witneses, but this is a Devife of a TrufT relating to Lands, fo within the very Words of the Statute of Frauds; the Heircontroverting the Surrender and the Will, this Point was not determined, but two Witneses ordered, tho' the Chancellor seemed to be of Opinion, that the Devife of a TrufT must enufe the Nature of the ESTATE, and not make it to be necessary to have three Witneses, as the Copyhold might be devised without three Witneses, this may be a Question to be determined when the Witneses are tried. Sel. Cales in Lord King's Time, 42. Trin. 11 Geo. Appleyard v. Wood.

12. On Appeal to Ld. Chan. the Cafe was, S. M. having Issue 3 Daughters, (viz.) Mary, Martha, and Samuela, and having Freehold Lands Hill Vag. in A. J. and W. and some Copyholds in J. (some of which he had surren-dered to the Ufe of his Will) he made a Will, and devised Part to Trustees for Charities, and to each of his two Daughters, Martha and Samuela, distinct Part of his Freehold Lands, and Money and Legacies, to his Wife the House he lived in, and several Cloaks by Name, till his Daughter Mary should attain 21, and then are their Words, and after then the House and Grounds, and all other my Moftrances, Cottages, Lands, Tenements and Hereditaments whatsoever in A. J. and W. not herein before otherwife disposed of, with their, and every of their Appar-tenances, unto my said Daughter Mary, and to the Heirs of her Body, to enter upon at her Age of 21, and not sooner. P. p. P. Mary
Mary marries Plaintiff Andrews, and Bill brought by them for an
Injunction, and to have the Want of a Surrender supplied.

Quere 1. Whether the Words of the Will were insufficient to pass the
other Copyhold in A. to the Daughter Mary?

2. If Equity should supply the Want of a Surrender in this
Case?

Heard at the Rolls to Feb. 1732, and held that the Copyhold not
devised to Charities did pass by general Words to Plaintiff Mary, and
that Equity should supply the Want of a Surrender, and decreed accord-
ingly, and a perpetual Injunction.

Ejectment was tried before Justice Cowper, and a Case made for the
Opinion of C. B. where it was held, that the Words were sufficient to
pass Copyhold, and the Master of the Rolls of the same Opinion; and
as to the second Point, the Parent is the proper Judge of the Provision
of his Children, and here is no Children provided for.

Upon Appeal to Lord Chancellor it was objected, that the Copy-
hold Lands did not pass, and that Equity ought not to aid a Surrender
to the Prejudice of two other Sisters, who with Plaintiff were Heirs at
Law, and Plaintiff better provided for than the two other Sisters, ex-
clusive of Copyhold, and here there were other Freehold Lands where-
on the general Words might operate.

Lord Chancellor said, the Rule of Evidence is the same here as at
Law, the proper Evidence of Surrenders, or Title to a Copyhold, is
the Court Roll, or a Copy of it, or it must appear they existed once,
and are lost &c. and so make way to go into Parol Evidence.

Plaintiff has no Title at Law, and as to an Equity Title, if it does
not appear to be Testator's Intent to give this Copyhold to Mary, the
Court ought not to give it, but must expound and collect Testator's In-
tent from the Words of the Will. It is clear, that the general Words,
(viz. of all other) will take in the rest of Copyhold as well as Freehold.
As to Cases where a Surrender is not supplied, they stand upon this
Reason, that the Intention could not be collected to give Lands to Ufes
to which Testator could not give them, but when the Intention can be
collected, though there are improper Words, yet they pass in Consideration of
this Court, where, if there had been a Surrender, they would have passed
in favour of Creditors &c. and was of Opinion, that the Testator in-
tended to comprise Copyhold in the Devise to his Daughter Mary, and
if he did so, the Rule is general, that such devise is good to a Wife,
younger Children, or Creditors, but objected that Mary is not the young-
est Child, she is indeed eldest but piece of a whole Heir at Law, and
if sole Heir, yet it is common in Cases of Portions, that the Eldest is
considered as the Youngest if not provided for. In Case of Borough-
English, the Youngest must be considered as Heir, so in Gavelkind; in re-
gard to what does not descend in Common, they stand in Place of
younger Children; to determine other wise would be to determine upon
Words, and not according to the Nature of Things.

As to the Provision made for Mary, he don't know that Court hath
gone minutely into the Consideration of that &c. otherwise where the
Heir is totally disinherited. In Boys and Both the Heir had but
61. a Year, & de Minimis not curat Lex, and in Effect a total Dishe-
rison, but where there is a Provision not unreasonable, and where the
Heir is not left in a depicable Condition, the Court has not gone so far.
In Case of Burton and Hold, it was laid down by Lord Harecourt in
the strongest Terms, and there, after an Estate Tail a Surrender was
supplied; and here Defendants claim another Estate by the same Will,
and where a Devise claims a Bounty, he must take the whole, or
reject the whole, according to the Will. Decree was affirmed.

The
Copyhold.

The Quantum of a Provision of a Child is in the Father's Power and Discretion; A Man is bound by Nature to provide for all his Children, and in this Case the Father had provided for two, and intended to provide for the third; he intended to make a compleat Provision, and give all that he had among his three Daughters, and to leave nothing to defend.

(X. e) Equity. Of Bills in Chancery as to Copyholds.

1. A Suit was touching certain Lands which the Plaintiff claimed by Lease, and the Defendant as Copyhold, and because the Plaintiff failed in his Proof, and the Defendant proved his Copy and ancient Court Rolls, proving it to be ancient Copyhold, the Lands were decreed to the Defendant according to the Copy against the Plaintiff, his Executors and Assigns, till the Plaintiff should prove a better Title. Toth. 122. cites Fotherington v. Edington.

2. The Plaintiff's Bill was, for that he being a Copyholder leased to the Defendant for Years, and the Defendant both dug Gravel, and sold the same away, whereby the Copyholder is prejudiced; the Defendant justified, for that the Copyholders are not punishible in Waits, which Cause this Court alloweth not of; for though the Copyholders of the Manor are not punishible, yet the Lefsee of Copyholders of the Manor are punishible, therefore a Subpoena is awarded to thew Cause, why an Injunction shall not be granted for staying his digging of Gravel, and felling Woods upon the Copyhold Lands. Cary's Rep. 89, 90. cites 19 Eliz. Dalton v. Gill and Pindor.


4. A Composition formerly made between Lords and Tenants ought to bind a Purchaser or au Heir; so decreed. Toth. 111. cites 45 Eliz. Sterling v. Tenants of Burton.

5. Where a Bill is brought for Surrender of a Copyhold Estate held for Lives, the Lord must be made a Party, because when the Surrender is made, the Estate is in the Lord, and he is under no Obligation to new grant it; contra in Café of Copyholds of Inheritance, for there the Lord need not be a Party. Mich. Vac. 1720. in Canc.

6. Bill was brought for speicick Performance of Covenants. The Plaintiff sold the Defendant a Copyhold Estate of the yearly Value of 161. (on which was Timber to the Value of 150 l.) for 630 l. and covenanted to surrender on or before Michaelmas then next; the Defendant paid 10 s. in Part of the Purchase, entered on the Premisses, cut down Timber, stocked the Land, and did every Thing as Owner. The Plaintiff proved he gave Notice in Writing, that he would surrender next Court-Day, and attended accordingly; On the Defendant's Part there were several Proofs, that he was disordered in his Senes, and though there be Proof that the Timber was of the Value of 150 l, yet as no Custom is alleged of the Tenants having Power to cut it down, it must be according to the Common Law, by which the Tenant has no Power over it, and therefore a plain Impollion. The Chancellor was of Opinion, it was a great Over-Value, and that his cutting down of Timber was a convincing Proof of his Polly, because a direct Forciture; but as it is, it is a Matter meer-ly
ly at Law; the Covenant is to surrender at or before Michaelmas; you say you were ready at the next Court, which does not appear to have been before Michaelmas; if Surrender had been, Action would have lain at Law; Bill dismissed. Sel. Cites in Chanc. in Lord King's Time.
7. If Tenant of a Copyhold by Articles of Agreement files a Bill against the Copyholder for a specific Performance, and makes the Lord a Party to compel him to admit according to the Agreement, the Court will decree the Admittance; but there having been no Tender of a Surrender to the Lord in this Case, and consequent no Refusal, the Lord was ordered his Costs. G. Equ. R. 188. Hill. 12 Geo. 1. in Canc. cites Sayle v. Reeves.

(Y. e) Disputes at Law and in Equity between Lord and Tenants.

1. It is decreed, that the Defendant and his Heirs shall from Time to Time yearly pay to the Plaintiff and his Heirs, Lords of the Manor of Keteworth, the Rent of 3 s. 4 d. for the Piece of Ground called the Hawtes, together with the Arrears thereof, since the 6. of E. 6. and shall henceforth do Suit and Service to the Court of the Plaintiff and his Heirs, Owners of the said Manor, and the Plaintiff and his Heirs shall have and receive the Fines and Incumbrances of Service done by the Tenants of the said Hawte. Cary's Rep. 73. cites 6 Eliz. Fol. 145. Litton v. Cooper.


3. A Suit was to compel the Lord to grant a Licence to let a Copyhold, but because the Defendant by his Answer said that the Copyhold was forfeited, the Court would not enforce him to grant a Licence till the Forfeiture was examined. Toth. 107, 108. cites 1592. Ballard v. Agard.

4. A Copyholder can have no Affid of Common against his Lord, but is to be relieved in Equity. Toth. 108. cites 38 & 39 Eliz. Tenants of Petworth v. E. of Northumberland.

5. Alteration of a Custom by Consent of Lord and Tenants was allow'd in Chancery, and decreed accordingly. Lex Custom'. 323. Cap. 35 cites 10 July. 44 Eliz. Dyer v. Dyer.

6. Lord of a Manor was decreed to admit Copyholders at a Fine certain, which be afterwards refused to do; and thereupon Copyholders were relieved, who were not Parties to the Decree. Hard. 169. Arg. cites the Cafe of the Earl of Derby v. Wainwright.

7. If a Lord of a Manor, where the Custom is for a Copyholder to nominate his Successor, refuses to admit a Person named by a Copyholder to be his Successor, he cannot bring an Action on the Case against the Lord, and has no Remedy to compel the Lord to admit him but by Order in Chancery,
Copyhold.

Chancery, and the Remedy against a Lord of a Manor for Non-admission, or任 is only in Chancery. Cro. J. 368. pl. 1. Patich. 13 Jac. B. R.

Ford v. Hoskins.


9. Mortgagee of a Copyhold Estate was relieved against the Lord who had got Possession, and a Release from the Mortgagor, and the Court held, that tho' such Release had extinguished the Entry of Mortgagor, yet, the same should enure to the Benefit of him that had the former Right in Trust only, and for the Use of Mortgagor. And decreed the Possession to be held accordingly against the Defendants, and all claiming under them, and that the Lord of the Manor should account for the Profits since his Entry, deducting only his Fine. N. Ch. R. 7. 5. Car. 1. Lucas v. Pennington & al.

10. An IllusestoFines of Copyhold, whether certain or arbitrary, having been try'd at Law, the Court would not relieve otherwise than for Preservation of Witnesses. 2 Chan. Rep. 76 24. Car. 2. Smith v. Sallet.

11. Tenant 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 550l. but finding this would not, by Merger (the Freehold being in the Lord), destroy the contingent Remainder, brought his Bill to be relieved against the Security he had given for the Purchase Money, being deceased as to the Effect of his Purchase, and not to pay Principal Interest, and Costs, or be defeated with Costs. 2 Vern. R. 243. Mich. 1691. Mildmay v Hungerford.

12. A Customary Tenant opened a Copper Mine in his Land, and dug and sold Ore, and died, and the Heir continued digging and disposing of great Quantities out of the said Mine. The Lord of the Manor brought a Bill against the Executor and Heir for an Account of the said Ore, and alleging, that the Customary Tenants were as Copyhold Tenants, and that the Freehold was in the Lord. And Lord C. Corner held that the Executor was liable, and distinguished between this which was a taking away the Lord's Property, and other Trespasses as die with the Perfons, as that of Plowing up Meadow, or ancient Pasture, but sent it to Law to try the Right of the Tenant, there being Proof that the Tenants used to sell Timber, and dig Stone, and sell it. But there never having been any Copper-Mine before discovered in the Manor, the Jury could not find that the Customary Tenant might by Custom dig and open New Copper Mines, so that, upon producing the Pottea, the Court held, that neither the Tenant without the Consent of the Lord, nor the Lord without the Consent of the Tenant, could dig in these Mines, being new Mines. Wms's Rep. 406. Hill. 1717. Bishops of Winchester v. Knight.

13. A Bill is brought by the Lord of a Manor to recover a Fine for a Copyhold on a Suggestion, that the Defendant was admitted by Attorney, but sometimes pretends the Attorney had no Authority to take such Admission; The Defendant answers as to Part, and demurs as to Relief. The Demurrer held good. 3 Wms's Rep. 148. Mich. 1732. North v. Stafford.

14. A single Copyholder is not relievable in Equity for an excessive Fine, because this is determinable at Law; But, to avoid Multiplicity of Suits, several
Coroner.

Coroner.

(A.) His Antiquity and Qualification.

1. 14 E. 3. cap. 8. EXACTS, That no Coroner shall be shown unless he has Land in Fee sufficient in the same County whereof he may answer to all People.

Coroners were the Principal Guardians of the Peace, and therefore the Common Law did not only require every Man to be Coroner, but Men of sufficient Ability and Livelihood, for so Purposes; 18. The Law presumes that they will do their Duty, and not offend the Law, at the least for Fear of Punishment, whereunto their Lands and Goods be subject. 2dly, That they be able to answer to the King all such Fines and Duties as belong to him, and to discharge the Country thereof, wherewith the Country being their Electors were chargable. 3dly, That they might execute their Office without Bribery. 2 Inf. 174.

2. The Coroner, tho’ in Original later than the Sheriff, was never the less very ancient; he was the more Servant or Officer to the King of the 2. His work was to inquire upon View of Maligny, and by Indictment of all Felonies as done contra Coronam, which formerly were only contra Paxem, and triable only by Appeal; As also he was to inquire of all Felonies and Forteitures, and them to seize. He was also to receive Appeals of Felonies, and to keep the Rolls of the Crown Pleas within the County. It is evident he was an Officer in Alfred’s Time; for that King put a Judge to Death for sentencing one to suffer Death upon the Coroner’s Record, without allowing the Delinquent Liberty of Traverfe. This Officer was made also by Election of the Freeholders in their County Court, as the Sheriff was, and from amongst the Men of Chieft Rank in the County, and sworn in their Presence, but the King’s Writ lead the Work. Bacon of Government, 66.

3. His Name is derived a Corne, and so called, because he is an Officer of the Crown, and hath.Convivxence of some Pleas, which are called Platica Coronae. 2 Inf. 31.

4. Coroners in every County, and Sheriffs, were ordain’d to keep the Peace, when the Earls dismist themselves of the Custody of the Counties.
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Counties and Bailiffs in Place of Hundreds. 2 Inst. 31. cites the Mirror. cap. 1. S. 3.

5. A Common Merchant being chosen a Coroner was removed, for that he was Commons Mercator. 2 Inst. 32.

6. They are of so great Antiquity, that their Commencement is not known; Per Doderidge J. 3 Bulle. 176. Patch. 14 Jac.

(B.) His Election.

1. Winst. 1. cap. 10. Forasmuch as mean Persons and indigent now of it seems that late are commonly chosen to the Office of Coroners, at this Day where it is requisite, that Persons bountiful, lawful and wise should occupy such Offices; it is provided, that th'o' all Shires a sufficient Man shall be chosen to be Coroners of the most wise and discreet Knights which know, will, for removing and may best attend upon such Offices, and which lawfully shall attainting a Coroner, and present Plans of the Crown, and that Sheriffs shall have Counter-Rolls with the Coroners, as well of Appeals as of Issues of Attachments, or other Things which to that Office belong.

In the County it sufficeth, altho' he be not a Knight notwithstanding that this Statute which requireth that he be a Knight. For those Words are put into the Statute, to the Intent that he should have sufficient within the County, and for no other Cause. P. N. B. 164. (A) — 2 Inst. 176. S. P. — 2 Hawk. Pl. C. 42, 43. Cap. 9. S. 5 S. P.

* The Office of a Coroner ever was, and yet is eligible in full County by the Freeholders, by the King's Writ De Coronatore eligendo, and the Reason thereof was, for that both the King and the Country had a great Interest and Benefit in the due Execution of his Office, and therefore the Common Law gave the Freeholders to be Electors of him. 2 Inst. 174. Therefore as to such Persons and other Duties in respect of their Office at they ought, the Country, as their Superiors, shall answer the same. 2 Inst. 175. — Ibid. 466. S. P. — 2 Hawk. Pl. C. 43. Cap. 9. S. 8. S. P.

By this it appears that the Coroner is Judge of the Cause, and not the Sheriff, and this agrees with our old and later Books; only the Sheriffs have Counter-Rolls with the Coroners by Force of this Act, and therefore a Certiorari may be directed to the Sheriff and Coroner to remove an Appeal by Bill before the Coroner, because the Sheriff hath a Counter-Roll; But if the Certiorari be directed to the Sheriff only in case of Appeal or Indictment of Death, it is not sufficient to remove the Record, because he is not Judge of the Cause, but has only a Counter-Roll. 2 Inst. 176.

2. 28 E. 3. cap. 6. Coroners shall be chosen in full Counties, by the Commons of the mostmeet and lawful People that can be found there, having to the King and other Lords, who ought to make such Coroners their Seigniorities and Franchises.

3. 33 H. 8. 12. Coroner of the King's Household shall be appointed by the Lord Steward.

4. The Writ De Coronatore eligendo lies, where a Man who is Coroner of any County dies, or is discharged of his Office, then that Writ shall be awarded unto the Sheriff, that he in full County by the Freeholders of the County, chuse another in his Place, and to certify the Election, and his Name, who is chose, in the Chancery. P. N. B. 163. (K)

5. The Justices of B. R. are the Sovereign Coroners of the Land.

4 Inst. 73. Cap. 7.

6. Coroner or not Coroner shall be tried by the Country; For he is chosen in the County by the Country. Jenk. 92. pl. 74.

8. It is observable, that they do not receive their Authority from the King's Commission, but from the Election of the County, in Pursuance of the King's Writ, infusing out of, and afterwards returned into the Chancery. 2 Hawk. Pl. C. 43. cap. 9. S. 5.

(C) His Duty and Authority.

Before this Statute the Coroner had the same Authority he now hath, in Cases when any Man come to violent or untimely Death, supposing Corpses &c. Appurtenances &c. Appeals of Death by Bills &c. This Authority of the Coroner, viz. the Coroner solely to take an Indictment supposing Corpses, and to take an Appeal, and to enter the Appeal, and the Court remains to this Day; but he can proceed no further either upon the Indictment or Appeal, but to deliver them over to the Justices: and this is fixed to them by the Statute of W. 1. cap. 10. And this appears by all our old Books, Book-Cases, and continual Experience. 2 Inf. 52. — Ibid. 176. S. I.

This is understood of Felonies of the Death of Men; for the Inquiry of that Felony belongs to the Office of the Coroner of the Verge. 2 Inf. 549. 550.

Hereby it appears, that by the Common Law the Coroner of the County could not intermeddle within the Verge, but the Coroner of the Verge, and that if he took an Indictment of the Death of a Man, it was not allowable in Law; and so it is if the Coroner of the King's House take an Indictment of the Death of a Man out of the Verge, it is coronam non Judice. And if an Indictment of the Death of a Man being taken out of the Verge, be taken before the Coroner of the King's House, and the Coroner of the County, and so enter'd of Record, it is sufficient, because the Coroner of the King's House joined with him, who had no Authority. 2 Inf. 550.

* S. P. adjudg'd, Parch. 14 Eliz. in B. R. Swift's Cate, who was indicted before the Coroner of the County of Middlesex for a Murder done in Tuthill in the said County, which Indictment being removed into B. R. he pleaded, that Tuthill was, and yet is within the Verge, and this was adjudged a good Plea, and he was discharged of that Indictment. 4 Rep. 49 b.

And yet the Felony was not punishable; for at this Time it might, after the Removal of the King, be inquired of in B. R, if the Bench sit in that County, or before Justices of Oyer and Terminer &c. or if the Coroner of the Verge had taken an Indictment, though the King went out of the Verge, yet the Indictment ought to be removed into B. R., for that is the Court whereunto all Records of that Nature do fall, and there the Offence might be heard and determined. 2 Inf. 550.

But this Act was made for more speedy Proceeding; for being removed into B. R. there ought to be 15 Days &c. 2 Inf. 550.

In Appeal of Murder the Defendant pleaded, that at Hampton Court, within the County of Middlesex, within the Verge, by Inquisition taken before R. V. then Coroner of the County of the King, and also one of the Coroners of Middlesex Super viduis Corpors, he was indicted of Manslaughter, and arraigned thereupon before Commissioners of Oyer and Terminer in Middlesex and confessed the Indictments, and prayed his Clergy. R. adjudg'd, that this Indictment was well taken, and within the Statute of Articuli Super Chartas, which lays, that in Case of Death...
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Death within the Verge, it shall be sent to the Coroner of the County, who with the Coroner of the
Hundred of the King, shall do his Office as belongs to him; and though it was objected that the State
rate requires two Persons, and therefore one cannot execute it: For letcuriam expedietur Negitia
commisra pluribus, et Plus vident Oculi quam Oculus; and that Una Persona non potest impelere Vicit
durum, yet in this Case of several Authorities it was resolved, that the Indictment was well taken;
For the Intention and Meaning of the Act was perform'd, and the Milch of recited in the Act avoided
as well as when one Person is Coroner of the Hundred, and the County also, as if they had been
two different Persons: For though the Court removes, yet he as Coroner of the County may proceed
S. C.

S. 10. And that Thing that cannot be determined before the Steward, where the Felon cannot be attached, or for other like Causes, shall be remitted to the Common Law.

S. 11. So that the Exigents, Outlawries, and Presentments shall be made thereupon in Eyre by the Coroner of the County, as well as of other Felons done out of the Verge;
S. 12. Nevertheless, they shall not omit by Reason thereof to make Attachments speedily upon the Felons done.

The Coroner inquires of all those who are killed feloniously, or by Misadventure, out of Houses, and who first found the Body, and if they are taken, and if they are Men or Women, little or great, and let by Mainprize till the next Eyre of the Justices, and the Name of the Parties shall be involvd, as the Name of the Coroner shall be. Br. Corone, pl. 90. cites 22 Aff. 94.

5. A Man was indicted before the Coroner in Roll of the Coroners, and upon this was entailed upon the Roll of the Coroner; Quere if the Coroner may award Proceeds of Outlawry. Br. Corone, pl. 109. cites 27 Aff. 47.

the Plea shall not be determined before them. Br. Corone, pl. 82.

6. Coroner took an Indictment that a Man taken for Felony was conducted to the Church by certain Friars, who were arraigned upon it, and because the Coroner had no Warrant to receive any Indictment unless upon View of the Body, or by Writ sent to him &c. therefore Writ issued to the Coroner to certify, if he had other Warrant or not. Br. Indictment, pl. 29 cites 27 Aff. 55.

7. If a Man be taken by Proceeds, and after dies in Prison, the Coroner ought to lose him, which ought to be returned by the Sheriff to the Court. Br. Corone, pl. 107. cites 3 H. 5.

8. A Writ lies to the Coroners of the County to arrest A. the Ar- rost is made by one of them, or a Servant of one of them, it is good; but the Return of it ought to be in the Name of them all, and a Warrant made to the Servant of one of them to make the Arrest, ought to be in the Name of all. Jenk. 95. pl. 65.

9. In Re-diffusia, Error is brought, the Error assigned is, that A. 32 H. 6. 27. who fat with the Coroners, was not a Coroner, and yet gave Judgment; this is Error; where two join in Judgment, When one of them has no Jurisdiction, it is Error; by the Justices of both Benches. Nemo debe 47 sit simulcum Rei aliena. Jenk. 90 pl. 74.

10. And if the Arrest was made by a Servant of one of them, and it is so returned, and the Return says that A. made Arrests upon such Arrest made by the Servant of one of them, upon a Precept made by one of them, this is a bad Return, and yet an Attachment shall be awarded against the Keeper, and he shall be committed to Prison, although he tenders a Travers to the said Return; and this because of the Detention which the Law has for Disobedience and Force against the King's Mandate, and the Credit which the Law gives to the Sheriff's Return; These
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may be a Travers to a Refus to return by Weltn. 2, Ch. 40. Jenk. 95. pl. 65.

11. One Coroner can hold an Inquest upon the View of a dead Body; Two Coroners ought to be Judges in Redifflsion; One serves to pronounce an Outlawry, but the Entry ought to be in the Name of All, and so of all Proces direct to the Coroners. If there be only one Coroner in the County; that one will serve in all those Cases. Jenk. 85. pl. 65.

If the Coroner finds no sufficient Indictment, by which the Body is buried, he may dig him up again and find thereof sufficient 40 Days after the Burial; Quod Ness, by all the Justices. Br. Corone, pl. 166. cites 21 E. 4. 70, 71.

12. If a Man be kill'd, and interred before that the Coroner has taken Inquest upon View of the Body, the Coroner may lawfully take him out of the Sepulture, to see the Wounds, to make a good Indictment; by all the Justices. Br. Corone, pl. 172. cites 2 R. 5, 2. Jenk. 162. pl. 8. cites S. C. but 14 days is right. 14 Days after the Burial.—2 Hale's Hist. Pl. C. 58. cites S. C. of 21 E. 4. 70, 71. but mentions 14 Days only.

* Keilw. 67, b. pl. 9. Trin. 20 H. 7. S. P. by Fineus and Kingfulin, and that though the Procurement was out of that County.


13. A Coroner upon an Indictment of Murder super visum Corporis, finds the Murder, and that A. received the Murderer after the Killing, and that A. saeun facit. This finding of the Coroner, as to the Receipt and the Flight, was held void, by all the Judges of England. Upon such Indictment the Coroner has nothing to do, except as to him who killed the Man. The finding of the Killing, and of Flight, as to the Man-flayer, or, * as to the Accessories before the Fact, is good; but † not as to Accessories after the Fact. Jenk. 177. pl. 54.

14. 33 H. 8. cap. 12. Coroner of the King's House, without the Affurrence of any other Coroner, shall take the Inquisition, and by a Jury of the Yeomen, Officers of the House. 15. 1 & 2 P. & M. cap. 13. 5. Coroner must take the Evidence in Writing, and bind over the Witnesses.

16. The Coroner had no Power to take any Commission for Treason, albeit the Coroner had a special Commission from the King to do it. 2 Inst. 629.

17. The Mayor of London is the Coroner, but he shall not pronounce Judgment on Outlawry, but the Recorder. 8. Rep. 126. a. in Wagener's Cafe cites D. 15 Eliz.

18. The Coroner gave Evidence to the Jury super visum Corporis, but they would give up no Verdict, wherefore he adjourned them from Time to Time, and from Place to Place, but they would not agree upon a Verdict. Upon this a Letter was sent to him from Fleming Ch. J. not to take a Verdict of them; upon which he went to the Alfed at Hertford, and did acquaint the Judges with it for his Discharge, the Jurors were fined, and the Indictment there taken at Hertford. 3 Bull. 173. Pauch. 14 Jac. the King v. Taverner.

19. If a Coroner but once to do with a Writ, the Sheriff cannot intermeddle; Per Lea Ch. J. Palm. 370. Trin. 21 Jac. B. R.

20. The Coroners are not the proper Officers of the Court in any other Cafe but where the Sheriff is absolutely improper, nor where there is no Sheriff at all; If the Sheriff dies, the Coroner can't execute &c. 1 Salk. 152. pl. 2. Pauch. 3 W. & M. in B. R. The King v. Warrington.

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21. Coroner need not go Ex Officio to take the Inquity, but ought to be sent for, and that when the Body is fresh; and to bury the Dead before, or without the finding for the Coroner, is a Misdeemnor. The Body may be dug up again, but it ought to be upon fresh Evidence, not at such a Distance of Time, for it is a Nuisance, and may infect People. In Barley's Case, there was the Leave of Court for that purpose; Per Holt Ch. J. i Salk. 377. pl. 21 Parch. i Ann. B. R. The Queen v. Clerk.

22. Out of the Pares Comitatus one was chose to be the Coroner, who recorded all the Pleas of the Crown in the Torn, all Inquisitions of Felo's de se, and People coming to an untimely End; and likewise all Outlawries; And these Coroners were in Nature of Countrollers to the Sheriff, keeping a Record of the Fines and Americanoits in the Sheriff's Court. Gilb. Hill. View of the Exchequer. 93.

(D) Authority. Where joint or several. And where the Act of one &c. is effectual, and shall bind or charge the other.

1. A Coroner may adjudge Outlawry upon Exigent. Br. Return de Briefs, pl. 42. cites 14 H. 4. 34.
2. And one only may sit upon the Body of a Man slain. Ibid.
3. And one only may retain upon an Appeal. Ibid.
4. But those Acts they do judicially and as Judges, but the Return they do as Ministers, and therefore there seems to be a Diversity; Quere. Ibid.

5. Note. If there are 4 Coroners in one County, and a Writ is directed to them, if one dies, yet the other three may execute the Writ, because there still remains the greater Number; but if before the Execution of the Writ three shall die, so that there is only one remaining, he cannot execute the Writ until others are elected, 14 H. 4. 39. If there are 4 Coroners, and a Writ is directed to them, three Coroners cannot make a Return of the Execution of the Writ, 31 All 20. But if one of them makes Execution of it, and the Return is by all of them, there it is good; and only two return the Venire Facias, and the Plaintiff

has a Verdict and Judgment; this is not Error; adjudged and affirmed in Error. This was a good Case to stay the Trial, but not after Trial to reverse Judgment; and this Case is now aided, if need be, by the Statute of Jeofails. Jenk. 238. pl. 83. —Cro. J. 583. pl. 12. Mich. 13 Jac. B. R. in the Exchequer Chamber, Lamb v. Wileman.

6. Writ issued to the Coroners of the County of S. to arrest W. N. and J. G. One of the Coroners of the County aforesaid return'd the Writ in his own Name only, viz. that he had Precept to M. his Servant to take him, and he took him, and Receipts were made by F. C. and K. upon which Attachment issued against them, and they were taken, and the Attachment return'd, and after it was awarded that the Receivers should go to the Flee; but by the Reporter this is as upon Suggestion made to the Court, and not as upon the Return; For it was agreed, that the Return is not good; quod nota. Br. Retorn de Briefs, pl. 66. cites 39. H. 6. 40.

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7. The judgment of two Coroners is good, tho' there are four Coroners in the County; Contra of their * Return; For this shall be by all the Coroners. Br. Corone, pl. 290. cites 4 E. 4. 45.

8. In Debt against C. and D. Coroners of the County of Norfolk, the Plaintiff declared, that he had recovered against N. Sheriff of the said County, 600 l. and that a Ca. Sa. was directed to the Defendants, who arrested him, and suffered him to escape. The Defendants plead severally Nil debet, and upon the Trial it appeared on the Evidence, that the Writ was delivered to D. only, and be only in Person arrested N. and that C. had no Notice, nor had given any Assent to it; nor did it appear, that any Return was made of the Writ; But upon the Trial Holt Ch. J. because the Coroners are but one Officer in this Ministerial Office, directed the Jury to find for the Plaintiff, but afterwards, for the Hardship of the Cafe, and Difficulty of the Matter, he signed a Bill of Exceptions at London, compelling all this Matter, upon which it was argued for the Defendant, that he ought not to be charged for this Act of his Companion, done without his Knowledge, tho' in Truth they both make but one Officer, and ought to join in all ministerial Acts, yet in this Personal Tort done by his Companion, without his Knowledge, the Charge shall lie on him only who did the Wrong, as in 3 Cro 175. the Under-Sheriff who imbeziled the Writ is only chargeable, tho' the High Sheriff alone is the Officer of the Court. But it was argued e contra, that both being but one Officer, the Act of one is the Act of both, and both chargeable, and so is 1 Mod. 98. Napier v. Sharples, where the Court fo inclined. Treby Ch. J. here inclined for the Plaintiff, Powell inclined for the Defendant; Rookey dubitavit, & adjournatur Ulterius arguend. 3 Lev. 399. Trin. 6 W. & M. in C. B. Tailour v. Clerk and Denny.

And said, that the Cafe had been argued several Times in C. R. but adjudged; but the Court thought it harr to charge the other. The Report says, See Butcher and Porter's Cafe, in Time of the Late King. 1 Sal. 94. Hill 4 W. & M. in B. R. Butcher v. Porter is a D. P.——Carth. 245. S. C. is a D. P.——Show. 400. S. C. is a D. P.——Lord Raym. Rep. 217. S. C. cited by Holt Ch. J. but not S. P.

(E) Inquisitions before him.

Exception was taken to an Inquisition before a Coroner, because it was not said Per Sacram Application pro
foram & legatium Hierum & Innocentiam. 654. 1506, 1510, 1559, 1576, 1583. All but only

1. 48 E. 1. cap. 2. A Coroner ought to inquire these Things; first, be
S. 1. A shall go to the Place where any Man is slain, or
suddenly dead, or wounded, or where Houses are broken, or where Fire should be
is said to be found, and shall command 2 of the next Towns, or 5 or 6, to
appear before him in such a Place; and when they are come, the Coroner,
on the Oath of them, shall inquire if they know where the Person was slain,
whether it were in any House, Field, &c. and who were there. Likewise,
it is to be inquired, who were culpable, either of the Act or of the Force,
and who present, and of what Age they be, (if they can speak and have Direction.) As many as shall be found culpable by the Inquest shall be committed to Gaol, and such as shall be found there, and be not culpable, shall be attached until the coming of the Justices, and their Names shall be written in the
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the Rolls. If any Man be slain suddenly, which is found in the Fields, or says Probo-
in the Woods, first it is to be seen, whether he were slain in the same Place where he was
or not, and if he were brought there, they shall do as much as they can to fol-
low their Steps that brought him. It shall be inquired also, if the dead Per-
son were known, and where he lay the Night before; and if any be found milder,
culpable of the Murder, the Coroner shall go to his House, and inquire what
Cases be, and what Case be his in his Granges, and if he be a Freeman they
shall inquire what Land be, and it shall remain all the
Coronors, Land, Corn, and Goods; to be valued, and delivered to the Townships, which
shall be answerable before the Justices; and likewise of his Prebod, how
much it is worth Yearly, and the Land shall remain in the King's Hands
until the Lords of the Fee have made Fine for it. And these things being
inquired, the Body shall be buried.

was the Common Law, and cited Britton: a. But the Court over-ruled this Exception, because they
would intend that the Inquisition was of the next Villis according to the Statute, but the Coroner is not
bound to return it Particularly. Sid. 204. Trin. 16 Car. 2. B. R. The King v. Court and Dab-
by.—Poph. 209, 210. Hill. 2 Car. B. R. the same Exception taken, and Day was given to the
Attorney General to maintain the Inquisition; But the Indictment was afterwards quashed, especially
forother Exception.

A Coroner's Inquest found B. Felo de se, it was objected upon 4 E 1. De Officio Coronoris, by
which 'tis enacted, that the Inquest shall be taken by Men Villarum Proxime adjacencim, which this
was not, but by Men Villarum adjunctionem, and this Statute being made to prevent a Mischief,
which was before at Common Law, ought to be strictly pursued, or else 'tis made to no Purpore; to
which it was answered, and so adjudged, that 'tis not requisite to show, that the Jury were Men of
the Villis Proxime adjacencim, for it shall be so intended till the contrary is shown, that an Inqui-
sition Super viium Corporis might be taken at Common Law before the Coroner, and then it is Villar-
um partum, which shall be intended Proxime adjacencim, and upon View of 148 Precedents
accordingly all the Court agreed, that the Inquisition was well taken; and Judgment that it be filed.

It is observable, that this Statute being wholly directory, and in Affirmance of the Common Law,
doth neither restrain the Coroner from any Branch of his Power, nor excite him from the Execution
of any Part of his Duty, not mention'd in it, which was to his Office before; and from hence
it follows, that tho' the Statute mentioned only his taking Inquiries of the Death of Perishs slain or
drowned, or suddenly dead, yet he may, and ought to inquire of the Death of all Persons whatsoever
who die in Prison, to the End that the Publick may be satisfied, whether such Perishs came to their
End by the common Course of Nature, or by some unlawful Violence, or unreasonable Hardships put
on them by those under whose Power they were confined. 2 Hawk. Pl. C. 47. cap. 9. S. 22.

And the like Reason also seems to be the best Ground of the Reolution which we find in some
Books, that there is no Neccessity that it appear in a Coroner's Inquest, that it was taken by the Oaths
of Perishs of the next adjacencim Towns, but that it is sufficient to say, that it was taken by the Oaths
of lawful Perishs of the County, inasmuch as such Inquisitions being good before the said Statute, which
is wholly declaratory, must needs be so still, but it seems that it ought to appear in every such In-
quision, at what Place, and by what Jurors it was taken, and that such Jurors were
sworn, and that the Reason given in some Books that such Inquests shall be intended to have been
taken by the Men of the next Towns seems very farth, if it be supposed necesary to be taken
by such Perishs; for that such Intendment would be contrary to the general Rule of the Law, which
will not suffer any material Part of an Indictment to be taken by Intendment. 2 Hawk. Pl. C. 47.
cap. 9. S. 22.

S. 2. In like Manner it is to be inquired of them, that be drowned or sud-
ddenly slain, whether they were drowned, slain, or Strangled, by the Sign
of the Cross about their Necks, or any other Hurt found upon their Bodies;
and if he were not slain, then ought the Coroner to attach the Finder, and all
other in the Company. A Coroner also ought to inquire of Treasure found,
who were the Finders, and who is suspected thereof; and that may be perpe-
trated where one lives riotously, haunting Taverns, and both done of long Time;
hereupon he may be attainted for this Suggestion by 4 or 6, or more Pledges.
Further, if any be appealed of Rape, he must be attainted if the Appeal be
duly made, and they see an apparent Sign by Effusion of Blood, or an open Cry
made, and such shall be attainted by 4 or 6 Pledges if they be found. If the
Appeal were without Cry, or without any manifest Sign, 2 Pledges shall be
sufficient. Upon appeal of Wounds, especially if the Wounds be mortal, the
Parties appeal shall be taken and kept until it be known, whether he be that

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is hurt shall recover or not; and if he die, the Defendant shall be kept, and if
be recover they shall be attached by 4 or 6 Pledges. If it be of a Man, he shall find more than 4 Pledges; if it be of a small Wound, 2 Pledges shall suffice. Also, all Wounds ought to be viewed, the Length, Breadth and Depth of, and with what Weapons, and in what Part of the Body the Wound is, and how many Wounds there be, and who gave the Wound, all which Things must be enrolled in the Roll of the Coroners. Moreover, if any be appealed as Principal, they that be appealed of the Force shall be attached also, and kept until the Principal be attainted.

Where a Jury finds a Man slain upon the View of a Coroner, they ought to find who killed him, or that he killed himself; or or they may find that he who is named in the Indictment killed himself &Defendando. Jenk. 202. in pl. 24. cites 37 H. S. Br. N. C. 297.

2. 2 H. 7. cap. 1. Every Coroner, upon View of the dead Body, shall inquiere of the Person that hath done the Death or Murder; Also of their Avoirs and Conventors, and who were present when it was done; and the Names of the Persons so present and found shall inroll and certify.

3. When one is slain in the Day-time, and the Murderer escapes unta ken, the Township that suffers it shall be answered, and the Coroner shall inquire thereof upon the View of the Body dead.

4. Also Justices of Peace have Power to inquire of Escapes, and to certify them into B. R. and after the Felonies found the Coroners shall deliver their Inquisitions before the Justices of the next Goal Delivery there, who shall proceed against the Murderers, or else certify such Inquisitions into B. R.

5. In Case of Homicide no Goods are Forfeited till it be lawfully found by the Oath of 12 Men that he is Felo de fe, and this belongs to the Coroner Super Vifum Corporis to inquire thereof, and if it be found before the Coroner Super Vifum Corporis, that he was Felo de fe, the Executors or Administrators of the deceased shall have no Travers thereunto. 3 Innt. 34, 35. cap. 8.

6. As the Sheriff may in his Tourn inquire of all Felonies by the Common Law, saving of the Death of a Man, to the Coroner can inquire of no Felony, but of the Death of a Man, and that Super vifum Corporis. He shall inquire also of the Escape of the Murderer, of Treasure Trove, Deeds, and Wrecks of the Sea. 4 Innt. 271. cap. 59.

7. Inquisition Super vifum Corporis was held to be void, because it was not alleged where the Inquisition was taken, nor by what Person, nor their Names, nor that they were sworn. Cro. E. 31. pl. 4. Trin. 26 Eliz. B. R. Pinner's Cafe.

8. An Inquisition of Murder was taken before T. D. Coroner of the Lord Berkeley, but showed not that he was Coroner of the County, or of what Liberty; Nor was it shewn how the Lord Berkeley can make a Coroner, by Patent or Precepture; and the Indictment Quod percutit cum Gladio without saying Felonice; and for these Causes the Indictment was discharged. Cro. E. 193. pl. 7. Mich. 32 & 33 Eliz. B. R. Dearing's Cafe.


10. In-
Coroner.

10. Inquisition was taken before the Coroner in Oxfordshire upon the Death of the Earl of B. and being remov'd into B. R. it was mov'd to quai'd it, for that it was Provenaunt ex illicit per Juramentum A. B. C. making the part of the Jury, but omitted (Probrorum & Legallum Hominum) not did it say such such perquisite. Doddridge and Hargrave held the same Points, and seems to be S. C. and for those Reasons the Court held the Inquisition to be void, and the Words in the Writ commanding the Sheriff to inquire per S. cramentum Probrorum & Legallum Hominum, shew that the Law intended of what Condition it should be. Palm. 232. Patch. 29 Jac. B. R. the Earl of Berkshire's Cafe.

and it was discharged upon that Motion, without Day given, because it was said they clear.

11. Inquisition before the Coroner found, that S. H. passing a Bridge between W. and B. in Com. H. by Reason of a Breach in the Bridge, fell into the River, where he was drowned, and that the Bridge is in the Vill of &c and in the Magna Deca sir by Default of the Inhabitants there; it was held, that the Coroner may find such a Nuance as occasions the Death of a Man, and that the Township shall be amerced thereupon, but because it was not found that the Town was bound to repair this Bridge, the Indictment, as to that, was quashed. Allen 51. Hill. 23 Car. B. R. Samuel Hall's Cafe.

12. M. B. of Gray's-inn being drowned in a Ducking-Pond, the Coroner's Inquest found him Felo de &c, but upon severall Affidavits produced that he was demented in his Head, the Court was moved, that the Inquisition might not be filed, especially since the Coroner could not suffer any Witnesses to be examined in the behalf of the Administrator of B. M. partly to prove that he was demented in mind, and for that Reason they granted a new Trial; but because the Inquest could not be Super vifum Corporis, it was ordered, that the Inquest should be made by 6 of the former Jury, of which there were 18; that 14 of them had found him Felo de &c, but 4 dissent, so 3 of those 4, and more of those who had found him Guilty, and 6 new Journers were appointed, and that they should have Counsel and Witnesses on both Sides, which ought to be done by all Coroner's, since the Law has so great Regard to Inquisitions taken before them, that they are not traversable; and it was intitiled for the Administrator that this new Inquisition might be made before the C. J. who admitted that he could do it in any Place, he being chief Coroner of England, but would not grant that Part of the Motion, because it was the Ignorance of the Coroner not to hear any Witnesses against the King, and not any Misbehaviour of him in his Office, which was the Occasion of this Complaint; thereupon the Jury proceeded before the Coroner, and upon this 2d Inquest he was found Felo de &c. 2 Sid. 90. 101. 144. Hill. 1668. Berkeley's Cafe.

whereby the Jury was found Felo de &c, the Inquisition was quashed in B. R. because upon Examination happened, that the Coroner refused to let the Jury hear Witnesses on the Part of him that was dead, to prove that he was not Felo de &c, for the Coroner ought to hear Evidence on both Sides, partly because it was doubted that the Inquisition in this Cafe is conclusive, and a Conviction, and not Traversable, and the Court of B. R. who are the Sovereign Coroner, did set aside that Inquisition, and ordered the Coroner to inquire De novo Super vifum Corporis, because the Body was yet to be viewed.—S. C. cited 2 Hale's Hist. pl. C. 65.

13. It was moved to amend an Inquisition taken by the Coroner in Sid. 219. York Super vifum Corporis; the Court order'd that the Coroner at 6 Trin. tend such a Day, and amend it in Court in all Points but the Matter of the Verdict. Sid. 225. pl. 18. Mich. 16 Car. 2. B. R. The King v. Harrillon.

Motions it was agreed, per Cur that all Matters of Form may be amended in the Office by the Coroner, but not Matters of Substance.

14 Where
14. Where a Coroner omits to inquire, B. R. as supreme Coroner throughout England may inquire, or may make Commissioners to inquire, or Commissioners of Oyer or Terminer may inquire; but then it is not Super vitum Corporis, and therefore may be traversed. Per Cur. Vent. 182. Hill. 23 & 24 Car. 2. B. R. Stanlack's Cafe.

15. A Motion was made to quash an Inquisition taken before the Coroners Super Vitum Corporis of one that killed himself, which found that he was Felo de se; but the Court were informed, that the Parry was non compos Mentis, and that there had been an undue Practice by the Coroner, of both which great Proof was made, and upon that it was quashed. Vent. 352. Mich. 32 Car. 2. B. R. Anon.

16. The Defendant was Felo de se, and the Coroner's Inquest found him a Lunatick, and now, Mr. Jones moved for a Melius inquirendum, but it was denied, because there was no Deaf in the Inquisition; but the Court told him, that if he could produce an Affidavit that the Jury did not go according to their Evidence, or of any indirect Proceedings of the Coroner, then they would grant it; but it was afterwards quelled, because they had omitted the Year of the King. 3 Mod. 80. Patch. 1 Jac. 2. B. R. The King v. Hetherfall.

17. If a Coroner's Inquest is quashed, he must take a new one Super Vitum Corporis, but if a Melius inquirendum is granted upon a Male se guilt of the Coroner, the new Inquiry must be before the Sheriffs or Commissioners, upon Affidavits, and not Super Vitum Corporis, because none but a Coroner can inquire Super Vitum Corporis, and he is not to be trusted again. 1 Salk. 190. Mich. 1 W. & M. in B. R. The King v. Bunney.

18. Caption of an Inquisition is not to be amended; per Affry and Cur. Comb. 70. Mich. 3 Jac. B. R. Anon.

in B. R. The King v. the Warden of the Fleet.

19. It was moved to quash an Inquisition taken before a Coroner, whereby the Jury find that a Post in the Highway was Unica Causa movens ad Mortem, and he excepted to it, because it was Nos certe criminis effe Causam Mortis, whereas it ought to be certain, and therefore it was quashed. 12 Mod. 112. 1 Hill. 8 W. 3. Anon.

20. The Coroner ought to accept such a Prematement as the Jury makes; Per Cur. abente Holt Ch. J. Comb. 386. Mich. 8 W. 3. B. R. Smith's Cafe.

21. A Person having kill'd himself, as there was reason to believe, Feloniously, for that he had made a Formal Will just before, and the Coroner having sworn the Jury to inquire, finding the Evidence given very strong, took off some of the Inquest; And per Holt, it is not in a Judge's Power to take off a Juryman after he was sworn; and tho' this Coroner be a weak silly Man, yet that is no Reason why there should not be an Information against him, for such Men must learn, they must not thrust themselves into Offices; and the Return of the Inquisition, finding the Deceased Non Compos, not being filed, it was quashed, per Cur. 12 Mod. 423 Patch. 13 W. 3. The King v. Stukely.

22. And Holt cited a Cafe of one Comb's who had kill'd himself at Highgate, in the Year 1655. and the Inquest was set aside for Practice. 12 Mod. 493.
Coroner.

253

(F) Traverse of Inquisitions before him.

1. The flying for Felony found before the * Coroner upon the Indictm. * For this
ment is not traversable; Contra of such flying found upon In-
dictment before Commissioners, for they ought not to inquire of this be-

2. The Coroner’s Inquest found A. Felo de fe; his Executors pray’d
The Court
that they might traverse it, which was granted by Hale, Twiliden and
Wild, silente Rainford, for the Coroner’s Inquest finding Felo de fe
is traversable, though Fugam Felicit is not. Afterwards the Inquest was
qualified for Want of the Word * Mordravit, and a new Inquisition
was appointed to be taken before Justices of Peace. 2 Lev. 152. Mich.
27 Car. 2. B. R. The King v. Aldenham.

Reason why an Inquisition that finds a Fugam Felicit is not traversable, is
because all the Parties
that were present at the Death of the Party are bound to attend the Coroner’s Inquest, and their
not appearing there is a flying in Law, and can not be contradicted; but that Reston does not hold in
a Felo de fe. Freem Rep. 419. pl. 516. Mich. 1674. Anon. — It was held, that an Inquisition
found of a Felo de fe was traversable, tho’ my Lord Coke holds the contrary, and it being removed
Ireon’s Cafe. —— But Salk. 577. pl. 11. Patch. 1 Ann. B. R. in Cafe of The Queen v. Clerk,
the Court held, that such an Inquisition would be good without the Word Mordravit, and that fo
is Dame Hale’s Cafe. —— 7 Med. 16. The Queen v. Clerk. S. P. by Holt Ch. J. But
an Inquisition, before the Coroner taken Super Vifum Corporis that finds the Perfon was Felo de fe &
Corpus Mentis may be traversed; But the Fugam felicit in an Inquisition before the Coroner cannot
be traversed; Resolved per Cur. Vent. 278. Hill. 21 & 28 Car. 2 B. R. Anon.

3. The Coroner’s Inquest Super Vifum Corporis found that P. felo-
monly threw himself into a River, and therein Sup ipsum emergit, & sic fiel-
pium accedit & mordravit; but because (emergit) is getting out of, and not
drowning himself in the Waters, the Inquisition was qualified, after the
Party had been dead and buried two Years; but because the Man had
been dead and buried so long that there could be no View, the Court
held that it might be supplied by a Commission of Inquiry, and it was
ruled that his Death should be presented at the next Assizes &c. and
the Inquisition traversed and tried at the fame Assizes. 2 Lev. 140.
Trin. 27 Car. 2. B. R. The King v. Parker.

4. Inquisition of a Felo de fe was returned hither by Certiorari, and 2 Ja. 198.
it was moved for a Melius Inquirendum, on Affidavit of Mealignally
Ripley, alias, Old-
field’s Cafe. Ripley,
and Distraintion, but denied, and held by the Court not grantable unless
there had been some Irregularity in the Caption of it, and ordered the
S. C. the
Administrator to traverse the Inquisition, as is usual in the Exchequer
Court in Cases of Inquests of Office, as Talis venit & queritur seipsum coloro
&c. gravari & Minus rite &c. And agreed by all the Bench, that he
might do so; but held by some of the Bar, that it is not traversable; upon an Action of for Goods of the Deceased’s it will hold good, and
dun, be-
cauze this
Inquisition
was travers-
able as well
as an Inquisition against another for Murder, and it was said, that Lord Ch J. Hale had declared here
that he was of this Opinion; And therefore the Court advised the Administrator of Ripley to remove
the Inquisition hither by Certiorari, and then to suggest himself to be griev’d by it, and so to bring
the Matter and Truth of the Inquisition into Judgment — Skin. 45. pl. 16. S. C. accordingly &
says, that the Lord of the Manor had used Art in obtaining the Verdikt.

T t t 5. An
Coroner.

5. An Inquisition on a Mollus Inquirendum is traversable, but not an Inquisition Super Vism Corporis. Carth 72, 73. Mich. 1 W. & M. in B. R. cited the Case of the King v. Heatherfall, and this agreed by the Court to be good Law.

(G) Punish’d for Misdemeanors in his Office in Civil Cases.

1. **NOTE;** an Attachment was awarded against the Coroner of York, because A. was 5o. exalit, but they would not give Judgment of the Outlawry, and an Affidavit of that was made. And Millington, an ancient Attorney said, that the Coroner of Stafford for such an Offence were fined every one 10l. but after the Judgment of the Outlawry pronounced they **may** lay the Return of the Exigent for to be advised, if the Case requires. Noy. 113. Trin. 2 Jac. C. B. Anon.

2. In Case against 4 Coroner, for that J. S. was outlaw’d at the Plain-tiff’s Suit, and a Capias Utteratum delivered to the Coroner, and tho’ they might easily have arrested him, and that he was once in Company with one of them, falsely returned a Non est Inventus. It was objected, that the Action ought not to be brought against all four, for it was paid the Writ was deliver’d but to one, and the Allegation was, that the Plaintiff was in Company with one of them, &c. But it was answered, that all four made but one Officer, and besides, they all join’d in making the false Return; And Judgement for the Plaintiff Nifi. Freem. Rep. 191, 192. pl. 195. Pauch. 1675. C. B. Naylor’s Cafe.

(H) Where Writs shall be directed to the Coroner.

1. **EXTENDI Facias** upon a Statute Merchant issued, and the Sheriff did not return the Writ, and the Party made thereof Suggestion, and pray’d Writ to the Coroner, and could not have it, but only a Re-extent. Br. Statute Merchant, pl. 34. cites 27 E. 3. and Firzh. Suggestion 20.

2. If the Sheriff does not serve the Replevin at the Plurics, Procesfs shall issue to the Coroner, and there the Sheriff has lost his Power to sue any Procesfs in it atter, by the best Opinion. Br. Office and Off. pl. 43. cites 43 E. 3. 26.


4. Note, that Procesfs directed to the Coroner to serve, this ought to be serv’d by all the Coroner; but where they are to give Judgment, the Judgment, of two of them suffices where they are four; For in the one Case they are Judges, and in the other only Minillers. Br. Procesfs, pl. 172. cites 11 H. 4. 34.

5. Procesfs
Coroner.

5. Processs shall not be made to the Coroners where there is no Sheriff, or where the Sheriff is dead; for the Sheriff is an Officer immediate to the Court, for Processs shall not issue to the Coroners unless in special Cafe; As where the Plaintiffs says, that the Sheriff is his Cousin, and prays Processs to the Coroners, and the other does not deny it, there Processs shall issue to the Coroners, and otherwise not. Br. Processs, 70. cites 22 H. 6. 51. By all the Justices.

6. If a Sheriff of a County in a City be in Contempt, the Attachment is to go to the Coroner, and not to the Mayor or chief Officer of the Corporation in such City or Town, and if the Offender be out of his Office, the Attachment shall be directed to the new Sheriff. 2 Vent. 276. Mich. 2 W. & M. in C. B. Anon.

7. In the Case of 2 Coroners, if the one be challenged, the other must be so, and yet both make one Officer. 1 Salk. 152. pl. 2. Pach. 1 W. & M. in B. R. in Cafe of The King and Queen v. War- rington.

Writ, and one Coroner may do an Act alone in the Name of the whole, and the Names of the others therein. Arg. says it is agreed so in the Books. 2. Show. 286 pl. 283. Pach. 35 Car. 2. B. R. in the Cafe of Rich v Player.

(I) Discharg'd or Remov'd. For what Cause, and How. And what shall determine his Office.

1. A Coroner is not made by Commission but by Writ and when he is Elected by Writ, it is return'd in Chancery, and is a judicial Act of Record, and therefore when the King dies this shall remain, where all manner of Commisions cease by Deimise of the King. As Commisions of Justices, and the like; but judicial Acts shall remain, and so the Coroner shall remain till he be removed by Writ of the King. Br. Office and Off. pl. 25 cites 4 E. 4. 43. and 44.

2. On a Suggestion that a Coroner had not sufficient Lands within the Hundred, a Writ issued to chuse another, and one was chosen. R. rhodes and Windham, held that this is a good Discharge; tho' F. N. B. 163. (N) says, that he ought to be discharged by Writ. Godb. 165. pl. 123. Mich. 28 & 29 Eliz. C. B. Anon.

3. The Coroner shall be discharged of his Office by the King's Writ sent unto him, and thereupon shall issue another Writ directed unto the Sheriff to chuse a new Coroner, and that Writ shall recite the Cause of the Discharge of the other Coroner. F. N. B. 163. (G) But this Cause is not traversable. Ibid. in the new Notes there (b) cites 5 Rep. 58.

4. If a Coroner is in a languishing Condition, or so broken with old Age F. N. B. 163. that he cannot exercise the Office, or becomes Paralytic, it is good Cause to remove him. 8 Rep. 41. b. in a Noto of the Reporter.

2 Hawk. Pl. C 44. cap. 9. S. 12. 8 P.
Corporations.

5. If a Coroner be discharged of his Office by false Suggestion, by the King's Writ directed to the Sheriff, then the Party may come into the Chancery, and require a Commission to inquire of the said false Suggestion, and to return the Inquiry before the King into the Chancery, and if it be found to be False, then the King may make a Supersedeas to the Sheriff, that he do not remove the Coroner if &c. and if he be removed that he suffer him to exercise his Office as he did before. F. N. B. 164. (D)

(K) Punished.

1. 3 H. 7. cap. 1. A Coroner shall not be remiss, but shall duly execute his Office according to Law, in Pain of 5l. and shall have for his Fee (upon View of the Body) 13s. 4d. of the Goods of the Murderer, if he have any; if not, then out of such Amencements as shall be set upon the Township that suffered the Murderer to escape.

2. 1 H. 8. cap. 7. Justices of Assize and Peace have Power to enquire of and punish the Defaults and Extortions of Coroners.

3. The Coroner is to return his Inquisition at the next Gaol Delivery, and because he did not, the Court discharges him, and sets a Fine of 100l. upon his Head, they having found it Murder, and kept the Inquisition in his Pocket. Per Cur. in a Nota. Keb. 282. pl. 81. Pasch. 14 Car. 2. B. R. The King v. Ld. Buckhurst &c.

For more of Coroner in general, See other proper Titles, and 2 Hawk. Pl. C. 4210 55. cap. 9. and 2 Hale's Hist. of Pl. of the Crown 53 to 69. cap. 8. concerning the Coroner, and his Court and Authority in Pleas of the Crown.

Corporations.

(A) By what Means a Corporation may commence, and by what Words and Names, and by whom, &c. contra.

[Or rather, of the several Sorts of Corporations,

[And of what Person or Persons it consists. Pl. 1, 2.]

* A Person has Succession, and is a Corporation in him and his Successors; for he may prefer in him and his Predecessors, and may purchase to him and his Successors. Br. Dean &c. pl. 19.
Corporations.

3. There are 4 Sorts of Corporations by the Common Law, as the King. Co. 10. 29. b.


5. By the King's Charter.


7. A Commonalty may be a Corporation without Mayor or Bailiffs.

8. The College of Greyfrock was founded by Pope Urban, as the Request S. C. cited 4 of Ralph Baron of Greyfrock, Ancestor of the Lord Dacres, and was always afterwards called or known and certified in the Book of Fruits and Tenents, by the Name of the College of Greyfrock, and it consisted of a Master and 6 Priests, always residing at Greyfrock, who came in by a Charter, which was not lawful for the Pope to give, and therefore it was adjudged, that it was not a College well incorporated, and therefore not given to King Ed. 6. by the Statute 1 Ed. 6. of Dissolutions. D. 81. a pl. 64. Hill. 6 Ed. 6. The King v. Ld. Dacres, als. Greyfrock College's Café.

9. The Bp. of St. David's by Licence from the King to appropriate certain Advowsons, did, by the King's Assent, and also of the Dean and Chapter, make a Collegiate Church, and constituted Prebendaries thereof, and appropriated a Corps to every Prebendary, all which was afterwards confirmed by the King's Letters Patents. Resolv'd by all the Justices of both Benches, except Harper, that this shall be taken as a College, and given to the King by the Statute 1 Ed. 6. 267. a. b. pl. 12. Mich. 9 & 10 Eliz.

10. There are 4 Things of Substancce to be observed in every Corporation founded ad Pias Ufas. 1fr. It must be known by a Name, as President and Scholars, or Master and Scholars, or Rector and Confreres &c. 2dly, There must be a Place certain where the Perfons shall be resident, which must have a known Name, As College, Nunnery, Hospital &c. 3dly, It must have the Name of a Saint, to whom it is dedicated or Founder, as Collegium Petri, or Pauli, or Gonvall-Hall, or Christ-Church &c. 4thly, It must have a Place known in which the House shall stand and known by some Name before the Foundation, as in Oxford, U n u
Corporations.

in Cambridge, in London &c. Per Manwood Ch. B. Mq. 231. Hill. 29 Eliz. in Fanthaw's Cafe.

12. In the Name of a Corporation 4 Things only are to be respected. 1st, the Names of the living Persons, who are the Corporation, as Master and Chaplains &c. 2dly, The House in which they are resident, and make their Abode. 3dly, The Name of the Founder. 4dly, The Place whereupon the House of their Abode is built and erected. And if these 4 Matters are sufficiently set down, though not formally, it is good enough; by the Lord Ch. B. in his Argument in the Court of Exchequer. Le. 160. pl. 228. Mich. 30 & 31 Eliz. in Cafe of Marriot v. Pashall.

12. It was said to be adjudged that the Inhabitants of a Town cannot be incorporated without Consent of the Major Part of them, and that without their Consent the Incorporation is void. 2 Brownl. 100. Trin. 9 Jac. Anon.

13. It may be with a Head or without a Head, and the Head and Members may be appointed after the Foundation; and the Foundation may be before any material Fabric is erected. Jenk. 270. pl. 88. Cafe of Sutton's Hospital, Mich. 10 Jac.

14. Franchises &c. are not essential to a Corporation but a Privilege pertaining to it; the Efficace of a Corporation is to make By-Laws, and govern their Members &c. the which they may do, though their Franchises are seised; As the Dean and Chapter of Norwich was a Chapter to the Bishop, and therefore remains a Corporation after their Lands surrendered; otherwife of a Corporation for a particular Purpofe, as an Hospital, which by Surrender of their Land had been destroyed before they were restrained by 13 Eliz. Per Holt Ch. J. and for this he cited Fitzherbert Corporation, cited in the Bishop of Norwich's Cafe. Skin. 311. Hill. 3. W. & M. in B. R. in Cafe of the King v. the City of London.

(A. 2) Corporation. What it is.

A Corporation is a Body Politick, consisting of material Bodies, which, join'd together, must have a Name to do Things that concern their Corporations, or otherwife it is no Corporation. And, 206. pl. 238. Hill. 29 Eliz. per Ch. B. in Cafe of Marriot v. Maffall.

1. A Corporation is an artificial Body, composed of different Members, Ad infir Corporis Hominis, and the Ligaments of this Body Politick or artificial Body, are the Franchises and Liberties thereof, which bind and unite all its Members together together; and the whole Efficace and Frame of the Corporation consist therein; Per Pemberton Serjeant. Arg. Carth. 217. Hill. 5 W. & M. in Sir James Smith's Cafe.

2. All the natural Persons of the Corporation are not the Corporation but are Perfons of which the Corporation consists, but not wholly; for the Name is a Part alio without which the Corporation cannot be. Arg. per Julicitarious. And. 310. Hill. 29 Eliz. in Cafe of Marriot v. Maffall.


4. A Corporation is properly an investing the People of the Place with the Local Government thereof, and therefore their Law shall bind a Stranger,
Corporations.

Stranger, and can only be created by the Crown; but a Corporation may make a Fraternity; Per Cur. 1 Salk. 193. pl. 5. Hill. 2 Ann. B. R. in Case of Cudton v. Earlwick.

5. The Ancients and Principals of Furnival’s Inn brought an Action upon a Bond given to discharge the Duties of the House, but being tried before Holt Ch. J. the Plaintiffs were non-suited, because not being a Body Politick, they were not capable to sue. Cited Arg. Gibb. 296, Trin. 5 Geo. 2. C. B.

(B) Who may make a Corporation.

1. None but the King can make a Corporation. Co. 10. 33. * Br. Devile, pl. 21. cites S. C.


2. The King may give Power to a common Person to name the Jenk. 279. Persons, and the Name of the Corporation, and when he hath done so, this Corporation is not said to be made by the common Person, but by the King. Co. 10. 33 b.

3. If the Mayor and Commonalty of London prescribe to make another Corporation in the City, and their Customs are confirmed, yet it is not good without the King’s Charters. * 49 El. 3. 4. † 49 El. 3. 8. Ibid. Prescription. pl. 15 cites S. C.

12 cites S C. — Sive Paxias; R. F. of London was seized of certain Land in London Denuelbells, and desired his Peone for Life, to find a Chaplin, the Remainder to two of the heirs of the Act of W’s masters of London, to find a Chaplin for ever, and, died, and the Peone found a Chaplin for Life and died, the two Wills of W’s witnesses entered, and did not find for the Chaplains, by which it was found by Office, and that the Decever died without heirs, whereupon some Paxias illud against them, to say why the King should not have the Land by Eclair, for the Non Capacity of the Reservifion, and they came and alleg’d Prescripftion, that by the Usage of London People of every Act may make Commonalty, Guild, and Fraternity, and decide to reaf, and that the Kings have confirmed their Usage. And by Award none can make Commonalty nor Corporation but the King himfelf, quod non nota; and yet it is usual that Corporations may prescribe that they have been a Body Politick Time out of Mind, and have been capable, and plaintiff, and Impealiable Time out of Mind, but one Corporation cannot make another Corporation. And per Cauem. such Corporations which London makes are not perpetual, but commerce by the Affent of the People of an Art at their Willis, so that if any of the Art will leave it, they may at their Pleasure, quod non negatur; And per Belk they cannot make Stainc of Inheritance, nor make Land deportable, nor to be devisable, nor the King by his Charter cannot do it, quod Cauem. concinit, and that the King may give to the Queen, and the may have Action alone. In Prescription. pl. 12 cites 49 El. 3. 5.

† Br. Devile pl. 21. cites S. C. that a Man cannot prescribe to make Guilds or Fraternity without Charter from the King; For Commonalty cannot in the Commonalty. — Br. Corporations. pl. 45. cites S. C. that Commonalty or Corporation cannot make another Corporation or Commonalty, by Usage nor Prescription, nor otherwise unless by Charter of the King, which wills it by express Words; Per Judicium Curiae. — Mo. 584. Arg. cites S. C. — Sid 291. pl. 7. Trin. 18 Car. 2. B. R. in the Case of The King v. Beadwell is a Nafa, that in that Case it was said that there cannot be a Corporation out of a Corporation where the right was by Grant. And it was doubted whether there can be a Corporation out of a Corporation where the right was by Prescription. For in London several of the Companies are Corporations by Prescription, out of the Grand Corporation by Prescription viz by both by Prescription.

4. Note, that a Corporation or Commonalty can’t make another Corporation nor Commonalty unless by Grant of the King by express Words; and not by Prescription or Custom; And per Cauem. the King may by his Charter divide a Corporation, and make the Prior of Weit-
Corporations.


The King only can grant or give Licence to found a Spiritual Corporation. 5. The King cannot give Licence to another to make a Corporation, for a Corporation ought to be made by the Words of the King himself. Thel. Dig. 20. Lib. 1. cap. 22. S. 26. cites Hill. 2 H. 7. 13. per Keble, contra per Rede. J. Mich. 20. H. 7. 7. & 38 E. 3. 14. And it was said by Brian and Choke, that the King may give Licence to one to make a Chantery for a Priest in a certain Place, and to give Land to him and Successors &c. And that this shall be a good Corporation without more Words. Thel. Dig. 20. Lib. 1. cap. 22. S. 26. cites Trin. 22 E. 4. Grant 30. and that so agrees 3 H. 7. Grant 36 & 38 E. 3. 14. Cof, cites 9 H. 6. 16 (b. pl. 8).—Only the King can make a Corporation, Jenk. 273, pl. 88, cites 10 Rep. 1. Sutton Hospital's Cafe. — Ibid. 205. in pl. 35. cites S. C. & S. P.

6. A Man at Common Law could not erect a Spiritual Body Politick, to continue in Succession, and capable of Endowment, without the King's Licence, but by the Statute of Martmaines they might have endow'd this Spiritual Body once incorporated Perpetuis Futuris Temporibus without any Licence from the King, or any other. 3 Inst. 202. cap. 97.

But now any Man may erect and build an House for an Hospital, School, Working-House, or House of Correction, and the like, without any Licence, but that is but a Preparation, and may be done as Owner of the Soil; but by the Common Law he could not incorporate any of them without Licence, but now he may *endow them with Lands in certain Cafes, by the Statutes of the 39 Eliz. cap. 3. and 3 Car. cap. 1. 3. Inst. 202. cap. 97.

* See Tit. Mortmain (A. z.)

(C) Of what Persons a Corporation may be made.

S. P. and both shall stand. Jenk. 273, pl. 88. 31. b. Several Corporations may be created one out of another ; As the Dean and Chapter of Lincoln are a joint Corporation, viz. the Dean is a Corporation by himself, and every one of the Prebendaries is a Corporation by himself. 10 Rep. 51. b. at finem, cites 9 E. 3. 18. b.

(D) Of what Place.

Jenk. 270. 1. THERE ought to be a Place of Corporation. Co. 10. 29. pl. 88. R. must have a Place certain; but a Jesuitical Place will serve. —— Mo. 231. per Manwood Ch. B. the S. P. —— Le. 160. pl. 228. 8. P. by the Ch. B.

2. There ought to be a Place supposed in England, and if there be not any such Place in England, yet it is good, As of Jerusalem in England. Co. 10. 32. b.
Corporations.

3. A Corporation cannot be limited to a County, as Probis Hominum of Poph. 57. Mich. 36. & 37 Eliz. 6 B. L. in Cafe of Button v. Wrightman. Popham said, that to erect an Hospital by the Name of an Hospital in the County of S. or in the filiopatrik of B. &c. is not good. because he is bound to a Place to be ascertained of the Lord Popham in Button’s Cafe.

4. The Name of the Corporation is as the Name of Baptism. Co. 10. 28. b. 123. 21 B. 4. 56 B.

(E) Of what Name.

1. THERE ought to be a Name by which it ought to be incor- porated. Co. 10. 29 B. Jenk. 270. pl. 58 it ought to have a Name certain; but a fictitious Name will serve. — Le. 165. pl. 238. Mich. 30 & 31 Eliz. in Cam. S. 258. per Egerton Solicitor General, Arg. says it is a clear and plain Rule in our Law, that the Name of a Corporation is as a Name of Baptism to a natural Man, and if there be any Difference, I conceive, that the Law requires more Strict Certainty in the Name of a Corporation, than in the Name of any particular Person; for a Name is more necessary to a Corporation than to another; for when an Infant is born, he is intrinsically a perfect Creature before any Name given him, and the giving the Name is not a Matter of Necessity, but of Policy, for Divinidion &c. but in the Cafe of a Corporation, the Name is the Substance and Efficace of it, and it is not a Body before a Name be imposed upon it, and therefore in the Charters of Corporations there is always such a Chafe, Per tale Nomen implicatur &c. acquire &c. pollini, and without their Name they are but a Trunk; but contrary in the Cafe of particular Persons. But otherwise in the Cafe of a Corporation, and we cannot give any Thing to a Corporation by Circumstances inducing or implying their true Name; As Land given to the first Hospital which the Queen shall found, although that it sufficiently appears, that such a one was the Hospital which the Queen first founded, yet the Gift is void. — Popham compares the Name of a Place to a Corporation to the Surname of a Person, which regularly ought to be expressed in Leaves, but if it be not put with all Exactness, yet it avoids not the Leave; but however that be, it is certain the Mattle of the very Name of the Place, which does not misname the Situation, is not material, for then it keeps within the general Rule formerly given. Gilbl. Hist. of C. B. 154. — Poph. 57, in Cafe of Button v. Wrightman, S. P.

3. The King may incorporate a Town by one Name, and after by another Name, &c. and then they shall use their Name according to the second Corporation, and yet they shall continue the Provisions they had before by the other Name. 21 B. 4. 59.

4. A Corporation may be by one Name, and enabled to purchase, and A Corpora- tion by another Name; Per Cur. Jo. 262. cites 11 B. 1. where a Corporation by Traction was by the Name of Master, Wardens, Brothers and Sifters of Richard Powel Rouncevil, and the Patent said, that they should sue by Name of the 1. if by Pre- script, may have several Names, but if by Charter it is otherwise, for in such Case it cannot have several Names at the same Time, and to the same Purposes; for if a new Charter is granted, and by a new Name, the old one is gone; As in the Cafe of Baptism by one Name, and Confirmation by another, but such Corporation may have several Names in several Purposes, for it may be created Per Nomen D. to take and to grant, and per Nomen E. to sue and to be sued. 4 Silk. 162. pl. 2. Mich. 10 W. 5. C 8 Anon. — Non sequitur. That what will amount to a Descript or Person to enable to sue, will be sufficient for a Person to sue in; Per Eyre and Powis. J. 10 Mod. 235. in Cafe of Cambridge University v. Vavasor, Grot, and A. Bp. of York.

XX

5. Body
Corporations.


6. A Corporation may be nam'd by a Subject. Jenk. 270. pl. 88. cites the Case of Sutton's Hospital. Mich. 11. Jac.

7. Where, my Lord Coke saies, a Corporation must have a Name, it must be understood either as express'd in the Patent, or implied in the Nature of the Thing; As if the King incorporate the Inhabitants of Dale, and give them Power to chuse a Mayor, tho' there is no Name of Incorporation in the Patent, yet it would be a good Incorporation, and the Name would be Mayor, &c. Commonalty; Per Holt. Ch. J. 3 Salk. 102. Trin. 13 W. 3. B. R. in Case of College of Physicians v. Salmon.

8. Inhabitants of S. can neither take by Purchase or Devise. MS. Tab. December 1, 1722. Foley v. Attorney General.

9. The Names of Corporations are given of Necessity, for the Name is as the very Being of the Constitution, and tho' it is the Will of the King that erects them, yet the Name is the Knot of their Combination, without which they could not perform their Corporate Acts, and it is no Body to plead and be imploed, to take and give, till it hath got a Name, but natural Persons can take before they come into Being, and when they are in Being, before they have got a Name. As a Remainder may be limited to the eldest Son of J. S. but if a Remainder be limited to such a Corporation as the King shall next erect, this is not good, tho' a Corporation be erected before the particular Estate be determined, for this Body of Men are only capable of taking by the Name in the Patent. G. Hist. C. B. 181, 182, cap. 17.

10. These Names of Corporations are usually taken from 5 Things,
   1. From the Persons, of which they confit.
   2. From the Being of the Corporation.
   3. From the Office, or Business, in which they are employed.
   4. From the Place where they are erected.
   5. From the Use of the Name.

And here they Note, that if their Names be expressed by Words Synonymous, it is sufficient; As if a College be instituted by the Name of Guardians, & Scholars Domus fice Collegii Scholarium de Merito and they make a Leave by the Name of Guflos & Scholares it is good, So if the Grant be made by Propofitus & Socii where it should be Scholares, it is good.

If J. S. Abbot of B. makes a Leave by the Name of Clericus de B. it is well enough.

If there be a Corporation founded by the Name of Mayor & Burgenfes Burgi Dom' Regis, an Obligation is made to them by the Name of Mayor & Burgenfes de Lion Regis &c. without laying Burgi Dom' Regis, and this was allowed a good Obligation; for the Parties are sufficiently expressed, and all Burroughs are founded by the King Guardians for Guardian is well enough, but they are an aggregate Body. Gilb. Hist. of C. B. 182, 183.—New Abr. 501. S. P. in toto Verbis.

11. 2dly, Their Name is taken from the En and Design of their Being.

If an House be founded by the Name of Missfier Propofitus Domus Dei, this is well enough, for the main Design is specified by both Names, But if an House be founded by the Name of Guardians et Scholarum Domus fice Collegii Scholarium de Merito, and a Leave be made by them by the Name of Guardians & Scholares Domus fice Collegii de Merito, this is no good Leave, for it is a material Varniance of the Name, since they have not express'd the Design of the House, which is a substantial Part of the Name. But if a College be instituted by the Name of Aula Scholarium Regia, to be governed by a Provost, and they are confirmed by the King, by the Name of Propofitus & Scholares Aula Regia, and they make a Grant of that Advowson by that Name, this is good, for that College would never have a Name according to the Words of the first Charter, for then it would be a Sole Corporation, which is contrary to the general Convenience of such a Body, for the Name would be Propofitus Scholarium Aula Regia, which cannot be intended, and the Word Scholars is not required as in the former Case, and the placing where it is, confines the Establishment, and Confirmation of the King, and common Appellation are good Interpreters of the original Intent of the Name. Gilb. Hist. of C. B. 183, 184.—New Abr. 502, 503. S. P. in toto Verbis.

12. 3dly, The Names of Corporations are taken from the Names of the Patrons that procured the Jurifdiction, or that have endowed them.

E. 4. incorporated the Deans and Canons of Windfor by the Name of the King's Free Chapel of St. George the Martyr, and in the time of W. & M. they made a Leave by the Name of the Dean and Canons of the King's and Queen's Free Chap.
Corporations.

13. 4thly, Their Names are taken from the Places, where they reside.

where it is settled, and from whence it cannot be removed, but to natural Permanence of the Name of the Place is but an Addition, for they may remove and change Place, and so their Names would have perpetual Alterations. Gilb. Hist. of C. B. 184. — New Abr. 501. S. P. in toto sem Verbis.

14. 5thly, The Name of the Saint; and if this be omitted or mistaken, this doth not avoid their Grants or Leases; for the Name of Dedication is but an empty Sound, and exprestes no real Use or Design, and therefore is immaterial, and may be omitted.

Our Dean of Coventry, this is good; so if they granted an Annuity or Corody, and the Name of the Saint had been omitted. Gilb. Hist. of C. B. 186. * See New Abr. 501.

(F) By what Words.

1. THESE Words, Incorporo, Fundo, Erigo &c. are not of Jenk. 270. Necessity to be used in making a Corporation, but Words equivalent are sufficient. Co. 10. 30.

of Sutton's Hospital, and says, that with this accords 44 Alle. 9. in the Prior of Plimpton's Cafe, and 4 B. 4. 7. in the Abbot of Glastonbury's Cafe and that in none of those Books or Records was any mention made of these Words, Fundo, Erigo &c. or any the like Words; For as has been said, they are Words declaratory only, and the Effect of them may be made by the Owner of the Land without any Grant.

2. Of ancient Time the Inhabitants of a Town were incorporated when the King granted to them to have Guildam Mercatoriam. Reg. 219. Co. 10. 30.

cites the Register 219. b. and says that thereupon the Place of all their Convocations and Assemblies were called the Guildhall, and ibid. 30. b. cites other Books, that the Words Gildam Mercatoriam made an Incorporation.

3. The King gave Licence to Ramsey to grant a Rent cuidam * Br. Patents, Capellano; this made a Corporation. 2 P. 7. R. 155. * 2 P. 7. 13. Co. 10. 28. [27. b.]

4. If the King grants Lands to the Men or Inhabitants of D. * Br. Corporations Hareidious & succesoribus suis, rendering a Rent for any Thing touching these Lands, this is a Corporation, but not to other Purposes. * 21 Ed. 4. 56. 7 C. 4. 30. + 2 P. 7. 13.

44. cites S. C. — Fifth. Grant, pl. 56. cites S. C. — Br. Corporations, pl. 55. cites E. 4. 14. S. P. and it seems, that they are only Tenants at Will; And if the Queen will release or give to them the said Rent and Fee-Peace, it seems that the Corporation is dissolved into facts; For the Rent and Fee-Peace was the Cause of enabling the Corporation &c. Ideo Quaete. D. 100. a. pl. 7. Trin. 1 Mar. Anon.

5. But
Corporations.

5. But if the King grants Land Hominibus, or Inhabitantes de
D. if they be not incorporated before, the Grant is void, it no
Rent be referred to the King. 21 E. 4. 56.

6. But if the King grants Hominibus de Illington to be discharged
of Toll, this is a good Corporation to this Intent, but not to
Purchase. 21 E. 4. 59. (B. this is Matter of Discharge.)

7. If the King gives Lands to the Inhabitants of Illington, and their
Successors. if they were not incorporated before, this is a void Grant,
for the King is deceived. 7 E. 4. 30.

8. Afne said, that the College of Rippon in his Country was founded
by the Name of Canonicus only. Thel. Dig. 20 Lib. 1. cap. 22. S. 16.
cites Trin. 19 H. 6. 16.

9. Corporation is good without limiting any Number certain of Persons
to be of the Corporation. Thel. Dig. 20 Lib. 1. cap. 22. S. 25.
cites Hill. 34 H. 6. 27.

10. The King incorporated those of Norwich by Name de Civibus &
Communites, and after in the Charter, Censefimus Civibus prudens
non prominent in Juratis &c. omitting this Word Communites, and per
Brian Ch. J. and Neal and Choke Justitaces, the Grant is good to the
Citizens only, because it makes a new Corporation. Br. Corporations, pl.
54. cites 7 E. 4. 14.——Thel. Dig. 20 Lib. 1. cap. 22. S. 17. cites S. C. and 21 E.
4. 56. that they are incorporated to have any Action for any Matter touching this Land, but not
otherwise.

11. And if the King grants to the Inhabitants of the Vill of Dale,
that they may chuse a Mayor, and after this, that they shall impale,
and shall be impaled by the Name of Mayor and Commonality of Dale,
now this Word Inhabitants is gone, and yet it was good in Principio
to take the Grant. Br. Corporations, pl. 65. cites 21 E. 4. 55, 56.

12. And Note, that in all the Ancient Cities and Boroughs of Eng-
land, as in London and elsewhere, the Grant is made to the Citizens
of London or Burgeoises of Dale, and the like, which were never incorporated
before, and yet good; but it seems that those are Favours for their long
Continuances, and there are many Grants to them by Names as above,
and that they may make a Manor, and to have Conulence of Pleas,
and many other Articles, is well, for they enjoy them. Br. Corpor-
ations, pl. 65. cites 21 E. 4. 55, 56.

13. If the King should grant Lands probis hominibus Ville de Illing-
tou without paying habendum to them and their Heirs, or Successors, ren-
dring Rent, this is a good Corporation perpetual as that Intent only,
but then it seems that they are but Tenants at Will, and if the King
releaves, or gives to them the said Rent, the Corporation it seems,
is dissolved ipso facto; For the Rent was the Cause of the enabling the
Corporation, &c. Dyer 100. a. pl. 70. Trin. 1 Mar. says it was fo held
for Law in the Star-Chamber. The Book says, Ideo Quere.

14. King Edward 6. granted to the Mayor, Citizens, and Commo-
nity of London, his Manfion-House, called Bridewell, and that it
should be founded and erected into an Hospital for the Poor, and that when
founded and erected, it should be called the Hospital of King Edward 6. of
Chief Bridewell, and St. Thomas the Apostle, and that they should be incor-
porated by the Name of the Governors of the Pellefions, the Revenues and
Goods of the Hospital of King Edward 6. &c. Adjudged, that this Hos-
pital in Intention only was sufficient to support the Name of a Corporation,
and that the Words, (viz) that the Governors from hencelorth
should be incorporated by the Name &c. incorporated them immedi-
ately,
Corporations.

ately, and that they should not wait till a Hospital be actually built. 10 Rep. 31. a. b. cites Mich. 34 & 35 Eliz. Rot. 172. B. R. Bride-well Hospital's Café.

15. King. J. by his Letter-Patents granted that the Borough of Yarmouth should be incorporated, and the Grant is made Burgenibus, without naming of their Successors, and also he granted Burgenibus tenere placita coram Ballivis, and in pleading it was not averred that there were Bailiffs there, and it was objected that the Borough cannot be incorporated, but by Men which inhibit in it; but it was resolv'd, that the Grant, is good, and the Lord Coke said, that he had seen many old Grants to the Citizens of such a Town, and good, and to that the Grant Burgenibus, that the Borough should be incorporated, being an old Grant, should have favourable Contraction; but the Doubt was, for that, that it was not averred that there were Bailiffs of Yarmouth, and if a Grant to hold Pleas, and doth not say before whom, the Grant is void, according to 44 E. 3. 2 H. 7. 21. Ed. 4. And for that it was adjudg'd; but the Opinion of all the Court was, that the Grant made Burgenibus was good without naming of their Successors, as in the Case of Grant Civibus, without more. 2 Brownl. 292. Hill. 7 Jac. 1669. C. B. Yarmouth Borough's Café.

16. A Charter by the King to Aliens may make them a Corporation as to the King, but not a Corporation as to the Subjects. See Roll Rep. 145. Hill. 12 Jac. B. R in the Café of the King v. Hanger.

17. The Locksmiths of Durham made Orders for taking away Locks ill made, supposing themselves to be a Corporation, because the Bishop of Durham being Juris Regalis had conferred their Orders; but Roll Ch. J. thought it would be hard to maintain that this made them a Corporation. Sty. 293. Mich. 1651. Goodyer v. Shaw.

(G) What Thing shall be incident to a Corporation without special Grant or Prescription.

1. When a Corporation is duly created, all other Incidents are tacitly annexed. Co. 10. 30. b. 13. 11 Jac. B. R. St. Savin's Café, resolved.

2. As if the King makes a general Corporation by a certain Name, without any Words of Licence to purchase Lands, or impale, or be impaled, yet the Corporation may purchase, plead, or be impaled well enough; for that by the making of the Corporation all those necessary Incidents are included. P. 11 Jac. St. Savin's Café, resolved per Curiam. Co. 10. 30. b. Hobart's Reports 285.

and where in that Café it was said 18. By the same to have Authority, Ability, and Capacity to purchase, but adds not any Clause to enable them to alien &c. yet that is incident, and need not be added. 2dly, To sue and to be sued, impaled and be impaled. 3dly, To have a Seal &c. This is also Declaration, and not Necessary; for when they are incorporated they make or use what Seal they please. 4thly, It restrains them from aliening or demising, unless in a certain Form; This is an Ordinance, testifying the Desire of the King, but is only a Precept, and does not bind in Law. 5thly, That the Survivors shall be the Corporation; This is a good Clause to remove Doubts and Questions which may arise, the Number being certain. 10 Rep. 38. b. In the Café of Sutton's Hospital.

Hob. 211. pl. 268. in Café of Norris v. Stays, Hobart Ch. J. says, that though Power to make By-Laws is given by special Clause in all Corporations, yet it is Needless; For I hold it to be included by Law, in the very Act of Incorporating, as is also the Power to sue, purchase, and the like; For as Reason is given to the natural Body for the governing of it, to the Body Corporate must have Laws.
Corporations.

Lane 21.

3. But by special Words the King may make a limited Corporation, or a Corporation for a special Purpuse; As if the King grants to the Aldermen, Estate of Highbury, 

but Tannfield, 

Ch B said, 

that he held 

that this 

Leafe should not make a Corporation where the King conceived that there was no Corporation before, but that the King might rather be said to be deceived; For he took a Different where there is a re-puted Corporation in being and where there is not, and therupon in the principal Cafe the Barons direct the Jury to give a general Verdict.

They may 

make Or- 

dinances 

agreeable 

to the Law. 

Jenk. 279. 

pl. 83. —— 

See the 

Notes at pl. 3. Supra.

5. If the King creates a Corporation of a Mayor, and 8 Aldermen, with a Clause in the Patent, Quod super Mortem vel Remotionem allicatus Aldermani licet Majori, et ceteris Aldermannis infra efto Dies Proximo post Mortem vel Remotionem &c. to elect another Alderman into his Place &c. though no Election be within 8 Days after the Death of (*) an Alderman, yet they may elect an Alderman at any Time after; for they have Power to elect another, as incident to the Corporation created; for Ancient Corporations have no such Clause, giving Power to elect, and this Affirmative Power does not take away the implicd Power incident to the Corporation. P. 8 Car. B. R. in the Cafe between Hacks and the Town of Lance- foun in Cornwall, resolved per Curiam, solicet, Richdson and Croke, no other of the Judges being there, and a Writ granted accordingly to elect another Alderman.

6. (5o) If a Corporation be created of a Mayor and 8 Aldermen, with a Clause in the Patent, that if any of the Aldermen die, or be removed, and it shall be lawful for the Mayor and the rest of the Aldermen, within 8 Days after the Death or Removal, to elect another in his Place, though it is not limited, that they, or the greater Number of them, may elect, yet the greater Number may elect. P. 8 Car. B. R. between Hicks and the Borough of Lance- foun, admitted per Curiam.

7. And in the said Cafe, if the Mayor, at the Time of the Death of an Alderman, be absent from London till after the 8 Days, and the Aldermen, within the 8 Days, come to the Deputy, and require him to make an Assemble of them to elect another within the 8 Days, and he refuses, and thereupon the greater Part of the Aldermen assemble themselves without the Mayor or his Deputy, and elect an Alderman, this is a valid Election, for the Mayor ought to be present at it by the Writs of the Grant. P. 8 Car. B. R. between Hicks and the Borough of Lancefoun, per Curiam.

8. When a Corporation is made, co ipso without any Words, they are enabled to have a Common Seal, and to impend and be impended, to make Leases and Grants, to purchase for Years, Lives, or in Fee; but

A Corpora-
tion which 
has a Fee-
roy, is in
Corporations.

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for Purchases in Fee they ought to have a Dispensation of the Statute of Land, cannot be restrained from them. They have Power to make Ordinances according to the Law.

Jenk. 270. pl. 88.

or 5 Items, as in Fee, unless by Act of Parliament; for it is against the Nature of an Estate of Fee simple to be restrained. Jenk. 270. pl. 88.

9. If there be a Popular Election of Mayor, and Mayor and Alderman in Corporation Towns, and this happens to break a Confusion amongst them, this may be altered by their Agreement, and by the Common Consent of all, to have their Elections made by a fewer Number, but not otherwise; but if by their Charter they are to be elected by them all, then this is not altered but by, and with, the general Assent of the whole Town, and so by this Means to take away Contention; per tot Cur. 3 Bult. 71. Trin. 3 Jac. The Corporation of Colchester v. &c.

10. Every Corporation, as such, have Power to take a Burgess's Renunciation; Per Hale Ch. B. Sid. 14. pl. 4. Mich. 12 Car. 2. B. R. The King v. Tiddlerly.

11. A new Charter doth not merge or extinguish any ancient Privileges, but the Corporation may use them as before. Raym. 439. Pasch. 33 Car. 2. B. R. Haddock's per Cur.

12. Whether a Power of Disfranchisement be a Power incident to every Corporation? Or whether it must be given by express Words in the Charter? See Arg. 10 Mod. 175. Trin. 12 Ann. B. R. in Cufc of the Queen v. Corporation of Buckingham.

(G. 2) What a Corporation may do, and what must be under the Corporation Seal.

1. If the Mayor and Commonalty be distrest, and after every one of the Commonalty release by their proper Names, this is not good, but the Mayor and Commonalty ought to release by their Common Seal. Br. Corporations, pl. 27. cites 19 H. 6. 64.

2. In Peculium to the Dean and Chapter they cannot take but by Letter of Attorney under Seal; Per Brook Justice. Br. Corporations, pl. 34. cites 14 H. 8. 2. 29.

3. Abbot and Convent cannot lease but by Deed, but the Abbot alone may lease without Deed, and if the Predecessor receives the Rent, the Lease is affir'd good. Br. Leases, pl. 32. cites 5 E. 4. 43. and says it is so paid there.

4. Bond made by the Mayor and Commonalty to the Mayor is not good, for he is the Head of the Corporation. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

5. So it is in Quare Impedit, the Master and Confreres cannot present the Master, Contra one of the Confreres. Br. Corporation, pl. 63. cites 14 H. 8. 2.

6. Warrant of Attorney of a Corporation shall be by their Common Seal, and otherwise it is Void; Per Choke Justice. Br. Corporations, Warrant, pl. 65. cites 21 E. 4. 7. 12. 27. 67. against the Mayor and Citizens of Chelmsford, there was a Warrant of Attorney under the Seal of the Mayor to appear; Quere, whether it should not have been under the Corporation Seal. SKIN. 154. The King and the City of Chelmsford.

7. If
7. It is a Corporation have a Power to remove a Man &c. at their Will and Pleasure this must be under the Common Seal, but a Return to a Mandamus Debito modo amotus may suffice. Vent. 355. Trin. 33 Car. 2. B. R. in Haddock’s Cafe.

8. A Mandamus being directed to the Mayor and Burgesses of Abington, to restore Mr. Holt to the Recorder’s Place, they return’d that the King by his Letters Patent gave them Liberty to make a Recorder Durante Bene-placito; It was said by Mr. Wyld, that a Corporation can’t determine their Will but under their Corporation Seal. Freem. Rep. 428. pl. 575. Trin. 1676. Holt v. Medlicott.

9. A Corporation can’t do an Act in Pais without their Common Seal, yet they may do an Act upon Record. So the City of London every Year makes an Attorney in B. R. without either Sealing or Signing, and they are effect’d by their Act to say it is not their Act. The Mayor’s Hand is not necessary to a Return, for he is liable in an Action for a False Return without it in his private Capacity; it is sufficient Evidence that the Writ was deliver’d to him, and that there is a Return made, and then the Mayor must shew the Contrary; and the Mayor, or any other Magistrate, that procures the False Return, tho’ without the Common Seal, or the Mayor’s Hand to it, is liable not only in their Corporate, but their Private Capacity; Per tot. Cur. 1 Salk. 192. pl. 4. Hill. 1 Ann. B. R. in Thetford (Mayor’s) Cafe.

(G. 3) Acts done by them good or not, being not done by the whole Body.

1. 33 H. 8. cap. 27. ALL and every particular Act, Order, Rule, and Statute, made by the Founders of any Hospital, College, Deanry, or other Corporation, whereby the Grant, Lease, Gift, or Election of the Governor or Ruler of such Corporation, with the Agent of the major Part of the same as shall have a Voice, or Agent to the same, shall be in any wise binded or let by one or more, being the lesser Number of such Corporation, contrary to the Common Law of this Realm, shall be void, and of no Effect.

2. And all Oaths taken by any Person of such Corporation for the Observation of any such Order or Statute, shall be void; and no Member of any such Corporation shall be compelled to take an Oath for the observing such Statute on Pain that every Person giving such Oaths shall forfeit 5 l. to be divided between the King and the Procurator to be recovered in any of the King’s Courts of Record.

3. Corporation of Mayor, or Bailiffs, and Burgesses of Windsor, may make Leafe for Years. One Bailiff only affents; the Leafe was void, and so it would have had two only affented; and it was agreed, that if the greater Part of Burgesses affent it is good, and it is not necessary that all be present at the Sealing; if their Assents be had before. D. 282. b. Marg. pl. 26. cites Good’s Cafe.

4. The Mayor and Commonalty of Southampton have an Affirmation from the King of a Sum of Money to be paid Yearly to them and their Successors out of the Customs of this Town and Port; the Mayor alone makes an Acceptance upon receiving it; this does not bind the Corporation in strictness of Law, but because 100 Precedents were known which allowed...
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5. The King did grant that the Parliam_rioners of Wallyf or should be a Corporation to bargain 'and sell, and that the greater Number of the Parliam_ners there did make Leafe and Eitares, and there was an Usage, that at the Time of meeting for the making of any such Leafes by them, they did use to ring a Bell, by the which Notice was intended to be given of the Assembly, and that after such Bell rung 20 of the Parliam_ners then present did make a Leafe, there being 100 others in the Parli not present, and yet this was adjudged in the Court 32 Eliz. to be a good Leafe, and he said, that if there be a Day an Place by Usage certain for their Meeting, in such Cafe there needeth no Warning. Lane 21. Pach. 4 Jac. in the Exchequer cited by Tanfield Ch. B. in Cafe of St. Saviour's Parli.

6. Where an Act is to be done by a Corporation, all the Members ought to be assembled together to consent, but this cannot be heerately and apart by them at several Times, for then it is Facium Singularum. Dav. 48. a. Pach. 5 Jac. B. R. in the Cafe of the Dean and Chapter of Ferens.

7. In a Trial at Bar for the Parishage of H. in the County of O, the Church being in the Presentation of the Dean and Canons of W. where there are 12 Canons besides the Dean, which in all make up 13 of the Corporation, it was held, 11t. That Prima Facie, in all Acts done by a Corporation, the Major Number must bind the Lesser, or else Differences could never be determined. 2dly, That Acts done by the Corporation ought to be done by the Consent of the Major Number, or else they are not valid, and therefore where the Corporation consists of 13, there ought to be 7 to make a Chapter; but the Act of the Major Number of those 7 is binding to the Corporation. But if the ancient Usage hath been, that Acts have been done from Time to Time by the major Number of those that are present, altho' they are but 3 or 4, it shall be then intended that that was Part of their Constitution at the Beginning, and so what is done by them shall be binding to the rest; and if it were otherwise, it would avoid Multiplicity of Leafes; for it is the common Practice in most Places, to seal Leafes by the major Number of the Dean and Prebendaries that are resident at the Time when the Leafe was made. Freme. Rep. 504. Pach. 1693. Hafird v. Somany.

8. If an Act be done to be referred to the constituent Members of a Corporation, nothing can be done but by the Majority of those who are the constituent Part of the Corporation; but where a thing is referred to be done by the Commonalty, there the Majority of those, who are present (all being summoned) will determine and bind the rest, but in the other Cafe the Majority of those who are present will not do; Per Cur. Mich. 6 Ann. B. R. The Queen v. Lock.

9. A Corporation aggregate consisting of 2 Bailiffs and Burgeesses &c. and one of the Bailiffs and Burgeesses made a Leafe in their Politick Capacity to the other Bailiff in his natural Capacity. The Court was of Opinion, that the Bailiff makes but one Officer, and the one cannot act without the other; therefore if a Leafe is made by the Corporation to one of them, he is both Leffer and Lefsee, which cannot be. 8 Med. 303. Trin. 10 Geo. 1755. Salter v. Grovenor.

10. A sole Corporation, as a Bishop or a Parson, could not make a Leafe to himself, because he cannot be Lefser and Lefsee, and the Law is the same in a Corporation aggregate, as Dean and Chapter, for a

Leafe
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Lease cannot be made by the Chapter without the Concurrence of the Dean; and for the same Reason, a Lease cannot be made to the without the Concurrence of the Chapter, but it may be made to any of the Prelates, because it is not necessary that any of them should join in the Lease, for a Prelates is not an integral Part of the Body Corporate. 8 Mod. 304. Trin. 10 Geo. 1725. in Case of Salter v. Governor.

11. Where-ever Notice is given of the meeting of a Corporation for one particular Business only, the Body cannot go on to other Business unless the whole Body is met, and it is done by Consent. Barnard. Rep. in B. R. 80. Mich. 2 Geo. 2. says this was laid down as a Rule by the Ch. Justice in the Case of the King v. Wakes.

12. A Charter required, that the Presence of the Mayor be necessary at all Corporate Assemblies. The Corporation were assembled, and a Matter being proposed, the Mayor dissolved the Assembly, but the remaining Part of the Corporation continued together, and proceeded. It was objected, that such After-Proceedings were irregular; But the Court said, it was very true, that no new Business can be proposed in the Absence of such Officer, but that the Assembly has always a Right to proceed in the Business which was begun when he was present. Barnard. Rep. in B. R. 385, 386. Mich. 4 Geo. 2. The King v. Norris.

(G. 4) Grants to or by Corporations, and by what Names or Titles they may take, or grant, and where there is a Variance or Misnomer.

1. W H E R E a Fovment is made to a Corporation and a single Person, it ought to be by Deed, and that the Livery be made to the Attorney of the Corporation, authorized by Deed, and to the other Person also, and then they shall be Tenants in Common, otherwise the Corporation can take nothing; Per Hulsey. Thl. Dig. 27. Lib. 2. cap. 3. S. 10. cites Hill. 7 H. 7. 9.

2. If I devise Land to the Abbot of St. Peter, where the Foundation is St. Paul, the Devise is void; Per Englefield J. Quod non negatur. Br. Devise, pl. 2. cites 19 H. 8. 8. [b. pl. 1.]

3. If a Master or President of a College by his Testament devises Land to the said House whereof he is President, and dies, the Devise is void, because they have no Head. Dal. 31. pl. 13. Anno 3 Eliz. and cites 13 H. 8. 13. S. P.

4. If a Grant is made to or by a Corporation in Time of Vacation, it is void. Litt. S. 443.

Without their Head they cannot take to the Use of the House; For without a Head the Body is imperfect. Dal. 31. pl. 13. Anno 3 Eliz.

If during the Vacation of the Abbot of Date a Lease for Life, or a Gift in Tail be made, the Remainder to the Abbot of Date and his Successors, this Remainder is good, if there be an Abbot made during the particular Estate. Co. Litt. 264. a.
5. The Dean and Canons of Windsor were incorporated by Act of Parliament by the Dean and Canons of the King's Free-Chapel of his Castle of Windsor, and they made a Lease by the Name of the Dean and Canons of the King's Majesty Free-Chapel of the Castle of Windsor, in the County of Berks. All the Justices held the Lease good enough; For though the King in Parliament ought to call it His Castle, yet when another speaks of it he is more apt to call it The Castle, and consequently such Variance is not material. Mo. 71. pl. 195. Trin. 6. Eliz. The Dean &c. of Windsor's Cafe.

6. And though more be put into the Words of the Lease than are in the Words of Incorporation yet it is not prejudicial if every Word is true; As if he had added of the Castle of New Windsor, or the Chapel of St. George the Martyr, because it is true, and there is not any other Windsor known, or any other St. George than the Martyr, and though it might otherwise, yet will not shall be intended. Mo. 72. in pl. 195. Trin. 6 Eliz. in the Dean &c. of Windsor's Cafe.

7. The Cooks of London were incorporated by Ed. 4. and that two Principals of the Community, by the Act of 12, or at the least of 8 Persons of the said Community, in myleria praedita maxime experssas singulis Annis eligere perfunt & facere de Commmrature illa duas Magistros juxta Gubernatores ad superintend &c. et quod ipsos Magistros vel Gubernatores et Communitas, should have perpetual Succession, and a Common Seal &c. and that they might parciage and enjoy Lands &c in Fee &c. A Deed of Bargain and Sale is made by A. B. C. and D. Master and Wardens of the Craft and Mystery, and the Community of the same Craft and Mystery, and 5. L. of the one Part, and R. Dormer of the other Part. Held here, that the Corporation was misnamed, for here are 4 particular Persons named, and Master is added at the End in the singular Number, and therefore it cannot refer to them all, or to two of them, and it if refers to the four the Charter doth not Warrant this, for that is a greater Number than the Charter wills, and if it shall refer to the last Name, then there are not Matters, and the Plural Number is Material, and in the Indenture they are called Master and Wardens, and Warden is not in the Charter, nor can be Part of the Corporation, and if in the Place of Warden, Governors had been put, they ought to have put (or) in the Place of (et) as Mailers or Governors, but as for the Words (Craft and Mystery) which are put in the Indenture before the Words (and Community) it is but surplices, which will not make the Deed of Bargain and Sale void. Plow. Con. 537. Trin. 20 Eliz. Croft v. Howell.

8. A Corporation was made by the Name of the Dean and Chapter Ecclesiæ Cathedæ Sanctæ & individue Trin. Caræfæ, made a Lease by the Name of Decanus Ecclesiæ Cathedæ, Sanctæ &c. &c. &c. &c. &c. &c. &c. &c. Six were against three, that it is good notwithstanding the Variance, which is not in Subsistence of the Name. D. 278. pl. 1. Mich. 21 Eliz. Carlile Dean and Chapter's Cafe.

9. There is no Book of Law which avoids Leases or Grants of Corporations for Variance in any of these four Circumstances, viz. Addition, Interposition, Omission, or Commutation, if they retain the four first Principles of Subsistence, viz. Name of Persons, of House, Foundations or Dedication, Place known before the Foundation in which they are situated. Per Manwood Ch. B. Mo. 255 pl. 567. Hill. 29 Eliz. in Panthaw's Cafe.
Corporations.

Name of Præpositus & Collegii Regalis Collegii bæati Mariae de Eaton justa Windor, and made a Leaf by Name of Præpositus, & Societatem Collegii Regalis de Eaton &c. omitting Collegium bæati Marie; And all the Judges held this a void Leaf. D. 150 a. pl. 84. Trin. 2 & 4 Pl. & M. and says, that it was to adjudge'd Mich. 10 Eliz. & Mich. 18. where the Place of the Corporation, viz. Chefler, was omitted in the Grant of the Donation made to the Dean and Chapter, but in the Hiberia it was inserted. —— Mo 15. pl. 52. S. C. that the Words (Sancti Mariae) were omitted, and there-fore held void; but the Leaf by the Dean and Chapter of the Cathedral Church Peterburgensis where they were incorporated by the Name Sancti Petri Burgenfis was not void, cites a great many Year Books.

10. The Proovof, Fellows, and Scholars of Queen's College Oxon. are Guardians of the Hospital in Southampton, and they leased Parcel of the said Hospital by the Name of Proovof, Fellows, and Scholars, Guardians of the Hospital; it was objected, that it should be Guardians, because the College conflits of many Persons, and every one is capable, and not like to Abbot and Convent; But the whole Court held, that the College is as one Body, and as one Person, and so the Leaue and Declaration were both good. Le. 134. pl. 183. Hill. 30 Eliz. Queen's College Oxon's Cafe.

11. It the Queen will found an Hospital by the Name Quod fundavimus ad reverandum Christoferm etton Cancellarii Angliae, all the named ought to be express'd in every Grant made by, or to the said Hospital; Per Egerton Solicitor General Arg. Le. 164. Mich. 30 & 31 Eliz. in Sacc. in Cafe of Marriot v. Pacelfall.

12. So Quod fundavimus ad reverandum pauperes. Ibid.

13. And sometimes the Number of Persons incorporated, if it be in the Charter, it ought to be used in all Acts made by or to them; As Majer & 6 Chaplains; Per Egerton Solicitor General Arg. Le. 164. Mich. 30 & 31 Eliz. in Sacc. in Cafe of Marriot v. Pacelfall.

14. The Dean and Chapter of Exeter made a Leaf by the Name of the Dean and Chapter of St. Mary of Exeter, whereas they were incorporated by the Name of the Dean and Chapter of St. Mary in Exeter; but this was held to be no material Variance. Cro. E. 167. pl. 5. Hill. 32 Eliz. B. R. Willis v. Jermin.

15. In Ejacment of a Leaf by the Warden and College of All-Souls of Oxford, the Jury found the Leaf to be made by the Warden and College of All-Souls of Oxford in the County of Oxford. It was objected, that this could not be the Leaf on which the Plaintiff had declared, because it varied from that Leaf, the one being made by the Warden &c. of All-Souls of Oxford, and the other by the Warden of All-Souls of Oxford in the County of Oxford. But per Cur. the Plaintiff had given Judgment, for the Verdict having for forth, that the Warden &c. was feiled, and being so feiled, made the Leaf &c. and sealed it with their Common Seal, all this is the same as in the Declaration, and the Words, (viz.) (in the County of Oxford) are not added as Part of the Name of the Corporation, but only to shew in what County Oxford is.

16. It was held per Curiam upon Evidence, that a Corporation may be known by two Names, and if it hath been so known Time out of Mind, that a Grant made by either of the Names is good. Cro. E. 351. pl. 4. Mich. 36 & 37 Eliz. B. R. Vaughan v. Gainstord.

There is a Diversity between ancient Corporations and Corporations made of late Time; For ancient Corporations may by Usage have divers several Names; And Des-mifies, Grants &c. by any of them are good enough 10 Rep. 126. Mich. 11 Jac. C. B. cites 16 instance of Cases —— S. P. by Hale Ch. 8. as by the Name of Burgessae, and of Bollivi and Burgessae; But if the Name of Bollivi and Burgessae be a Name which they have recorded within Time of Memory, they cannot prescribe by it, but by their ancient Name, till such a Time, and then &c. as in Dyer. Hardr. 593. Pauch. 21 Car. 2. in Sacc. in Cafe of Attorney General v. Farmham (Town in Surrey)—

Hill. Hill. of C. B. 136. 187. S. P.
Corporations.

17. A Bargain and Sale by the King for any Consideration, to a Corporation is good, although the King cannot stand feited to the Use of another; and the Consideration of Money paid or mentioned to be paid, altho' by any Stranger, makes the Conveyance of Bargain and Sale valid. Jenk. 270, pl. 58.

18. King H. 8. incorporated Trinity College in Cambridge by the Name of Master, Fellows, and Scholars of the College of the Holy and Undivided Trinity in the University of Cambridge; and Anno 6 E. 6. they made a Leafe by the Name of the Master, Fellows &c. of Trinity College, but left out the Word (University.) Two Justices thought the Leafe good, but the two others, and the Ch. J. though it void, but he moved the Parties a second Time to an Agreement, and would not as yet give Judgment. 2 Brownl. 243. Paich. 7 Jac. B. R. Trinity College's Cafe.

19. A Devise of an House was to his Wife for Life, Remainder to the Master and Wardens of the Queen's Free-School of St. Olave's Southwark; In Ejectment brought by the said Master and Wardens, it was objected, that the Corporation could not take by this Devise, because there is an Exception in the Stat. 32 H. 8. cap. 5. of Wills of all Bodies Politick or Corporate, so that they are excepted from taking by the Will; The Court were all clear of Opinion, that the Plaintiff had a good Title. 2 Bull. 335, 34 Mich. 10 Jac. Master &c. of St. Olave's Cafe.

20. The Dean and Chapter of Norwich were incorporated by H. S. Jo 1668. S. C. by the Name of the Dean and Chapter of the Bishop of Norwich and his Successor; they surrendered their Charter to Ed. 6. and afterwards were incorporated by him by the Name of the Dean and Chapter Supreme, and one Tritanis Norwich ex Fundatione Regis Ed. 6. They made a Leafe by the old Name of Incorporation, leaving out (Ex Fundatione Regis Ed. 6.) and adjudged that the Leafe was good. Palm. 491. Hill. 3 Car. B. R. Heyward v. Fulcher.

ancient Name was good notwithstanding the said Omission in the Grant and Leafe.

21. Debt upon a Bond made to the Plaintiff's Wife Dum fola by the Corporation of Wells, by the Name of the Mayor, Aldermen, and Burgiffes. Upon Non est Factum pleaded, the Jury find a special Verdict, that Queen Eliz. in the 31st Year of her Reign, created them a Corporation by the Name of the Mayor, Makters, and Burgiffes of Wells, and that Car. 2. in the 35th Year of his Reign, by his Letters Patents, granted to them that they should be known by the Name of Mayor, Aldermen, and Burgiffes &c. and by this last Name they entered into the Bond; and if this be the Bond of the Mayor, Makters, and Burgiffes of Wells, then &c. And adjudged for the Defendants, because by the taking of the second Letters Patents the first Name is untrue extinexitf'd; but it was agreed, that a Cooperation might have two Names, the one by Prescription, and the other by Grant, or both by Prescription, but not two by Grant. Lord Raym. Rep. 8c, 8t. Paich. 8 W. 3. Knight & Ux' v. the Mayor, Makters, and Burgiffes of Wells.

22. The Names of Corporations are not arbitrary Sounds meerly for the New Abr. of things, but have a certain and significant Meaning, and if that be kept to, though the Words and Syllables be varied, yet the Body Politick is very well known, for then there is enough said to shew that there is such an Artificial Being, and to distinguish it from others. Gilb. Hist. of C. B. 191.

23. Any Cooperation by Act of Parliament may take by another Name, than that by which it was instituted, for in Acts of Parliament the Subject b. Trin. and Deign of the Legislature must be respected, and those that have Power wholly to change the Name of Things, have certainly Power to
C, orations.

alter it in any Act of theirs, and all inferior Juiictions are bound to support the Sense of the Law, and not to destroy it, if it has any Meaning, and therefore the Statute that Adowrons of Popish Recusants, convict be given to the Chancellor and Scholars of the University of Oxford, and they bring their Action by the Name of the Chancellor, Masters, and Scholars of the University of Oxford, this is well enough.


24. If a Writ be brought by Hugh Prior of Coventry, this is too general, and shall abate, but in a Lease so made had been good. Gilb. Hist. of C. B. 189.

25. There is a Difference between Writs, Declarations &c. and Obligations and Leave ; for that if the Name of a Corporation be mistaken in a Writ, a new Writ may be purchased of common Right; but it were fatal, if mistaken in Leaves and Obligations, and the Benefits of them would be wholly lost; and therefore one ought to be supported, and not the other. J. Abbot of W. granted Common of Pasture to J. S. by the Name of W. Abbot of W. this is good enough Causa quipra; But if this Name had been thus mistaken in a Writ, it had been fatal.


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1. THE Queen makes a Lease for Years of Land to the Men of Chesterfield, rendering Rent, and the Grant was to them by the Name of the Aldermen of Chesterfield, and they by the Name of Aldermen of Chesterfield grant their Inters to C. in the Land ; and it was agreed by the Court that the Grant by them was void; for they by the Grant of the Queen have Capacity to take, but not to grant the Land to another. Cro. E. 35. pl. 3. Mich. 26 & 27 Eliz. B. R. The Aldermen of Chesterfield's Cafe.

2. A Corporation of Mayor and Commonalty, or of Bailiffs, Burgesses &c. may by their Common Seal grant their Lands &c. for Life or Years, or in Fee, and this shall be good, and bind their Successors; Per tot. Cor. Sid. 162. pl. 15. Mich. 15 Car. 2. B. R. Smith v. Barret.

3. No Person, Natural or Politick, who has a Fee, but may alien it; A Bishop, Dean, and Chapter &c. are Corporations, which have their Estates under a Tryst, yet they may alien ; Per Holt. Skin. 602. Mich. 7 W. 3. B. R. in the Banker's Cafe.

4. And tho' a Person may not alien by himself, yet he may by the Consent of the Patron and Ordinary; Per Holt. Skin. 602. Mich. 7 W. 3. B. R. in the Banker's Cafe.
(G. 6) Grants to a Corporation. To what Persons it shall be faid to extend; And what Passes.

1. **Covenant** was brought by the Mayor and Commonalty of N. against the Mayor and Commonalty of D. and charged that the Defendants by their Deed had covenanted that the Plaintiff's should be quit of Margage, Postage, Callum, and Toll in D. of all those of N. and that they had taken Toll by certain of their Burgesses, of certain of their Burgesses of N. wrongfully &c. And there adjudged that the taking of the Common Servant is the taking of the Corporation, and to the Covenant broken; Quod not; and it is not mention'd there if the Servant was Servant by Specialty under the Common Seal of the Corporation, or not. Br. Corporations, pl. 14. cites 48 E. 3. 17.

2. It was faid by Paught, that if Goods are given to an Abbot, and to another, the Property is jointly in them two, and nothing in the House &c. and that the other shall have all by Swerceship of the Abbot dies Ther. Dig. 26. Lib. 2 cap. 2. S. 24. cites Trin. 9 H. 6. 25. and that fo it is agreed in a Lease for Years made to them. Trin. 100. H. 7. 15.

3. Obligation made to J. P. Alderman of Saint Mary's Guild of D. and his Successors, and in Fact there is no such Corporation there, the Obligation shall go to the Executors, and Successors is Void. Br. Obligation, pl. 69. cites 20 E. 4. 2.

4. So of Bonds made to the Church-Wardens in London, and their Successors, it is void to the Successors, and good to the Executors; For they are not incorporated. Br. Obligation, pl. 68. cites 20 E. 4. 2.

5. And where Bond is made to the Dean of P. and his Successors, and it is not paid Dean and Chapter, and his Successors, this is good to the Executors, and void to the Successors. Br. Obligation, pl. 68. cites 20 E. 4. 2.

6. Contrary to it had been to the Dean and Chapter and his Successors; For he has 2 Capacities, viz. to him and his Heirs, and another with the Corporation. Br. Obligation, pl. 69. cites 20 E. 4. 2.

7. And if Obligation be made to the Bishop of L. and his Successors, or Person of D. and his Successors, this goes to the Executors, and yet they are a Corporation; For they have two Capacities. Br. Obligation, pl. 68. cites 20 E. 4. 2.


9. If Land be granted to a Mayor and Commonalty without giving to their Successors, they have Fee-Simple. Ther. Dig. 20. Lib. 1. cap. 22. cites 11 H. 7. 12.

10. It was faid, that if Land be given Jo. Stile Dean &c. and to his Successors, and to Jo. Stile Clerk, being the same Person, and to his Heirs, that this is a good Gift, and that he shall be Tenant in Common with himself for diverse Reasons. Ther. Dig. 27. Lib. 2 cap. 3. S. 11. cites Trin. 13 H. 8. 13.

11. If one devises Land to A. N. Dean of Paul's and to the Chapter there, and their Successors, and A. N. dies, and a new Dean is made, and then the Devisee dies, the Land shall vest in the new Dean and Chapter according to the Intent, tho' by the Words it does not; For the chief Intent was to convey it to the Dean and Chapter, and their Successors for ever, and the Inheritor Person of A. N. was not the principal
Corporations.

G. 7) Actions. Obligations &c. made to or by Corporations. Liable; who, where the Head is remov'd. And Pleadings.

1. NOTE; that the Deed of an Abbot and Covent, which Abbot is deposed or deraigned after, is good. B. Abbe, pl. 19. cites 9 H. 6. 32.

2. Contrary to the Deed of an Abbot who is a Usurper where there is a lawful Abbot at the Time &c. Ibid.

3. Bond was made by Prior and Covent, and after the Prior was made Bishop of D and in Action against him upon the fame Bond be pleaded this Matter, and that the Action shall be upon Succesfor, and not upon the Predecessor, for the Corporation is charged only, and a good Plea without Traverseling, abfque hoc that he alone made the Bond. Br. Traverseling per &c. pl. 82. cites 21 H. 6. 3.

4. Debt of Contract against the Provost of the College of T. in Cambridge for Stuff bought, which came to the Use of the College, and that the same Provost, viz. T. M. was removed, and the now Defendant was elected, and made Provost &c. and Exception was taken that he did not show how he was removed, & non allocatur per Cur. For if he be removed by any way, and the other was Provost, it is sufficient, and this only is traversable, and not the Cause of the removing; for Action of Debt shall be brought against Executors generally, without shewing how they were made Executors; for if he be Executor it suffices, and the Entry of the Prochonotary is general, that he was removed, without shewing how, and for what Cause. Br. Pleadings, pl. 87. cites 5 E. 4. 75.

5. Where a Man Pleads Payment to the Chamberlain of London, viz. to one J. and his Successors &c. according to the Form of the Condition of the Obligation aforesaid, he ought to shew that the said Chamberlain was deposed, or the like, and then he paid it to W. N. his Successor, who was elected Chamberlain &c. by which he pleaded accordingly; For otherwise it shall be intended that the first continued Chamberlain; So of an Abbot &c. Br. Pleadings, pl. 98. cites 8 E. 4. 18.

6. In Debt, the Prior of B. made an Obligation without the Covent, and after was made an Abbot of another House, and the Obligee brought Debt against him, and declared upon the Matter, and the Defendant said, that the Goods did not come to the Use of the House of which he is Abbot, and demurred in Law upon the Declaration; Per Vavilor J. this is a Body Politick, and none shall be charged but the same Body Politick, and an Abbot or Prior can take nothing but to Use of the House, and when he is made an Abbot of another House, he is severed from the first House, and therefore he is discharged, and the Covent of the first House shall not be charged, because they were not bound unless the Goods came to the Use of the House, and if he be deposed, and after re-elected into the same House, yet he shall not be charged, for he is in another Courte, and all the other Justices were to the contrary at this Time; but after Rede & Fineaux agreed with Vavilor, 5 H. 7. 25 and Wood, Brian, Reble, and Townend to the contrary.

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contrary, because he was at all Times personable when he was immediately made Abbot of another House; contrary where he is depos-
ed and re-elected, and therefore Brook makes a Quære, for it is du-
bious to him; and per Vavilof, 5 H. 7. 25. an Abbot may give the
Goods of the House, and make a Charge during the Time that he is
Abbot, and make an Obligation, which is good if it be fixed during
the Time that he is Abbot, but the Successor shall not thereof charged,
and therefore because the Capacity by which he charged is determin-
ed, the Charge determines, and the best Opinion was with him, as it
seems, and agreed with Vavilof the principal Case. 9 H. 7. 23. Br.
Barre, pl. 69. cites 3 H. 7. 11.

7. If the Abbot of B. be bound in an Obligation by his own Seal, and
after is translated to the Abbey of St. A. Action of Debt lies against
him as Abbot; per Vavilof for Law; otherwise it seems where he is
depos'd, and after is re-elected Abbot, in this House, or in Another;
For there the Action was once extinct, contrary here. Br. Nonau-
bilità, pl. 23. cites 9 H. 7. 23.

(H) Who shall be said the Founder.

1. H E that gave the first Possessions to the Corporation is the
Founder. Co. 10. Hospital 33. b. 38 Ill. 22. 50
pl. 83. S. P.—
Br. Corody
pl. 12. cites
S. C. but
S. P. does not clearly appear.—Firth. Grant, pl. 1. cites S. C. & S. P.

2. [So] If the King hath a Chapel, and gives Possessions to
it, by which he is the Founder thereof, though the Seculars are after
translated into Regulars, yet the King shall be the Founder thereof,
because he gave the first Possessions. 38 Ill. 22.

3. If the King and a common Person give Possessions to a Corpo-
sation at one and the same Time, the King shall be the Founder only
by his Prerogative. 50 Ill. 6. per Linfer.

and a common Person join in a Foundation the King is the Founder, because it is an entire Thing. If
a common Person founds an Abbey, or Priory, with Possessions of small Value, and the King after endows it
with great Possessions, yet the common Person is Founder.
If a common Person founds a Chantry, and after the King translates it, and makes it a Monastery, and
endows it with Possessions, yet the common Person is in Law the Founder because he gave the first
Loving.
So if the Translation be from Regular to Secular, sed contra. 2 Inf. 68.

4. If he was taken in Case of a Corody, whether the King was Pa-
tron of a Priory, where he presented one to a Corody, by reason that his
Progenitor founded a Chapel there before any Priory was there; or whether the Bifhop of E. and his Predecessors, Time out of Mind, had been
Patrons there. And Greene Justice laid, that when the King had a
Chapel of which he was Patron, and this was in the Hands of the Prior,
the Seculars were translated into Regulars, yet he who gave the first
Possession was Founder, and the Jury found for the King. Br. Pre-
sentation, pl. 39. cites 38 Ill. 22.

5. And it was said, that tho' there was no Prior there before, and
tho' the Priory was not founded in the Place where the Chapel was, yet
because
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because it was annexed, and the King was the first Patron of it, the Patronage was the King's; Quod Nota. Br. Prefentaution, pl. 39. cites 38 All. 22.

6. And because they had made Elections of Priors there without the King's Licence, to the Di{hironf of him and his Crown, it was agreed that the King recover the Patronage, and that the Temporalties be felled into the King's Hands for such Di{hironf and Contempt, till Satisfaction made to him. Ibid.

7. Founderfhip cannot esceat, for it is not held, that is, it cannot esceat by Death without Heir; Per Brooke. Br. Corodies, pl. 5.

8. Nor can it be forfeited, as Brooke thinks; For it is annexed to the Blood, which cannot be divided, as it is said, after the Augmentation-Court took its Commencement, in Time of H. 8. For a Man who is Heir, to another cannot make another to be Heir. Br. Corodies, pl. 5.

9. If a Bishop be Founder of a Priory and Consent, and the Crown translates this to a Dean and Chapter, and discharges the Monks of their Habit and Order, yet the Bishop remains Founder still. 3 Rep. 74. Dean and Chapter of Norwich's Cafe.

Br. Prerogative, pl. 8, cites S. C.

It is annexed to the Saint, and cannot be granted to any one, and if the Church be di{f{led, the Founder shall have the Land. Br. Corodies, pl. 5.

10. He that gives the first Possification to any Corporation is the Founder. Jeuk. 270. pl. 89.


12. A Founder having given Statutes to the College cannot alter them and give new Statutes, unless he had refer'ed to himself an Authority for that Purpo{e. Skin. 513. lays this Point was agreed in Cafe of Philips v. Bury.

(H. 2) Consider'd How. And capable of What.

1. Corpora{tion aggregate of several is invifible, immortal, and rests only in Intendment and Consideration of Law, and therefore Dean and Chapter cannot have Predecessor nor Successor. 10 Rep. 32. b. cites 39 H. 6. 13. b. 14.

2. Nor can they commit Treafour, or be outex'ed, or excommunica{ed; For they have no Souls, nor can they appear in Perfon but by Attorney. 10 Rep. 32. b. cites 21 E. 4. 72. a. and 30 E. 3. 15. b.

3. Corporation aggregate of many cannot do Fealty; For a Body invifible cannot be in Perfon, nor can swear. 10 Rep. 32. b. cites Br. Fealty, [pl. 15.] 33 H. 8.

4. It never was seen, that a Corporation might be bound in a Recognizance or Statute Merchant; Per Dyer. No. 68. in pl. 182. Trin.

5. Cos-
5. Corporations aggregate of many are not capable of these two Professions, either Professorate or Mortmain, because the Corporation itself is invisible, and reverts only in consideration of Law. Co. Litt. 139. 2.

(H. 3) Dissolution; And the Effect thereof.

1. If the Corporation of a Prebend be a Manor & Nient plus, and the Manor is recovered from him by Title paramount, the Corporation remains, for he shall have Stallum in Choro, and Vocem in Capitule, and he is still a Prebendary. 3 Rep. 75. b. cites 15 All. pl. 8.

2. C. brought Annuity against the Dean and Canons of St. Stephen's Westminster, and counts, that the said C. was seized of the said Annuity by the Hands of M. Parson of the Parish Church of G. Predecessor of the said Dean and Canons. The Defendant pleaded, that the said Rectory of G. was Parcel of the Professions of the Priory of Wells, which Priory was Parcel of the Priory of St. Stephen's in Normandy, which Priory, and the Professions thereof were seized into the King's Hands, by reason of the War between King E. 3. and the King of France, and so continued in his Hands till the Time of King H. 5. and then the Rectory of G. was appropriated to the said Priory Time whereof Memory &c which Kings continually took the Profits, till by Stat. 2 H. 5. it was ordain'd, that all Priories alien, and their Manors, Rectories &c. in England, which appertain'd to the said Priorities, or are appropriated or annexed &c. shall be to the King and his Heirs, which Lands and Rectory came to King E. 4. who by his Letters Patents granted the Priory alien, and the said Rectory to the Dean and Chapter, Defendants &c. Upon Demurrer, Judgment was given for the Plaintiff. 2 And. 106, 107. pl. 57. in Case of the Bishop of Rochester v. the Dean and Chapter of Rochester, cites it as Pach. 18. H. 7. Rot. 416. The Prior of Castleacre v. the Dean &c. of Westminster.

3. Grant was made to John of Gaunt, Duke of Lancaster, of all Strays within his Fees, and a Prior of Splading held of the Grantee certain Land in B. in Frank-amortz, and Stray came there, and the Grantee claim'd it by his Grant; and the said Opinion was, that he shall have it; for he has Tenure there, and therefore he has Fee there; for if the Hoûle be dissolved he shall have the Efcheat, and the Tenant may have Writ of Mene, or No inuile Vexes. Br. Patents, pl. 61. cites 7 E.

4. If the Abbot and Convent gives all their Lands and Professions to another in Fee, yet the Corporation remains. Br. Extinguishment, pl. 35. cites 20 H. 8. per Fitzr. J.

5. If a Corporation which has a Common in Gros be determin'd or dissolved, the Common is extinct. Thel. Dig. 20. Lib. 1. cap. 22. S. 28. cites it as the Opinion of Pach. 27 H. 8. 10.

6. If Lands helden of 7. N. be given to an Abbot and his successeurs, in this Case, if the Abbot and all the Conven die, so that the Body Politick is dissolved, the Donor shall have again his Land, and not the Lord by Efcheat. Co. Litt. 13 b.

7. So if Land be given in Fee-simple to a Dean and Chapter, or to a Mayor and Commonalty, and to their successors, and after such Body Politick, or Incorporate is dissolved, the Donor shall have again the Land, and not the Lord by Efcheat; and the Reason, and the Caufe of this Diverfitie is, for that in the Case of a Body Politick or Incorporate,
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porate, the Fee-simple vested in their Politick or Incorporate Capacity created by the Policy of Man, and therefore the Law does annex a Condition in Law to every such Gift and Grant, that if such Body Politick or Incorporate be dissolved, that the Donor or Grantor shall re-enter; for that the Cause of the Gift or Grant fails, but no such Condition is annexed to the Estate in Fee-simple vested in any Man in his natural Capacity, but in Case where the Donor or Feoffor reserves to him a Tenure, and then the Law doth imply a Condition in Law by way of Efcheat. Co. Litt. 13. b.

8. The Bishop of R. brought Annuity against the Dean and Chapter of R. and declared of an Annuity by Prescription from the Prior of St. Andrew's of R. which Priory was dissolved the 28 H. 8. and 31 H. 8. and their Pofoffions were committed by the King to the Dean and Chapter of R. Anderfon laid, the Annuity does not remain; for an Annuity charges the Party, and not the Pofofition, and therefore when the Corporation is dissolved, which is the Perfon, the Annuity is gone; Walmelly laid, that in 2 H. 6. 9. it is faid there, if a Priory be charged with an Annuity, the Annuity shall continue although it be changed to an Abby. Anderfon laid, that is true, for there Corporation is changed only, but here it is dissolved. Williams laid, that is faved by the 31 H. 8. for Annuities are exprifed in the Saving. But Anderfon anfwer'd, that this is an Annuity, or Rent with which the Land is charged. Beaumont laid, that it be any Thing wherewith the Land is charged it is faved, but the Perfon is only charged with this Annuity. Walmelly laid, that the 21 H. 7. is, that an Annuity out of a Patronage is not a mere Personal Charge, but charges the Patron only in respect of the Land; and the Court would consider on the Cafe. Ow. 73. Pach. 38 Eliz. C. B. Rochefler (Bifhop's) Cafe.

9. If Lands are given to a Corporation, and their Successors, and the Corporation is dissolved, the Donor, or his Heirs, hall have back the Lands again; for the fame is a Condition in Law annexed to the Estate, and in such Cafe no Writ of Efcheat lies, yet the Land is in him in the Nature of an Efcheat; Per Cur. Godb. 211. pl. 301. Mich. 11 Jac. C. B. in Cafe of the Dean and Chapter of Windfor v. Webb. A Prescription was laid in an Abbey and Covent to be discharg'd of Titles, and it appeared, that the Body Corporate was dissolved, but all the Monks were dead, and the Abbot also, and the Lands came to Laymen. It was adjudged, that they hall pay Titles in kind, because the Prescription was determined by the Lands not continuing in the Hands of the Abbot and Covent; For a Lay-Man cannot prorife in Non Decimando. Godb. 211. pl. 301. Mich. 11Jac. C. B. The Dean and Canons of Windfor v. Webb.

10. Holt Ch. J. laid, that a final Judgment for Seifure of a Corporation would not, as he thought, be interdictual, as is proved by a Judgment for Seifure Quoquoque &c. in Cafe of Non-appearance, but the Liberties of a Corporation may be feified, or suspended, as in the Dean and Chapter of Norwich's Cafe 3 Rep.) and yet no Seifure or Surrender of the Corporation itselft; the Offices and the Power of chufing others may be feied into the King's Hands, though he cannot exercise them, and he may regrant them. If a Corporation to a particular Purpose be divifed of all its Powers and Liberties, it is gone, as in Cafe of a Charity; But for any other Corporation, they have Power to make By-Laws, and govern the Place, though they have their Liberties lapsed; for they continue a Corporation, and may all as such, as in the Dean and Chapter of Norwich's Cafe, that they were ufeful still as Subjects to the Bishop. It is not the Privilege of the Corporation to make By-Laws, but it is entituled to its being, and Part of the Conftitution. Show. 280, 281. Mich. 3 W. & M. in Cafe of The King v. Mayor of London.
What Thing dissolves the Corporation.

1. If a Corporation be made of Confreres and Sistors, and after all the Sistors are dead, all grants and acts made by the Confreres after are void; for when the Sistors are dead, this is not any perfect Corporation. 9. 23. B. R. in the Case between Serjeant Lovelace and Marwood it is there cited to be so.

2. If the King makes a Corporation consisting of 12 Men, to continue always in Succession, and when any of them die, the others may chuse another in his Place; if or 4 of them die, yet all Acts done by the rest shall be sufficient, for this is not like the aforesaid Cafe. 9. 37. B. R. per Curtain.

3. Though a Dean and Chapter depart with all their Possessions, yet though for Necessity the Corporation remains as well to allot the Bishop in his grant away his Lands, yet make &c. of his Temporalties, and so long as the Bishopric remains they have their Stallum in &c. and they shall be now (as they were at first) Corporations, and without any Possessions; and namely, when the Bishopric may enjoy wholly of Spirituality. 3 Rep. 75. b. cites it as said by Scoole, 10 Per Whit. E. 31. b. in the Case of the Bishop of Norwich, and 25 Afl. pl. 8. per Jack, to which Jones agreed, and said, that there is no Necessity of Lands, being annexed to the Corporation, for there were Dean and Chapters before any Lands were given to them, and though they grant them away, yet the Corporation remains; and to this Dukeridge agreed, and thence concluded, that Dean and Chapter cannot defy themselves; For thereby the Bishop will lose his Counsels and without them he can make no Grant, and great Inconvenience would follow to the Discipline of the Church; and therefore without the Bishop they cannot dispose themselves; to all which Hide Ch. Justice agreed for the same Reasons. Palm. 560. 501. &c. Hill. 3 Car. B. R. in Case of Heyward v. Fulcher.

4. If the Corps of a Prebend be a Manor, and nothing more and the Manor is recovered from him by Title paramount, yet his Corporation remains; for he has Stallum in Choro, fi Vescem in Capitulo, and he is a Prebendarie, though he has Possessions. 3 Rep. 756. cites 15 Afl. 10.

5. If a Man is Patron of a Vicarage which voids, and he presents to it by the Name of Parsonage, by this the Corporation of Vicarage is chang'd into Parsonage. Br. Corporations, pl. 85. cites 11. H. 6. 18, 19.

6. The Creation of a new Corporation after the Determination of the old one makes another Body, so that Rent Charges and Annuities payable to the old Corporation are extinct by the Death of all the Members, as Monks &c. Br. Mortmain, pl. 1. cites 20 H. 6. 7.

7. If the Abbot and all the Monks die, the Corporation is dissolv'd, and the Land shall Escheat. Br. Corporations, pl. 78. cites 20 H. 6. 7. 8.

8. If the Master and Confreres of a College are all dead, the Corporation is determined. Thel. Dig. 20. Lib. 1. cap. 22. S. 20. cites Trin. 11 E. 4. 4.


10. But if the Abbot be alive, and the Covent all dead, the Corporation is not determined, per Catesby; for he may Profess others &c. Thel. Dig. 20. Lib. 1. cap. 22. S. 20. cites Trin. 11 E. 4. 4.
11. But if they fell all the Lands and the Abbey, yet the Corporation remains, per Fitzherbert; but Brook makes a Quære, of what he shall be Abbot; for there is neither Church nor Monastery; and makes a Quære, if the Abbey dies, if they mayClose another, the House being dissolved; Monks and Canon are capable of Spiritualities as to be Vicar, Executor &c. Br. Corporations, pl. 78. cites 32 H. 8. and Hill. 3. H. 6. 23.

12. A Corporation was founded by the Name of Brothers and Sifters, and allthe Sifter are dead, and the Brothers make Cape, and held void, for then it was no Corporation. D. 282. b. Marg. pl. 27. cites it as in the Time of Queen Eliz. Manwood v. Lovelace.

13. The Dean and Chapter of Wells, by express words, grant and surrender the Deemy of Wells &c. yet this was not thought fair till the grant and surrender was established by Act of Parliament, and tho' all Bishops prieks were of the Foundation of the Kings of England, and therefore in ancient Time were Donative, and given by the Kings, as appears in 17 E. 3. 40. and by the Statute 25 E. 3. de Proviliumibus, yet afterwards (as appears by the said Book and the said Act) the Bishops prieks became by the Grants of the Kings eligible by their Chapter, and therefore if by the surrender of the Dean and Chapter their Corporation shall be dissolv'd, this will introduce 3 Inconveniences; 1st. To the Bishop concerning his Affittance in his Episcopal Function, 2dly, To the Bishop and others touching the Confirmation of his Grants. 3dly, To all the Church in General. For how can there be a Bishop chosen in such Capes? 3 Rep. 75. b. 76. a. cites D. 273. pl. 35, 36 &c. 10 Eliz. [Walrond v. Pollard.]

14. By the Death of all the natural Person of which the Corporation consists, it is dissolved. And. 210. pl. 238. Hill. 29 Eliz. in Cafe of Marriot v. Mascal.

15. H. 8. translated the Abbott and Prior of Norwich by his Letters Patents, and created them by the Name of Dean and Chapter, who surrendered their Possessions to Ed. 6. and afterwards Ed. 6. incorporated them by the Name of Canons & Capitul in Ex Fundatione Ed. 6. And afterwards he granted their Possessions to them by the Name of Dean and Chapter, Super indivisit Trinitat' Norf omittit these Words (ex Fundatione Ed. 6.) It was adjudged in this Case. 11th. That all Translations made by H. 8. of Prior and Covent, unto Dean and Chapters, were good by the Statute of 25 H. 8. 2dly, Refolv'd, that by the surrender made to Ed. 6. the Corporation of Dean and Chapter was not gone; for although they departed with their Possessions, yet for Necessity the Corporation did remain, for their Affittance of the Bishop. 3dly, Admitting their ancient Corporation was surrendered, and the new Corporation made by Ed. 6. was good, and that the Words omitted, viz. Ex Fundatione Ed. 6. were material, yet the Grant made to them was good, notwithstanding this Misnomer, by the Statute of 1 Ed. 6. cap. 8. of Confirmations. Hughes's Abr. 967. pl. 1. tic. Founder and Foundation cites 3 Rep. 74. [Mich. 40 & 41 Eliz.] Norwich Dean and Chapter's Cafe.

16. If a Prior and Covent be translated concurrentibus iis quae in Jure requiruntur an Abbott and Covent, or to a Dean and Chapter, thefe tho' the Name be changed, yet the Body was never dissolv'd, but in Efect it remaineth still. Co. Litt. 102 b.

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18. If a Corporation, that hath been by Prescription, accepts a new Charter, wherein some Alteration is of that Name, and likewise of the Method in the governing Part, yet their Power to remove, and other Franchises which they had Time out of Mind, do continue, per Cur. 1 Vent. 355. Trin. 33 Car. 2. B. R. in Haddock’s Cafe.

19. A Corporation may be dissolved; For it is created upon a Trust, and if that be broken it is forfeited, but a Judgment of Seifre cannot be proper in such a Cafe; for it it be dissolved, to what Purpofe should it befeis’d? Per Cur. 4 Mod. 58. Mich. 3 W. & M. in B. R. in Sir James Smith’s Cafe.

20. If a Corporation may be feied Nonine Distriptionis, or otherwise, it is dissolved; for when it is merged in the Crown the King may make a new one, but cannot restore the old; a Corporation is something besides Franchises, for it is a Capacity to hold as a natural Body, and this the King may cause to be in Actu Exercitio, yet it may be Actus Signatus. Neither does a Seifre of Office dissolve one; for on making a Corporation, the King may reserve the naming of Officers to himself, and suspend it for a Time, per Eyre J. 12 Mod. 18. Hill. 3 & 4 W. & M. in Cafe of the King v. the Mayor of London.

21. It was a Quarter, whether a Corporation could be dissolved, but sure it may; it is such a Franchise as may be forfeited; but a Judgment of Seifre is no proper Judgment to dissolve a Corporation; per Holt Ch. J. 12 Mod. 18. Hill. 3 W. & M. in Cafe of the King v. the Mayor of London.

22. By a Surrender of Liberties and Privileges the Corporation is not dissolved; per Holt Ch. J. 12 Mod. 19. cites 3 Rep. Dean and Chapter of Norwich’s Cafe, and Jo. 166.

23. Agreed, if a Corporation were made to a particular Purpofe and Show 280. they undeit themselves of all Right, so that they cannot answer the End of their Infiulation, it is thereby dissolved; As in the Cafe of a private Corporation for Charity, before the restraining Statute; but if the End of a Corporation remain’d, as in a Borough, to make By-Laws and &c. P. by govern it, the Corporation remains still, and the making of By-Laws is no Franchise, but part of the Constitution; per Holt Ch. J. 12 Mod. 19. Hill. 3 & 4 W. & M. in Sir J. Smith’s Cafe.

24. A Body Politick, to which a Trust is annexed, and Male Adminiftration of it is Caufe of Forfeiture, and it may be dissolved; and for this was cited the Statute of Quo Warranto, whereif the Corporation does not appear upon Summons, the Franchise shall be feied into the King’s Hands Nonine Distriptionis, and if it does not come during the Eyre it was lost for ever. Skin. 310. Hill. 3 W. & M. B. R. The King v. the City of London.

25. By Parker Ch. J. if a Mayor is not chosen at the Time prescribed by the Charter and there is no Provision in the Charter for the Old Mayor’s continuing on until a New Mayor is chosen, in, the Corporation is dissolved, and confequently cannot proceed to a new Election; Indeed some are of Opinion, that this may be cured, by the influing out of a Writ under the Great Seal impowering them to proceed to a new Election; but others are of Opinion, that even this will not do, and that there is no other Remedy but to obtain a new Charter from the Crown; But no Body ever thought, that in such a Cafe, the Quondam Corporation could revive itself by chufing a new Head, without such a Writ under the Great Seal. 10 Mod. 346. Mich. 3 Geo. I. B. R. Corporation of Banbury’s Cafe.

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26. The Question was, whether by Surrender of a Charter the Corporation was wholly dissolv'd, and the very Being of it destroy'd? 3 of the Judges held, that it was not, and compared it to the surrender of a Deed, that the Estate was not thereby surrendered, therefore the Corporation was still subsisting, and had a Capacity to take, and by the Charter of King William did retake, and it would be very inconvenient if it should be otherwise; that is if they could give up more by a Surrender than they can take by a Regrant. In the great Case of the City of London, several learned Men were of Opinion, that a Surrender did not destroy the Being of a Corporation; this appears by the Surrender of Abbeys in the Reign of H. 8. for it was not thought proper at that time to rett purely on these Surrenders, but to have them confirmed by Act of Parliament. One of the Judges held, that tho' barely by the Surrender of this Charter, the Corporation was not dissolved, yet there were other Words in it, by which they gave up all the Liberties and Privileges which they then enjoyed, by which Words the very Being of this Corporation was dissolved; but this being a Case of great Weight, it was adjourned farther to be argued. '8 Mod.' 361, 362. Paftch. 11 Geo. The King v. Grey.


1. N O T E, by Keeling J. that several of the ancient Statutes that were made for private Cities, have only a Memorandum upon the Roll, viz. that all Customs &c. are confirmed, and the Parties have this exemplified, with express Mention of the particular Customs, and in particular some of the ancient Statutes which confirmed the Customs of London are so, and that the Customs reasonable or unreasonable, when they are so confirmed they are good, and he said he had viewed Rolls to be so. Sid. 251. Paftch. 17 Car. 2. B. R. in Case of Wilkinton v. Bolton.

(I. 3) Of taking or refusing a New Charter, and the Effects thereof.

S. C. cited Mo. 5th. as held in the Exchequer-Chamber by Portington, in the Abbey of St. Bartholo- mew's Case that the Sheriff's shall hold the Liberties which were given to the Bailiffs, and cites 21 F. 4. 55; the
Cafe of Norwich, in which it was held, that all Grants made Inhabitants in Probis Homnibus and Civibus shall be enjoy'd by the Corporation of the same Place, when they are afterwards incorporated by the Name of the Mayor and Commonalty, or otherwise; And cited allo D. 279 5, pl. 10. Mich. 10 & 11 Eliz. where thou of York preferibid as Mayor, Bayliffs, and Citizens to take and sell as forfeited Goods there foreign bought, and foreign sold till R. 2, at which Time they were incorporated by the Name of Mayor, Sheriffs, and Citizens, and then they claim'd this Custom as Mayor, Bayliffs, and Citizens, and held good; And the whole Court and Coke Attorney agreed, that in the last Name of Corporation all shall be enjoy'd, which was gained by Prescription or Grant in the precedent Name.

2. The Corporation of the Bayliffs and Commonalty of Dale have the Land and Franchises; the King changes their Name, and they are incorporated by the Name of the Mayor, Bayliffs, and Commonalty of Dale; The Land and the Franchises which they have, remain with this new Corporation, for the new Patent of Incorporation recites their former Names, and changes it as above; and this new Corporation continues composed of the same Perfons and Place, which constituted the old one. Jenk. 99. pl. 94.


* S. P. and fo of the Method of the governing Part, yet their Power to remove, and other Franchises which they had Time out of Mind &c. do continue. Ven. 555. Haddock's Cafe. — It was agreed, that where a Corporation is by Name of Commonalty, and after by another Grant they have Bayliffs, yet by this Change they shall not be discharged of Covenants, Annuities &c. to which they were bound before, and by the same Reason it seems that they shall retain the Lands and Possessions which they had before. Br. Corporations, pl. 3. cites 2 H. 6. 9.

4. If a Patent of certain Lands are made to J. S. and J. S. is afterwards confirmed by the Bishop by the Name of T. S. notwithstanding this Change of his Name the Land remains with T. S. But it after the Confirmation, a Patent had been made to J. S. it had been void; for Confirmation by the Bishop is as 2d Baptism, and changes the Name; So in the principal Cafe, if after a new Corporation a Patent had been made to them by the Name of their old Corporation; such Patent had been void. Every one is bound to know his own Name, and not the Name of another. Jenk. 100. pl. 94.

5. A Prior and Covent had been of ancient Time; the King after Time of Memory, by the Licence of the Pope and the Ordinary, had translated the Priory into a Deantry and Chapter of Men secular, and granted that they should be impleaded, and might implead by such Name &c. It was held, that such new Corporation might sue for the Annuity which the Prior and his Covent had by Prescription from Time &c. Thel. Dig. 20. Lib. 1. cap. 22. S. 23. cites 39 H. 6. 13, 14. and fays sec 56 E. 3. 27.

6. If a Man recovers against a Vicar an Annuity, and before Execution the Vicarage is united to the Parsonage, yet the Plaintiff shall have Execution against the Parson. Br. Corporations, pl. 51. cites 20 E. 4. 6.

6. It was held by Brian, that if the Bailiffs and Commonalty of London had granted an Annuity, and after they had had Mayor and Sheriffs by Grant of the King, the Grantee might have Action against them by their new Name. Thel. Dig. 20. Lib. 1. cap. 22. S. 24. cites Trin. 20 E. 4. 6. and fays See 21 E. 4. 59 the saying of Choke.

7. But it is a Doubt in such Cafe, how a Man ought to sue Seire Facias against the new Corporation out of a Recovery had against the old Corporation, as appears 2 H. 6. 9. in the Cafe of the Commonalty of Shrewsbury. Thel. Dig. 20. Lib. 1. cap. 22. S. 24.

8. Where the Bailiffs of L. grant an Annuity to me, and after are made Mayor and Sheriffs, I may have Action of this against the new Corporation. Br. Corporations, pl. 51. cites 20 Ed. 4. 6.

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10. It was adjudged, where one Corporation is duly united and annexed to another Corporation, that the Corporation to which the union is made shall have action upon cause of action accrued of a thing which was of the possession or right of the other Corporation. Thel. Dig. 20. Lib. 1. cap. 22. S. 27. cites 11 H. 7. 8. & 26. And that to agrees Trin. 50 E. 3. 27.

11. If a Corporation grants the office of Town Clerk, or Recorder, and after surrender their Patent, and takes a new one by a new name, all the offices are determin'd. Hutt. 87. Hill. 2 Car. in Sir Charles Howard's Cafe.

12. Debt was due to an old Corporation, and they were incorporated by a new name and brought action in their new name, and recovered. 3 Lev. 237. Mich. 1 Jac. 2. C. B. Mayor Cafe of Scarborough v. Butler.

13. Where a Corporation takes a new Charter concerning ancient liberties, they may use it either by way of grant of or confirmation; Per Holt Ch. J. and Eyre J. Cumb. 316. Hill. 6 W. 3. B. R. in Cafe of the King v. Larwood.

14. If a Corporation refuses a new Charter, it is then void; But when they accept, and put it in execution, then it is good; Per Holt Ch. J. Cumb. 316. Hill. 6 W. 3. B. R. in Cafe of the King v. Larwood.

15. Plaintiff brought Cafe for a false return to a mandamus, commanding him to swear Harris to be Mayor of Dartmouth, and a peremptory mandamus moved for. It was resolved by the Court, that if there be an old Charter surrendered, but surrender not enrolled, and a new Charter in consideration of the surrender granted, that the second Charter is void, because they act under a void Charter; But otherwise if it be the same Members in the old Charter, because then they act by their first Charter, which is still good. So, if in the first Cafe, they had given a Bond, and put the Seal of the new Corporation to it, it would be void, as was adjudged in the Cafe of Bath and Wells; But if the Members of the old Charter had gone to Election, and some by colour of the new Charter had voted with them against their Will, there a choice by majority of the old Charter, with some mention'd in the new, is good. 12 Mod. 247. Mich. 10 W. 3. Bull v. Palmer.

16. Where those that were Members under an old Charter happen to be the only acting Persons in a matter relating to the Corporation, they shall be deemed to act by virtue of the ancient and true rights, but if confusingmix'd with others that were only Members under the new Charter tho' the old Members were the majority, yet then must be taken to act by virtue of the new Charter, and then what they did was void. 1 Sal. 191. pl. 1. Trin. 11 W. 3. B. R. Refolv'd in Cafe of Butler v. Palmer.

17. Where the new Charter alters the Constitution of the Corporation, and new models it, there they shall lose their old name; otherwise, if the Constitution as to all the integral parts of it remains the same, tho' the new Charter gives them a new name, the old one remains; for the purpose if the Mayor be added, or a Mayor and Aldermen, or an Abbot or Covert, a Dean and Chapter, there they lose their old Name, because new integral parts of the Corporation are added; But if the Inhabitants of G. were incorporated by the name of Bailiffs, Burgesses, and Commonalty of G. and then a new Charter is granted to them, that they shall be called by the name of Bailiffs, Burgesses,
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gentlemen, and Commonalty of G. yet they may use the first Name, because the Town is the same, and the old Constitution remains; Per Holt Ch. J. 2 Ld. Raym. Rep. 1239. Hill. 4 Ann. in Cae of the Queen v. Ipswich Bailiffs &c.


1. In Writ of Covenant the Case was, that the Commonalty of S. made Composition with the Abbot of W. and after they by another Grant had Bailiffs, and by the best Opinion now the Suit shall be against the Bailiffs and Commonalty, and not against the Commonalty only according to their Specialty, for by Matter Ex post facto a Man may vary from his Specialty. Br. Varience, pl. 1. cites 2 H. 6. 9.

2. A Prior and his Predecessors had been seised of an Annuity Time out of Mind, and by Licence of the King, the Pope, and the Ordinary, translated it into Dean and Chapter, and the Dean and Chapter breathed Annuity, and preferred in him and his Predecessors, and did not say Deans of the same Place; the Defendant knew the Translation within Time of Memory, Abique hoc that the Dean and Chapter and his Predecessors Deans there have been seised Modo and Forma &c. and after the special Matter was entered in the Roll with the Traverse, except these Words, then Dean &c. [which] were omitted by Award of the Court; And per Prifon, the Defendant may traverse the Prescriptive generally, and give the special Matter in Evidence, and demur upon the Translation given in Evidence by the Plaintiff, or plead the special Matter by Entemple by the Record of the Translation, and demur in Law upon the other, upon this Matter, and to see that it is doubted here, if they may prescribe in this Form by the Seifin of the Prior &c. Br. Presciption, pl. 42. cites 39 H. 6. 13. — But see thereof 22 E. 4. 49. 44 and the Form of that Prescription 7 E. 4. 32. & 20 E. 4. 6. Ibid.

3. Where a Prior is made Abbot, and the Corporation chang'd from a Prior into an Abbot, it was touch'd, that it such Abbot will prescribe in Right of the House, he ought to shew that the Prior and his Predecessors Time out of Mind &c. and that after he was professe'd an Abbot, and that after the Abbot and his Sucessors &c. have been seised &c. Br. Presciption, pl. 70. cites 7 E. 4. 32.

(K) What Things a Corporation may do without Deed.

1. A Corporation aggregate cannot without Deed command their Cro. E. 815. Bailiff to enter into certain Lands of their Lease for Years for Pl. 9. S.C. a Condition broke; for such Command without Deed is bad. P. 4 Rep. 43 El. B. R. between Dumpee and Sims adjudged. Observe S. P. — Vent. 48. Arg. cites S. C.

2. Covenant
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2. Covenant was brought by the Mayor and Commonalty of N. against the Mayor and Commonalty of D. and counted, that the Defendants by their Deed had covenanted that the Plaintiffs should be quit of Murage, Portage, Custom, and Toll in D. of all things in N. and that they of N. had taken Toll by certain of their Burgesse of certain of the Burgesse of N. wrongfully &c. And there adjudg'd, that the Taking of the * Common Servant is the Taking of the Corporation, and fo the Covenant broken; Quod nota; and it is not mention'd of their the Servant was Servant by Specialty under the Common Seal of the Corporation, or not. Br. Corporations, pl. 14. cites 48 E. 3. 17.

3. Mayor and Commonalty cannot disfess another unless the Use of themselves; contra it seems if one enters for them by Authority in Writing under their Common Seal, where their Entry is not lawful. Br. Corporations, pl. 24. cites 8 H. 6. 1. 14.


5. Per Littleton, the Opinion of all the Justices of both Benches is, that Assignment of Auditors by Corporations is good without Deed. Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.


8. Lease of Land by an Abbot for Years is not void by his Death, but voidable only, because it may be leased without Deed, and by Receipt of the Rent by the Successor the Lease is good; But if Abbot grants a Villan, or Rent, or the like, which pays not by Deed, and dies, there by Death of the Abbot the Grant is void. Br. Leases pl. 41. cites 21 E. 4. 9. 5, 6.

9. Trefpafs by the Master and Chaplains of B. of a House and Clofe broken in London; the Defendant pleaded Licence of the Parties to come into the House to talk with them, and Pigot demurred in Law, because the Licence was by Parol, and not pleaded by Deed, and therefore ill; for a Licence by a Corporation &c. shall be by Writing. Br. Licences &c. pl. 16. cites 21 E. 4. 15. 19.

10. Dean and Chapter may retain and assign Bailiff, Receiver, or other Servant, without Writing, per Townend Justice; but Brian Ch. J. contra, and that he cannot be Servant without Writing, nor demand his Salary without Writing. Br. Corporation, pl. 47. cites 4 H. 7. 6.

11. But they may charge a Man for his Occupation without Deed, as Guardian in Socage, Bailiff of the King, and Receiver of his own Head &c. per Brian Ch. J. and he was Precife, and Adjoiner. Br. Ibid.


13. A Servant may justify by Command of a Body Politick without having Deed of the Commandment, per Townend; but Brian contra, and that they can do nothing without Writing. Br. Corporations, pl. 49. cites 4 H. 7. 17.

14. They cannot make themselves Diffeators by their Assent without

15. In
Corporations.

15. In Trespa's the Defendant said, that it was the Franktenement of the President and Scholars of C. and he was servant to them, and by their Command entered &c. and per Keeble, he cannot be retained with a Corporation without Specialty, nor make a Service without Specialty. Br. Corporations, pl. 50. cites 7 H. 7. 9.

16. But of petit Things there needs no Writing, as to light a Candle, But for or make Hay, or Fire, nor to put Beasts out of his Land, per Wood; Oxenbridge contra, for these Things belong to a Servant to do without Command, but Entry &c. ought to be by Deed; And Fairtax accordingly of the petit Things, but that Corporation cannot have a Servant may ap- but by Deed; And Tremail agreed with Wood of the petit Things, point a Serv- but severall contra of the petit Things aforefaid, by Reason of the Ufe, our Deed, and of the great Trouble which shall be to the contrary, but not by the Law, therefore quære. Br. ibid.


17. One cannot appear in Affile as Bailiff to a Corporation without Deed. Vent. 48. Arg. cites 12 H. 7. 27.

18. Command of the Mayor to enter into Land for the Corporation is good without Writing, contra of Command of the Commonalty, Chapter &c. contra it seems of the Command of the Mayor and Commonalty. Br. Corporations, pl. 96. cites 16 H. 7. 2.


20. But they may make Attorney in Court of Record without other Writing than the Record; for Record is a strong Writing. Br. Corporations, pl. 83. cites 13 H. 8. 12.

21. So to certify their Mayor in the Exchequer; for this is enter'd of Record, and so is the Ufe for London at this Day. Br. Corporations, pl. 83. cites 13 H. 8. 12.

22. A Corporation cannot do a Test but by their Writing under their Common Seal; Per Fitzjames Justice. Br. Corporation, pl. 34. cites 14 H. 8. 2. 29.

23. All Acts which a Corporation does shall be by their Name of Corporation, and by Writing, and otherwise ill; and yet by two Justices they may Presant, and the Pleading is good, without saying that the Presentment was by Writing, for the Law implies it; But two others contra. Br. Corporations, pl. 34. cites 14 H. 5. 2. 29.

24. The Election of Dean, Master, &c. and the making of their Attorney, which are of Record, are good without their Writing under Common Seal; but in Feoffment to the Dean and Chapter they cannot take but by Letter of Attorney under Seal; per Brook Justice. Br. Corporations, pl. 34. cites 14 H. 8. 2. 29.

25. Note, per Cur. that he who drinras as Bailiff of a Corporation, and is not Bailiff, may make Conuance &c. if they agree to it, and good without Deed; And the Case was, that one of the Corporation drinrain'd in Right of the Corporation, and had not their Deed; Nota. Br. Corporation, pl. 2. cites 26 H. 8. 18.

26. Though the Law is, that a Bailiff may justify in Trespas as Bailiff to a Corporation without a Deed, yet it is not like to a Bailiff in an Affile; and it was said, that a Bailiff of a Manor shall not have Debt for his Sal- lary against a Corporation without a Deed. Plowd. 91. b. Trin. 3 Mar. Arg. in Affile of Freth-Force brought in London by Pannel v. Moore.

27. If the Sheriff makes his Warrant to a Corporation who have return of Writs, to arrest a Person, they may make a Bailiff without Writing by Parol
Corporations.

33. Eliz. Vaviloff's Cafe.

28. A. feized of Land granted 40 l. Rent to a College. A. sealed his Part of the Indenture, and delivered it to one J. S. to the Use of the Master and Fellows, and for him to deliver it accordingly, but there was no Deed to shew their Receipt of it, and then they seal'd the other Part, but made no Attorney to deliver it; Adjudged good without a Letter of Attorney, for their sealing the Counter-Part is a sufficient Agreement to the Grant. Ow. 143. Trin. 40 Eliz. Goodrick v. Cooper.

29. If a Reversion is granted to a Corporation by Deed, though they cannot accept of this but by Attorney, yet if they bring Waife it is a sufficient Agreement to vest it in them; Per Walnyn. Ow. 143. Trin. 40 Eliz. C. B. in the Cafe of Goodrick v. Cooper.

30. A Corporation aggregate of many cannot make a Lease for Years without Deed, in respect of the Quality of the Incorporation, but the Leafee may align it over without Deed. Co. Litt. 85. a.

31. A Man may enfoff an Abbott, a Bishop, a Parfon &c. or any other sole Body Politick, by Deed, or without Deed, in Free-Alms; but if Lands be given to a Dean and Chapter, or any other Corporation aggregate of many, there the Gift must be by Deed. Co. Litt. 94. b.

S. C. cited


32. Where a Corporation has an Estate pur ater Vie, if they attorn to the Revivomer, it must be by Deed; For though the Grantee does not claim in by thofe that attorn, and that an Attornment is no more than Conlent, yet in Pleading the Deed of Attornment ought to be fhewn; For in such Cafe a Deed is requisite Ex institutede Legis; But when a Deed is requisite Ex Proviiione Honinis, there the Provision of Man shall not change the Judgment of Law in such Cafe. 6 Rep. 38. b. Pach. 3 Jac. C. B. in Bellamy's Cafe.

33. Church-Wardens were incorporated by Act of Parliament, and afterwards the Queen demized a Reversion to them for 21 Years, and afterwards by LettersPatents, reviving the first Grant, and that the Church-Wardens Modi habentes & ad praefens poftidentes had surrendered all their Estate for Years &c. the in Confideration of the said Surrender, and for a fine of 20 l. &c. demided the said Rectory to them for 50 Years. It was ad-judged, that there need not be any actual Surrender of the first Leafe, because the Words in the Fecond Leafe, (viz.) Modi habentes & ad praefens poftidentes import that they were then poftident of the first Leafe, and their Acceptance of the new Leafe for 50 Years was, in Judgment of Law, a Surrender of the first Leafe for 21 Years, and shall precede it, and that a Corporation may make a Surrender of their Term by an Act in Law, without Writing, though not an express Surrender without Writing. And the Reporter adds, that he had seen several other Letters Patents made on the like Confideration of a Surrender, with the Words (Modo habens & poftidentes) in none of which there was ever any actual Surrender made. 10 Rep. 66. b. Trin. 11 Jac. in Seacc. Church-Wardens of St. Saviour's Cafe.

34. Trefpafs for carrying away divers Leads of Wheat; The Defendant justified under the Dean and Chapter of N. that they were feized in Fee of Reversion of H. wherein the said Corn was growing, and sever'd from the 9 Parts, which he took by their Command. The Plaintiff replies, that the Dean &c. were feized of the said Rectory to G. for 99 Years, which by mean Allignements came to the Plaintiff. The Defendant re-join'd, that one of the Meine Allignees by Feoffment convey'd the said Rectory to one W. W. whereupon the Dean &c. entred into the said Rectory as a Forfeiture, and that the Corn being sever'd and set out for Tithes, he took them by Command of the said Dean &c. Exception was taken, because he pleaded an Entry after the Forfeiture, and did not shew a Deed of Command to enter, Sed non allocatur; For it is not plead-
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35. In Trepass for taking away a Ship, the Defendant justified under A Corporate
the Patent, whereby the Company is incorporated, that now but such
and such found trade thither, on Pain of forfeiting their Ships and Goods,
&c. and said, that the Defendant did trade thither. Plaintiff demurr'd,
because he did not know the Deed whereby the Company was authorize'd to
feize the Goods. Twiliden thought they could not feize without Deed,
but any more than they could enter for Condition broken without Deed; but
adjournat to be argued whether this was a Monopoly or not. Mod.

36. In Debt on a Lease for Tithes, rendering 50 l. a Year, the Defen.
dant pleaded, that before any of the Rent entered'd he assign'd over the said
Lease and Tithes, of which the Plaintiff had Notice, and did receive the
Rent before due from the Assignee. It was infil'd, that this Acceptance
shall not bind the Corporation, because they can do nothing but by but gave
Attorney or Bailiff made under their Common Seal, and cannot by Judgment
themselves take Notice of this Assignment. Twiliden J. said, that this
Point was resolv'd in Magdalen College's Cafe, 11 Rep. 79. a. to be a
void Acceptance. Adjudicat. Raym. 194, 195. Mich. 22 Car. 2. B. R. for the In-
definability. Windfor (Dean and Chapter) v. Gover [als. Gower.]

37. Coincidence, as Bailiff of a Corporation, without being a Precept in S. C. cited
Writing, was adjus'd good. 3 Lev. 107. Mich. 34 Car. 2. C. B. Manby
v. Long.

38. In Ejectment, the Plaintiff declared on a Demise made by a Corpo-
ration, but did not set forth that it was by Deed, or under the Seal of
the Corporation, and upon Not Guilty the Plaintiff had a Verdict, and
Judgment, and this was alleged for Error; But Judgment was affir-
med, for Declarations in Ejectment are grounded now on Petitions only,
so that in such Case the Law is altered from what it was formerly.

39. Where a Corporation has a Head (as a Mayor) he may command A Corpora-

ion aggregate, which has no Head, to give their Authority under the Seal of the Corporation. 2 Luw.

our Deed or Warrant, as well as a Gak or Butler; for it neither refers nor directs any fort of Interest in
or out of the Corporation. 1 Salk. 191. cites it as so held between Cary and Matthews in Can. Scacc.

40. Though
Corporations.

40. Though a Corporation cannot do an Act in Pari without their Common Seal, yet they may do no Act upon Record, because they are stopped by the Record to say it is not their Act. 1 Salk. 192. pl. 4. Hill. 1 Ann. B. R. The Mayor of Thetford’s Cafe.

41. A Corporation made a Contract for letting the Market at Bridport in Dorset, tho’ not in Writing, being from Year to Year, and held to be good. At Dorchester Assizes 1749. Coram King Ch. J.

(K. 2) Of Executing Deeds by a Corporation.

1. If Abbot and Covent make a Deed, and do not deliver it but by Attorney, this Attorney ought to have Letter of Attorney of them to deliver it; Per Choke and Jenny. Br. Corporations, pl. 72. cites 9 E. 4. 39.

2. Corporation may make a Deed out of their House, for all may come out to another Place &c. but if it be dated in the Chapter House it cannot be [delivered] in another Place. Br. Corporations, pl. 72. cites 9 Ed. 4. 39.

3. The Abbot and Covent may make a Deed in another County than where the Abbey is, and this by the best Opinion of the Court. Br. Lief, pl. 63. cites 21 E. 4. 26.

4. Dean and Chapter made a Lease, rendring Rents, and for Default of Payment to re-enter. The Rent was not paid, whereupon they made a Lease to the Plaintiff, and in their Chapter-House put their Seal to it, and made a Letter of Attorney to J. S. enter, and deliver the Deed upon the Land. It was objected, that the 2d Lease not good, because the Dean and Chapter let it in the Chapter-House by putting their Seal to it, which made it a perfect Deed, and so there could be no other Delivery; and therefore the first Letter containing in Possession, and they out of Possession the Lease was void, and the Delivery by the Attorney, it having a former Delivery, is void; sed non allocatur; For there is no other Means for a Corporation to make a Lease but this. Cro. E. 197. pl. 3. Hill. 32 Eliz. B. R. Willis v. Jermin.

5. If a Person pretending to be Mayor of a Corporation, puts the Corporation Seal to a Deed, yet it is not by that the Deed of the Corporation; Per Holt Ch. J. 12 Mod. 423. Mich. 12 W. 3.
Corporations.

(K. 3) What Actions or Remedy the Successor shall have for Things done in the Time of his Predecessor &c.

1. If a Distraint be made to a Dean, or an erroneous Judgment, or false Oath, and he dies, his Successor shall not have Affises of Novel Distraint, but a Writ of Entry for Distraint in the Quibus, or a Writ of Error, or Attaint, and name him, because he was not Party to the Judgment. D 86. b. pl. 97. Patch. 7 E. 6. in the New Serjeant's Cafe. Alias, Bristol (Dean and Chapter) v. Clerk.

2. But where the Dean is sealed in Common with the Chapter, that tho' he dies, yet his Successor, and the Chapter together, shall have Affises of Novel Distraint, or Error, or Attaint, without naming the Name of the Dean in certain, because the Dean does not die, but continues for ever. Ibid.

3. An Abbot may have a Writ of Quod permitatur of a Distraint made to his Predecessor, and shall make Mention of the Distraint in his Writ. F. N. B. 123 (H) And so may a Parson. F. N. B. 123. (L)

4. When a Dean, Bishop, Prebendary, Abbot, Prior, Master of an Hospitall, alien the Lands which they have in Right of their House &c. without the Affent &c. the Successor may have a Writ De fine absenis Captali, and it may be in the Per, Cai or Post. F. N. B. 194 (L) a Prebendary may have a Juris Utrum. F. N. B. 194. (M)

5. A Master of an Hospitall may have Trespass for Goods taken away in the Time of his Predecessors. F. N. B. 89. (G.)

lie in such a Cafe by the Common Lawe, but not Trespass till the Statute of Marlebridge. Br. Rempirale, pl. 2. cites 9 H. 6. 25.

6. If a Man distraint a Corporation, and levies a Fine, and 5 Years pass, the Statute of the 4 H. 7. doth extend to them, if they are such Corporations as have of themselves an absolute Estate and Authority, as Mayor and Commonalty, Deans and Chapters, Colleges, and such like; for as they have a Power to take Lands and Tenements, so they ought to have Care to defend them, and they and their Successors ought to make their Entry and their Claims to avoid Fines, as other Persons and their Heirs ought to do; but if a Bishop, Dean, Parson, Vicar, or Prebendary, or such like, do not make their Entry or Claim, or bring their Actions to avoid the Fine within 5 Years, but are remifs through all this Time, yet their Successors shall not be bound for ever, in anmuch as they have no absolute Estate or Authority in their Possessions; for the Bishop and Dean, cannot do Things to bind their Possessions without having the Affent of the Dean, and Chapter, and the Parson, Vicar, and others &c. without the Affent of the Patron and Ordinary, who have an Interest and Part in the Matter, and though every Successor shall have 5 Years to make his Claim or Entry, yet every one who suffers the 5 Years to pass shall be bound during his Time, but though he is bound, his Successor shall have other 5 Years to make his Entry or Claim, or bring his Action. Plow. Com. 538. a. b. Trin 20 Eliz. Crot v. Howell.
What Things shall go in Succession.


If a Lease for Years he made to a Bishop and his Successors, and the Bishop dies, this shall not go to his Successors, but to his Executors. Co. Lit. 46. b.

If a Master of an House that hath a Covent and Common Seal recovers in an Annuity, and after Arrearages incur, and after he dies, the Successor-Master shall have the Arrearages, and not the Executor of the Predecessor, because the Predecessor could not make a Testament. 19 H. 6. 44. b. adjudged.

If a Parson recover a Mortality, and after Arrearages incur, and after the Parson dies, the Executor of the Parson shall have the Arrearages, and not the Successor, because he could make a Testament. 19 H. 6. 44. b.

The Patent confirmed by Act of Parliament is, that Offenders in practiong Phylik in London without Admission by the College of Physicians, shall forfeit 51. for every South, until Diminution Rest; an alteration Diminution dicto President and Colleges; if it Pro- bation of the College recover in Debt against an Offender, and dies, the Successor shall have a Scire Factorum to execute it, and not the Executor, for the Predecessor recovered it as due to him and the College. 12 H. 2. R. between Atkins and Gardiner adjudged.

6. The Ornaments of the Chapel of a preceding Bishop belong to the succeeding Bishop, tho’ other Chattels in Case of a sole Corporation do belong to the Executors of the Party deceased, and shall not go in Succession; Per Coke Ch. J. 12 Rep. 105. cites 21 E. 4. 48.

7. A Man was oblig’d to a Dean in 20 l. solvendo cedens Deane & Successoribus suis; the Dean died; Shelley held that the Successor shall have it, for the Dean has a Corporation to him and his Successors, as well as to him and his Heirs or Executors; Sc of a Bishop, Aboor, or Prior,
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if the Successors are named in the Obligation his Executors shall not action was have it; Contra of a Mayor, or the Guardians of a Church, and their made to the Successors; Baldwin held, the Payment to the Dean and Successors was void, because the Obligation was to the Dean only. D. 48. a. pl. Wells and his Successors, and ad-
judged, that the Successors cannot have Action of Debt thereupon; But they agreed, that the Successor might have Covenant upon a Lease for Years, which is in the Realty. The Doubt was, be- cause after the Death of such Person who is a Corporation single, the Obligation is due to no Body, and so suspended, & Actio Peronalis once suspended mortis æt. But Nulla Regula, quin fallit.

8. When a Bishop makes an Estate, Lease, Grant of a Rent-Charge, Warranty, or any other Act which may tend to the Diminution of the Revenues of the Bishop &c. which should maintain the Successor, the De- privation or Translation of the Bishop is all one with his Death; But where the Bishop is Patron and Ordinary, and confirneth a Lease made by the Patron without the Dean and Chapter, and after the Patron dies, and the Bishop collates another, and then is translated, yet his Confirmation remains good, for the Revenues that are to maintain the Successor are not thereby diminished; The like Diversity holds in Case of Resigna-

9. The ancient jewels of the Crown are Heir Looms, and shall de-
ferred to the next Successor, and are not devitable by Testament. Co. Litt. 18. b.

The King cannot dis-
pose of them by Testa-
ment, but be

may give them by Letters Patents; Per Berkeley and Jones. Cro. C. 544. pl. 8. Hill. 9 Car.

B. R.

(M) Election and Amotion of Officers, Members &c.

At what Time; And How.

1. Memorandum, that at the Parliament held by Adjournment H. 38. H. 8. it was admitted by Writ of the King, and so ac-
cepted, that if one Burgess be made Mayor of a Vill, that has judicial jurisdic-
tion, and another is Sick, that those are sufficient Causes to elect new ones, by which they did so by Writ of the King out of Chan-
cery, comprehending this Matter which was admitted, and accepted in Communi Domo Parliamendi. Br. Parliament, pl. 7. cites 38 H. 8.

2. Where a City, Borough, or Vill is incorporated by Charters, some by one Name, and some by another, and it is directed in the Charter that the Mayor, Bailiffs, Aldermen &c. shall be chosen by the Commonalty or Burgesses, there being in every Charter a Power to make Laws, Ordinances, and Constitutions for the better Govern-
ment of the Cities &c. they may by their common Consent ordain that the Mayor or Bailiffs, or other Principal Officers, shall be chosen by a certain fixed Number of the Principal of the Burgesses, or of the Commonal-
fy, and prescribe also how such a fixed Number shall be chosen; And tho' in some Corporations such Constitutions can't be known or found, where the Election of Electing hath been in a particular Number, yet it shall be presumed that there were such anciently. 4 Rep. 77. b. 78. Mich. 40 & 41 Eliz. The Cafe of Corporations.

3. Upon a Quo Warranto against the Town of Liskardy in Car. 2d. s. Time, they surrendered their Charter, which was not enjoined till King James
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James the 2d, who in Consideration of the Surrender, granted a new Charter to them. It was held per Cur. that the second Charter being in Consideration of a void Surrender, was also Void and where by the Charter surrendered *none could be Mayor*, if he were not a Capital Burgess, and one was made a Capital Burgess by the Charter of King James, and after made Mayor according to the old Charter. Question was started, whether he were a legal Mayor? Holt and Cur. said, you should first have moved him from being a Capital Burgess, for if we find one in actual Possession of an Office, we shall intend him to be rightful Officer till the contrary appears; As if Mere Laicus be preterfed &c. to a Benefice; we shall take him for a Clerk till first steps be annulled. 12 Mod. 253. Mich. 10 W. 3. Piper v. Dennis.

4. Note, by their Charter they are Supernumer to proceed to an Election on such Day; and per Holt and Turton, if they do not chuse on that Day, they cannot do it the next Day; for they must pursue their Patent, and that gives Power only for one Day, and tho' the Mayor be sick, so as he cannot officiate that Day, there is no Remedy; and Turton said, that in such a Case they were forced to Petition, in Case of Corporation of Norwich; and they said, they had known a Quo Warranto go against the Mayor for *staying at another Day*; But Wright, then King's Serjeant, and since Lord Keeper, was strong against this Opinion. 12 Mod. 308. Mich. 11 W. 3. in Case of The King v. Borough of Abingdon.

5. At an Election of Mayor an unqualify'd Person has the most Votes; afterwards they proceed to a new Election, and a third Person, who is qualidy'd, has the Majority; this third Person is the Mayor duly elected, and not he that had most Votes next to the unqualify'd Person. 8 Mod. 37 Hill. 7 Geo. 1. The King v. the Mayor of Bedford.

6. Where the Election is to be by 26 Burgesses, and a Burgess is unqualify'd, the Election is void. Arg. 8 Mod. 36. Hill. 7 Geo. the King v. the Mayor of Bedford.

7. Where by the Charter of Incorporation the Election is to be on a certain Day, it *cannot be made at a Day after in that Year, unless upon the Death or Removal of the Mayor in being*; For if they should elect on any other Day, it is not Secundum Authoritatem given by the Charter; and there can be no Inconvenience if they should stay till another Day appointed by the Charter for them to chuse a new Mayor; because (by this Charter) it is expressly provided, that the Mayor elected shall continue in his Office till another is duly chosen, which cannot be but upon the very Day appointed; For where they have no Power by their Charter to chuse on any other Day, their Corporation shall be dissolved rather than they should make an Election on another Day, and this Court cannot compel them to chuse a Mayor on any other Day, where there is a Mayor already in being; Per Cur. 8 Mod. 129. Patch. 9 Geo. 1. B. R. The King v. the Mayor and Burgesses of Tregennny.

8. Information in Nature of a Quo Warranto was granted for *Unsurping the Office of Mayor*. 8 Mod. 234. Patch. 10 Geo. The King v. Pindar.
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having misbehaved himself in this Election, there being no more than two who voted for the new Mayor, who therefore refused to be sworn, lest he likewise should be prosecuted upon an information for usurping the Office; so that C. continued Mayor till, having been Mayor, though he was six Months in Prison; and for this Misbehaviour he was found Guilty, and fined 200l. and to find committed till he paid it. S Mod. 253, 256. Trin. 10 Geo. The King v. Cracker.

9. Altho' a Charter directs that the Alderman shall be elected annually, yet such Clause is only directory, and the Office of Alderman is not thereby determined at the End of the Year after his Election, but the Person elected continues Alderman till dead, or removed in the same Manner as a Person elected into the Office of Mayor. MSS. Tab. March 16. 1725. Profe v. Foot, upon a Writ of Error.

10. Charter that the old Mayor shall continue till another was duly elected and sworn; Another is duly elected, yet he cannot act as Mayor till sworn, and Judgment in Quo Warranto against such Mayor. M.S. Tab. March. 1725. Pender v. the King, in Error.

11. All the Members of a Corporation are invited to drink a Glass of Wine at a Tavern; After their being met, one of the Body resigns his Office, and then they go immediately to an Election. On a Trial at Bar the Jury found it a good Election, but the Court thought it against Evidence, and granted a new Trial. This was on Return to a Mandamus, and after a peremptory Mandamus granted. Court said, this was a Surprize, there being no Notice of a Vacancy and a Fraud, and that Body circumvented; tho' Ch. J. said, that he thought, if all the Members were together, and all concurred in Election, or did any other Corporate Act, that would be good, tho' no previous Notice; But Fortescue doubted; for the Body ought to be Corporaliter congregat et Alem. blat', this thing is not proper at an Ale-houe, but at Guild-hall, that is a proper Place for all Business; many Inconveniences would be it these things were allow'd, but no Inconvenience where the Proceedings is free and open, which ought to be in all Cafes. The Members ought to have Time to consider who is a proper Person to be chosen in. Patch. 10 Geo. The Cafe of Appleby.


13. An Election of a Member by the other Members of a Corporation not corporately assembled, must be attested by every one. 2 Ld. Raym. 1359. Patch. 10 Geo. 1. Muirgrave v. Nevinson.


An Information shews that the City of Norwich is an ancient City, and that Hen. 4. by his Charter, granted that the Mayor, pl. 1 S.C. Aldermen, and Citizens, might elect two to be Sheriffs of the said City, and S. P. that after this, Charles 2d, in the 18th Year of his Reign, by his 316. S.C. Charter, granted that the Mayor and Aldermen might elect one Sheriff, and S. P. the Citizens another. The Mayor, Aldermen and Citizens, having the Election of the Sheriff in them, they might by Consent alter the Manner of the Election, and their Acceptance of the Charter of Car. 2. and having elected according the Form prescribed in it, is an Evidence of such Consent, and therefore though the Charter of the King may not alter the Manner veiled and settled by the Charter of Hen. 4. Yet if they accept such a Charter, and consent to it, and act in conformity to it,
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and acquiesce under it, such Charter is good, and this Submission and Conformity shall be an Evidence of their Consent, and therefore the Election is good. Skin. 574. 576. Hill. 6 W. 3. B. R. The King v. Larwood.

(O) Pleadings by or against Officers, as to their Election &c.

1. Refers upon the 5 R. 2, the Defendant said, that his Predecessor, Master of the Hospital of D. was seised, and dy'd, and he entered as Master, and gave Colour, and held no Plea; because he did not be the Foundation, and that he was elected, and made Master, quod nota; by which he amended his Plea, and said, that it is the Hospital of St. John, incorporated of Brothers 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 J. late Master was seised, and died, and that this same Defendant, before the Entry &c. was elected Master by the Brothers and Sisters, and entered &c. as above, and well, without expressing the Number of Brothers and Sisters; For the Corporation was made before Time of Memory, and peradventure does not express the Number. Br. Action fur le Statute, pl. 9. cites 34 H. 6. 27.

2. But if the Number be expressed in the Foundation, there he ought to express it; Quod suit concessum. Ibid.

(O. 2) Property of Goods of Corporations. In whom it shall be said to be; And Pleadings.

1. During the Life of the Abbot, the Property is in the Abbot only, and he may give them; but if he dies, or be deposition, the Property is in the House. Br. Abbe, pl. 2. cites 9 H. 6. 25.

2. When a Count or Pleading is made, which speaks of an Abbot who is dead or removed, it shall be called Goods of the late Abbot, but when it is of an Abbot who is alive, or in Possession, it shall be entered Goods of the Abbot only; Note a Difference. Br. Abbe, pl. 2. cites 9 H. 6. 25.

(P) Actions by or against them. What, and How; And where any Members are liable in their private Capacity.


2. Note,
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2. Note, per Thorp, that Trespass does not lie against Commonalty, but shall be brought against the Persons by their proper Names; for Capias nor Exigent lies not against Commonalty. Br. Trespass, pl. 239. cites 22 All. 67.

3. Capias in Debt shall not be awarded against Corporation; for the Body Politick cannot be taken; Per Choke Justice. Br. Corporations, pl. 63, cites 21 E. 4. 7. 12. 27. 67.


5. Money was borrowed by the Company of Woodmongers, who were incorporated, and a Bond was sealed with their Common Seal, and subscribed by the Defendants, who were two of the Principal of the Company. The Bond was Noverint. Univeri &c. Nos Magnus &c. Guardians &c. of the Company of Woodmongers teneri &c. and now the Company being dissolved, Action was brought against those who subscribed the Bond; but ruled, that it could not lie; so the Plaintiff was Nonuit. Lev. 237. Palch. 20 Car. 2. B. R. Edmonds v. Brown. & al.

6. A Member of a Company sets his Name to a Bond under the Common Seal of the Company; This does not legally bind him in his private Capacity. Arg. Fin. R. 84. Hill. 25 Car. 2. in Cae of Naylor v. Brown late Master of the Woodmongers Company & al.

7. A lends 500 l. to a Company, who gives Bond under their Common Seal for Re-payment with Interest; afterwards the Company assigned a Bond of 1000 l. due to them to J. S. for Payment of some of their Debts, and J. S. declared the Trust of 620 l. Part for several Members of the said Company, who were paid accordingly; but decreed Re-payment by the said Members, and that A be first paid with Damages and Costs; and the Court was of Opinion, that the Declaration of the Trust by a Stranger (as J. S. was) as to the 620 l. was utterly void, because the Corporation did not join in declaring the Trust, or give J. S. any Authority under their Common Seal, or by any Corporate Act to make such a Declaration. Fin. R. 83. Hill. 25 Car. 2. Naylor v. Brown, late Master of the Woodmongers Company & al' Members of the said Company.

8. For a Duty or Charge upon a Corporation, every particular Member thereof is not liable, but Process ought to go in their publick Capacity. Nota, sic dicet omnum. 1 Vent. 351. Mich. 32. Car. 2. B. R.

(Q) Actions. Names. By what Names they shall sue, or be sued.

1. THE Functio to be Master of an Hospital is a Dignity, and he ought to be sued by such Name, otherwise the Writ shall abate; Per Scrope. Thel. Dig. 35 Lib. 3. cap. 3. S. 4. cites Hill. 2 E. 3. 48.

2. But Prooff is not a Name of Dignity. Thel. Dig. 35. Lib. 3. cap. 3. S. 4. cites Hill. 17 E. 3. Nomen Dignit. 6.

3. A Man may sue an Abbout or Prior by Name of Abbout Sancte Trinitatis de M. or Beatae Marie Eborum, or Prior Sancti Oiwaldi &c. without saying Monasterii, or Deo talis Sancti, or such like. Thel. Dig. 50. Lib. 6. cap. 3. S. 5. cites Mich. 3 E. 3. 129.

4. And
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4. And against the Abbot of Dorchester, without saying Abbati Fec.

5. In Action real the Writ may well be brought against an Abbot, without naming him by Name of Baptism. Thel. Dig. 49. Lib. 6. cap. 2. S. 2. cites Trin. 7 E. 3. 324. 10 H. 6. 1. and 12 H. 4. 5.

6. But in Writ of Entry against an Abbot, the Abbot by whom the Entry is supposed ought to be named by his Name of Baptism. Thel. Dig. 49. Lib. 6. cap. 2. S. 2. cites Trin. 7 E. 3. 324. 10 H. 6. 1. and 12 H. 4. 5.


9. But in Replevin contra Pasem against an Abbot he shall be named by his Name of Baptism. Thel. Dig. 49. Lib. 6. cap. 2. S. 3. cites Mich. 8 E. 3. 427, but says the contrary is held Patch. 39 E. 3. 17.

10. Affise against the Abbot of Selby, and did not say of what Saint the Abbey is, and good, because they are known by this Name, and so fee that Action by a Corporation is good by Name known. Br. Corporations, pl. 40. cites 8. All. 24.


12. So he may sue Scire Facias to have Execution out of a Judgment without naming him by his Name of Baptism. Thel. Dig. 34. Lib. 3. cap. 1. S. 3. cites Patch. 29 E. 3. 44.

13. A Writ brought by an Abbot by Name of Theo. Abbatis beate Marie de lorum was adjudic'd good without saying Abbath of the Church of our Lady of York &c. Thel. Dig. 37. Lib. 3. cap. 9. S. 1. cites Mich. 8 E. 3. 436. and 8 All. 44. and Hill. 3 H. 6. 28. and 5 E. 4. 20.

14. Writ was maintained against a Corporation by Name of Prepositi 'Scolarum Domus Beate Marie de Ossum' without saying Prepositior & Scolaribus &c. Thel. Dig. 73. Lib. 6. cap. 12. S. 1. cites Trin. 22 E. 3. 9.

15. Repleva does not lie against a Corporation, viz. by the Name of Corporation, but against the Persons who did it by their proper Names; for Capias nor Exigent does not lie against Commonalty, nor Commonalty shall not plead nor be impleaded but with the Mayor or Bailiffs, if they have Mayor or Bailiffs, and Corporation may be by Name of Commonalty without Mayor, Bailiff, or other Head. Br. Corporations, pl. 43. cites 22 All. 67, per Thorp.

16. The Writ was Precipe Priori de Wigorn; and the Defendant said, that there is in Worcefter the Prior of the Fries Preachers, and the Prior of Nefer Dame &c. by which the Writ abated. Thel. Dig. 53. Lib. 6. cap. 12. S. 2. cites Mich. * 25 E. 3. 48, notwithstanding that the Demandant tender'd that the Defendant was known by such Name, Concordat 29 All. 70. But none but the Prior pleased in Affise.

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17. A Writ of Annuity was maintained against an Abbot without naming him by Name of Baptifm. Thel. Dig. 50. Lib. 6. cap. 2. S. 5. cites Trin. 31 E. 3. Brie 342.

18. So of Writ of Ejection of Ward. Thel. Dig. 50. Lib. 6. cap. 2. S. 5. cites Mich. 22 E. 3. 17, where it was said, that in a *Tone per odd* he ought to name him by his Name of Baptifm.

19. Notwithstanding that *Land be given to an Abbot by Name of Baptifm, and to his Successors an inventory* Cantor &c. yet the Writ of *Different lies against him by Name of Abbot, without naming him by his Name of Baptifm. Thel. Dig. 50. Lib. 6. cap. 3. S. 2. cites Patch. 32 E. 3. Brie 291.

20. Writ brought by the King against one by Name of Process of the Hooft of C. was abated, because the Corporation by the Grant and Licence of the King was founded and named Process of the Chantery of G. Thel. Dig. 53. Lib. 6. cap. 12. S. 3. cites Trin. 38 E. 3. 17.

21. In Writ brought against the Prior of Newark in Dorchester, it was said, that such Writ is maintaynable with alleging that it is known by such Name, if Charter of the King of Foundation, or any other Thing of Record be not shown to the contrary; And upon this the Charter of of Foundation was shown forth, by which the King had granted Land to found a College of Sifters in the Prechors of Dorchester, by which the Writ abated for the Surplusage of Newark. Thel. Dig. 53. Lib. 6. cap. 12. S. 4. cites Mich. 38 E. 3. 53.

22. Scire Facias was sued against the Prior of Saint John's of Hierufa-lem in England upon a Recovery in Walf, which was Prior of the Hospitall of Saint John's of Jerusalem in England, and Exception taken; Per Thorp, it is known by the one Name and the other, and therefore an- swer; Quod Nota. Br. Mifnomer, pl. 15. cites 44 E. 3. 16.

23. Every Corporation may sue by its very Name of Foundation, notwithstanding that it be not known by this Name, but better known by ano- ther Name, as the Master of the Scholars of the Hall of Valens Marie in Cambridge, brought Writ by this Name of his Foundation where it was better known by the Name of Penbrooke-Hall. Thel. Dig. 37. Lib. 3. cap. 9. S. 2. cites Mich. 44 E. 3. 35. Brie 582.

24. Dean and Chapter cannot maintain Writ, if the Dean be not named by his Name of Baptifm. Thel. Dig. 34. Lib. 3. cap. 1. S. 4. cites Mich. 14 H. 4. 11. but cites 21 E. 4. 19 contra.

25. Where a Prior had brought Writ of Entry, upon Diffufion made to himself of Land of which he was feited in his own Right, Exception was taken that he had not named himself by his Name of Baptifm and Sur- name; Quare. Thel. Dig. 34. Lib. 3. cap. 1. S. 5. cites Mich. 9 H. 5. 9.

26. In Writ of Covenant by the Abbot of W. against the Commonalty of S. it was agreed, that where a Corporation is by Name of Commonalty, and after by another Grant they have Bailiffs, yet by this Change they shall not be discharged of Covenants, Annuities &c. to which they were bound before. Br. Corporations, pl. 3. cites 2 H. 6. 9.

27. Precipe quod reddat against Magiftrum live Capitalem & Presbyteros Collegii de A. was awarded good, though it was for*, which is disjunctive, because the Foundation was by thofe Words. Br. Corporations, pl. 3. cites 7 H. 6. 13.

28. An Abbot shall have Writ of false Imprisonment, or Battery, or other *Policy* done to *his Person* without naming him, or by Name of Baptifm. Thel. Dig. 34. Lib. 3. cap. 1. S. 6. cites Patch. 7 H. 6. 29.

29. It was held, that in Plea Personal where Process of Outlawry lies against an Abbot or Prior, he ought to be named by his Name of Baptifm.
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30. Where a Man is obliged by Name of Mayor of London, being Mayor, and after is removed, the Writ ought to be brought against him by his proper Name. Thel. Dig. 50. Lib. 6. cap. 2. S. 7. cites Mich. 10 H. 6. 1. andsays see 18 E. 4. 21.

31. The Dean and Canons of Windor is a good Name of Corporation to bring Action by Writ, without showing how they are founded by this Name. Thel. Dig. Lib. 3. cap. 9. S. 7. cites Tin. 18 H. 6. 16.

32. Where the Name of the Corporation was Bailiffs and Commonalty, the Writ brought against them by the Name of such a one and such a one Mayor Bailiffs and the Commonalty is abatable. Thel. Dig. 52. Lib. 6. cap. 12. S. 9. cites Mich. 20 H. 6. 9.

33. In Writ of Trespasses to be brought against an Abbot, it suffices to name him by the Name by which he is known; but where Franknevenement is demanded against him, which is of the Right of his House, he ought to be named by his very Name of Foundation. Thel. Dig. 54. Lib. 6. cap. 12. S. 10. cites Rich 20 H. 6. 9. and Mich. 21 H. 6. 4. where the Writ was maintained by saying that He was known by the one Name, and by the other, without saying that He and his Predecessors have been known by the one and the other &c.

34. In Trespass against an Abbot it is sufficient to name him by Name known, but in Writ against him, which touches the Franknevenement, he shall be named by his Name of Foundation; Per Newton for Law. Quod non negatur. Br. Corporations, pl. 5. cites 20 H. 6. 27. and M. 21. H. 6. 4.

35. Misnomer of Corporation in Trespass against him of his own Ass is no Plea if it be named by a Name known. Br. Misnomer, pl. 31. cites 21 H. 6. 4.

36. Contra in Action brought by the Corporation, or in Action against them of Right of the House, and known by the one and by the other Name, there it is a good Plea in Trespass against the Abbot; Quod Nota. Ibid.

37. Writ was brought against the Mayor and Commonalty of Exeter and it was pleaded, that they were incorporated by Name of Mayor, two Bailiffs, and Commonalty, Time out of Mind, and held no Plea, without saying further, that they had been implicated by such Name by such Time, and not by the Name of Mayor and Commonality without the Bailiffs &c. and then the Plea shall be good. Thel. Dig. 54. Lib. 6. cap. 12. S. 12. cites Tin. 28 H. 6. Brief 104.

38. Writ brought against a Prior by Name of Prior of the Church of St. Peter of B. is not good, where his right Name is Prior of the Church of Saint Peter and Paul of B. Thel. Dig. 54. Lib. 6. cap. 12. S. 13. cites Mich. 35 H. 6. 5.

39. In Writ of Entry brought against such a one Warden of the House of M. in Oxford, it was pleaded, that the Name of the Corporation was Warden and the Scholars of the House &c. and it was founded, and by such Name had purchased and implicated, and been implicated Time out of Mind &c. It was held, that the Writ could not be maintained by saying that they had implicated and been implicated by the one Name and by the other, because the Corporation cannot be Tenant of the Land unless according to their very Name &c. For the Warden only is not Tenant, and so it shall be of Dean and Chapter, but it may be otherwise in Personal Action. Thel. Dig. 54. Lib. 6. cap. 12. S. 14. cites Tin. 36 H. 6. 485.

40. Where an Obligation was made 7b. Abbatis Monasterii batte. Maria, extra Mariis civitatis Eborum, It was held by the Court that Writ upon this Obligation, by Name of Abbatis Monasterii batte. Maria Eborum should be good. Thel. Dig. 38. Lib. 3. cap. 9. S. 11. cites Patch. 7 E. 4. 20. and says, See Tin. 11 E. 4. 2.

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41. The Master of Burdon Sanct Lazari was received to maintain his Writ in such Form, viz that he, and all his Predecessors, Time out of Mind, were named and known, and have implored, and were implored as well by the one Name as by the other. Thel. Dig. 38. Lib. 3. cap. 9. S. 9. cites Trin. 9 E. 4. 21. and says See Hill. 13 H. 7. 14. per Kebbe, and Mich. 16 H. 7. 1. agreeing.

42. In Writ upon Contrari or of Trespass against Corporations if the Defendant Pleads Misceunfer the Plaintiff may say that known by the one Name and the other; But such Plea is not good in Writ brought upon Specialty where the Name varies from the Specialty. Thel. Dig. 54. Lib. 6. cap. 12. S. 16. cites Trin. 11 E. 4. 2. 11 H. 6. 33. 63. and says See 1 E. 4. 7. Paich. 5 E. 4. 20. Mich. 16 H. 7. 1.

43. Mayor and Commonalty may sue without naming the Mayor by his Name of Baptism, as it seems. Thel. Dig. 38. Lib. 3. cap. 9. S. 10. cites Trin. 12 E. 4. 10.

44. Where a Corporation is Master and Conferes, and are sued by the Name of Master and Conferes or Socii, this five Socii is void. Br. Corporations, pl. 8. cites 29 E. 4. 12.

45. A Corporation may be incorporated by one Name and implored by another Name by Grant of the King. Thel. Dig. 38. Lib. 3. cap. 9 S. 12. cites Trin 11 H. 7. 27. 21 E. 4. 70.

46. If the King grants to a Corporation to purchase or give by Name of Master and Wardens, Brothers and Sisters, and by this grant to them to implored and be implored by Name of Master and Wardens, all is good, and shall be used accordingly, the one in Perquities and the other in Suits. Br. Corporations, pl. 95. cites 11 H. 7. 27.

47. If there be a Corporation of one sole Person that both a Fie simple, and may have a Writ of right, he may be named in Originals, &c. by the common Law by his Christian Name, without any Surname; For the Name of his Corporation is in lieu of his Surname (some say both that the Christian Name Surname) as John Abbot of D. &c. John Bilhop of Ricet is, N. but otherwise it is of a Person; for he must be named by his Christian Name and Surname. 2 Int. 666.

48. If there be a Corporation aggregate of many able Persons, as Mayor and Commonalty, Dean, and Chapter, Master of an Hospitall and of C.B. Conferes &c. the Mayor, Dean, or Master, need not to be named by his Christian Name, because that such a Corporation standeth in lieu both of the Christian Name and Surname. 2 Int. 666.

49. A Corporation as a Mayor and Commonalty cannot disarrant in their own Persons, but by their Bailiff. Brownl. 175. Master and Fellows of Emmanuel College in Cambridge's Cafe.


Return to a Mandamus directed to the Corporation of Canterbury. Ibid.

51. Some have held, that when a Politick Person is implored to name him by the Name of his Politick Capacity, is sufficient, and that this will serve instead of Christian or Surname, because he is not to be disting-
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guished from natural Persons, since as a natural Person he is not im
pleaded, but it is enough to distinguish him from all other Corporati
ons. Gilb. Hist. of C. B. 188.

52. A Corporation was instituted by the Name of Præfecti & Guara
dianorum Naupcœnum de Redeville, and an Action is brought against
them by the Name of Præfecti Guardiani and Socii, and accounted bad.


A Corporation was instituted by the Name of Præfecti & Guara

(R) Actions by or against a Corporation, and one of
the Corporation.

1. T H E Opinion of Brian Ch. J. was, that the Mayor and Com-
monalty should have Action for the Imprisonment of their Mayor.
& 15.

2. It was said by Vavilfor, that the Mayor and Commonalty of New-
Casile were bound to the Mayor by his proper Name, and afterwards the
next Year, when another was made Mayor, he brought Action of Debt
upon this Obligation, and took nothing, because this Obligation was
void, made to himself by himself. Thel. Dig. 20 Lib. 1. cap. 22. S.

3. It was said by Brian, that if one be indebted to an Abbot, and after
makes himself a Monk in the same Abbey, and at last is made Abbot of the
same House, he shall have Action of Debt against his own Executors for
this Debt. Thel. Dig. 20 Lib. 1. cap. 22. S. 15. cites Patch. 5 H.
7. 25. [b. 26. a.]

(S) Actions &c. Inter se.

1. T H E Chapter of the Church of our Lady of Lincoln, brought
Quære Impedit against the Dean of the same Church. Thel. Dig.

2. If Mayor and Commonalty discharge one of the Commonalty, he shall have
Affise against them; for they are asseveral Persons; viz. Body Poli-
tick and Body Natural; Per Patton. Br. Corporations pl. 24. cites
8 H. 6. 1. 14.

3. And Mich. 17 E. 3. 64. the same Chapter had such Writ against
their said Dean, and so had Action of their Possession sever’d from the

(T) Joinder
(T) Joinder in Actions. In what Cases.

1. The Dean and Chapter of Canterbury being Guardian of the Spiritualities, shall join in Writ of Trespass of Goods out of their Possession taken which come to their Hands as Ordinary sede vacante. Thel. Dig. 32 Lib. 2. cap. 11. S. 10. cites Mich. 17 E. 2. Brief 822.

2. The Corporation of Southampton, and other natural Persons, were received to sit jointly in the Exchequer for Disturbance made in the taking of Custom and Toll &c. and of Battery done to the Bailiff. Thel. Dig. 31. Lib. 2. cap. 9. S. 1. cites Trin. 2 E. 3. 51.


4. The Master of the Hospital of Saint John of Cant brought Writ of Right of Admision of a Church, which his Predecessor held in Proprios Usis in Right of his Hospital, without naming his Confreres with him. Thel. Dig. 19. Lib. 1. cap. 22. S. 9. cites Paffch. 5 E. 3. 189.

5. In Trespass of Battery by an Abbot and his Commiogni, the Writ was Ad Damnum ipsum, and held good. Thel. Dig. 115. Lib. 10. cap. 25. S. 2. cites Paffch. 13 E. 3. Briefe 261.

6. And such a Writ by a Prior and his Confrere Ad Damnum ipsum Prioris was adjudg'd good. Thel. Dig. 115. Lib. 10. cap. 15. S. 2. cites Hill. 22 E. 3. 2.

7. The Dean and Chapter ought to join in all Actions, which touch their Possessions, which they have in Common Appartent to their entire Corporation. Thel. Dig. 31. Lib. 2. cap. 7. S. 1. cites 17 E. 3. 64. and 21 E. 4. 25. and 14 H. 4. 11. and Trin. 1 H. 5. 5.

8. It was adjudg'd, that the Prior of the House of Lepers of Plympton should have Affize in his own Name, inasmuch as he was Prior of the House by Election of Confreres of the same House, and that they have been Priors of the same House by Election by the Manner Time out of Mind, where in Fact the Prior was a Layman, and his Confreres Lay Persons who had not any Foundation, nor Common Seal, nor Rule &c. Thel. Dig. 19. Lib. 1. cap. 22. S. 6. cites 44 Att. 9.

9. The Mayor and Comonwealth of Lincoln brought Writ of Covenant against the Bailiffs and Comonwealth of Derby, upon a Covenant by those of Derby, that those of Lincoln should be quit of Marage, Pontage, Custom and Toll, within the Vill of Derby &c. where some Burgesses of Derby had taken certain Toll and Custom of certain Burgesses of Lincoln, and adjudg'd a good Writ, notwithstanding that Exception was taken that the Corporation ought not to have Action, but the single Persons whose Goods were taken ought to have Action of Trespass against the Persons who took them. Thel. Dig. 20. Lib. 1. cap. 22. S. 21. cites Trin. 49 E. 3. 17.


11. Note, that a Covent shall not be named with the Abbot or Prior in any Suit by him to be taken, neither shall they be named with the Abbot in any Suit to be taken against the Abbot or Prior, or with him. Br. Abbe, pl. 14. cites 5 E. 4. 122.

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13. It was held for Law, that a *Warden* and *Chaplains* of a *Chantry* should have an *Action* of *Trespass* for breaking their *Close*, against one who had a *Lease* of the same *Close* of the same *Warden* alone without the *Chaplains*, and should *Punish* him for the *Trespass*. Thel. Dig. 20. Lib. 1. cap. 22. S. 18. cites 21 E. 4. 75. and that fo *Agrees* Trin. 1 E. 5. 5. and 7 H. 7. 9.

14. *Grant* in a Corporation which *touchs* every *Single Person*, there every single *Person* shall have thereof Advantage by himself; as *Grant* to be *quity of Toll* &c. *Per Catesby*. Br. Corporations, pl. 65. 21 E. 4. 55, 56.

15. If an *Obligation* be made to one *B. and to an Alb. It B. dies now, his *Executors and the Alb* shall *join* in *Action* of *Debt*. Thel. Dig. 32. Lib. 2. cap. 11: S. 9. cites F. N. B. tit. *Writ de Debito*.

16. *Trespass* for entering into the *Close* of the *Dean*; after *Verdict* found for the *Plaintiffs*, it was moved in *arrest* of *Judgement*, that this *Action* being brought for the *Possessions* of the *Dean* only, the *Chapter* *was not to join*, and fo this *Cause* Judgment was laid. Cro. E. 200. pl. 23. Mich. 32, 33 Eliz. in B. R. "Wolley v. Robinson."

(U) Appearance of Corporations to *Actions* brought against them. How it must be.

1. *In Writ* against *the Dean and Chapter*, the *Chapter* cannot appear nor *plead* any *Plea* without the *Dean*, notwithstanding that the *Dean* be dead. Thel. Dig. 194. Lib. 13. cap. 4. S. 1. cites *Hill*. 7 E. 3. 302.

2. *And* in *Writ* against *Master* and *Scholars*, the *Master* cannot appear nor *plead* without the *Scholars*. Thel. Dig. 194. Lib. 13. cap. 4. S. 1. cites *Trin*. 34 H. 6. 49. but adds *Quere* if the *Head* of a Corporation can appear in *proper Person*.

3. *Debt*; *princte* the *Society of Lumbards London Merchants of Florence*, and two Lumbards came and named their *Names*, and said that they were *distrained* by the *Sheriffs* of London, and returned in *Issues* 10 l. and *prayd* that their *Appearance* be *recorded* as Lumbards of London to *save* their *Issues*, but not as of the *Society* of Lumbards of London, fed non *allocatur*, for the *Writ* shall be *intended* to be *against* a Corporation. Br. Corporation, pl. 28. cites 19 H. 6. 80.

4. *And* where *Mayor* and *Community* are *sued*, and *be* and all the *Commoners* appear in *proper Person*, this is not good, for it is *another Bodie*, therefore it seems that the *Corporation* ought to appear *by Attornay*, by their *Name* of Corporation, and not in *proper Person*. Br. Ibid.

5. *Mayor* of *Community* cannot appear in *Person*; *For the Court cannot tell* it all appear or no, and *therefore they ought to make Attornay*. Br. *Garrant de Attornay*, pl. 56. cites 21 E. 4. 13.

They cannot appear but by *Attornay* by Deed under their *common* *Seal*, and otherwise the *Warrant* is void, per Cheke J. *quod non negotur*, therefore *Quere* of the *Usages* thereof at this Day. Ibid.

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6. In a Quo Warranto brought against the Bailiffs, Aldermen &c. they did appear by Warrant of Attorney, and one of the Bailiffs named in the Warrant did not appear, nor agree to it; it was holden by the whole Court, that the Appearances of the major or greater Part being recorded was sufficient; and it was also holden per curiam, that altho' the Warrant of Attorney was under another Seal than their Common Seal, yet being under Seal, and recorded, it cannot be annulled. Godb. 439. pl. 506. The Bailiffs &c. of Yarmouth v. Cowper.

(X) Abatement of Writ.

1. In Covenant by the Mayor and Commonalty of Lincoln against the Mayor, Bailiffs, and Commonalty of Derby, the Writ was general, according to the Deed, that the Defendants had covenanted with the Plaintiffs &c. And the Deed was, that the Mayor and Commonalty of Lincoln should be quit of Murage, Pontage, Cliffage, and Toll within the Vill of Derby, of all Merchandizes &c. The Count recites the Covenant according to the Deed, but at the End of the Count it was shown, that some certain singular Persons of Derby took Toll, &c. of certain Burgesses of Lincoln, contrary to the Covenant &c. yet adjudged a good Writ. Thel. Dig. 84. Lib. 9. cap. 5. S. 26. cites Trin. 49 E. 3. 17. and says Sec 30 E. 3. 29.

2. In Trespas upon the Case against the Mayor of an Hospital, the Thel. Dig. Writ was, that where the Defendant by reason of his Tenure ought to chanse, i.e. a Dutch isque et omnes alit pradictam tenuriam prius habentes, per se 55. sua securis et minutae diminuatur et conuenientur de tempore donum &c. And it was abated for want of good Title; For such Prescript is not good, for it should be in the Defendant and his Predecessors, or in them and those whose Estate &c. Thel. Dig. 106. Lib. 10. cap. 14. S. 16. cites Mich. 12 H. 4. 7.

3. One by Name of Chaplain of the Chantry of T. was received to maintain Writ of Entry, without laying in his Writ that the Chantry was in any Church or Chapel. Thel. Dig. 37. Lib. 3. cap. 9. S. 3. cites Patch. 12 H. 4. 19.

4. Seire Faccus upon Recognition of 100 l. in the Exchequer against J. Abbot of P. the Sheriff return'd him Warrant, and cause R. Abbot of P. and said that J. Abbot was and is depos'd long before the Writ and he is Abbot, &c. non Allocatur. For he has no Day in Court, and also he is at no Mitchell, for if Execution be made of his Goods he may have Trespas, by which Judgment was given against J. Abbot. Br. Milnofer. pl. 2. cites 2 H. 6. 5.

5. Where a Recovery was had upon Composition in Writ of Covenant against the Commonalty of Shrewsbury, and afterwards the King makes Bailiffs there, a Writ of Seire faccus was sued out of this Recovery by Name of the Commonalty, leaving out the Bailiffs; and it was held per Cheney, that the Writ was good, but Hankford held the contrary, and that the Bailiffs ought to be named. Thel. Dig. 54. Lib. 6. cap. 12. S. 7. 8. cites Trin. 2 H. 6. 9. and says, that Fitzh. abridges the Opinion of Hank. to be the beft, Brief 7.

6. It was held by Martin, that Writ brought by an Abbess by Name of Abbatissi Minorissarum de B. is not good, without saying Abbatissi Dominus Minorissarum &c. Thel. Dig. 37. Lib. 3. cap. 9. S. 4. cites Hill. 3 H. 6. 29.

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9. It was said by *Newton*, that an *Abbott* ought to bring his *Writ* by *his very Name of Foundation*. *Thel. Dig.* 37. *Lib.* 3. cap. 9. *S.* 5. cites *Mich.* 21 H. 6. 4. and that so it was held *Mich.* 1 E. 4. 7. where he is Plaintiff, that he cannot say, that he is known by the one *Name*, and by the other, or by diverse *Names*. But adds *Square*, if he may maintain his *Writ* by saying that he and his Predecessors have used *Time out of mind* to impelled by diverse *Names*, and says *See* *Trin.* 9. E. 4. 21.

10. The *Writ* was against *Prepositum & Scholares Ecclesiae* *Bente Marie & Sancti Michaelis in Canterbury*, where their *Name* was to be impelled by *Grant of the King Prepositum & Scholares Ecc. de Canterbury; Videlecite, (in) put in lieu of (de.)* And it was held, that the *Writ* should abate, and should not be amended. *Thel. Dig.* 54. *Lib.* 6. cap. 12. *S.* 17. cites *Mich.* 15 E. 4. 17.

11. In *Debt* it was agreed, that of *Mayor and Commonalty* it is no *Plea* that the *Mayor* is *not of found Memory*, nor *Excommunication* in the *Mayor* is no *Plea in Action* by the *Mayor and Commonalty*, and *Outlawry*, or *Vilification* in the *Mayor* is no *Plea*. *Br. Nonabilitie*, 37. cites 21 E. 4. 12. 13. 67. 69.

12. *Action* brought by the *Dean and Chapter of W.* the *Defendant* said, that the *Dean died the Day of the Writ purchased*; *Judgment of the Writ*; and per tot. *Cur.* if the *Dean dies, and another is chosen Dean before the Day in Court*, and the *first Dean not named by his proper Name*, but named *Dean*, the *Writ* is good. *Br. Corporations*, pl. 64. cites 21 E. 4. 15.

13. *Otherwife* it shall be *if no Dean was at the Day in Court* when the *Defendant* pleaded. *Br. ibid.*

14. *And it was said clearly, that if the Dean had been named by the Name of Baptism*, and died, pending the *Writ*, there the *Writ* shall abate, though another was elected before the *Day in Court*. *Br. ibid.*

15. If *Mayor and Commonalty bring Action*, *Outlawry* was pleaded in the *Mayor*. *Judgment* if he shall be answered it is no *Plea*; For the *Action* is brought by *Corporation*, and the *Outlawry* is against him in his *natural Body*. *Br. Nonabilitie*, pl. 53. cites 21 E. 4. 14.

16. *In Action by a Corporation or natural Body Milhonomer* of the one or the other goes but to the *Writ*, but to say that *No such Person in Reorum Natura, or No such Body Politick*, this is in *Bar*; For if he be *mihnamed*, he may have a new *Writ* by the right *Name*, but if there be no such *Body Politick*, or such *Perfon*, then he cannot have *Action*. *Br. Milhonomer*, pl. 73. cites 22 E. 4. 34.

17. *A Corporation diufrain'd in their proper Names*, and therefore in *Replevin* brought the *Writ* was adjudge'd naught; For a Corporation as *Mayor and Commonalty cannot diufrain in their own Perasons, but by their *Bailiff*. *Brownl.* 175. *Trin.* 13 *Jac*. *The Matter and Fellows of Emanuel College in Cambridge.*

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(Y) Abatement of Writ. For Variance.

1. In Debt, the Writ was Praecipe, W. W. Prior of the House of the St. Mary, and St. Thomas the Martyr De novo Loco juxta Gilford in the County of Surrey, and the Obligation was, viz R. A. Prior of the Priory Novi Loci juxta Gilford in the County of Surrey, and Covent of the same Place. Pole demanded Judgment of the Writ for the Variance; For it should be Priory according to the Obligation, and not House; But per Prior, all is of one Effect, and the Writ shall be according to their Foundation; But Pole saith, yet it ought to accord with an Alias Dium; but per Prior, this need not be, for the Successor for not the Plaintiff are not entitled, and therefore answer; Quod Nota, that Variance in Name of a Corporation shall not lose the Obligation, if it be of one and the same Effect. Br. Variance, pl. 8o. cites 28 H. 6. 8.

2. In Trespaes by the Mayor and Bailiffs of Oxford, the Defendant saith, that they are incorporated by Name of the Mayor and Burgesses of Oxford &c. and not &c. and held a good Plea, per Brian; But Wood was of Opinion, that it is not good without showing Letters of the Incorporation. Thel. Dig. 124. Lib. 11. cap. 5. S. 3. cites Hill. 13 H. 7. 14.

(Z) Things done to, or by the Head, or any Members of a Corporation. In what Cases it shall be said done in the Politick or in their Natural Capacities.

1. If I give 20l. to an Abbot to pray for the Soul of my Father, he has this Money in his own Right, and not in Right of the House, and if be waftes it, the Ordinary cannot depose him for this Cause. Br. Deposition, pl. 4. cites 9 E. 4. 34. Per Mylo J.

2. A Corporation cannot be beaten in their Corporate but in their Natural Body; nor a Corporation cannot beat another, nor do Treason or Felony in their Corporation, and Corporation shall not be imprisoned for denying their Deed, nor for Disturbing Force &c. nor Forejudg the Realm. Br. Corporation, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

3. If a Mayor is imprisoned touching his Office, As for a Bond made by him and the Commonality, this is an Imprisonment to him as Mayor. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

4. And where the Corporation ought to chuse a Mayor annually such a Day under Pain of 10l. and the Mayor is imprisoned, so that they cannot observe the Day, by which they lose the Penalty, or if they ought annually to appear in the Exchequer such a Day to account to the King, under Pain of 10l. and the Mayor is imprisoned, so that he cannot observe the Day, by which they lose the 10l. the Corporation shall have Action of this Imprisonment, and so Plea good. Br. ibid.

5. Durefs cannot be to a Body Politick, but it may be to a Mayor to do a Thing appertaining to his Office; by the best Opinion; For he is the Head of the Corporation. Imprisonment of the Head of a Natural Body in the Pillory is Imprisonment of all the Body; For it is in tire. Br. Durefs, pl. 18. cites 21 E. 4. 8. 14. 15.
(A. a) Things done by the Head without the Body's joining. In what Cases they shall stand good.


2. The Sum of 100l. per Annum, is due to the Mayor and Commonalty of Southampton out of the King's Customs. Acquittance by the Mayor only is not good, by all the Justices; And yet because he is the Head of the Corporation, and there were 100 Presidents sworn of the like Matter in time past'd, therefore the Acquittance of the Mayor was allow'd; Quod Nota. Br. Corporations, pl. 87. cites 2 R. 3. 7.

(B. a) Proceeds against Corporations.

1. Debt was brought against the Society of Lombard Merchants of Florence, and the Sheriff distrained 2 Lombards, who came in Person, and prayed their Appearance to be recorded to have their Issues as distinct Persons, but not as of the Society of Lombards, &c. non Allocatur, but that they shall be put to their Remedy against the Sheriff of London, by a general Action of Trespass, for where a Corporation is implooted, they ought not to distress any private Person; Quod Nota. Br. Trepasses, pl. 135. cites 19 H. 6. 80.

2. Upon a demission of a Bill in Chancery, and that Demission enroll'd, an Appeal was to the Lords, setting forth, that in the ordinary Course of Proceedings the Chancery could not relieve the Plaintiff against the Defendants, they being a Company, and serv'd with Proceeds would not appear, they having nothing to be demission'd by. The Defendants being so many of the Members of the Company as were particularly named, did put in an Answer, Plea, and Demurrer, and the Company, tho' often Summoned, did not appear. Their Lordships ordered, that the Demission stand reversed, and that the Ld. Chancellor &c. retain the Bill, and that the Court of Chancery shall issue forth usual Proceeds of that Court, and if Cause be, Proceeds of Distress as thereupon against the said Corporation, provided the said Proceeds be serv'd, one Month before the Return thereof; And if upon Return of the said Proceeds the said Corporation shall not file an Appearance, or shall appear and not answer, the said Bill shall be taken Pro Confessa, and a Decree shall thereupon pass. But in Case the said Corporation shall appear and answer within the Time aforesaid, then the Court of Chancery shall proceed to examine what the Plaintiff's just Debt is, and shall decree the said Corporation to pay so much Money as the same shall appear to amount unto, with reasonable Damages. And in Case the Corporation shall not pay the Sum decreed within 90 Days after the Service of the said Decree upon their Governor, Deputy-Governor, Treasurer, Clerk
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4. After a Decree against a Corporation for a Sum of Money, and a After Serving a Process of Contempt against them, as is usual against Persons in their natural Capacity; and it by the said Time so to be limited by the said Court of Chancery, the said Money so to be as- 

sed, shall not be paid, then, and from thenceforth, every Perfon of the said Company upon whom such a Leviation shall be made to be liable in his Capacity to pay his Quota or Proportion as attested; And the Ld. Chancellor, or Ld. Keeper, is to order or decree, that such Process shall lie against any such Member for retaining or delaying to pay his Quota or Proportion, as is usual against Persons charged by the Decree of the said Court for any Duty in their several Capacities; And if the Total so returned and filed with the Register, shall not amount to so much as shall be sufficient to satisfy the Sum declared, with respect had to such Persons as shall make it appear that they are overcharged, or ought not to be charged at all, then the said Ld. Chancellor, or Ld. Keeper for the Time being, may from Time to Time order that a new Leviation be made and returned into the Registers of the Court of Chancery, of such Sum as shall be sufficient by way of Supplement for that Purpose, to the Payment whereof every individual Person is to be bound in such Manner as aforesaid. Chan. Cafes 256, 207. Trin. 23 Car. 2. Dr. Salmon v. the Hamborough Company.

5. But the Disturbing in Process against a Corporation is to answer as well the Contempt as the Bill or Complaint, but when upon a Decree, it is ad Compendium & Solvendum, and the Court refused to grant any Stay of Process, or for the Defendants to be examined. 2 Vern. 396. Mich. 1790. Harvey v. the East India Company.

6. And Ld. North said, that a Sequestration issued on the Return of the first Disturbing, and after a Hearing in the Order of Dr. Hufley v. the Grocer's Company. And also in the Case of Cholmley v. the Grocer's Company.

(See p. cited 2 Vern. 396. and Mich. 1790 Harvey v. East India Company.)
C. a) Pleadings and Proceedings.

1. In Annuity it was held, that if an Abbot with assent of the Count grants an Annuity without naming himself by Name of Baptism, that in Action against his Successor he ought to sue in the Count the Name of him who was Abbot at the Time of the Grant. Thel. Dig. 84. Lib. 9. cap. 5. S. 24. cites 20 E. 3. Annuity 33. and that to agree 12 H. 4. 5.

2. Where there is a Covenant between two Villis incorporated, that the one shall suffer the other to be quiet of Toll, and after their Common Officer takes Toll, this is a Breach of the Covenant; Contra if it be done by another particular Person. Br. Corporations, pl. 14. cites 48 E. 3. 17.

3. Annuity was granted to J. M. by a Corporation, by Name of Precedent of the College of C. and Action was brought by Name as above, without Name of Baptism, and good. But per Hull, he ought to declare the Name of the Grantor in his Count. Br. Corporations, pl. 18. cites 12 H. 4. 5.

4. So if Abbot with the Assent of the Count is bound to me in 20 l. without other Name, I shall have Action against the Successor, and declare the Name of the Obligor certain in the Count. Br. Corporations, pl. 18. cites 12 H. 4. 5.

5. So in Writ of Entry for Difference made to the Predecessor, the Name of the Difference shall be express'd in the Writ; Per Thirn. Br. Ibid.

6. Scire Facias against the Communality of S. who said that the King had made Bailiffs there; Judgment of the Writ, not naming the Bailiffs, and a good Plea. Br. Brief, pl. 493. cites 2 H. 6. 9.


8. In Debt against an Abbot upon the Deed of his Predecessor, because the Predecessor pledged a Tablet of the said late Abbot, and his Abhy aforesaid, to the Plaintiff for 40 l. of which the Predecessor re-paid 20 l. and be delivered to him the Tablet again, and took the Obligation of the Predecessor himself, and averred that the Tablet came to the Use of the House, and the Count good by Judgment, notwithstanding that he laid Goods of the Abbot and Abby; for when this is counted or pleaded of an Abbot who is dead, the Count shall be at Supra, and the Pleading in like Manner; But if it be of an Abbot who is Abbot, and alive, it shall be Goods of the Abbot only; for during his Life the Property is in him, and after his Death the Property is in the House; Quod Nota Diversity; and per Rolle, Count shall not abate for Surplijage. Br. Count, pl. 10. cites 9 H. 6. 25.

9. The Dean and Canons of Windfor fled Writ of Trespass, and the Writ was Ad Responendum Decano & Canonicis &c. without showing how they are fo incorporated. Thel. Dig. 20. Lib. 1. cap. 22. S. 16. cites Trin. 18 H. 6. 16.

10. Debt against an Abbot, and counted that T. late Abbot, Predecessor &c. promised to him 10 l. of which 5 l. was for Bread and Beer, and 5 l. for Defence of a Suit which was pending against the Abbot; and the Count good, notwithstanding he did not say that the Bread and Beer came to the Use of the House, nor that the Suit was against the Abbot; For this shall be intended; But by all the Justices, the said Count was to say generally, that it came to the Use of the House; and after the Count was awarded good. Br. Abbe, pl. 9. cites 22 H. 6. 56.
11. Scire Facias against L. B. Warden of the College of C. in Canterbury, and the Scholars of the same, were sued by the Successor of a Parson upon Recovery of an Annuity, and was brought in the County of Norfolk, and the Sheriff returned good Scire Faci L. B. and Scholaribus &c. and upon this L. B. came, and said that he is the same Person who was warned, and said that he is not Warden, nor was not the Day of the Writ purchas'd, nor ever after; Judgment of the Writ; And there it is agreed, that the Scholars need not appear nor plead, for all is one Corporation; And if the Head be not warned, the Body is not warned; And the Issue was accepted. But per Moyle, this is a strange Issue, for L. B. said, that he is not Master; Per Wangford, if the Issue be found for the Plaintiff, he shall have Judgment to recover the Annuity; But Brooke makes a Quære thereof, for the Scholars who are Part of the Corporation, are not Parties; But if the Issue be found for the Defendant, it seems clear that the Writ shall abate, for he is named L. B. Warden in the Writ, and therefore it seems it had been better for the Plaintiff to have sued his Writ against the Warden and Scholars &c. without proper Name of the Master, and then Scire Feci Magistro &c. Scholaribus return'd had been good. Br. Corporations, pl. 6. cites 34 H. 6. 14. 49.

12. Where the Number of Brothers and Sisters appear in the Foundation, this shall be thrown certain in the Pleading, and the dying seized of the Predecessor is good Cause to enter, and justify upon the S. R. 2. UbI Ingr enforced non datur per Legem. Br. Corporations, pl. 7. cites 34 H. 6. 27.

13. But this is no Title in Affifu, and he ought, where the Master dies, to shew how the other was elected, and made Master &c. before he enter'd, and that none intrusted &c. Br. Ibid.

14. Annuity by the Dean and Chapter of Stoke against the Master of Thel. Dig. the Hospital of Saint Mary-Overa, Parson of D. and counted of to L. Ar. 20. Lib. 1. years of an Annuity of 40 L. and that 1. late Dean of the said Chapter, and then Chapter, Predecessors of the now Dean and Chapter, were seized of the said Annuity by the Hands of one H. late Parson of the Church aforesaid, Patch. 12 H. Predecessor &c. and that the aforesaid late Dean and Chapter, and all his Predecessors, were seized &c. by the Hands of the aforesaid H. late Parson of the Church aforesaid, and by the Hands of his Predecessors, Parsons of the Church aforesaid Time out of Mind, until the 26th Year of the now King, and the aforesaid late Dean died, and the aforesaid now Plaintiff was elected, and made Dean of the Church aforesaid &c. and alleged Seisin at S. aforesaid, to the Damage &c. Choke demanded Judgment of the Count, because he counted that the Dean and Chapter which now are, and the late Dean and Chapter then Predecessors &c. where the Chapter cannot have Predecessors nor Successors, for it is perpetual, so that the Dean may have Predecessor, but not the Chapter; & non allocatur; for they are incorporated by this Name, and therefore they ought to prescribe by the Name by which they are incorporated, and the Prescription was awarded good, that the Dean and Chapter, and their Predecessors, Time out of Mind, were seized &c. notwithstanding that they did not say (then Dean and Chapter) of the Church aforesaid, for it shall be intended that their Predecessors were Deans. Br. Prescription, pl. 42. cites 39 H. 6. 13.

15. So of a Prior, and this Ex Parte of him who makes the Prescription, or claims by the Prescription. Ibid.

16. But otherwise it is of him who shall be bound by the Prescription, as here it is to bind the Parson, that they were seized by the Hands of the Rector, his Predecessor &c. they shall say, then Parsons or Rectors of the Church aforesaid &c. for they are to be bound &c. Ibid.
17. In Replevin it was said by all the Justices, except Prior, that the Abbey is none of the Coven, and this is well proved by Molle, by the Writ of Sine Affenso Capituli, and Alton ad idem; For in a Deed superseded by the Abbey and Coven, it is a good Plea that Not the Deed of the Abbey, not denying that it is the Deed of the Coven; And it is a good Plea, that Not the Deed of the Covenant, not denying that it is the Deed of the Abbey, and therefore the Abbey is not Parcel of the Coven; But per Prior, the Abbey is Part of the Coven, and the Head or Principal of the Covenant. Br. Abbe, pl. 12, cites 39 H. 6. 36. and 50.

18. The Abbey of Colchester, Parson of a Church, claimed an Annuity as pertaining to the said Rectory; he ought to prefer in Right of the Rectory, and not that he and his Predecessors, Abbots, have had it Time out of Mind; because of Parcells and Things pertaining to the Rectory they ought to claim in Right of the Rectory. Pl. C. 503. b. cites 49 H. 6. 16.

19. One of the Commonalty cannot justly for Rent due to the Commonalty, but the Corporation itself hath justice, and no single Person of them. Br. Corporations, pl. 54. cites 7 E. 4, 14.

20. In Trespass the Defendant pleads How for Years of the Master and Confreres of a College, and the Leaf was aginst Nostra apposition, instead of laying the Common Seal, and yet held good, and it shall be intended their Common Seal. Br. Parks, pl. 76. cites 11 E. 4, 4.

21. Debt upon Action of Account by the Mayor and Commonalty of S., against the Executor of T. P., their Receivers, and claimed that Auditors were appointed by the aforesaid Mayor and Commonalty; Catesby said one T. is now Mayor, and was the Day of the above purchase, which T. and the Commonalty, did not align Auditors, and no Plea, though they did not know who was Mayor at the Time of the Assignment; For if the Predecessor aligned &c, yet the Sentence on the Commonalty shall have Action, and Count generally, that the Mayor and Commonalty &c, notwithstanding the Words aforesaid, Mayor and Commonalty, and that the Count above was good, and is the Common Course, which has all Times continued, and if the Mayor dies, passing the Writ, and another is chosen, yet the Writ, as above, remains good. Br. Corporations, pl. 56. cites 12 E. 4, 9. 10.

22. So of Dean and Chapter, because those Actions by Custom have been sued for all the Body. Br. Ibid.

23. Contre of Abbey or Prior, for those Actions are by the Head of the Body only. Br. Ibid.

24. In Trespass the Defendant justified, because the Freehold was in the Dean and Chapter, and be as Servant, and by their Command entered, and Exception was taken, because he did not know the Name of the Dean, viz. the proper Name. Le. 307. Arg. cites * 13 E. 4. 8.

25. If Dean and Chapter make a Leaf thus, viz. Scientia nos Decurium & Capitulum &c. dimittisse &c. and does not know the proper Name of the Dean, the Leaf is void, per Littleton. Quod nulli concedit per Curiam. Br. Corporations, pl. 39. cites 18 E. 4. 8.

Br. Leafe, pl. 45. cites S. C. and 13 E. 4 that by the best Opinion where the Dean and Chapter make a Leaf &c. it is not necessary to express the Dean's Name of Baptism. Le. 307. Arg. cites S. C.
26. And the Law is the same where he justifies by Commandment.
Br. Ibid.
27. Debt by R. Alderman of the Guild of St. Mary in Boston against L. upon a Bond made to S. N. late Alderman, which was to him, and his Successors; per Littleton Justice he ought to shew how the Corporation was made; Contra of Abbot and Prior, or Dean and Chapter, but Guild or Fraternity cannot be made but by a special Incorporation, and per Brian it is true, for Successor cannot take Effect but there is Succession, for otherwise this Word Successor is void. Br. Corporations, pl. 60. cites 20 E. 4. 2.
28. For where a Man is bound to the Church-Wardens and their Successors, this word Successor is void, and the Executors shall have the Action, for the Wardens are not incorporated; per Brian and Littleton Justice to the same Purpose, that a Bond made to the Dean of P. and his Successors is not good to the Successors, but the Executors shall have the Action; Contra of Bond to the Dean and Chapter of P. and their Successors, there the Successor shall have the Action after the Death of the Predecessor. Br. Corporations, pl. 60. cites 20 E. 4. 2.
29. So of a Bishop; per Littleton Justice, and Choke Justice to the same Purpose, and agreed the Case by Brian, and that Bond made to the Abbot or Prior, and their Successors, omitting the Coven, is good to the Successor; for no other of the Corporation is able to take the Bond but the Abbot. Br. Corporations, pl. 60. cites 20 E. 4. 2.
30. And that where Chapter Priest is founded by such Name and Successors, and Land is given to him and his Successors, this is good, and the Successor shall have it, and not the Heir. Br. Corporations, pl. 60. cites 20 E. 4. 2.
31. But Bond made to him, and his Successors shall enure to the Executors and not to the Successors, by which the Plaintiff prayed Leave to purchafe a better Writ. Br. Corporations, pl. 60. cites 20 E. 4. 2.
32. Debt upon a Bond by the Abbot of Saint Bennet's against the Mayor, Sheriff's and Community of Norwich; the Defendants said, that A. the Abbot, and others of his Consent, imprison'd. H. then Mayor, in the Fleet in London, till be and the Sheriff's, and the Community, made the Bond at Norwich by the Duties aforesaid, and the best Opinion was, that the Plea was good. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.
33. And after, fol. 27. they were compell'd to shew that there was Mayor and his Name, and the Name of the Sheriff's, the Time of the Death, and the Name of the Abbot &c. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.
34. But it was held by several, that if he had said that so many Men make the Community, Chapter, or Consent, who were imprison'd to make the Death, this is good; For otherwise it cannot be intended that a Corporation can be imprison'd; and where the Mayor is imprison'd, the Corporation shall not have False Imprisonment. But per Catesby the Plea is good; For the Body is entire, and therefore the Imprisonment of the Mayor is the Imprisonment of all the Corporation, for he who restrains my Hand, imprisons all my Body; So where one holds my Feet in the Stocks or my Head in the Pillory, without Authority, this is an Imprisonment to all the Body. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.
35. In Action brought by any Corporation pretended or supposed, it is a good Plea to say that there is not any such Corporation by Name &c. in the same County. Thel. Dig. 20. Lib. 1. cap. 22. S. 19. cites Mich. 22 E. 4. 37.

36. Treff-
35. *Trespass against the Mayor and Commonalty; it is no Plea that the Inhabitants of the same Wili have Common there, for this is another Corporation.* Br. Corporations, pl. 48. cites 4 H. 7 13.

37. *In Trespass brought by a Dean and Chapter, being Parsons inimicable to the Church of D. this Diversity was taken, viz. that if they they demand the whole Church of D. they shall say that they were seized in Dominio suo ut de Feodo in jure Ecclesiae Cathedralis sue pretieitate &c. but if the Demand be of Parcel only, as of an Acre, Parcel of the Parsonage; they ought to say in jure Ecclesiae sue de D. Pl. C. 403. 503. b. Mich. 18 & 19 Eliz. in Cafe of Grendon v. the Bishop of Lincoln.

38. *Notice may be given to a Corporation by their Solicitor and Counsel; Per Manwood. Savil. 20. pl. 50. Patch. 24 Eliz. Anon.

39. If a Parson pleads that he is seized, he shall say in jure Ecclesiae, for he has two Capacities, and without such Words he shall be intend-ed elected in his own Right; But if an Abbot pleads that he was seized, there needs not such Words, for he has no other Capacity; so of Dean and Chapter, Mayor and Commonalty; per Anderdon Ch. J. Le. 133. pl. 212. Trin. 31 Eliz. C. B. in Cafe of the Scholars of All-Souls in Oxford v. Tamworth.

40. *In Ejudicament the Plaintiff declared of a Leafe by the Warden and Fellows of All-Souls College. Exceptions was taken, because the Plaintiff had not declar'd upon a Leafe by the Warden and Fellows, without naming any Name of the Warden. The whole Court held the Declaration well enough, and Anderdon said it stands with Reacon, that since the College was incorporated by the name of Warden and Fellows, and not by any Christian Name, that they may Purchaze and Leafe by such Name without any Christian Name, and may be implicated and implead others by such Name, and as the Fellows, in such Cafe, need not be nam'd by their Christian Names, no more ought the Warden; But otherwife of a Parfon, Vicar, Chauncy Priest. Le 306. pl. 427. Mich. 32 & 33 Eliz. C. B. Carter v. Claycole.

41. *A Writ of Right was brought by the Warden and College of All-Souls-College in Oxford, and the Writ was good claimant effe jure & Hreditarium jiam, but did not say in jure Collegii yet adjudged good; for when the Writ was brought by the Cutos & Collegium, it cannot be otherwise intended than in jure Collegii, as in their Incorporation; for they had no other Capacity, and the Precedents are both ways.* Cro. Eliz. 232. pl. 1. Patch. 33 Eliz. C. B. All-Souls College v. Tamworth.

42. *Pleading qual Villa de Beverly incorporata suit was good enough, altho' that it be better Pleading to say that the Mayor Burgesses &c. or the Inhabitants were incorporate &c. Nov. 54. Fisher v. Truittlow.

In pleading a Leafe by a Dean and Chapter the Name of the Dean must be Tewed. Co. Lit. 3. a.

Adjudged that they may grant or lease by Name of Dean and Chapter, without shewing their proper Names, and so may plead and be implead, because in their Corporate Capacity they have no Name of Baptism, or any other Name than that by which they are incorporated; but it is otherwife in the Cafe of a Parfon or a Vicar; For they must use their Name of Baptism. 3 Salk. 103. pl. 5. Mich. 8 W. 3. Newton v. Travers.

44. *An Abbot, Prior, Bishop, Dean, Parfon, or any other sole Corporation that is seizid in Auter droit, cannot disclaim when he is touched, by reason of Homage Ancifred, or in any other Cafe, for they alone cannot devest
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deveil any Thing in Fee which was vested in their Church or House.
Co. Litt. 102. b. 103. a.

43. If a Prior, Bishop &c. in a Quo Warranto against them for Franchise or Liberties, disclaimed, this shall bind their Succesfor. Co. Litt. 103. a.

46. An Abbot &c. acknowledges the Action in a Writ of Annuiy, this will bind the Successor, because he can't falsify it in a higher Action, and there must be an End of Suits; But if the Abbot lays a Fine, or acknowledges the Action in a Precipice quod reddit, the Successor shall be bound pro Tempore, but he may have a Writ of Right, and recover the Land; But it in Dues upon a Bond against an Abbot &c. the Abbot &c. confesses the Action, and dies, the Successor shall not avoid Execution, though the Bond was made without Assent of the Covent, for he cannot falsify the Recovery in an higher Action; So it is of a Statute or Recognisance. Co. Litt. 103. a.

47. In Debt for Rent by a Corporation, they intitle themselves byFetchment, and do swear Levey to be executed by Letter of Attorney; And therefore it was objected, that they cannot take unless by Letter of Attorney; Roll Rep. excuted, as well as in a Feoffment made to other Persons; and Judg-ment accordingly. Cro. J. 411. pl. 11. Mich. 14 Jac. B. R. Ipswich (Bailiffs &c.) v. Martin & al. Bulst. 211. S. C. but S. P. does not appear.

49. Ejeouement-Leafe was made by a Corporation; they feal'd the Lease and delivered it to their Attorney, having a Letter of Attorney from them to deliver the same; Per Cur. they can't do this in any other Manner but by their Attorney; they are only to subscribe and feal the Lease, and to deliver the same by their Attorney, having their Letter of Attorney fo to do. Bulst. 119. Pach. 9. Jac. St. John's Coll. Oxon v. Lord Norris, als. Clark v. Hannes.

50. No Action lies at Common Law against a Dean and Chapter on a Promise made by them; because a Corporation can't be bound without Deed, and when a Corporation is set in a Court of Equity, the Corporation it fell is not set, but some particular Persons of the Corporation, and one may be set that was not of the Corporation at the Time of the Promise, and where the Promife was to make a new Lease on the Surrender of the former, and they Grant a new Lease to another, it was refolved, that the old Leifee had great Equity to be reliev'd. Roll. R. 32. pl. 28. Mich. 12 Jac. B. R. Frevill v Ewebank.

53. In Debt by the Guardians and Fellows of N. for a Forfurture on Breach of a By-Law, Hobart Ch. J. that they need not show how they were incorporated; For the Name argues a Corporation. Hob. 211. Pach. 14. Jac. in Cafe of Norris v. Stapes.

51. A Corporation may have some Things by Prescription, and some by Charter, and therefore may use both Titles. Nota. Lat. 113. Hill. 1 Car.

52. A Lease was pleaded to be made by Dean and Chapter, but did not show that the Dean and Chapter were fealed in Jure Collegii, nor what Ejection the Dean and Chapter had in the Land; Doderidge held the Pleading ill, because it might be of an Estate pur auter Vie. Lat. 14. Pach. 2 Car. Newman v. Marth.

53. In Covenant brought against a Bishop on a Covenant entered into by his Predecessor, it was not alleged that he was seised in Jure Episcopatus, and therefore was adjudg'd ill; For in pleading Seilin in all Fole Corporations it ought to be pleaded in Quo Jure they were seised; but it is Books where, otherwise in Corporations aggregate. 2 Lev. 68. Mich. 24 Car. 2. B. that where it is pleaded that J. S. R. Davenport v. the Bishop of Salisbury.

Episcopos was seised, that it implied Seilin in Right of the Bishoprick, which is true if it were a

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In second Deliverance, the Defendants made Oonuance as Bailiffs to the Master and Governors of Chrift's Hospital &c. for that they are a Corporation, and seised in Fee of the Place where, in the Right of the Hospital; upon Demurrer it was objected, that the Conuance was ill, because it did not fit forth How incorporated, nor Sworn Lefsum perceptsion, nor Prow any Writing; but adjudg'd that this Avowry is good, because the Incorporation is but an Inducement to the alleging the Seizin in them, therefore need not be fhewn, nor need he allege any Precept in Writing. 3 Lev. 107. Mich. Car. 2. C. B. Manby v. Long.

A Bill was brought against a Corporation to discover Writings. The Defendants answered under their Common Seal, and fo not being sworn will not Anfwer in their own Prejudice. Ordered, that the Clerk of the Company, and such Principals Members as the Plaintiffs shall think fit, anfwcr on Oath, and that a Mafter settle the Oath. Vern. 117. pl. 104. Hill. 34 & 35 Car. 2. Anon.

Bill against a Company, if they do not appear, it was faid the Plaintiffs may take out a Diffiringas against the Company, and have it return'd Null, and to get a Sequestration against them, and then by the Courfe of the Court the Plaintiff need not bring them to Hearing. Vern. R. 121, 122. pl. 112. Hill. 1692. Curfion v. the African Company.


56. An Information was exhibited against the Bailiffs and Burgometers of Yarmouth; one of the Bailiffs (there being 2) appointed an Attorney to appear, but the other would not confent, and the Court was moved, that their Liberties might be feized for want of an Appearance; But the better Opinion was, that upon an Information in Nature of a Quo Warranto, which is Datum eft Curiae intelligi, and which in Nature of a Personal Action, there cannot be a Seize before a Summons, (f. e.) the Liberties cannot be feized upon a Venire Fodias, but upon a Diffiringas; but it is otherwife in a Quo Warranto, for there it is Summonitus luit; then it was made a Quifition, whether a Warrant of Attorney made by one of the Bailiffs was not fufficient, because the Corporation did not difavow it, but that was determined. 3 Salk. 104. pl. 7. Anon.

57. In a Writ be brought by Hugh, Prior of Coventry, this too general, and shall abate, but in a Leafe fo made had been good. Gilbl. Hiift. of C. B. 189.

58. In the Cafe of the South-Sea Company, in whom the Estates of the late Directors are vested by Act of Parliament, where the Statutes of Limitations might have been pleaded against the late Directors, it is pleadsable against the Company, who stand but in such Directors Place. 3 Wms's Rep. 143. Mich. 1732. South-Sea Company v. Wyndfell.


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1. The King granted to J. N. to found a Chantry of 12 Priests, and that the Provost thereof shall be called Provoft of the Chantry of C. and the King alter brought Quare Impedit against him by Name of Provoft of the House of C. and therefore the Writ abated. Br. Corporations, pl. 21. cites 38 E. 3. 14.

2. Scire Facias against the Prior of St. John of Jerusalem in England upon a Recovery, which was against the Prior of the Hospital of St. John of Jerusalem in England, the Writ was awarded good, because it was known by the one Name and the other; Quod Nota, in Action against a Corporation. Br. Corporations, pl. 10. cites 44 E. 3. 16.

3. Trefpaus against J. Abbot of St. Mary in C. the Defendant said, that it was founded by the Name of Abbot of the Church and Monastery of St. John's of C. Judgment of the Writ; Newton said, this is no Plea; For it may be known by the one Name and the other, and it is good in Action against him, and especially in Trefpaus of a Tort done by himself; For it was of Goods carry'd away. But if he was to bring Action, or if Action was brought against him in Right of the House, there it ought to be named by the very Name of Foundation, by which Aniwer; QuodNota Markham said, that the House was founded &c. and all as above, and that they and all his Predecessors have unpleaded and been unpleaded by the Name afterwards, and not by the Name of the Abbot of St. John's of C. only; Judgment of the Writ. Portman said, the Abbot is known by the one Name and the other, prifit &c. and a good Plea, per Newton, tho' he and his Predecessors have been known by each Name. Br. Corporations, pl. 30. cites 21 H. 6. 4.

4. Quare Impedit against the Master of a College in Cambridge; the Defendant pleaded, that they are incorporated by another Name; Judgment ab actio; the Plaintiff demurr'd, because he did not conclude to the Writ; And per Fitzherbert, the Plea is not good without Doubt, by which the Defendant pleaded another Plea, and to see that misnofer of a Corporation goes to the Writ. Br. Corporations, pl. 1. cites 25 H. 3. 1.

5. In Debt against a Corporation the Corporation ought to be named by its Right Name. As if it be J. Prior of Saint Peter, and the Corporation is Saint Peter and Saint Paul, this is Misnofer, and cannot be aided after Imparlance, for it is Parcel of his Name. Br. Corporations, pl. 8. cites 35 H. 6. 5.

6. Obligation was made Abbati Monasterii de M. extra Muros Eborum. In Debt brought the Writ was, Quod reddat Abbati Monasterii de M. Eborum, leaving out (Extra Muros) and held good, notwithstanding the Variance. Gouldsb. 122. cited by Gawdy as 5 E. 4. 20.

7. Where Mayor and Commonalty are sued by another Name, they may make Attorney by Special Warrant by their very Name of the Corporation, and so the Attorney shall plead Misnofer, and Corporation cannot appear but by Attorney, because the Court cannot know if it shall appear or not, if they appear in Perfon; Per Brian & tot. Cur. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

8. Annuity against the Dean and Chaplains of the King's Free Chapel of St Stephen Westminster; Attorney appear'd for them, and made Defence, and.suppli'd, and at the Day said that they were founded by name of Dean and Chapter of the Free Chapel Royal of St. Mary and St. Stephen Protomartyr, and the Opinion of all the Judges was, that they shall be entopp'd to plead
plead it, and this seems to be by Reason of the Attorney, and Impudence, for it is contrary to his Warrant. Br. Corporations, pl. 71. cites 15 H. 7. 14.

9. Trepassa by J. Abbot of R. the Defendant they'd how he fail'd of his Name of his Corporation. Markham Ch. J. said, Known by one and the other, or Suit by Name known is no Pla for the Plaintiff; for he ought to know his proper Name; But it the Defendant be named by the Plaintiff by Name known, tho' the Defendant be Corporate, this suffices. Br. Corporation, pl. 82. cites 1 E. 4. 6. and 25 H. 8. the Justices of C. B. agreed this in Case of a Corporation. But Quere, if there be not a Diversity between actions Real and Personal. Br. Corporation, pl. 82.

to Rep. 122. b S. C. refolv'd accordingly. Where a Man makes an Obligation to a Corporation, they shall declare by their right Name, and allege that the Obligation was made to them by the other Name. G Hit of C. B. 179. cap. 17.

11. In an Act of Parliament Misnomer of a Corporation, when the express Intent appears, than't avoid the Act no more than in a Will, for Parliament, Testament and Arbitrament, are to be taken according to the Minds and Intentions of those that are Parties to it; and therefore when the Description of a Corporation in an Act of Parliament, or a Will, is such, that the true Corporation intended is apparent, and it is not possible to be intended of any other Corporation, tho' the true Name of Corporation (which is requisite to be express'd in Grants and Deeds) be not precisely purfu'd, yet the Act of Parliament and Will shall take Effect. 10. Rep. 57. b. Trin. 11 Jac. Chancellor &c. of Oxford's Cafe.

12. A Corporation by Prescription may have several Names by Reputation; as if they are called by one Name, tho' it is not exactly the Right Name, yet if it suffices to describe the Persons they must answer the Writ. Arg. 11 Mod. 67. pl. 9. Mich. 4 Ann. B. R. in Serjeant Whitacre's Cafe.

13. The Names of Corporations are not arbitrary. Sounds mostly of individuality, but have a certain and significant Meaning; and if that be kept to, tho' the Words and Sillables be varied, yet the Body Politick is very well named, for then there is enough said to shew that there is such an artificial Being, and to distinguish it from others, G. Hit of C. B. 131 cap. 17.

14. Upon Error out of C. B. upon a Qua. Imp. by the Chancellor and Scholars of the University of Cambridge against the Arch Bishop &c. upon the 3 Jac. 1. cap. 5. disabling Populi Recitants Convict from presenting &c. and voids such Presentations in the Chancellor and Scholars of the two Universities respectively. Defendant had pleaded in Abatement, that the Incorporation was by the Name of Chancellor, Masters, and Scholars
INTRODUCTION OF COSTS, AND THE ORIGINAL OF THEM.

1. Statute of Marlebridge 52 H. 3. cap. 6. was the first Statute that gave the Defendant Damages and Costs, if they were found for him. It seems that no one could have recovered Damages in Plea Real, but in Plead Personal and mixed Actions; for by theStatute of Merton cap. 1. Damages are given in Dower upon dying of the Baron, and by other Statutes Damages are given in Writ of Entry for Difficulties, and in Aiel and Cofinance, and see the Statute of Gloucester cap. 1. that in all Cases where a Man recovers Damages he shall recover Costs; and yet where Great Damages are given by the Statute, he shall not recover Costs, and therefore it seems that the Statute of Gloucester intended to give Costs where single Damages are to be recovered. Br. Costs, pl. 20.

Before this Statute, at the Common Law, no Man recovered any Costs of Suit either in Plea Real, Personal, or Action. 2 Inft. 278.

Here is Expres Mention made of the Costs of his Writ, but it extends to all the legal Costs of the Suit, but not to the Costs and Expenses of his Travel and Loss of Time. 2 Inft. 278.

3. And this shall hold Place in all Cases where the Party is to Before recover Damages.

no Demandant recovered Damages in any Real Action, but only in a Writ of Dower Unit with Lassels, by the Statute of Merton, cap. 1. 2 Inft. 289.

This

Generally this Branch gives Damages to him that Right has, and his Heirs, against the Intruder, Abator, Diffeiior, or other wrong doer himself. 2 Inf. 259.

5. If the Plaintiff be barred or non-suited at Common Law, all the Punishment, regularly, is Amercement. Jenk. 161. pl. 7.

6. There was no such Thing as Costs of Suit at Common Law; but if the Plaintiff did not prevail he was amerced Pro fallo Clamore; if he did prevail, then the Defendant was in Misericordia for his unjust Detention of the Plaintiff's Right; but this made the Plaintiff no Amends for the Costs that he had laid out of Pocket, in obtaining his Right; so it stood till the Statute of Gloucester, cap. 1. but by that Statute, if any Person recovered Damages in a Fee Personal or Mixed, he should have his Costs, which was the Original of Costs of Incurrence; for then Damages were found by the Jury, and it was thought no Dilemma to the Court, to tax the moderate Fees of Counsel and Attorneys that attend the Cause; so Matters stood for the Plaintiff till 45 Eliz. cap. 6. Gib. Hist. of C. B. 210.

7. There were no Costs at Common Law given Ex Professo under that Title, but the Plaintiff was punished in Amercement to the King Pro fallo Clamore, and the Defendant in Misericordia, where the Judgment was against him, cum Expensis Litis under that Title, because he would fuller twice for the same Fault; but it seems in the Iter, where the Expenses of the Suits began to encroach, they were sent to give their Costs in the Grefs, and unblended with the Damages, and the Judges being in the Iter, aslied with the Officers of the Court, and not hurried or strained in their Sittings, they could easily make a Computation of such Costs; but when Ed. 1. was changing his Iter, and bringing in Rediidentary Jutices to go the Circuits and try the Causes in their Counties, that there might be the same uniform Law, then it was necessary the Costs should be taxed above, and not at the Alizes; and thence by the Statute of Gloucester, the 6 E. 1. they introduced Costs for the Plaintiff, and the Words are viz. upon the Alizes, Writs of Comnage &c. the Demandant shall recover against the Tenant the Costs of his Writ purchased, together with the Damage aforesaid, and all this shall be holden in all Causes where a Man recovers Damages; this brought in Costs in Real Actions, where there was no Damages, and also in all Personal Actions, for even in Action of Debt there are Damages for the unjust Detention, and upon Demurrer the Damages are contended, and therefore there is a sufficient Authority for the Court to assise the Expence or Damage. Gib. Hist. of C. B. 214, 215.

[A] To whom Costs shall be given.
[And against whom.]

1. If Baron and Feme join in an Action, and a Verdict is given for the Plaintiffs, and the Jury assise Damages ultra Mitas & Cuthagia
(A. 2) In what Cases.

1. A Summons, for that the Defendant, in Consideration of such Clothes as were delivered at such a Place, promised to pay 8l. and in consideration of a Debt upon Arrearages of Account, the Defendant being indented in 132, the Defendant promised to pay 8l. The Defendant pleaded non Assumpsit; and found against him, and several Damages assessed, but entire Costs and Judgment accordingly for the Plaintiff. And Error thereof brought and held that the Consideration upon the 2d Assumpsit was not sufficient; But for the 1st, and for the entire Costs, the Judgment was affirmed; And for the 2d Assumpsit, it was reversed. Cro. E. 537. pl. 72. Hill. 33 Eliz. Grymfon. v. Reyner.

2. In Action on the Cafes the Plaintiff was Not Suits, and it was mov'd that no Costs should be given against him, because the Declaration brought against a Plaintiff, he could not have Judgment, but it was answer'd, that it had been often ruled, that the Defendant should have Costs notwithstanding, who was found not guilty, but...
but only in Grimton's Case, for Cofts are given for Vexation, cites it as agreed per Car. D. [32. a. b. pl. 5. 6] 18 H. 8. [but it is misprinted, and should be Paclh. 28 & 29 H. 8.] where it was to held by Fitzherbert and Baldwin, but Englefield dubitavit.] 2 Roll Rep. 83. Paclh. 17 Jac. B. R. Palford v. Webb.

of the Writ and Declaration to excuse themselves of Cofts. Cro. C. 175. pl. 2o. B. R. Heylor's Case.


4. In Ejectment the Plaintiff mistook his Venue Factus, and the Jury found for the Defendant. The Defendant had Judgment for his Cofts notwithstanding the Venue was mistaken. Godth. 329. pl. 423. Arg: cites Mich. 18 Jac. Done v. Knott. Paclh. 21. Jac. B. R. Pinchard v. Reynolds.—-2 Roll Rep. 327. S. C. resolved accordingly.— Perit. 146. Mich. 5 Car. C B Knight v. Siddombs, the Exception that the Venue was not written was allow'd, and because the Defendant might have Judgment he cannot have Cofts, and Richardson said that B. R. in Action on the Case by Grimton's Case, it was found against him, and the Plaintiff for the Prevention of Cofts of Juladien, that the Declaration was not sufficient, and it was allow'd; but if the Plaintiff be Nonuit he shall not have Benefit of such Exception to prevent Cofts, by Reason of the unjust Vexation.—-S. P. as to the Nonuit. Hosoo. 254. pl. 507. Trin. 16 Jac. Steward v. Sudbury.

5. A Man inhabiting in the most remote Part of England was arrested eight times by Latitain, and no Declaration is put in; and the Council prayed Cofts for the Defendant. The Prothonotary said, that he shall not have Cofts, unless he come in Perfon; but Richardson said on the Contrary, he shall have Cofts; for it appears that he had been put to travel, and a Day given to fly Caufe why the Cofts shall not be given. Het. 73. Hill. 3 Car. C. B. Fenno v. Thomas.

6. Whether Cofts might be given on a special Verdict, the Court doubted; For the Statute 23 H. 8. cap. 15. says, that where a Verdict is found against the Plaintiff; But in a special Verdict it is neither found for or against; But it may be said, that when it is adjudged against the Plaintiff, then it is found against him; and 4 Jac. cap. 3. which gives Cofts in an Ejecttne Firmae, had the same Words, if any Verdict, &c. But it may be answer'd, that as in Demurrer no Cofts shall be recovered, no more in a special Verdict, for that the Plaintiff had a Probabilien Caufam litigand, and the Statute may be intended of vexatious Suits & c. Het. 144. Trin. 5. Car. C. B. Fawkenbridge's Cafe.

7. Affidavit that the Defendant owed but 40s. the Court ordered the Plaintiff to shew Caufe why he should not accept it and on Refusal he shall have no Cofts, unless he proves more due. 2 Keb. 152. pl. 27. Hill. 18 & 19 Car. 2. in B. R. Rhodes v. Brooks.

8. A Prohibition was pray'd to the Ecclesiastical Court of Lincoln, for that the Plaintiff was prosecuted there ex Officio upon Articles exhibited against him for not coming to Church, and for sitting irreverently there when he did come, and because they taxed Cofts against him, the Court doubted, whether Cofts ought to be taxed, because it was not a Caufe between Party and Party, but promoted ex Officio Judicis, & per instantiam Curiae, thro' a Person be assigned by the Court to prosecute it. Afterwards, by the Mediation of the Court, the Cofts were mitigated, and the Party submitted to pay them, and to conform to the Laws of the Church. Hard. 5o3. pl. 1o. Mich. 2o Car. 2. in Scace. Browne v. Lake.
If after the Prosecutour, Burnett 251, and Kendall, the Plaintiff thereby faves Cofts; Per Cur. 12 Mod. 145. Mich. 9 W. 3. Greenhill v. Shepherd.


11. In Debt on Bond, the Money be tender'd before Action brought, which is refused yet the Plaintiff must have Cofts; For the Statute gives the Court no Jurisdiction till after Action brought, and therefore they cannot take Notice of a Tender before. Resolved. 10 Mod. 26. Trin. 10 Ann. B. R. Player v. Bandy.

12. Where Defendant imports, and a 3d Person demands Conunce of Pleas, which is refused to the 3d Person as coming too late but which otherwise would have been granted, no Cofts shall be paid. 10 Mod. 156. Peace. 12 Ann. B. R. Manners v. Perne.

13. Three Declarations for one and the same Battery being ordered to be reduced into one, Plaintiff's Council prayed Cofts, but was denied, Notes in C. B. 230. Hill 7. Geo. 2. Harper an Attorney, v. Woodhouse and others.

14. Plaintiff's Attorney delivered a very long Declaration for entering Plaintiff's House and taking and carrying away his Goods, and in every Count repeated the Particulars contained in an Inventory of the Defendant's Goods taken at the Time they were discharged for Rent, on Account of which Defendant this Action was brought, with some small Variance in the Description of the Goods, and laying the Trespasses on different Days; the Court, upon hearing Counsel on both Sides, it appearing that the Action was brought for one and the same Trespass, ordered two of the Counts to be struck out, and the Attorney to pay Cofts; Notes in C. B. 239. Hill 9 Geo. 2. Macdonald v. Gunter.

15. Motion to set aside Plea in Abatement, which came in two Days after Declaration left at Defendant's Attorney's Chambers, under the Door, which was not found there till November 18. The Agent had appeared for the Country Attorney, and Plaintiff had given no Notice to the Agent of Declaration being filed or left; Per Cur. whether the Plea came regularly in or not is the only Question? And the Declaration not being delivered, nor any Notice to the Agent of its being filed, the Rule for setting aside the Plea was discharged with Cofts, it being tricking Practice to put the Declaration under the Country Attorney's Chamber Door. Notes in C. B. 251, 252. Mich. 12 Geo. 2. Burnett v. Kendall.

16. In what Cases Cofts are discharg'd by a General Pardon. See Tit. Prerogative (S. a) pl. 13. and the Notes there.

(A. 3) For not going on to Trial.

1. Where, upon Notice of Trial, the Defendant makes Affidavit, that he attended with his Counsel and Witnesses, and the Plaintiff did not proceed to Trial, the Court here will make a Rule for the Secondary to tax the Defendant his Cofts, if he finds that Cofts ought to be taxed. 2 L. P. R. 243.

2. The King shall pay Cofts for an Amendment, but shall not pay Cofts for not going on to Trial; but where there is a Procurator, he's & S. P. shall pay Cofts for Amendments, and not going on to Trial both, but as to the then there must be an Affidavit of the Name of him who is the Procurator for that does not appear upon the Indictment; and if the Defendant or does not know the Procurator, he ought to apply to the Attorney General.
Cotts.

3. If upon Notice of Trial Defendant dehays Breviary, retained Counsel, and makes ready his Witnesses before that Notice is countermanded: upon Affidavit thereof and Motion, he shall have such Costs as Maller shall tax. 12 Mod. 36. Mich. 13. W. 3.

4. On a Motion for Costs for not going on to Trial it appeared that a Countermand was given on Sunday, the Day before the Communion Day, which it was said would have been good, had it not been on a Sunday; but the Court held, that Costs should be allowed. Rep. of Prac. in C. B. 15. Mich. 4 Geo. 1. Deighton v. Dalton.

5. Action was laid in Cornwall. Notice of Trial was given in Town, and countermanded in the Country three Days before the Communion-Day of the Assizes. The Question was, whether this was a good Countermand to prevent Costs for not proceeding to Trial, Defendant having fetched Witnesses from London, who was got as far as Exeter before he heard of the Countermand? Per Cur. Notice of Trial cannot be given in the Country, but may be well countermanded there; and though by that Practice Defendant is put to an Inconvenience in this Case, yet the Inconveniences which must necessarily accrue from the contrary Practice would be much greater. The Countermand would have been good if given but two Days before the Communion-Day. Notes in C. B. 212, 213. Trin. 8 & 9 Geo. 2. Goodright, on the Densities of Hawkey v. Hoblyn.

See (B) (A. 4) To whom; And against whom; Informers.

1. By the Words of the Statute of 18 Eliz. cap. 5. [S. 3.] That every Informer upon a Penal Statute that shall willingly delay Suit, discontinue, or be Non-fuit, or against whom the Matter shall pass by Verdict, or Judgment, shall pay Costs: it was held, that all Informers upon Penal Statutes, which give Action to him, that will Sue, shall be liable to an Informer in the Common Course of Informers, and shall be confider'd as common Informers, though they never before inform'd against any; But where a Statute gives the Moiety, or other Part to the Party griev'd, and not to him that will sue in Common, there if one informs for himself and the Queen, he is not within the Compass of the Statutes. This Difference was taken for Law, and Judgment accordingly. And. 116. pl. 162. Knevet v. the London Butchers.

2. Information upon the Statute 21 H. 8. cap. 13, against two Persons, (viz.) against one for Non-residence, and against the other for taking a Favor; one of them pleaded Sickness, and that by Advice of Physicians he removed into a better Air for Recovery of his Health; the other pleaded, that he took the Farm for Maintenance only of himself and Family; these were both good Pleas, and the Informer not proceeding, but having brought this Information only for Venation, and to make the Defen-
(B) In what **Actions.**

1. In a **Prohibition,** if Illue he joined among others, whether the S. C. at D.
   Defendant hath prosecuted in the Court Christian after the Pro-
   hibition granted, and it is found against the Defendant, the **Plaintiff**
   shall have his Colts, as well as where the Defendant is found
   **Guilty in an Attachment upon a** **Prohibition.** High 15 Car. B. v. Lang S. C.
   R. between **Pacey and Longe** adjudged, and then **bounced** Em. 7 * Car. B. where it
   was to resolved per Cur. upon a **View of o** **federal ancient Precedents.**

   In C. B. where the Suit being commenced in the Spiritual Court after a **Prohibition**
   delivered, an **Attachment**
2. In an Action upon the Statute of 21 H. 8. [cap. 6.] for taking a Mortuary against the Statute, the Plaintiff shall have some Costs, though it is on a Penal Law, because it is brought for a Debt. New Entries 164. Contra Rich. 12 Jac. 2. Smith's Case, per Curr.

3. If Costs are awarded to the Defendant in a Prohibition by the Statute of 2 E. 6. upon a Consultation granted, and the Party for whom they are awarded brings Debt for them, he shall have his Costs in this Suit. Rich. 22 Jac. B. R. between Cockertan and Davis, litig.; but D. 22 Jac. B. R. it was adjudged per Curriam, that he shall have Costs, because this is a new Suit and judgment.

4. In an Action of Debt upon the Statute of 1 & 2 Ph. 3. 8 Ma. cap. 12. of Diftrites upon the Branch of the Statute, by which the 3d and triple Damages are given to the Party sued, for driving a Diffr. out of the Hundred, no Costs are to be given by the Law, be cause the Statute by Intendment gives treble Damages in lieu of the whole. D. 2 Eliz. 177. 32. Co. Magna Chart. 239.

5. But upon the Branch of this Statute of 1 & 2 Ph. 3. 8 Ma. by which it is enacted, That if any one takes more than 4 d. for impounding a Diffr., he shall forfeit 5 l. to the Party grieved, over and besides the Sum taken ultra 4 d. If any Action of Debt be brought by the Party grieved for the 5 l. for that the Defendant took 6 d. ultra the 4 d. for the impounding a Diffr., and the Defendant pleads Nil debut, and it is found against him, the Jury ought to give (§) Costs; for here this is a certain Debt before the Action brought, tho' it be paid by, and been discharged of these Costs; for this is not like to the first Branch of this Statute, where triple Damages are given, nor to other Penal Statutes, where the Damages or Debt are uncertain, as upon the 2 of Cd. 6. &l Recovery. Rich. 15 Car. B. R. between North and Mulgrave, in a Writ of Error upon a Judgment in Banco, where Costs given upon Advice, adjudged per Curriam, and the said Judgment affirmed. Intr. Cr. 15 Reg. 975. New Entries 162. upon the Statute of 13 Eliz. cap. 5. of Forgery of false Debts. New Entries 164. upon the Statute of 21 H. 8. cap. 6. of Mortuaries, Costs given.

Coils.

See tit. Mortuaries (A) pl. 2. and the Notes there.

This Case is in D. 177. b. pl. 35.


Cro. C. 559. pl. 3. North v. Wingate &c. recov'd per a. Cur. and that when a Statute gives a Penalty certain, and gives an Action of Debt, if the Defendant does not pay the Demand, the Party to a Suit, when he recovers he shall recover his Damages, because he did not pay the Duty by the statute upon Demand, and he shall also have Costs, or otherwise he may expend more than he recovers; but where the Duty is uncertain, as to recover treble Damages, as on the Statute of Wills, and not setting our Tithes, there is no more given but the treble Value, and no Costs. —- Jo 447 pl. 9. Mulgrave v. North & S. C. adjudi'd. —- Mar 56 pl. 58. and 61. pl. 94. North v. Mulgrave, S. C. adjudi'd. —- S. C. cited Arg. Vent. 153. Trin. 25 Cr. 2. B. R. but the Court held, the Costs and Damages ought not to be given in Action popular, he the Fortune certain or not; but where a certain Penalty is given by the Party grieved, there he shall recover his Costs and Damages, Eason v. Barker. —- In Debt on the Statute 5 Eliz. cap. 9. about Wm'th's the Court held, that no Costs shall be a necessary Action, be the Penalty certain or uncertain; But where the Party grieved shall have Penalty certain, he shall have Costs. 1 Salk. 376. pl. 4. Trin. 9 W. 3. B. R. Shore v. Mathews. —- Comb. 449. S. C. accordingly. —- Some Diversity per Car. Girth 250, 251.
Colts.

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C. of H. because by Certainty Keilw. 12 it was on a private Act of Parliament, concerning the New River Water brought to Plymouth, for diverting the Water Course, contrary to the Statute, and held per tot Cur. that the Plaintiffs should have Costs, because here was a certain Penalty given to certain Persons, and so within the Rule of Costs. W. & M. in B. R. Cause Diversity taken in Cafe of the Company of Cutlers in Yorkshire v. Ruffin, which was an Action on a private Act of Parliament for a Penalty, for retaining an Apprentice contrary to that Act, and not to have Costs be given, and cites the Cafe next above. Comb. 224. Cutter's Company in Yorkshire v. Hurstey, S. C. 12 Mod. 46 Cutter's Company &c. v. Buskin, S. C.

(5. bis) In an Action upon the Statute of 2 H. 4. cap. 1. [11.] This is the for suing before the Admiral for a Thing done upon the Land, in which Case the Statute gives to the Plaintiff double Damages without speaking of any Costs, yet he shall recover as well double Costs as double Damages. Co. 10. Bullard [Pillard] 116. D. 4. 5. S. 159. [b. pl. 375, 38.]

b gives the Reason, for that this a Statute of Addition; because Damages and Costs were in such Cafe recoverable at Common Law, and cites S. E. 4. 13. b. 14. 5. and the Statute increases the Damages to double, and yet he shall recover Costs also. For the Statute in increasing the Damages does not take away the Costs. S. C. cited Shm. 555. See Lawton v. Story.

6. And in the said Action upon 2 D. 4. the Jurors may assess the Damages and Costs entirely, if they will; for Damages include all. Co. 10. Bullard 116.

7. But it seems upon the Statute of 2 D. 4. no Costs shall be given De Incremento by the Court, but only the Costs given by the Jury shall be double, and nothing De Incremento. Dill. 16 Car. 25. R. between Treason and Babby, to be done upon Advice. Infracire 10. 16 Car. Rot. 137.

8. But Walter Hoddesdon said, there were some Precedents that S. C. cited the Costs given by the Jury should be doubled, and also the Costs given and held De Incremento; but it seems to him the other Way, namely, to double the Costs given to the Jury only, without any Increase by the Court, to be the true and safe Way.

9. In Waife the Plaintiff shall not recover Costs, because great Damages are given by Statute. Br. Waife, pl. 118. cites 2 H. 4. 17. S. P. cited per Cur. For this is a Law of Creation, and gives Remedy where none was before, and therefore no Costs shall be recover'd.

10. Writ of Waife was brought, and the Waife found, and Skrene prayed that they inquire of the Damages of his Writ and Suit, viz. Costs, as it seems; And Per Rickhill and Thirn, where Damages are given all by the Statute, as in Waife, Decies tantum, Quare Impedit, &c. a Man shall not recover other Damages than are in the Statute, quod Curia consciert. Br. Costs, pl. 6. cites 2 H. 4. 17.

11. In Quare Impedit, the Plaintiff recovered Damages without Ibid. pl. 27. Costs; For where Damages are given by Statute since the Statute of cites S. C. Gloucester in Certainty out of the Course of the Common Law, a Man shall recover that which is limited in the Statute, and not otherwise, and therefore he shall not have Costs in Quare Impedit. Br. Costs, the Premient and Damages. pl. 1. cites 27 H. 6. 10.

but not Costs; because Great Damages are given by the Statute, Fitch. Damages, pl. 29. cites S. C.—Kellw. 26. a. pl. 2. B. R. S. P. by Pineux Ch. J. —2 Inf. 289. S. P.—10 Rep. 116. a. b. S. P. because the Stat. W. 2. cap. 5. which gives Damages, is an Act of Creation, and cites S. C. —Shm. 25. Mich. 33. Car. 2. C. B. It was ruled, that if it be a Quare Imp by Common Law, then there shall be no Costs, but otherwise if it be by Statute; And if the Church is full of the Defendant by Infringement, then it is a Qua. Imp. within the Statute, but if it is not, then it is at Common Law; and cites Co. Ent. 508, 509.

4 P

12. So
Cofts.

In Decies Tanturn the Plaintiff shall recover no Cofts. Br. Cofts, pl. 1. cites 27 H. 6. 10.


14. W. brought an Action upon the Statute 1 & 2 P. & M. against B. for unlawful suspending of Detrest, and was Non suit; it was moved by Shuttleworth Serjeant, if the Defendant should have Cofts upon the Statute of 23 H. 8. and it was adjudged, that he should not; and that appears clearly by the Words of the Statute &c. for this Action is not conceived upon any Matter which is comprised within the said Statute and also the Statute upon which this Action is grounded, was made after the said Statute of 23 H. 8. which gives Cofts, and therefore the said Statute 23 H. 8. and the Remedy of it, cannot extend to any Action done by 1 & 2 P. & M. And Rhodes J. said, it was so adjudged in 8 Eliz. 3 Le. 92. Patch. 26 Eliz. in C. B. Wrennam v. Bullman.


16. Assezory for an Amusement in a Leet, for not doing Suit, the Plaintiff was Non suit, for which the Defendant had a Return, and he prayed his Cofts, but the Opinion of the Court was, he should not have Cofts, for it is not such a Thing for which the Statute doth give Cofts, for it extends only to Gouns and Services. Cro. E. 300. pl. 15. Patch. 34 Eliz. in B. R. Porter v. Gray.

17. Action upon the Statute 3 Eliz. for Perjury, it was found for the Defendant, and 91. assailed for Cofts to him; and it was moved, that Cofts shall not be given against the Plaintiff, for he such as a Party grieved, and not as a common Informer, and so not within the Statute. 28 Eliz. but it was answered, that Cofts shall be here upon the Statute 24 H. 8. which giveth it upon every Action upon Statute. Gawdy, this cannot be, for the Statute 5 Eliz. was made after that Statute. Square of it. Cro. E. 177. pl. 4. Patch. 32 Eliz. in B. R. Spire v. Ros.

18. In Battery, the Defendant was Bail for A. and B. who afterwards were condemned; Error was brought in the Exchequer Chamber, and the first Judgment was affirmed, and other new Cofts given by the Justices there, and the Record was remanded into B. R. and now a Seire Facias was prayed against the Bail, as well for the Damages upon the first Judgment, as for the Cofts given in the Exchequer; it was the Opinion of the Court, that the Bail was not chargeable with the new Cofts, for they take upon them to pay only the Condemnation of this Court, and not of any other Court. Cro. E. 587. pl. 21. Mich. 39 & 40 Eliz. B. R. Penruddock v. Errington.

19. On a Litel for Tithes, the Defendants suggested a Modus as to Part of the Tithes, and a Contract executed in Satisfaction for the Rest; and because he proved not his Suggestion within 6 Months, the Parson had a Confutation, and Cofts assailed. In Debt brought in C. B. for the Cofts, the Plaintiff had Judgment. Error was brought in B. R. and assailed, that no Cofts ought to be assailed, because the Suggestion for the Prohibition was grounded upon the Modus, which must be proved, and also upon the Contract, which needs no Proof, and therefore the Suggestion being entire, and Part of it needing no Proof, they could not give
give any Cofts; For that is where the whole Matter of the Suggestion requires Proof. Yelv. 119. Hill 5 Jac. B. R. Cobb v. Hunt.

20. Note, it was the Opinion of all the Justices, and so declared, that if the Plaintiff in an *Ejection* *Firma* doth mistake his Declaration, that the Defendant in such Case shall have his Cofts of the Plaintiff by reason of his unjust Vexation. Godb. 345. pl. 439. Trin. 21 Jac. B. R. Anon. 

21. In Affixe brought against D. the Plaintiff was Non-suit, and D. moved to have Cofts, and it was denied by the whole Court, because an Affixe is not within the Words of the Statute. Brownl. 23, 29. Anon.

22. In an *Action for slandering the Defendant's Title* the Plaintiff had *Cro. C. 140*. Judgment. It was allign'd for Error, that 103. Damages were given, *pl. 16.* and yet 111. was given for Cofts. The Ch. J. thought it Error, because Action on the Cafe for Slander was within the Statute 21 Jac. S. C. held [cap. 16.] but the three others *e contra;* For tho' it is within the first accordingly, Branch as to Actions to be brought within the time limited, because it has been held that Hider in that Case the Words of the Statute are General, Actions on the Cafe; yet the Clause for Cofts are, Actions on the Cafe for Slander; to doubtful and this ought to be to the Person of a Man, and not to the Title of Lands; For this is not properly a Slander, but a Caufe of Damage. Jo. 196. *pl. 8.* Mich. 4 *Car. B. R.* Low v. Harwood.

23. P. brought an *Action of Trespass* against D. for *entering into his House, and breaking open his Chest,* and *taking away his Goods.* The Defendant pleaded a special Plea, viz. that he did it by way of Distrefs for Rent due unto him. The Plaintiff replied, De *Injury sua propria abique talis Causa;* upon this an Issue was joined, and a Verdict found for the Plaintiff. Roll Ch. J. said, that he must pay Cofts, otherwise there shall be Vexation without amends; therefore let the Plaintiff take his Judgment. *Sty. 153.* Mich. 24 *Car. B. R.* Frank v. Dixon.


25. In an *Action upon the Statute 8 H. 6. of forcible Entry,* the Secondary craved the Direction of the Court before he could tax Cofts; and they were doubted in it, and rather inclined the Plaintiff was to have no Cofts; But upon the View of *Dilford's Cafe,* in 10 Rep. and the Books there cited, they refolved that he should have treble Cofts. *Vent. 22.* *Patch. 21 Car. 2. B. R.* Skier v. Atkinson.

26. Serjeant Darnel moved for the Defendant, that whereas the *Judge* that tried the *Cause,* *certified only an Assault,* and *no Battery;* yet the Plaintiff had sued out and executed an Execution for his full Cofts, which exceeded the Damage, being under 40s. *Holt. Ch. J.* You come too late, after Execution executed; You may take your Action. See *Stat. 22 & 23 Car. 2. cap. 9.* ad finem. *Comb. 222.* Mich. 3 W. & 1st. B. R. Phelps v. Rainer.

27. In *Trespass for digging in his Close &c. there shall be no Cofts; Contra* if that had been a carrying away. *Hill. 7 W. 3.* B. R. *Reynold* v. *Osborn.*

28. In *Trespass for entering his Close &* *throwing down so many Perch of Hedges, no Cofts; Contra* if that had been a carrying away. *Hill. 8 W. 3.* Franklyn v. *Jollard.*

29. 8 & 9
29. 8 & 9. W. 3. cap. 10. S. 3. In all Actions of Waste and Actions of Debt upon the Statute for not setting forth Tithes, wherein the single Value or Damage found by the Jury shall not exceed 20 Nobles, and in all Writs of Scire Facias and Prohibitions, the Plaintiff obtaining Judgment of Execution after Plea pleaded, or Demurrer joined, shall likewise recover his Costs.

30. It is the Course of the Court of Exchequer, that Plaintiff's shall have Costs in Equity, where they recover, without any Order for them. M.S. Tab. 1702. Warburton v. Warburton.

31. If a Bill in Equity be brought for a Partition, no Costs can be had on either side, because it is an amiable Suit; so it is at Law; Per the Matter of the Rolls. Pach. 7 Ann.

32. Contant Course of the Court, where mutual Account is decreed, to reserve Costs till after the Report, that the Court may have it in their Power to punish the wrong doer. M.S. Tab. Feb 16th 1709. Rider v. Bayley.

33. In Ejectment of Lands in Kent, there was a Verdict Pro Quo as to Part, and a Verdict for Lord Suffex for some Lands in Pottage, and several other Defendants nam'd in the Rule with my Lord Suffex were acquitted; as to several other Defendants in other Rules there was a Verdict that they were Not Guilty; Per Car. upon 8 & 9 W. 3. cap. 10. as to all these Defendants nam'd in the Rule where all were acquitted, they must have their Costs; as to the other Defendants nam'd in the Rule with my Ld. Suffex. where Part is found against them tho' acquitted, they are not to have their Costs, and the Court certified, that there was a reasonable Cause for Making such Persons Defendants on a Trial at Bar. Mich. 9 Ann. Regin. B. R. Ld. Suffex's Cafe.

34. Trepass for breaking his Calf, and for breaking down of his Rails, pro Feasura, and for spoiling his Locks thereto affixed; Costs denied. Trin. 11 Ann. B. R. Mabbott v. Whittell.

35. In Cae for Words, or an Affirm with Damage are taken on one Promiser only, or one Set of the Words, Costs are given generally; So on a Writ of Inquiry on one Promiser (where two are in the Declaration, and to one a Demurrer &c. &c) pro Quer and Non Affirm to the other, and a Noli Prosequi &c.) the Damages and Costs of the Suit shall be general. Hill. 11 Ann. B. R. Baker v. Campbell, for the Costs of Suit are the same whether the 11th or 2d. Promise be not performed.

36. Costs shall follow the Event of an Account, but if the Account be intricate and doubtful there shall be no Costs. M.S. Tab. March 8th 1716. Pitts. v. Page.

37. Held by Judge Eyre in Elix, Lent A£. 1719, that where a Trepass was without the Judge would certify, tho' no Malice prov'd, and so was the Practice.

38. And also, that where Non Affirm is pleaded there is no Occasion for a Certificate, because it is admitted by the Plea.

(C) In Replevin.

1. **R**eplevin against two; the one came and avowed for himself, and confessed for his Companion for Rent Arrear; the Plaintiff Runs Arrear, and so to Illue, and the Plaintiff prayed Proces against the other; Per Hill, he is out of the Court, and you shall recover your Damages for all against him who pleaded &c.Nota. Br. Replevin, pl. 24. cites 21 E. 3. 20.

2. In Replevin, the Defendant claimed Property, upon which they If the Defendant were at Illue, and found for the Plaintiff to the Damage of 20 Marks, and the taking of a Cow; the Defendant prayed that the Plaintiff might not party in have Recovery of the Damages for the Cow, till the Beasts of the Delen-Court which dant, which the Plaintiff has in Withenm, of which Cape if you a- gainst the Plaintiff, are delivered; fed non Alloccatur. Per Tirwhit up, on this Process against the Plaintiff for the Withenm the Defendant shall recover Damages against the Plaintiff for the Detinue of the Withenm; quere, for by the Reporter a Man cannot recover Damages without Original. Br. Damages, pl. 11 H. 4. 16.

3. In Replevin, the Defendant justify d as Bailiff; the Plaintiff pleaded 7 H. 4. 27. Maintenance in the Land with f. M. and Day was given in the same Term, and at the Day the Court demanded the Defendant, who made Default, and the Plaintiff recovered Damages 41, because he had confided the Taking, and did not maintain it. Br. Default, pl. 24. cites 14 H. 4. 2.

4. If a Man takes Cattle for Damage-seaflant, and the other tenders the Amends, and if he refuses it &c. now if he files a Replevin for the new Notes Cattle, he shall recover Damages only for the detaining of them, and not for the taking of them; for that the same was lawful, and therefore no 25 Ed. 3. Return shall be. F. N. B. 69. (G.) cites 22 H. 7. 30. Contra in Cal 8. b 45 Ed. of Trefpafs.

5. And in a Replevin, if the Plaintiff declares, that the Defendant yet 8, if the has, and detains the Cattle, and the Defendant appears, and afterwards Defendant makes Default, the Plaintiff shall have Judgment to recover all in Damage, claims Pre- tory, or pays his, as well the Value of the Cattle, as Damages for the Taking of them, and his Costs. F. N. B. 69. (L.) cites M. 8 H. 8. Rot. 108. if it in the mean Time the Beast die, or are Sold, so that he cannot have a Return, he may recover all in Damages, if it be found for him. Ibid in the new Notes there (c) cites 7 H. 4. 13. — The De- fendant claimed Property in C. B. and they are at Illue, and it was found for the Plaintiff, it terms he shall recover the Value of the Thing taken, and his Damages. Ibid cites 11 H. 4. 10. — If the Defendant makes Complaisance, and access, and after Day given over makes Default, the Plaintiff shall recover his Damages by Taxation of the Court. Ibid cites 14 H. 4. 2.

6. 7 H. 5. cap. 4. S. 3. Every Accouant; and other Person, that makes Account or Complaisance, or justifies as Bailiff in Replevin or Second Deliverance for Rent, Cattle, or Service, if the Plaintiff be barred, shall recover Damages and Costs.

7. In second Deliverance the Plaintiff was nonsuitit, and the De- fendant prayed his Damages and Costs by the Statute 7 H. 8. cap. 4. Quod Nota; and the Statute is, that where he is barr'd, or the Matter found
found him against him, there the Defendant shall recover Damages; Quod
8. If the Avowant recovers in Replevin he shall not recover Dam-
ages for the Time mean, but only for the Trusts done at the Time of the
Taking; Per tol. Cur. and said that he had been always taken fo.
Dal. 52. pl. 23. Anno 5 Eliz. Anon.
Crok. E. 320.
9. Error of a Judgment in Replevin, where the Defendant avowed
for an Fisiday, and had a Return thereof awarded, with Costs and Dam-
eges; Error was affirmed, for that no Costs and Damages are given
in this Case, either by the Statute, 7 H. 8. or 21 H. 8. for they are
given only in Avowries for Rents, Customs, Services, or for Damage
Peafant; the Court conceived that it was Error, but would advise, Ex
Chaplin.
10. If a Man has Judgment in the Second Deliverance there shall be
Return irrepeleafible and he shall recover Damages. Goldsb. 187. pl.
126. Hill. 43 Eliz. Anon.
Cro J. 329.
11. In Replevin the Defendants avowed for an Amereement of 10 l.
fell in the Sheriff’s Town for not repairing of a Way, which by Custom
ought to be repaired; it being found for the Avowants, the Jury af-
sessed Costs and Damages. It was objected, that the Costs and Dama-
ges ought not to be given by the Statute of 21 H. 8. [cap. 19.] which
did not extend to Amereements in Turne and Leets, but only to Rents,
Customs, and Services. It was answered, that the Costs and Dama-
ges were well assessed, and cited 8 Rep. 36. Grielley’s Cafe, and
Joyner’s Cafe, that the Avowant, for an Amereement in a Leet, shoul-
dhave Costs and Damages, but no Judgment appears. Mo. 893. pl.
Crok. J. 473.
12. Replevin; The Defendant avows for 36 l. Rent for a Year and
half, being 21 l. [24 l.] by the Year; the Plaintiff pleads Payment of 12 l.
and another Issue was brought for the 24 l. and for the 3 l. If it was
found for the Plaintiff and Damages and Costs taxed by the Jury;
but it was found against the Plaintiff for the 2d. Issue, and now mov-
ed, that the Juries finding of Costs and Charges for the Plaintiff is
void; for when Part is found for the Avowant, he shall have Return,
and Damages and Costs, and the Return shall be for the Defendant,
where any Part is found for him; whereof it was adjudged ac-
Parfo.
Colts.

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is claimed for the Plaintiff, and the same for the Defendant; the Plaintiff shall recover his Costs and Damages, and the Defendant shall have Judgment of Return Habendo, and no Costs and Damages; But that the Reporter [Brownlow] thought otherwise, if there are two several Accusers, for then they shall recover Costs and Damages on both Sides; And Sergeant Lutych says it is probable that the Case intended by Brownlow was the Case of Denton v. Peasons, reported in 2 Roll Rep. 37. For it agrees therewith in the Part of the Case, and then the Sergeant adds a Copy of the Judgment it self as entered upon the Record.


Court divided. — Mar. 23. pl. 64. S. C. accordingly.

15. A Nonia Pene is an uncertain Thing, and comes not within the Statute of 21 H. 8. touching Accusers as a Rent-Charge does, which is certain. Arg. Sty. 4. Hill. 21 Car. B. R. in Case of Remington v. Kengerby.

16. In Replevin the Defendant avowed for a Rent-Charge, and the Plaintiff, perceiving that the Jury would find for the Defendant, being call'd, when they were ready to give their Verdict, would not appear. However, the Court took the Verdict, which found for the Defendant, and gave'd Damages and Costs. 2 Sid. 155. 1659. B. R. Lacy v. Berry.

17. In Replevin, the Writ was in the Detinuit, and the Plaintiff declared of a taking Goods at the Parish of St. M. &c. in a Place there called Maiden-Lane, and that ea injure detinuit &c. The Defendant said, that the Place contain'd a Mefugia with the Appurtenances in the Parish of St. P. &c. and that H. M. was fail'd in Fee thereof, and demis'd it to the Defendant for 21 Years, and that the Defendant demis'd it to James Peddy for a Year at the Rent of 28 l. payable Quarterly, and avow'd for a Quarter's Rent. This Avowry, was held to be ill without Question, because the Caption of the Bills in the Count ought to be traver'd, and cited 21 E. 4. 64. 9. H. 6. 59. But exception being taken to the Variance &c. Detinuit in the Writ and Detinuit in the Count, they agreed to amend on both Sides, and to that Point was not resolved; but Sergeant Lutych says it seems a material Variance, for in the Detinuit the Plaintiff shall recover as well the Value of Goods, as Damages for the Taking, and cites F. N. B. 69. (L.) and Co. Ent. 610, 611. But when Writ and Count are in the Detinuit, he shall only recover for the taking, because this implies that the Plaintiff had his Goods again, and cites Hill. 14 E. 2. 421. 2 Rutw. 1147. 1150. Mich. 2 Jac. 2. Petree v. Duke.

18. Plaintiff in Replevin was Nonstit, and on Error in B. R. Judg. 1 Salk. 205. ment affirm'd. Defendant shall not have Costs, because he is not with, S. C. any of the Statutes as to Delay of Execution, and Statutes that give Costs shall never be extended beyond the Letter; For Costs are in the Nature of a Penalty. Carth. 179. Hill. 2 & 3 W. & M. in B. R. Coan v. Bowles.

19. In Replevin, the Defendant avow'd and the Plaintiff being non- 12 Mod. suit brought a Writ of Second Deliverance, whereupon it was moved 147. S. C. &c. P. to stay the Writ of Enquiry of Damages; Et per Car. this is a Superfluous to the Returno habendo, but not to the Writ of Enquiry of Damages, for these Damages are not for the Thing avow'd for, but are given by the Statute of 21 H. 8. cap. 19, as a Compensation for the Expen
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Cofts.

Expende and Trouble the Avoitant has undergone. Salk. 95. pl. 6. 


21. In Replevin the Plaintiff declares for the taking of his Cattle in a certain Place called B. The Defendant pleads in Abatement, that he took them in a certain Place called C. oblique breque capit in praet' Leo scoat.' B. prout &c. & pro return habendo he avow &c. The Plaintiff confessed the Caption to be in C. and thereupon the Plaintiff had Judgment that the Writ should abate, and for the Return of the Cattle. It was Resolved by the Court, that would not have Cofts; for the Statute 1 H. 8. cap. 19. does not extend to extend to this Case, but gives Cofts only when the Plaintiff is non-suited, and the Statute of 7 H. 8. cap. 4. gives Cofts only when the Plaintiff is barred; but here the Plaintiff is neither barred nor non-suited, but the Writ only abates; and he may have a new Writ, and is not put to his Second Deliverance. Comyns’s Rep. 122. Trin. 1 Ann. in B. R. Smith v. Walgrave.

(D) In a Writ of Error.

1 H. 7. cap. 20. con-

fess this

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and

ensue, that

from these-

forth the same shall be put in Execution.

2. In Error of a Judgment in C. B. in Formedon the Judgment was affirmed; and it was moved to have Cofts and Damages for the Delay of Execution upon the Statute. H. 7. cap. 10. whereupon it was doubted, because it was in a Formedon in which (being the principal Action) no Cofts were allowable; but notwithstanding, upon considering the Statute, which is General, viz. “That if a Writ of Error was brought “before Execution, and the Judgment be afterwards affirmed, the “Demandant or Plaintiff shall have Cofts and Damages,” And it mentions not any Action, they all resolved that Cofts and Damages shall be given for Delay of Execution, though in the first Action no Damages were recoverable; and Judgment accordingly. Cro. E. 616, 617. pl. 1. Mich. 40 & 41 Eliz. B. R. Graves v. Short.

3. In all Cases of Writs of Error before the Judges and Barons in the Exchequer Chamber, they, at the Prayer of the Party, shall award Cofts and Damages to the Plaintiff in the first Suit for his Delay and vexation, and this by the Statute 3 H. 7. cap. 10 But if the Plaintiff in the Writ of Error was Plaintiff in the first Suit, then no Cofts and Damages shall be given in Cane where the Plaintiff or Demandant has Execution of the first Judgment. 2 And. 123. pl. 68. Anon.

8. Cofts are allowable in every Cane where a Writ of Error is brought before Execution sued, it is the Discretion of the Court what Cofts shall be allowed, and though the Matter upon the Writ brought was doubtful, yet there was not any Cane, but that Cofts are allowable; But the Cofts must not be denied by the Court, and therefore the Plaintiff in the Writ of Error was awarded to pay Cofts. Cro. E. 659. pl. 4. Patch.


5. Judgment

5 Rep. 100. 
6. Penru-

dock’s Cane.

S. C. but

S. P. does

not appear.

146. at the End of the Cane of Winne v. Loyd.
5. Judgment was given for the Defendant in C. B. and that Judgment was affirmed, and 11. Costs given in B. R. upon the Statute of 3 H. 7. It was moved, that the Costs were not grantable, for the Statute is where Judgment is given against the Defendant, and he to delay the Execution brings a Writ of Error, and the Judgment is affirmed; but here the Judgment is given for the Defendant in C. B. so no Execution was to be awarded there against him; and although the Plaintiff brought the Writ of Error, and the Judgment be affirmed, yet it is out of the Statute; and of that Opinion was the Court, wherefore a Super- sedes was awarded to stay Execution for the Costs. Cro. C. 425. pl. 10. Hill. 9 Car. in B. R. Bawton v. Nichols.

6. A Judgment in Formedon in the Remainder being affirmed upon a Writ of Error brought in this Court, it was moved that the Defendant in the Writ of Error, being delayed in the Execution, might according to the Statute, 3 H. 7. have Costs. Resolved, that because there were no Costs nor Damages recovered or allow'd in the first Action, so that no Execution is delayed but only for the Land, that no Costs were allowable by that Statute. Cro. C. 425. pl. 15. Mich. 11 Car. in B. R. Smith v. Smith.

7. 13 Car. 2. cap. 2. S. 10. If any Person shall sue any Writ of Error for Reversal of any Judgment given after Verdict in any of the Courts afore- said, and the Judgment be affirmed, such Person shall pay the Defendant in Error double Costs.

Costs, though the Judgment be affirmed; for he is not a Person within the Intent of the Statute. Cart. 138. Trin. 3 W. & M. in B. R. Gale v. Till. — 3 Lev. 275. S. C. and the Court seemed to be of the same Opinion, but would advise; And Levins of Counsel for the Plaintiff, in the original Action, being satisfied with the Opinion of the Court, never moved it afterwards. 4 Mod. 244. S. C. held accordingly.

8. Sec. 11. This Act shall not extend to any Action popular, nor to any Action upon any Penal Law, except Debt for not setting out Tithes, nor to any Injunction, Prejudgment, Inquisition, Information, or Appeal.

9. A Writ of Error was brought to reverse a Common Recovery in 2d. 215. Wales, and Judgment in the Common Recovery is affirmed; and now Williams moved for Costs for the Defendant in the Writ of Error, according to 3 H. 7. cap. 10. and although there is not any Delay here, according to the Words of the Statute, yet this is to be intended where Execution may be, but here is no Execution to be had; But the Court S. C. and denied to give Costs, because there is not any Delay of Execution, and at the Common Law there were no Costs in a Writ of Error. Raym. 134. Trin. 17 Car. 2. B. R. Winne v. Lloyd.

caufe no Costs or Damage in the Original Action. — It is said, that Hill. 11 Geo. 2 B. R. in Case of Ogston b. Rawlinson, it was held, that any Delay is good reason for Costs, and to this Case was denoted.

10. A Writ of Error on a Judgment in C. B. in Ireland was affirmed in B. R. there, and Costs awarded to the Defendant in Error; A Writ of Error was brought here, and the Error assign'd here was, that Costs ought not to have been awarded upon such Affirmance, because our Statutes do not extend to Actions there. It was adjudged that the Judgment in B. R. in Ireland be reversed quoad the Costs only. Sid. 357 pl. 11. Hill. 19 & 20 Car. 2. B. R. Exham v. Coniers.

11. A Writ of Error was brought in Cam. Scacc. on a Judgment in B. R. after Execution executed, and therefore it was moved, that the Plaintiff be discharged of Costs; Per Cur. this is not within the Statute 3 H. 7. cap. 10. because no Execution is hereby delay'd, and also the Exchequer Chamber gives Costs. 2 Keb. 391. pl. 79. Trin. 20 Car. 2. B. R. Harding v. Radall.
12. B. had judgment in an Exception in C. B. and Execution of his Damages and Costs. F. brings Error, and the Judgment is affirmed. Whereupon B. prays his Costs for his Delay and Charges, but could not have them; for no Costs were in such Case at the Common Law, and the Statute of 3 H. 7. cap. 10. gives them only where Error is brought in Delay of Execution; so 19 H. 7. cap. 29. And here, though he had no Execution of the Term, yet he had it of his Costs. Vent. 58. Trin. 22 Car. 2. in B. R. Foot v. Berkley.

13. Saunders on 3 Cr. prayed Colts in a Writ of Error on a Judgment in a Quare Impediment in Verdict against one, and on a Demurrer by the other, Damages on 13 Car. 2. cap. 2. Stat. 2. that where Judgment on Verdict is given, the Party shall have double Costs; the Court agreed on 3 H. 7. cap. 10. that if no Execution were had of the Presentation or Damages, the Party shall have Costs for Delay of Execution in any Part, but on Cro. G. 425. Smyth v. Smyth, no Costs can be after Execution executed, because no Delay; the late Statute of 13 Car. 2. is only as to the Security, and by Rule of Court Costs were taxed Nisi. 2 Keb. 882. pl. 69. Hill. 23 & 24. Car. 2. B. R. Bucke v. Atton.

14. Holt said, if the Defendant pleads in Bar of the Writ of Error, and has Judgment, that the Plaintiff be barred, then the Defendant is to have no Costs; but where the Judgment is affirmed, the Defendant is to have Costs upon the Statute of 3 H. 7. cap. 10. Comb. 313. Hill. 6 W. 3. B. R. Fulee v. Rowe.

15. Where a Writ of Error is brought, if the Party enters a New Prof, no Costs can be had; for the Statute gives Costs in a Writ of Error only where it is in Dilatation Executions; Per Holt Ch. J. 5 Mod. 67. Mich. 7 W. 3. in Case of Winchurch v. Malley.

16. 8 & 9 W. 3. cap. 10. [11.] If after Judgment for the Demendant the Plaintiff or Demendant shall file a Writ of Error, and the Judgment shall be affirmed, or the Writ of Error discontinued, or the Plaintiff nonsuit therein, the Defendant or Tenant shall have Judgment to recover his Costs, and have Execution for the same by Capias ad Satisfaciendum, Fieri Facias, or Elegit.

17. No Costs are to be had on a Writ or Error where the Judgment is reversed. 8 Mod. 314. Mich. 11 Geo. 1. Wivell v. Stapleton.

18. But it had been otherwise if the Judgment had been affirmed. 8 Mod. 314. Mich. 11 Geo. 1. Wivell v. Stapleton.

19. Where Judgment was against two, and a Writ of Error is brought by one, and qualified, the Defendant shall have Costs. 8 Mod. 316. Mich. 11 Geo. Cowper v. Ginger.

(E) On Demurrer.

1. At this Day, if a Demurrer be adjudg'd against the Plaintiff, he shall not pay Costs, but shall only be amerced. Jenk. 161. pl. 7.

2. It was agreed upon Statute 23 H. 8. cap. 16. [15.] that if in Debt there is a Demurrer which goes to the Action which is adjudg'd against the Plaintiff, the Defendant shall have Costs, tho' it be out of the Words of the Statute, and that fo is the Course of the Court, and had been always allow'd, but if the Demurrer goes to the Writ only, and it is adjudg'd against the Plaintiff, the Defendant shall not have Costs. And. 117. pl. 163. Hill. 26 Eliz. Anon.
3. By Statute 17 Car. 2, cap. 7, s. 3. If upon an Acovry in any of the Courts of Westminster, Judgment be given on Demurrer for the Aov rant, or him that maketh Cause, he shall recover Cofts.

4. 8 & 9 W. 3, cap. 10 [11.] s. 2. If any Person shall prosecute in any Court of Record any Action, wherein upon Demurrer Judgment shall not be given against such Plaintiff or Defendant, the Defendant or Tenant shall have Judgment to recover his Cofts, and have Execution for the same by Capits ad Satisfaeendam, Fieri Facias, or Eligit.

Defendant upon a Demurrer to a Plea in Abatement; Per Holt Chief J. 12 Mod. 525. Trin. 13 W. 3. Anon.

5. Affirmavit; the Defendant pleaded his Privilege as an Officer of the Exchequer in Abatement, and the Plea being held good upon Demurrer, there was Judgment, quod Billa caietor; Et per Cur. it was held up on the 8 & 9 W. 3 cap. 11. That the Defendant should have no Cofts, held accordingly for the Aet extends only to Demurres in Bar, and not in Abatement, because it speaks of Suits which are vexatious, which does not appear to the Court on pleas in Abatement, but on Demurres in Bar, where the Court sees the Merits of the Case, it does, and it would be very hard accord- ingly, if the Defendant should have Cofts against the Plaintiff in such a Case, when the Plaintiff could have none against the Defendant, tho' he should have had Judgment, quod repandea Outier. 1 Salk. 194. pl. 3. 10 W. 3. B. R. Thomas v. Lloyd.

6. 4 & 5 Ann. cap. 16. Gives Cofts upon Insufficiency of Matters in Demurres, and on Pleas unless the Judge certify a probable Cause.

(F) Where Defendant, or one or more of the Defendants shall have Cofts.

1. 23 H. 8. cap. 15. If a Plaintiff be nonsuit, or overthrown by Trial in Action upon the Cafe &c. the Defendant shall have Cofts set by the Judge of the Court.

2. 24 H. 8. cap. 8. No Cofts shall be awarded to the Defendant in Actions brought by the King.

3. Where an Original is discontinued, the Defendant shall not have Cofts; But after a Discontinuance in a Lattit, the Defendant shall have Cofts by the Statute of 8 Eliz. cap. 2. Le. 155. pl. 142. Mich. 30 Eliz. C. B. in Cafe of Bear v. Underwood.

4. As.
4. Allsumpt; a special Verdict was found, and thereupon adjudged for the Defendant; and it was now moved, whether the Defendant should have Costs by the Statute of 23 H. 8. cap. 15. for it was alleged, that that is to be intended where the Plaintiff is non-suited, or a general Verdict paves against him, so as it appears that he has not any Cause of Action; but the Court ruled, that he should have Costs; for a special Verdict is as well a Verdict for him, for whom it is found, as a general Verdict, and there is not any Difference, when judgment is given thereupon, but it is as if a general Verdict had been given for the Defendant, wherefore &c. Cro. E. 465. (bis) pl. 18. Pauch. 38 Eliz. B. R. Allop. v. Clcldon.

5. Where there were several Defendants, and only one was sentenced, the other had Costs, because not charged with the Olence for which the Sentence was, but with the other Offences of which they were acquitted. Mo. 770. pl. 1064. Mich. 3 Jac. in the Star Chamber. Dag v. Penkevcll.


6. The Plaintiff brought two Actions upon 2 E. 6. for treble Damages &c. and he is Non-suited in one Action, and discontinues the other, and held by the whole Court that the Defendant shall not have Costs by 8 Eliz. cap. or by 4 Jac. cap. 3. because if the Plaintiff had recovered he should have recovered but treble Damages only, by the Statute. Noy. 136. Mich. 7 Jac. B. R. Cox v. Small.

7. Replevin against A. and B. A. pleaded Non cetit, and it was found against him. B. argued the taking for good Cause, and it was found for him. It was moved for Costs against A. but [it was answer'd, that no Costs ought to be given against him, because, the other Issue being found for B. his Companion finds that, the Plaintiff had no Cause of Action, and said it was so held within these two Years in B. R. in Cae of Denton B. Blencherville, and the Court now seem'd of the same Opinion. 2 Roll. Rep. 140. Hill. 17 Jac. B. R. Anon.

8. In a Raisvment of Ward, brought by an Executrix of her own Poffeiion; The Issue being upon the Tenure, and found for the Defendant the Question was upon the Statute 4 Jac. cap. 3. if the Plaintiff should pay Costs? Three Justices held that the Defendant should not have Costs, but Yelverton e contra. Cro. C. 29. pl. 3. Hill. 1 Car. C. B. Peacock v. Steers.

9. Error; Alter a special Verdict, and argued at the Bar, there was a Discontinuance entered by the Plaintiff, as it was agreed he might; It was moved, that Costs might be assented for the Defendant; But the Court doubted whether Costs might be assented, because there was no Verdict given in the Cafe. Cro. C. 375. pl. 19. Hill. 15 Car. B. R. Oxford (Earl of) v. Waterhoulé.

10. In Covenant against two the Plaintiff has Judgment by Default against one, and the other pleads Performance, which is found for him; Refolv'd, that the Defendant shall have Costs upon the Verdict against the Plaintiff, and the Plaintiff shall not have either Costs or Damages against the other Defendant. Lev. 63. Pauch. 14 Car. 2. B. R. Porter v. Harris.

---4 Jac. 1. cap. 3. If the Demandant or Plaintiff be Non-fit, or overthrown by lawful Trial in any Action whatsoever, the Defendant shall have Costs.

11. In a Warrantia Charta, the Court was, that the Defendant ensoff'd him, and covenant'd that he was seiz'd of a good State in &c. and had power to convey &c. and that the Plaintiff should quietly enjoy it from all former Grants &c. except a Term of 20 Years in the B. of which seven only were to come, and
and that the Defendant would warrant the Premises to him against all Men; and says, that at the Time of the Feoffment there were more than seven Years to come of the said Term, and that one C. having Title entered and expelled the Plaintiff, and the Defendant refused to Warrant the Tenements to him. Upon Issue, there were not more than seven Years to come of the said Term, the Defendant had a Verdict; and it was moved, that he ought to have Costs upon the Statute 4. Jac. cap. 3. which gives Costs to the Defendant in all Cases where the Plaintiff would have Costs if the Verdict be for him, and by the Statute of Gloucester cap. 1. Costs are given in all Cases where Damages are to be recovered, and in a Warrantia Charta the Demandant shall recover Damages; and tho' in this Case of Execution of a Term an Action of Covenant and not a Warrantia Charta had been the proper Remedy; yet since the Defendant will accept Judgment in this Action, he ought to have his Costs; But the Reporter says Quære de ceo, for if the Action does not lie, Judgment ought to against him tho' the Verdict is for him. 3 Lev. 321.


13. Where the Plaintiff discontinues with the Leave of the Court, the Defendant ought to have his Costs (as upon a Nonuit) which cannot be MODERATED; Per Holt Ch. J. Comb. 299. Mich. 6 W. & M. in B. R. Poole v. Purdy.

14. It was moved, that one Defendant was put in by Fraud on Purpose that he might make no Defence, but to secure the Plaintiff from paying Costs, and therefore prayed, that if the Plaintiff were Nonuit, or the other Defendant had a Verdict, he might have his Costs. Holt Ch. J. I fear we cannot do it in any Case, unless in ejectment, and there we'll not compel the Defendant to contend, Leal, Entry, and Outer, unless the Plaintiff contents. Comb. 304. Pech 8 W. 3. in R. Wilecocks v. Powell.

15. 8 & 9 W. 3. cap. 10. [II.] S. 1. Where several Persons shall be Defendants in Trespasis, Assail, False Imprisonment, or Ejectorsone Firmus, and any of them shall be acquitted by Verdict, he shall recover Costs &c. as if a Verdict had been given against the Plaintiff, and acquittal all the Defendants, unless the Judge before whom &c. shall, immediately after the Trial, in open Court certify upon the Record, under his Hand, that there was a reasonable Cause for the making such Person or Persons Defendants.

16. S. 3. If the Plaintiff shall become Nonuit, or suffer a Discontinuance in a Sinister, or a Verdict shall pass against him, the Defendant shall recover his Costs.

by an ill Return, being made to be on a Sunday, now Costs was pray'd, this being a Discontinuance with-

17. Four Persons were arrested by a Latirat in Trespaes; three of them appear and put in Bail, and for want of a Declaration in Time take three several New Proses against the Plaintiff, and upon a Motion to set those Non Profiles aside for Irregularity, it shall it was held per Cur. to be well enough; for by the 8. Eliz. every Person is to have his Costs &c. though at the first there was some Doubt with the Court, that there ought to have been one Non Profile only, for until the Declaration it was a Joint-Action, whereby the Plaintiff might fever his Demand, and make several Declarations. Trin. 8 Ann. R. R. Anon.

18. An Information was brought at the Assizes against the Defendant for Non-reference, which being renewed into B. R. by Certorari, the Defendant demurred for want of Jurisdiction; and upon Argument Judgment

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was given for him; whereupon it was mov'd for Cofts upon the Statute of the * 18 Eliz. 5, and a Cafe of Cannon and Gooding Qui tam v. Nixon. Mich 6 Geo. 1. was cited, whereupon an Information on the Statute of the 1 & 2 P. & M. cap. 7. for selling Wares by Retail the Defendant demurr'd, C. for the want of a Jounder in Demurr on the Part of the Informer, Cofts were order'd for the Defendant. On the contrary it was infil'd, that this Cafe was not within the Statue, there having been no Verdict, nor any Judgment upon the Merits; But the Court agreed it was clearly within the Words and Meaning of the Statue, for Judgment upon Demurrer is certainly a Judgment of Law, and if Informers should be allowed to bring Informations in Courts which have no Jurisdiction, without the Punishment of Cofts, it would let in great Vexation, and the Statue be thereby wholly evaded; Whereupon it was referr'd to the Multer &c. Mich 13 Geo. 2. B. R. Garland qui tam v. Burton.

19. The Plaintiff had brought two Ejeftments for the same Premises in C. R. but countermanded Notice of Trial just time enough to prevent his paying of Cofts, and then brought another Ejeftment in this Court, upon which Defendant mov'd that Proceedings might be stay'd in the last, till the Cofts of the two former had been paid; But the Court would not do it, because the Countermand being proper, no Cofts are legally due; But at another Day the Court finding it to be a Vexatious Proceeding, granted a Rule to stay the last Ejeftment till the former were discontinued, and to the Plaintiff to make his Ejeftion which he would proceed upon; And it being objected that the Defendant; if he pleaded, might have carried down either of the former to Trial, they said, they would not oblige a Defendant in Ejeftment to hazard his Possession by bringing on the Cause by Provido; And the Ch. J. cited the Cafe of Fenwick v. Lord Grotucnor Salk. 258, where a Defendant in Ejeftment, having Judgment against him, brought a Writ of Error, and, pending that, a new Ejeftment, which was not allow'd of, and was called by Lord Holt a riding Ejeftment. Mich. 12 Geo. 2. B. R. Thrufton on Demand of Park & Ux' v. Troublesome.

(G) Cofts. In what Cases Defendant shall recover Cofts in inferior Courts.

1. 8 Eliz. cap. 2. S. 3. C O S T S, Damages, and Charges, shall be awarded where the Plaintiff doth delay, discontinue, or is Non-suited in the Marshalsea, and all other Corporations and Liberties, where the Courts are kept de Die in Diem; but there they are not so kept, then the Plaintiff must declare at the next Court after Appearance, unless he have longer Time allowed by the Court.

2. 16 Car. 1. cap. 15. 3. In all Cases where the Plaintiff's or Defendants are to have Cofts by the Laws of this Realm, the Plaintiff's or Defendants shall have like Cofts in the Stannary Courts.

(H) What
(H) What Costs; where there are several Actions or Suits.

1. **Where a Man brings Debt in the Marshalsea, or in London, or elsewhere, upon an Obligation, and is long delayed there, and nonsuited, and after takes a New Suit in C. B. and recovers and recovers his Debt, there he shall not recover his Damages for the Suit in the first Court, but only for the Suit in C. B. and for the Detinue &c. which is intended Damage, and the first Term of Damages is intended Costs.** Br. Costs, pl. 24. cites 2 H. 4. 22.

2. Where two bring Affises, and the one dies, by which the Writ abates, and another brings another Writ by Journeys Accounts, and recovers, he shall have the Costs of the first Suit, per Bigot; Quod Noto. Br. Costs, pl. 15. cites 9 E. 4. 5.

3. If a Writ doth abate by the Act of God, in a new Writ by Journeys Accounts he shall have Costs for the first, and the Proceedings thereupon; but if the first Writ be faulty in Default of the Demandant or Plaintiff, in the 2d Writ the Demandant or Plaintiff shall have no Costs for such an insufficient or faulty Writ. *2 Inf.* 238.

4. In Traver in B. R. the Court were divided in Opinion as to the Sufficiency of the Declaration, and continuing divided upon several Motions, the Plaintiff for Expedition contended that Judgment be entered against him, and so it was, Quod nihil caperit per Billam; and then the Plaintiff began a new Action in C. B. and amended that Fault in his Declaration, and had Judgment by Confession of the Defendant, and only 3l. Damages given by a London Jury, and thereupon Hendon moved in this Court to have Costs in his former Action, but because the Verdict was found for the Plaintiff, and upon Exception to the Declaration Judgment was given against him; the Court held that no Costs should be given. *Cro. C. 542.* pl. 10. *Pach.* 15 Car. B. R. Sir Martin Lyster v. Home.


shall have Costs the Defendant shall have Costs; But they were denied by the Court; For that ought to be taken in the original Action, and not in Case of Attaint; But upon the Reconsider Costs shall be given; But that is in the original Action.—*Cro. C.* 542. pl. 6. Daly v. Bellamy S. C.

If the first Verdict had passed for the Plaintiff, whereby he should have had Costs, or if it had passed as he brought Attaint, and the Jurors had been attainted, he should have such Costs as he had in the first Action, but he should not have had more Costs in respect of the Attaint; So convert where the first Verdict passed for the Defendant, and he had Costs, if the Verdict be impeached by Attaint, or affirmed, he shall have no more Costs, but only those which are given upon the first Verdict. *Cro. C.* 542. pl. 6. *Pach.* 15 Car. B. R. Daly v. Bellamy.

6. The Lessor of the Plaintiff is liable to pay Costs (though he shall ne- The Lessor never be forced to give Security for them) but the Lessor of a Tenant in Possession is not liable to Costs, because though he may come in Gratia personal Rules and defend his Title, yet the Tenant in Possession is not liable of Court on to Costs by the Law, but only by the Course of the Court, unless the Demand be by the Lessor's Means brought to the Bar, and then he shall never have a 2d Trial at Bar before he has paid the Costs of the former Trial; the Insuffi- But yet the Court for Non-payment of Costs will not hinder Proceedings or Things in the Country; *Per Cur.* *Keb.* 106. pl. 117. *Trin.* 13 Car. 2. B. *Skilling of the Plaintiff in Execution.*


7. Upon


9. One was bound beyond Sea in Wilt Jersey to pay the Plaintiff $81. Legalis Monetae præsidete &c. Plaintiff demanded 861. English Money; but was non-suited upon the Variance, and brings a new _Action_. B. R. will not stay the 2d _Action_ until he has paid the Costs of the first, because the Merits did not come in Question on the Trial on which he was non-suited, but that was only on the Variance. Ed. Raym. Rep. 697. Mich. 13 W. 3. Bafs v. Firmen.

10. _Indictment_ for a Trespass and Riot; Defendant pleaded Non _Cul._ and the _Indictment_ was removed hither by _Certi dispar_ &c. The Defendant went before the Master, and Costs were taxed; and now it was moved that he might go before the Master again, that the Professor might be considered for his Charges below, the Master's _Taxation_ before being only for Costs _ince_ the _Certi dispar_; Et per Cur. the _Master_ might not to consider the _Costs_ below, but only _ince_ the _Certi dispar_, and upon it; and then it was moved to aggravate the _Fine_; But per Cur. you ought not to aggravate the _Fine_ after the Party has been before the Master; if you do, we will let _aside_ the _Taxation_ of _Costs_. 1 Salk. 55. Parch. 1 Ann. B. R. the Queen v. Somers.

11. If_a Person_ incloses _Land_ in a _Town_ under a Custom for that _Purpofe_, and another brings an _Action_ against him, in order to try that Right, and a _Bill_ is thereupon brought in order to establish the Custom; If, upon an _Issue_ directed in that _Cause_ to try the Custom, it is found against the Defendant, yet the Plaintiff shall not have the Costs which were incurred in the Court of _Equity_, because in such _Cause_ the bringing a _Bill_ was not necessary; But where _several Persons_ inclose _Land_ under a _Custom_ for that _Purpofe_, another brings _8_ _Actions_ against them on that _Account_, and a _Bill_ is thereupon brought to establish the _Custom_, and to stay the _Proceedings_ in _those_ _Actions_; If upon an _Issue_ directed in that _Cause_ to try the _Custom_, a _Verdict_ is found in _Favour_ of it, the Defendant shall pay the _Costs_ in _Equity_ as well as at _Law_; For in this _Cause_ the _Defendants_ at _Law_ were put under a _Necessity_ of bringing their _Bill_ to stop _such_ _Multiplicy_ of _Actions_, and the bringing the many was most vexatious. Barnard. Chan. Rep. 437. Parch. 1741. Codrington v. England.

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(1) **Costs and Damages.** In what Cases. And what Costs. Double or treble.

Sr. Costs, pl. 26. cites 9 H. 6. 66. per Judicium, that a _Man_ shall not recover _Costs_ in _Action_ of _Wafe_; and Brooke says, it seems that this is the best _Law_.— Keilw. 26 a. pl. 2. Trin. 17 H. 7. 5. P. in B. R. by _Fines_ Ch. 1.

In an _Action_ of _Wafe_ against _Tenant_ for Life, or Years, the _Plaintiff_ shall recover the Place waffed, and treble _Damages_ given by _Statute_ Gloucecester cap. 5 but no _Costs_, because no _Action_ lay against them at the Common _Law_; but the _Action_ and _Damages_ are newly _given_; but against the _Guardian_ or _Tenant_ in _Dower_ &c. there the _Plaintiff_ shall recover treble _Damages_ and _Costs_ also, for that an _Action_...
2. In Forcible Entry the Defendant pleaded not Guilty, and found for the Plaintiff; and Damages taxed for the Tort to 10 l. and for Costs of the Suit 5 l. and it was argued if he shall have Costs, because in this Case great Damages, viz. treble Damages are given by Statute; and after June Ch. 1 underway that the Plaintiff recover his Damages treble, which amounted to 10 l. as well for the Damages which he had sustained, as for the Costs of his Suit; Quod Nota. And so to see that the 5 l. for Costs were not adjudg’d treble, but only the 10 l. and therefore it seems that this stands for all. Br. Costs, pl. 16 cites 14 H. 6. 13.

3. In Forcible Entry the Plaintiff recover’d treble Damages and Costs, in an Action contrary in Waffe; for there are no Costs; and per Patron, the Reason is, inasmuch as the Statute of forcible Entry gives so, but the Statute of Waffe makes no mention of Costs, but only of treble Damages; Quod Nota. Br. Costs, pl. 12. cites 19 H. 6. 32.

which gives treble Damages, in this Case the Plaintiff shall recover his Damages and 10 l. Costs to the treble, for that he should have recovered single Damages at the Common Law, and the Statute increased them to treble. 2 Inst. 299.

4. In Forcible Entry 100 l. Damages were given, and 80 l. was for the Tort, and 20 l. for the Costs, and notwithstanding that treble Damages are given by the Statute, yet he recover’d Costs, and all were treble, viz. 300 l. for all, Quod Nota. Br. Costs, pl. 14. cites 22 H. 6. 57.

5. Assize against two of two Manors, the one was found a Diffeisor with Force of one Manor, and the other acquittance of the Diffeisor of this Manor, but of the other Manor he was found a Diffeisor, but not with Force, and the other was of this acquitted, and the Costs were taxed to 20 l. and because the Costs ought to be against both, for they are entire, and against him who is found Diffeisor with Force, the Costs shall be treble as well as the Damages, therefore their Opinion was, that the 20 l. shall be adjudg’d against both in Common, and 40 l. over against him who was found Diffeisor with Force, and so he recover’d 40 l. Br. Costs, pl. 20. cites 12 E. 4. 1.

6. In an Action upon the Statute of 5 Eliz. for Hunting in his Park, the Statute gives treble Damages. It was the Opinion of the Justices, that notwithstanding that the Statute gives treble Damages, that the Plaintiff should have Costs also. 4 Le. 38. pl. 98. Mich. 27 Eliz. B. R. Onion’s Cafe.

In Trepass upon the Statute 8 H. 6. cap. 9. of forcible Entry, the Jury found Damages 20 l. and 2 s. Costs, and the Costs were increased by the Court of C. B. to 20 s. and the Damages and Costs being trebled, he had Judgment to recover 63 l. It was align’d for Error, that the Costs aligned by the Court ought not to be trebled, but only those Costs which the Jury alledg’d, Set non allocatur; For all the Precedents are otherwise; and Judgment affirm’d. Cro. E. 582. pl. 6. Mich. 39 & 40 Eliz. B. R. Thoroughgood v. Scroggs.

8. It was resolved upon the Statute of 2. E. 6. that the Statute giving treble Damages, the Jury cannot give other Damages, and that the Jury cannot give Costs. No. 915. pl. 1294. 44 Eliz. Day v. Peckwell.

4 T

9. In
9. In an Action Real Personal or Action, where double and treble &c.
Damages are given by any Statute, it has been controverted in Books,
whether the Demandant or Plaintiff shall recover Costs, and whether
the same shall be also doubled or trebled, which Doubt and Variety of
Opinions has grown in respect of the right Relation of the Diversity of
the Law in those Cases, has not been observed, which is, that whenever
any Statute does increase Damages to the double or treble Value &c.,
where Damages before were given, there the Demandant or Plaintiff shall recover
his double or treble Damages and Costs also, and the Costs also are
as Parcel of the Damages shall be trebled. 2 Inst. 289.

5 P. because
the Party can
have nothing
more than
such a new
Statute has
given, and that is Damages only, and the Statute of Gloucester cannot operate to add Costs
to what is given by a subsequent statute, because the new Statute must be construed from itself,
which gives Damages only, and therefore for the Court to give Costs in such Case, would be to go

11. Upon the Statute 1 & 2 P. & M. for chfing of Difficulties out of the
Half of the &c. whereby 5. is given and treble Damages, the Plaintiff
shall recover no Costs, because this Action and Penalty is newly given.
2 Inst. 289.

12. In Affidavit of Solicitor done with Force the Plaintiff shall recover
Treble Damages and his Costs also, because at common Law the Plaintiff
should recover Damages and Costs in both Cases; For the Statute of 8 H. 6. cap. 9. is only an Act of Addition. Per Cur. 10 Rep. 116.
B. Mich. 10 Jac. B. R. in Pilford's Case says, that with this agrees.
10. a. F. N. B. 248. (C).

13. In Case for two Slanders spoken at several Times, the Defendant
pleaded Not Guilty; The Jury gave separate Damages, and Intire
Costs. One of the Slanders was not actionable, but the other was. Judgment
was not reversed in the Exchequer Chamber as to the Words
as to the Re
fidue —

Perry. Powell J. said he had known the Case of Jacob v. Mills denied to be Law many a Time, and that
there are 20 Resolutions to the Contrary, viz. if a Remittitur be not entered for Part, it will be bad
for the whole; For the Judgment is of the whole; and the Court were all of Opinion, that if one of
the Declarations were found on which no Damages ought to be recover'd, it would be bad. 7
11 Mod. 155. Hill. 1 Ann. B. R. — S. C. cited and denied per Curiam. 11 Mod. 25. in pl. 2.

14. W. cites P. in the Spiritual Court for Tissue of a Dove-House. P.
upon Suggestion had a Prohibition, but he did not prove his Suggestion
within 6 Months. W. takes Issue upon the Suggestion, and it is
found against him, and yet he prays Costs by the * Statute 2 Ed. 6.
cap. 13. S. 14.] for Failure of Proof within the 6 Months. But by the Court adjudged, that he shall not have it, for he hath exceeded his Time to take Advantage of that, and he can never have a Confinement; Ergo, he shall not have double Costs. Read the Words of the Statute,

Confinement,

and double Costs if the Plaintiff in the Prohibition does not prove his Suggestion; but here he never
shall have a Confinement, because the Matter is palled against him; but upon Failure of Proof he
should have pray'd a Confinement, and then should have double Costs.
* See Tit. Prohibition (D. a. 2) pl. 1. and the Notes there.

S. P. But
had it been
for other
Collateral
Matters only
& M. Willet v. Tidney.

It might have been otherwise. Cirtth. 188. S. C. — 12 Mod. 5. S. C. the Action was for Money receiv'd to the
the Plaintiff’s Ue; the Defendant justified as Collector of the Land-Tax; it was urged, that it is not Matter concerning his Office; for it may be for Money received to his own Ue, or for Overplus of Differs not return’d. And Holt Ch. J. inclin’d, that if the Action was brought for Overplus not return’d, this does not touch his Office, and he does not use the Statute for Defence; But because it was certified by the Judge of Affile that it was within the Statute, the Defendant had treble Costs.

16. In Resusc of Differs for Rent, per 3 W. & M. cap. 5. Plaintiff’s S. Skin. shall recover treble Costs as well as treble Damages, for the Damages are not given by the Statute, but increased, an Action on the Cafe for a Rescue lying for a Rescue at Common Law. 1 Salk. 205. pl. 2. Hill. 5 W. & M. Lawton v. Story.

given by the Common Law, and it was ruled that Costs De Incrumento shall be treble also, and so upon Debate it was ruled in C. B. in the Cafe of Sandys v. Child, affirmed here in a Writ of Error; and tho’ the Cafe in Rolls Costs 517. be that the other is the more sure Way, yet per Holt Ch. J. Costs De Incremento are also double &c. in all Cales of Officers &c.—Carrth. 521. S. C. for the Word (Treble) resolved’d after shall be referred as well to the Word Costs as to the Word Damages.

17. It is a Rule, that in all Cales where Damages and Costs are given at Common Law, and a Penalty is added by a Statute with double Damages, that also draws double Costs. Carrth. 297. Hill. 5 W. & M. in B. R.

18. Debt for the Penalty for acting as a Commissioner of the Land-Tax, not having 10d. per Ann. The Plaintiff was nonsuit’d; the Defendant bad his Costs taxed, and paid by the Plaintiff, and a Receipt given. Afterwards the Defendant, apprehending that he was intituled to treble Costs, got the Judge who tried the Cafe to certify that he was an acting Commissioner, wherupon he had treble Costs taxed, and took the Plaintiff in Execution for Non-payment of them; to set aside which the Court was moved, and per ton. Cur. the Defendant conclud’d himself by receiving, single Costs, and so the Execution bad. MS. Rep. Mich. 5 Geo. B. R. Vincent v. Strode.

19. Where Damages were recoverable at the Time of making of the Statute of Gloucester, there the Plaintiff shall recover his Costs, which is by the plain Meaning of the Statute, which says, the Plaintiff shall have Costs wherever he has Damages; but if there are several Issues found for the Plaintiff, or against the Defendant, entire Costs are given upon the whole Pleadings; for it is the whole Charge the Plaintiff was at. Gill. Hilt. of C. B. 215.

(K) To Officers and Ministers of Justice. Where they are Defendants.

1. 7 Jac. 1. If any Action upon the Cafe, Trepass, Battery, or False Infraction, shall be brought against any Justice of Peace, Mayor, or Bailiff of a City, or Town Corporate, Headborough, one Acting Portreeve, Constable, Tithe-man, Collector, of Subsidy of Fifteenth, for any for any thing or thing by them done by reason of their Offices, it shall be lawful for every such Justice of Peace, or other Officer, and all others which in their Assistance, or by their Command, shall do any thing touching their Offices, to plead their Issues, Not Guilty; and if the Verdict pass with the Case, the Judge before whom the Matter shall be tried shall allow the Defendant double Costs.

The Court seem’d of Opinion, that a Deputy-Constable is within the Statute 7 Jac. cap. 5 because he comes in Right of the Constable, and represents his Person, and Coke Ch. J. thought that an Under-Sheriff is within this Statute, which Bridgman of Counsel for the Plaintiff agreed.

This Statue extends to any Officer under a Justice of Peace, Chyr. 34. Wens. Went. (21 Jac. cap. 12.) under a Justice of Peace, Chyr. 34. Went. Went. (21 Jac. cap. 12.)

Enquiry of the Statute as to pleading the General Issue. — 3 Bult. 77. 78. S. C. Doderidge J. held, that the Statute for double Cofts extended only to the Confessable, and are thereby given to him only; but Coke Ch. J. held a Convict Bar. [at llth] the whole Court agreed in Opinion against the Plaintiff, that the Defendant, as Deputy-Confessable, may have the Benefit of the said Statute to have double Cofts, but no Judgment was given, the same being adjourned, and never mov'd again; but ended (as the Reporter says he heard) by Agreement between the Parties, perceiving which way the Court inclin'd in their Opinions against the Plaintiff. —— This Statute extends to one who acts under the Warrant of a Justice of Peace, though he is no Officer, who did execute the Warrant; and, thus, this seems to be warranted by the Words in the Statute, viz. Any other who do any thing by Command of Justices of Peace, and other Officers therein named. Clayt. Rep. 54. pl. 93. August Affairs, 15 Car. Coram Berkeley J. Wmpenny's Cafe.

3. 21 Jac. 1. cap.12. S. 3. All Churchwardens and Persons called Scavengers executing the Office of Churchwardens, and all Overseers of the Poor, and others which in their Affiance, or by their Command, shall do any Thing touching their Offices, shall have such Benefit by the Act 7 Jac. 1. cap. 5. as if they had been named therein.

4. Trespasses by Husband and Wife for Battery done to them both, Ad Damnum iporum, it was found that the Defendant did it as Confessable in Execution of his Office, and found for the Defendant; He prayed double Cofts, according to the Statute 7 Jac. cap. 5. The Baron and Feme cannot join for a Battery done to them both, and to the Declaration and Writ ill, yet it was adjudged, that he being found Not Guilty, and what he did was as Officer, should, according to the Statute, have double Cofts. Cro. C. 175. pl. 20. Mich. 5 Car. in B. R. Heyler's Cafe.

5. T. S. brought an Action on the Cafe against the Churchwardens, for falsely and malignantly presenting in the Spiritual Court on a pretended Fame of Inconvenient; the Churchwardens had a Verdict, and they mov'd for double Cofts, becausse they were troubled for a Matter concerning their Office; But held not to be within the Statute [21 Jac. cap. 12.] For the Statute intended only where they were vex'd for Temporal Matters, which they shall do by Virtue of their Office, and not for Prenaments concerning Matters of Fame. Cro. C. 285. pl. 31. Nich. 8. Car. B. R. Kercheval v. Smith.


6. Cafe, for that the Plaintiffs were Inhabitants, and possess of lands for Years, in the Parish of St. M. and liable to the Payment of Duties for the Reparation of the said Church, and the Defendant being Confessable of R. falsely represented, that they were Inhabitants of the Parish of R. & possessed of Lands within the Parish of R. and chargeable there for the Payment of such Duties which they were unduly compelled to pay. Upon Not Guilty found for the Defendant, it was prayed upon the Statute 7. Jac. cap. 5. that he might have double Cofts. Resolved the fame was out of that Statute but within the Statute of 26 H. 8. which gives only single Cofts to the Defendant. Cro. C. 467. pl. 5. Trin. 12 Car. in B. R. Stone v. Lingar.

7. On Removal of an Order to reimburse an Overseer of the Poor in his Expendce about a Suit for the Parish, the Court considered that Cofts may be allowed upon a Certiorari, as in Hallefoot's Cafe on removal of Order of a Blanket-Child, and per Car. Cofts were allowed against the Town of Barwick St. John. 2 Keb. 500. pl. 63. Pach. 21 Car. B. R. Cullen v. Monkse.

8. E. brought an Action against the Collector of the King's Tax, who brought it down to Trial by Provost, and there the Plaintiff was not fur, and now the Defendant moved for Cofts in triplo. Note, the Judge could not certify.
certify in this Case that the Defendant was suid as Gilb., for, because the Plaintiff was not sued before... Holt Ch. J. said, it must appear then by Affidavits, and there must be a special Entry; Quia super examinationem apparet Cur. &c. Comb. 322; Paich. 7 W. 3. B. R. Sir Philip Egerton's Case.

9. The Plaintiff having discontinued his Action, which he brought against an Officer, who justified as such in the Execution of his Office, it was moved for double Costs upon the Statute 4 Jac. 1. cap. 3. and a Rule was made to shew Cause. 2 Barnard. Rep. in B. R. 171. Trin. 5 Geo. 2. Anon.

(L) In what Cases there shall be full Costs, or no more Costs than Damages.

1. 43 Eliz. cap. 6. S. 2. F in Actions Personal at Westminster not be The Intending for any Title or Interest of Lands, nor the concerned the Freehold or Inheritance of any Lands, nor for any Battery, to it shall appear to the Judges, and so signified or set down by the Juries reduce all before whom the same shall be tried, that the Debt or Damages to be recovered-Actions, ed therein shall amount to 40 s. or above, the Judges shall not award for where the Costs to the Plaintiff any more than the Sum of the Debt or Damages so recovered shall amount unto, but left, at their Discretion.

Entry, or other County Courts, whereby they thought the Profits of Landlords would be encroached, and the Costs of Defendants diminished; but the Statute failed of effecting that Purpose, because they do not put it merely upon the Damages given by the Jury under 40 s. for indeed that would have been hard, where the Jury gave too little Damages, to have punished the Plaintiff with the Costs of his Costs, therefore they put it, that the Judge must certify the Damages proved were not above 40 s. in Appreciation of the Verdict; but the Judges thought it extremely hard to certify in order to make Plaintiffs lose the Costs where they had not prevailed, unless the Action were exceeding importent and vexatious. Gilb. Hill. of C. B. 213, 214. New Abr. 312. S. P. in totem Verbis. No Druke but this Statute was intended to bring back all Personal Actions, but prov'd ineffectual; For as it was worded, it did not take away Costs De Increments from the Courts of Westminster if the Damages were under 40 s. but they only gave Liberty to the Judge, where Damages were under 40 s. to certify against the Plaintiff having Costs, unless in Case of Battery, or where Title of Freehold or Inheritance came in Question; but because it was hard, that when a Man had altered his Right, he should pay Costs for it, and if one injured another under the Value of 40 s., that he should not be redressed in the King's Courts, they remedied this Part of certifying; but thus it stand till the Statute of 22 & 23 Car. 2. cap. 9. Gilb. Hill. of C. B. 211. Gilb. Equ. Rep. 195. Hill. 12 Geo. in the Exchequer in Case of Reeve v. Butler, S. P. and Ibid. 196. Marg. is a Note, that the Ch. Baron said, that he could find no Precedent of any Certificate purport to the Statute in any of the Books of Entries. The Interpration of the Statute of Gloucester was, that though the Jury was to settle the Costs of the legal Proceedings, because these were Matters of Law to which the Jury could not answer; And thus it stand till 43 Eliz. cap. 6. [S. 2.] prout supra. Gilb. Equ. Rep. 195. Hill. 12 Geo. in the Exchequer, in Case of Riff v. Entuir. And says, that this Statute is pretty darkly penned, and therefore he believes it had very little or no Effect.

2. 21 Jac. cap. 16. S. 6. In Actions upon the Case for slanderous Words This Statue in any Court, if the Jury assails Damages under 40 s. the Plaintiff shall recover only so much Costs as the Damages so assailed shall amount unto, without any Increase of the same.

Actions of Slander, where there were no more Costs than Damages: and it takes away the Costs De Increments by express and positive Words; Per Lord Ch. B. Gilbert. Gilb. Equa Rep. 196 Hill. 12 Geo. in the Exchequer, in Case of Reeves v. Butler.

3. Note, Mich. 5 Car. C. B. it was said by Richardson to be the Resolution of all the Justices of B. R. and C. B. that in an Action upon the Case for Slander, though the Court are bound by 21 Jac. cap. 16. and
cannot increase the Colts where the Damages are under 40 s. yet the Jury are not bound by that Statute, and therefore they may give 10 d. Colts where they give but 10 d. Damages. 1 Salk. 207. in Cafe of Brown v. Gibbons.

4. Action, for that the Defendant falsely and maliciously spake these Words of the Plaintiff, viz. that the Plaintiff committed Felony, and procured him to be arrested for Felony, and to be imprisoned for three Days, and was found against the Defendant generally, and Damages to 20 s. it was pray'd, upon the Statute of 21 Jac. that he might have no more Colts than Damages, the Damages being under 40 s. But refolv'd, that this Cafe was out of the Statute, and full Colts were awarded to the Plaintiff. Cro. C. 307. pl. 7. Hill. 9 Car. B. R. Blizzard v. Barns.

S. C. cited.

Cro. C. 307.

5. Action for calling him Thief, and procuring him to be indicted and imprisoned for Felony, until he was acquitted; Upon Not Guilty found for the Plaintiff, and 10 s. Damages, it was mov'd upon the Statute of 21 Jac. cap. 16. that Plaintiff should have but 10 s. for Colts. The Court conceiv'd, that because this is not an Action for Words only, but also an Action upon the Cafe, in the Nature of a Conspiracy, and the Defendant is found Guilty of both, the Defendant shall have Judgment for his ordinary Colts, and that it is out of the Statute. Cro. C. 163. pl. 5. Mich. 15 Car. B. R. Topfal v. Edwards.

6. 21 Jac. cap. 16. which prohibits more Colts than Damages in Cafe for Words, if the Jury give under 40 s. Damages, does not extend to Courts Baron; For if it were, this Act would totally take away their Power of giving Colts De Incremento in such Caeses to more than 40 s. For the Jury there can in no Caeses gives Damages beyond 39 s. 11 d. (for if they do to the Court will have no Jurisdiction in the Cafe) and consequently the Court in no such Cafe could give Colts De Incremento above 40 s. which was never the Intent of the Act; but this Act ought to be intended of Courts, in which the Jury may, if they please, give more than 40 s. Damages; but in Courts Baron they cannot; And by Wright Serjeant, (who was not concerned in the Cafe as Counsel) Colts De Incremento, according as the Cafe requires, are given in all Courts Baron in England, notwithstanding the Act of Jac. 1. Lord Raym. Rep. 181, 182. Patch. 9 W. 3. C. B. Littlewood v. Smith.

7. Cafe for Slanderous Words spoken of his Wife, that he was a Whore, Per quod he lost rich and such Customers; Damages under 40 s. This is not within the Statute; for it is not the Words, but the special Damage, which is the Cafe of Action in this Cafe, and upon Evidence it is not sufficient to prove the Words, but the special Damage also; for the Husband may bring this Action alone. So in an Action for flandering his Title, the Plaintiff shall have his full Colts. 1 Salk. 206. pl. 5. Hill. 1 Ann. B. R. Brown v. Gibbons.

Ibid. the Court said, that in Tri- nity Term, 5 Geo. Dir. for 1st. the Browns, this 371, 372. Trin. 11 Geo. Phillips v. Fith.

very Point was debated, (viz.) whether a Fact laid by way of Aggravation, which was only a Consequence of speaking the Words, should bring it out of the Statute, and entitle the Plaintiff to full Colts; and resolved, that where the Thing laid in the Declaration by way of Aggravation would bear an Action of Libel Independent of the Words & in such Cafe full Colts should be given; and that it is the con- fluent Difference in such Caeses, that where the Words spoken are the very Gift of the Action, though other Things are laid by way of Aggravation, there shall be no more Colts than Damages, for the Jury in such Cafe.
Carts can have no Consideration in giving their Vend'ct what was laid by way of Aggravation; but if the Action was founded on Special Damages, there should be under Consideration.

9. In an Action for Words brought by the Plaintiff against the Defendant, the Plaintiff sets out in his Declaration, that he was a House-Smith by Trade, and that the Defendant spoke the Words of him, which Words were actionable in themselves; and by reason of the speaking thereof, which Words, the Plaintiff had left several Customers, naming them particularly &c. to his Damage of 100 L. On the general Blue pleaded, the Jury found for the Plaintiff, and gave him only 5s. Damages. The Court directed the Plaintiff should have no more Costs than Damages. 2 Ld. Raym. Rep. 1558, 1589. Trin. 5 & 6 Geo. 2. B. R. Burry v. Perry.

10. In an Action for Words importing Felony, As be stole my Horse &c. upon an Action laid and laid by way of Aggravation of Damages, and that he carrie'd him in count of before a Justice of Peace, and caus'd him to be imprison'd &c. The Court gave under 40s. Damages, and yet after several Motions in Court, Trin. 11 Geo. 1. B. R. the Court made a Rule, that the Plaintiff should have full Costs. Ld. Raym. Rep. 1588. Arg. cites it as the Case of the Phillips and Fiith, and Carter and Fiith.

40s. for it is not the Words, but the special Damage is the Cost of the Action, and cites 1 Salk. 206. Brown v. Gibbons; but where the Words are actionable of themselves, as in the present Case, and Special Damages are laid by way of Aggravation, and Damages are under 40s. there shall be no more Costs than Damages, for that it is properly an Action for Words within the Statute of 21 Jac. cap. 16 and as to the Cases cited of Carter v. Fiith, and Phillips v. Fiith, upon considering that Declaration the Court held, that as it was laid, it was not only laid in Aggravation of Damages, but was a distinct Case of Action, importing Crimen Felonia est imputabilis, and therefore the Plaintiff had full Costs. — 2 Mod. 171, 172. Phillips v. Fiith, S. C. & S. P. the Court said, that the Action in this Case was founded on the Words spoken, and that the procuring the Plaintiff to be arrest'd for Felony is laid in a different Court, and the Defendant is found guilty generally, and therefore the Court inclined that the Plaintiff should have full Costs.

11. 22 & 23 Car. 2. cap. 9. 8. 136. (149) Enacts, that for making this Statute the Statute of 43 Eliz. cap. 6. more effectual, that in all Actions of Tres-

pafs, Assault, and Battery, and other Personal Actions wherein the Judge at the Trial shall not find and certify under his hand upon the Back of the Glanville Record, that an Assault and Battery was sufficiently proved, or that the for a aster Freehold or Title of the Land mentioned in the Declaration was chiefly &c. cannot be re-

presented by Question &c. if the Jury find the Damages under 40s. Plaintiff shall not recover more Costs than Damages &c. and if any more Costs be awarded the Judgment shall be void, and the Defendant &c. may have an Action against the Plaintiff for such vexatious Suits, and recover his Damages and Costs of such his Suit, in any of the Courts of Westminister.

Incrementum ought still to arise in all such Personal Actions, where the Judge's Certificate was not necessary in order to the obtaining of Costs, and that was only by the Statute in two Cases, where Trespafs was done to the Freehold, and to Things fixed to the Freehold, and the Damages under 40s. in Battery, where the Damages were under such Sum. Gib. Hist. of C. B. 212. Therefore, if the Defendant justified by any thing that brought the Title of the Land in Question upon the Record, there the Judge shall not certify in order to intitle the Plaintiff to his Costs, for it was not a Case within the Statute. 2dly. If it was an Action of Trover, or Trespafs de bonis Alportatis of Goods and Chattels not fixed to the Freehold, it was out of the Statute, and no Certificate necessary to intitle the Plaintiff to his Costs, and therefore the Plaintiff had Costs De Incremento on the Statute of Gloucester. So 3dly. If an Action of Trespafs to the Freehold, and an Action of Trespafs de bonis Alportatis were joined, and the Plaintiff recovered in general upon both Courts, he had no need of a Certificate to obtain his Costs; and therefore Costs De Incremento went upon the Statute of Glouce.

This Construction of the Judge of the Statue of King Charles, seems to be very right from the S. & W. 5. cap. 11. for the Inconvenience was found, that the People did Trespafs upon their Neigh-

bours, yet not to the Value of 40s. and so they could have no Redress at the Courts of West-

minister without losing their Costs in such Actions, and therefore by that Statue a 3d quarter of Certificate was given. Gib. Hist. of C. B. 213.
12. In Trepassfs of breaking of his Net, the Defendant pleaded Not Guilty, and Evidence is for a Piscary; Winimington prayed full Costs on 23 Car. 2. cap. 9. S. 149. but the Jury being Not Guilty, and no Title in the Declaration, nor certified by the Judge of Alltice that Title was in Question, the Court refused to give more Costs then Damages. 3 Keb. 121. Hill. 24 Car. 2. B. R. Pembroke (Earl of) v. Welfall.

13. In an Action upon the Cafe for Common, Peachell prayed Restitution of Costs, there being but 1 d. Damage, and being no Certificate on the Trial, that the Title was in Question, fed non allocatur; for per Curiam, it has been reolved, by the major Part of the Judges of England, that the Statute 23 Car. 2. cap. 9. S. 149 extends only to Trepsafs, and Affault and Battery, and not to Action upon the Cafe or Afflimmits, or such like; which the Court now agreed, and denied Restitution, the rather here, because the Title must be in Question. 3 Keb. 31. pl. 59 Paich. 24 Car. 2. B. R. Brown v. Taylor.

14. In special Action upon the Cafe for Battery of Servant, Per quod Servitium amisit; Barwell prayed Costs without the Judges signing the Poiten, that the Battery was well proved; and per Curiam it was granted in B. R. on 23 Car. 2. cap. 9. S. 149. 3 Keb. 184. pl. 27. Trin. 25 Car. 2. Peak v.

15. In Trepassfs of taking the Plaintiffs Bull, on Verdict for the Plaintiff 25 s. Damages. Treman prayed full Costs, whereupon it was referred to the Secondary to confer with the Prothonotaries of C. B. and on their Report per Cur. no Costs shall be allowed; and Costs was denied. 3 Keb. 247. pl. 68. Mich. 25 Car. 2. B. R. Claxton v. Laws.

16. An Action brought in an inferior Court for an Affault and Battery, was removed into B. R. and upon the Trial the Jury gave 6 s. 8 d. Damages, and 40 s. Costs, and the Judge before whom it was tried certified, that the Affault was sufficiently proved. The Question was, whether or no in this Cafe the Plaintiff should recover any more Costs than Damages? And 3 Points were moved. 1st. Whether or no the Judge had sufficiently certified, because it was that the Affault (and not the Affault and Battery) was sufficiently proved. 2dly. Whether or no, if the Costs and Damages given by the Jury, exceed 40 s. it shall be within the Act? 3dly. Whether an Action commenced in an inferior Court originally, and afterwards removed hither, shall be within the Act? And as to this Point the Reporter says he was told, that the Judges of C. B. had adjudged, that it was, as to this, as all one as it an Action began here. 4thly. The Reporter says he was told, that the Judges at Sergeant's Inn had differed in their Opinions, whether or no Actions of the Cafe were within the Act; but the Opinions of most were, that they were not, nor none but those named, viz. Treipasfs and Battery. Freem. Rep. 365. 366. pl. 467. Paich. 1674. Hamond v. Rockwood.

17. An Action of Trepasfs was brought Quod Domini fregit, and Bona aportavit, and as to the Domini fregit the Defendant was found Not Guilty, but to the taking away the Goods Guilty, and Damages assessed to 15 s. The Question was, whether he should have any more than Damages, in as much as being found Not Guilty as to the Domini fregit, it is now no more than if he had brought an Action of Trover for the Goods, and that had not been within the Statute; and a Precedent was cited in C. B. where it was held, that the Plaintiff should have his full Costs; fed advifate vult Cur. and so it was held here afterwards. Freem. Rep. 394. pl. 511. Trin. 1675. B. R. Anon.

18. In an Affault and Battery the Cafe upon the Evidence was this, the Defendant drew a Sword, and wounded a man in a menacing Manner against the Plaintiff, but did not touch him, to the Jury were ordered to find him Guilty as to the Affault, but not of the Battery; and the Opinion
Opinion of the Court was, that the Plaintiff was to have no more Costs than Damages, for the new Act excepts Actions of Assault and Battery, so that both must be proved. Vent. 256. Palch. 26 Car. 2. B. R.

Anon.

5 Keb. 355. pl. 58 Smith v Hadone, S. C. the Court conceived, that he can have no more Costs than Damages, and that the Statute does not extend to the increased Costs; but the Court may give Judgment for what Damages the Jury tax, though only the Assailant be certified.

19. North Ch. J. said, this Statute was made with respect to the Statute of 43 Eliz. cap. 6. for there is it is provided in Personal Actions, if the Debt or Damage is under 40 s. &c. the Judges may mark the Poleter, and the Plaintiff shall recover no more Costs than Damages, but where Trespasses and Battery are excepted, and then this Statute provides in those Cases only; the Difference is upon the 43 Eliz. the Party shall have his ordinary Costs, unless the Judge certify [lefs], but upon this left Statute in Trespasses and Battery, when less than 40 s. is given, the Party shall not have ordinary Costs, unless the Judge do certify; and he said it was held by the same, that such Personal Actions, which did not bring the Title of the Land in Question, were not within this Statute, except Battery, and therefore he held the principal Case, being an Action upon the Case by a Commoner, could not possibly bring the Title of the Land in Question; and besides, the Statute was made to prevent Suits for petty Trespasses. Freem. Rep. 214. pl. 222. Mich. 1676. in Case of Styleman v. Patrick. 20. Trespasses in the Palace Court; the Case was removed into B. R. by the Defendant, and the Jury having given 13 s. Damages, the Question was, upon the Statute 22 & 23 Car. 2. cap. 9. whether the Plaintiff should have no more Costs than Damages; Et per Car. the Cause being removed by the Defendant, the Plaintiff shall have more Costs, but not if it had been removed by the Plaintiff, for so he might be more vexatious. 3 Salk. 115. pl. 9.

should have more Costs; the Cause being removed by the Defendant; but not adjudge; But it being said to have been so ruled in C. B. the Court said they would advise with the Justices of C. B. so that the same Rule might be in both Courts.

21. Cafe for eating of his Grazes with Sheep, so that he could not in Freem. Rep. 1713. pl. or his Common &c. this is not within 43 Eliz. for it is not a frivolous Action, because a little Damage to one Commoner, the Jury and to 20, may in the whole make it a great Wrong, and if it was gave to 20 s. frivolous, the Judge of Assail might mark it to be such, and though a Damage, Title is here let forth to his Commoner, yet the Title of Land cannot come in Question, and so not be certified as in Cases of Trespasses, neither is there any need of a Certificate, if it appears by the Pleading that J. Wind. the Title of the Land is in Question. 2 Mod. 141. Mich. 28 Car. 2. 1 B. R. and 43 Car. C. B. Styleman v. Patrick.

that this was not within the Statute 22 & 23 Car. 2. but Atkins J. e contra; for though the Title of the Land could not come in Question, yet Common is concerning Land, and a Man may have Freehold in it. North Ch. J. said, that here it appears his Title was in Question, for he must prove his Title in Evidence, as it is alleged in the Declaration, and they all agreed, that where it appears by the Record that a Title is in Question, there is no need of the Certificate of the Judge; But per Atkins, it may be the Defendant would contest his Title upon the Trial, and then it would not be in Question; but according to the Opinion of the other three the Plaintiff had his ordinary Costs.

22. In Trespasses for entering his Close &c. the Defendant justified for a 2 Show. 28. Way &c. the Plaintiff replied that the Defendant was Guilty extra viam. 3 S. C. but not upon which they were at Issue, and the Plaintiff had a Verdict; the Opinion of the other three the Plaintiff had his ordinary Costs; whether he should have no more Costs than Damages; by Lord Ch. adjudged S. Gilbert. 4 X Gilb. Rep. 198, 199.
adjudged he shall have full Costs, because the Title to the Way appears on Record, (viz.) of what Extent it is, viz. so many Feet in Breadth &c.


23. In an Action of Trespass, upon Not Guilty, at the Assizes in Suffolk, a Verdict was found for the Plaintiff, and 10s. Damages, and 20s. Costs, and Judgment entered accordingly; and an Action of Debt was brought upon the Judgment, and the Defendant pleaded specially the Statute 22 & 23 Car. 2. cap. 9. against recovering more Costs than Damages (where the Damages are under 40s.) in Trespass, unless certified by the Judge that the Title was chiefly in Question, the Words of the Statute being, If any more Costs in such Action shall be awarded, the Judgment shall be void. To which the Plaintiff demurred, and the Plea was held insufficient; because the Verdict was for 40s. Costs, and not Costs increased by an Award of the Court. If the Judgment were erroneous, yet it was hard to make it avoidable by Plea, notwithstanding that the Words of the Statute are, shall be void. 2 Vent. 96. Trin. 33 Car. 2.

24. Trespass Vi et Armis for slinging down certain Stalls of the Plaintiff in the Market Place of H. It was refolv'd p.r. tor. Cur. that the Plaintiff should have his ordinary Costs, because the Statute shall be intended to reach to such Action only in which the Freehold may apparently come in Debate, and this Action is not Quare Clasuum fregit, but only for destroying a Chattel, and the Freehold cannot come in Debate, any more than if a Man should take his Sword out and run a Coach-Horfe thro' the Guts, whereby he died, and the Owner shall bring Trespass Vi et Armis, and recover under 40s. Damages, yet he shall have his full Costs. Raym. 437, 438. Hill. 34 & 35 Car. 2.


Saunders Ch. J. said, that a Stall is no Part of the Freehold. ——— 2 Show. 258 pl. 261. S. C. held accordingly, and if the Stall had been annexed to the Freehold, yet if carried away it would be likewise out of the Act; and in such Cases, where it appears in the Record, the Parties need not be mark'd. ——— S. C. cited 3 Mod. 40. ——— S. C. cited by Ld. Ch. B. Gilbert. Gilb. Equ. Rep. 198.

25. Trespass for breaking his Close, and impounding of his Cattle; Upon Not Guilty pleaded the Plaintiff had a Verdict, but Damages under 40s. Whereupon Mr. Liveyday the Secondary refused to tax full Costs, alleging it to be within the Statute of 22 & 23 Car. 2. Mr. Pollexfen moved for Costs, alleging that this Act doth not extend to all Trespasses, but only to such where the Freehold of the Land is in Question; If the Action had been for a Trespass in breaking his Close, and Damages given under 40s. there might not have been full Costs, but here is another Count for impounding the Cattle of which the Defendant is found Guilty, and therefore must have his Costs; the Plaintiff had ordinary Costs. 3 Mod. 39, 40. Hill. 35 Car. 2. B. R. Barnes v. Edgard.


26. In an Action of Trespass Quare Clasuum fregit, and putting Stakes upon his Ground, it was held, that this was within the late Statute, which enacts, that the Plaintiff shall recover no more Costs than Damages; but if any Thing had been taken away (of how little Value soever) it had not been within the Statute. 2 Vent. 49. Trin. 1 W. & M. in C. B. Anon.

Fry, which was Trespass Quare Clasuum fregit, & Blada fur ibidem crecent, fuccladit & aportavit. The Jury, as to the breaking of the Close, and cutting of the Corn in the Blade, found the Defendant Guilty, but as to the carrying away Not Guilty; but where it does not appear that the Trespass was committed under pretence of Title, or that any thing was carried away, there we cannot make a Construction contrary to the express Words of the Act of Parliament.

27. Tref-
27. Trespass Quaer Clauatum fregit, and declared of divers others Trespafs. The Defendant pleaded Not Guilty as to the Clauum fregit, and justified as to the other Trespaefes, which upon the Issue was found for the Defendant, and as to the Clauum fregit it was found for the Plaintiff. The Court held it a clear Cause within the late Statute, that the Plaintiff should have no more Costs than Damages, the Damages being under 40 s. 2 Vent. r80. Trin. 2 W. & M. in C. B. Anon.

28. In an Action of Trespasses Quaer Clauatum fregit, and digging up and carrying away of his Trees. It appears upon the Evidence, that the Defendant had entred into the Plaintiffs Clofe, and dugg up several Roots of his Trees, and removed them to a Place on the same Ground, about two Yards distance off'. Pollexfen, Ch. J. and Rokeby (Powell absent) were of Opinion, that the Plaintiff was to have full Cofts, because the Roots were carried from the Place where they were digged, tho' not removed off the Ground; Ventris conceive'd that the taking of the Roots, and laying them a little way off in the same Mans Ground, could not be taken as an Aportavit, but by the Opinion of the other two the Plaintiff had his full Costs. 2 Vent. 215, 216. Mich. 2 W. & M. in C. B. Anon.

Cafe in Vent. 215. But they agreed, that if any thing was carried off from the Grounds, tho' of never fo little Value, it would be an Aportavit; For the Words Aportavit, & Aportavit, in Declarations, means such a Carrying as amounts to a Conversion to the Defendants Use.

29. In an Action of Trespasses Quaer Clauatum fregit, where as to fame Part there was Not Guilty pleaded, and as to the other a special Jusfification, and a Verdict upon the general Issue for the Plaintiff, and the special Issue for the Defendant. The Court took this to be within the late Statute for the Plaintiff to have no more Cofts than Damages, because the Issue upon the Matter specially pleaded, was found for the Defendant, and so the same Thing if the general Issue had been only pleaded, and found for the Plaintiff. 2 Vent. 195. Trin. 2 W. & M. in C. B. Anon.


31. Trespafs &c. Herbam depaefendo & Solum & finandum Carucis subvertendo & in solio fodendo & cum Terra inde prope eol Agn curfim finum obhupand' per quod Clauum finum inuadat fuit &c. Upon Not Guilty pleaded the Plaintiff had a Verdict, and 2d. Damages; and the Secondy refusing to tax any Cofts more than the Damages, it was moved now, that the Plaintiff might have full Cofts, as in other Cases, and per Cur. upon Vetw of the Statute, the Plaintiff shall not have full Cofts in this Cafe, for that it was within the very Words of the restraining Clauus, which allows no more Cofts than Damages, if the Damages are under 40 s. Quod Nota. Carth. 224, 225. Paich. 4 W. & M. in B. R. Laver v. Hobbs.

32. Tref-
32. Trespass for chasing his Sheep, and that be (the Defendant) Ad
Loco ignota eos abducit & changavit; after a Verdict for the Plaintiff,
and 2d. Damages, he had his full Colts upon a Motion, pronoally up-
on the Word Abducit which is the same in Signification with Apporta-
33. In an Action of Trespass several Trespassers were for forth and the De-
fendant was found Not Guilty as to all but one which was petitus ambulat-
do, and the Damages 5s and no more. This Case began originally
in an Inferior Court, and was removed hi ther; and the Court allowed
full Colts, tho' the Damages were to small; Quod Nota. 4 Mod.

Comb. 190. Blichley v. Fry, S. C.

34. Trespass for entering his Close, and cutting and carrying away his
Close; Upon Not Guilty pleaded, the Defendant is found Guilty of all
the Trespass, but carrying away the Corn, and as to this he is found
Not Guilty; and it was moved to have full Colts, because otherwise
a Man might come and destroy Fruit-Trees and Flowers in a Garden,
and do Damage to a great Value; yet upon Trespass brought, the De-
fendant could not infilt upon any Right, but plead Not Guilty, and
the Plaintiff shall have Colts only according to the Damage and the Ac-
ct did not intend such wilfull Trespassers, but only Civil Trespassers; as
the riding over a Cloke in Hunting &c. and several Colts were cited,
wherein such designd and voluntary Trespasses, thou' Nothing be carri-
ed away, yet full Colts were given; but notwithstanding all this that
was said, the Court seem'd strongly to incline e contra; &4th hare
vuit, but the Court agreed, that if he had carried away, the' went out
of the Premisses, full Colts should have been given. Skin. 666. pl. 4.

35. Trespass for a Cloke broken &c. Upon Not Guilty pleaded, the
Nili Prius Roll was carried to the Afflues to be tried, and there, by
Confect of the Parties, the Jury had the View, and the Trial was put
off' to the next Affliues, and then the View was tried, and a Verdict
for the Plaintiff, and 10 s. Damages; And the Question was in C.B.
whether the Plaintiff should have more Colts than Damages, for the
Judge had made no Certificate that the Title came in Queslion; and re-
solved per Cur. the Plaintiff shall have full Colts; for it appears upon
the Record, that the View was granted, but the View cannot be granted
unles where the Title comes in Question, and therefore the granting of
the View amounts to a Certificate, that the Title came in Question; and
by all the Prothoferatris, it is always the Practice to give full Colts
where the View is granted. Ld. Rayn. Rep. 76, 77. Patch. 8
36. Tho' the Damages are under 40 s. in an Action removed out of
an inferior Court by Habeas Corpus, yet the Plaintiff shall have full Colts,
37. In an Action of Trespass Quare Glaufius frugis of Affluere, Bat-
tery, Wounding, and of Disturbance of Linn in his quiet Possession &c. upon
Not Guilty pleaded, a general Verdict was given for the Plaintiff, and
Damages under 40 s. But Mr. Branthwaite moved to have full Colts,
because the Defendant was found Guilty of Wounding, and Disturb-
ance of the quiet Possession; But per Holf Ch. J. the Practice has
been always otherwise; and he said, he did not remember such a Mo-
tion to have been made; but Gould J. said, that he moved such a Mo-
tion as to the peaceable Possession here in B. R. but it was denied him
and the Motion here was denied. Ld. Rayn. Rep. 566. Patch. 12

38. It
38. Trespafs for 

39. Trespafs for 

40. Trespafs for 

41. It was moved to have full Cofts in an Action of 

42. Trespafs for 

43. Trespafs of 

44. 

It was held within the Statute; for the Locks were hid to the Posts, and the Posts to the Freehold. MS. S. C. cites Hill. 12. Ann. Lane v. Brown.
44. Trespass was brought for breaking and entering Plaintiff's Houfe, and keeping the Plaintiff out of Possession and Use of the said Houfe, with a Continuance for a Month, whereby the Plaintiff was put to great Expenses to gain the Possession of his Houfe, and in the mean Time lost the Profit and Use of his Houfe; Verdict for the Plaintiff, and 2 s 6 d. Damages, and upon Motion for full Costs, it was decreed by the Court; for this is a plain Trespass Quare Cluflum fregit, and the per quod is only an Aggravation; and in this Cafe the Title of the Freehold might have come in Question, and if fo, there fhou'd have been a Certificate of the Judge, which not being in this Cafe, the Plaintiff can have no more Costs than Damages. Gilb. Equ. Rep. 197, 198. cited by Lord Ch. B. Gilbert as Minc. 12 Geo. 1. C. B. Blunt v. Miller.

45. In Trefpafs the Plaintiff declares of breaking and entering his Houfe, and then counts, that B. (the Deftendant) intra Tempus prædict' viz. Such a Day, broke and lock'd up the Houfe and Barn and took and detain'd such and fuch Goods of the Plaintiff's, for four Weeks in the said Houfe and Barn. The Jury found for the Plaintiff, and 2 d. Damages. Lord Chiel Baron Gilbert, who delivered the Opinion of the Court, faid, that tho' he doubted somewhat at firit, yet he is now clearly of the Opinion with his Brothers, that there can be no more Costs than Damages. Here is no Count, but where the Freehold might possibly come in Question; For this Count is for breaking the Barn, and locking up the Door of the Houfe and Barn, and detaining several of the Plaintiff's Goods, mentioned in the Declaration, in that Houfe and Barn. Now here is no Subtantive and independent Count quoad the Goods and Chattles, becaufe it is connected with the breaking and locking up of the Barn, and in that Cafe the Freehold of the Barn might come in Question; and then locking up the Goods in the Barn is but mere Aggravation in that Count. If a Man will put his Goods in my Barn without my Leave, he can't enter and break my Barn in order to come at his own Goods, and therefore upon this Count the Property of the Goods must not be in Question, but merely the Barn that was thus broken. Gilb. Equ. Rep. 195. to 199. Hil. 12 Geo. in Scacc. Reeves v. Butler.

46. Another, and still a stronger, Reason in my Opinion, is, that it is laid by way of Detinuit, and not by way of Aportation; For where it is laid by way of Detinuit, he may detain a Defiles, & contra Vadis & plegios, and not by way of Aporation and Conversion; And then even on the part of the Count, touching the Goods and Chattles, the Freehold might come in Question, and whether fuch Defiles were lawful; So that taking this as an Aggravation of breaking the Barn, as indeed it ought to be, the Freehold might come in Question in this Count; Or if it had been put into an independent Count, in the Detinuit only, and not by way of Aporation and Conversion, fuch Count would not be good in Trespass, and therefore no Damages could have been recovered for it and therefore there could be no Costs de Incremento, and consequently there can be no Costs in that Cafe; This was the Opinion of the whole Court delivered by the Lord Ch. B. Gilbert. Gilb. Equ. Rep. 199. Hil. 12 Geo. in Scacc. Reeves v. Butler.

47. The Construction upon this Statute was, that in all Actions of Battery, and in all Actions where Freehold could come in Question, if the Damages were under 40 s. the Plaintiff must procure a Certificate from the Judge, in order to obtain his Costs; but in all other Personal Actions, the Law stood as it did before the Statute of Eliz. that the Judge must certify the Action as frivolous, to strip the Plaintiff of his Costs; the plain Consequence of which is, that if there be several Counts in Trefpafs, and one relates to the Freehold, in which the Title may come in Question, and another relates to Chattles de Bains Aportat' in which no Title of Land can come in Question, and entire Damages be found under 40 s. the Plaintiff must have Costs, by the Statute of Gloucester, becau
cause the Colts are not remitted by the Statute of Eliz. without a Certificate from the Judge, and this is not within the Statute Cap. 2, wherein there is a Necessity there should be a Certificate of the Judge, to intitle to Colts; and therefore when entire Damages are found, there must be some Damage proportioned to that Count, and if there be any Damage proportioned to the Count relating to the Goods, that the Statute of Gloucester carries Colts of Court. Gilb. Eq. Rep. 196. Hill. 12 Geo. in the Exchequer, in Case of Reeves v. Butler.

48. In Trespass for a very great Detriment and spoiling of the Plaintiff's Land, it was moved to tax full Colts, though the Damages given were under 40s. but the Court said, that an Affidavit was out of the Statute of 22 & 23 Car. 2, cap. 9. Seft. the last, but that a Spoliation was not; And Page J. said, that the Courts had discouraged Suits of this Nature; For upon the Statute 43 Eliz. cap. 6 if the Judge certifies the Suit to be vexatious, they will not allow the Party his full Colts, though the Damages are above 40s. but he said, if the Party had produced a Certificate from the Judge of the Trespass being wilful and malicious, they would have granted it; and this is required by 8 & 9 W. 3, cap. 10. Barnard. Rep. in B. R. 117. Hill. 2 Geo. 2. Grandey v. Wiltshire.

49. In Trespass Quare Clamantium frigidis, and also for a Trespass committed on a Chattle severed; Per Cur. the Authorities seem to run, that a Trespass being laid to be committed on a Chattle severed, the Plaintiff is intitled to full Colts. Gilb. 42, 43. pl. 5. Hill. 2 Geo. 2. B. R. Granville v. Vincent.

50. Where de Non Affinitate Demusius is pleaded, the Plaintiff is intitled to his full Colts, provided he has a Verdict; per Cur. clearly, but Judge Lee said, that the Rule is not, that the Plaintiff should be intitled to his full Colts in all these Actions of Trespass, where there is special pleading, and particularly cited the Case of Philpot v. Jones, Hill. 1 Geo. 1. in trespass there for breaking the Plaintiff's House, the Defendant justified as Bailiff under Process; the Plaintiff replied, that his Doors were open; upon which Issue was joined; Verdict found for the Plaintiff, and Damages 2d. Motion was in that Case for full Colts, but the Court refused it. 2 Barnard. Rep. in B. R. 277. Mich. 6 Geo. 2. Walkin v. Smith.

51. 4 & 5 W. & M. cap. 23. S. 10. If any inferior Tradesman, Apprentice, or other dissolute Person, neglecting their Trades and Employments, who follow Hunting &c. shall presume to Hunt, Hawk, Fish, or Fowle, (unless in Company with the Master of such Apprentice duly qualified) be taking, shall be subject to the Penalty therein, and may be fined for their wilful Trespass in coming on any Person's Land, and if found Guilty, Plaintiff shall not only recover his Damages but his full Colts of Suit.

breaking and entering his Cloze, and treading down his Grass and Corn, and hunting there, the Defendant being an inferior Tradesman, Conta Deem &c. and Contra Forman Statut. The Court held, that Contra Forman Statut should only be applied to the latter Part, which was really against this Statute, and that since the Breaking and Hunting could not be separated, the Plaintiff should have his Colts according to this Statute; and Judgment for the Plaintiff — Comb. 420. S. C. adjudged for the Plaintiff; For the Conclusion of Contra Forman Statut shall refer only to that which would reasonably bear it, and though in Grammar it goes to all, yet in Law it goes to the Hunting only. — Carr. 35. S. C. adjudged accordingly. And per Holt Ch. J. it is sufficient to lay in the Declaration, that the Defendant hunted in the Plaintiffs Cloze without concluding Contra Forman Statut; For that should come in Evidence— 5 Mod. 207. S. C. adjudged for the Plaintiff. For this was an Offence before the making this Act, which only repeals that Clause of the Statute of 22; Car. 2. as to Colts, and therefore though the Declaration concludes Contra Forman Statut it is well enough.

52. 8 & 9 W. 3. cap. 10. S. 4. For the preventing of wilful and malicious Trespass, be it further enacted, that in all Actions of Trespass to be commenced or prosecuted, from and after the 25th Day of March, 1697.
in any of his Majest's Courts of Record at Westminster, whereas at the Trial of the Cause it shall appear, and be certified by the Judge under his Hand upon the back of the Record, that the Trespass upon which any Defendant shall be found Guilty was wilful and malicious, the Plaintiff shall recover not only his Damages, but his full Costs of Suit, any former Law to the contrary notwithstanding.

But Note, that the Action being to be commenced in those Courts, if they are commenced there, and removed by Habeas Corpus or Certiorari into the Courts of Westminster, there the Plaintiff shall have full Costs. Gilb. Hill. of C. B. 217.

This Statute maintains the Statute of Car. 2. as extending only to the Courts of Westminster, but further enacts, that it shall be extended to the Principality of Wales and Counties Palatine. Gilb. Hill. of C. B. 215.

(M) How assails'd or tried.

1. Where a Man tenders Damages and Costs, and the rest of the Debt upon Statute Merchant, and prays Seque Facias to seise his Land, the Mites and Coftages shall be try'd by Averment, and not by laving of the Justices. Br. Costs, pl. 5. c. 47. E. 3. 11.

2. If in Trepass brought against two Defendants one is found Guilty by himself, and the other Guilty by himself, and Damages severally assessed, yet the Costs shall be jointly taxed. to Rep. 117. a. in Pildolf's C a f e, and says, that with this agrees 36 H. 6. 13. and 12 Ed. 4. 1.

3. Sir J. S. brought an Action upon the Cause against P. B. upon a Grover of Goods and Household Stuff, the Defendant pleaded as to Parcell, that they were fix'd to his Freedom in S. in Hampshire, abique hoc that he found them in other Manner; as to another Part, that the Plaintiff gave them to him at D. in Hampshire; and as to the other Part, he pleaded Not Guilty; For the first Part the Plaintiff caus'd it to be entered, Non vult alterius prohibet, and took Illuc upon the two other, and it was found for the Plaintiff by several Justices, in several Counties, and Damages and Costs assessed by the Juries; and now the Defendant brought Error, and affirmed Error, because both Juries have assessed Costs, and Judgment given accordingly, whereas the first Verdict ought to do it; and where two Juries are to try the Illus, the Form of the Entry after the first Verdict is, Cellet Executo, until the other Illus be tried. See 21 H. 6. 51. 56 H. 6. 13. Anderson, 3d. several Illus cannot serv the Costs, although they may the Damages, for it is but one Suit, therefore but one Costs, and that is the Reason that Judgment shall not be given until the last Illus be tried, because that Costs shall be but once assessed, which was granted by the whole Court, and by Parium, that the Jury may assess Costs for the whole Suit, Quod fuit Concessum: 2 Le. 177. pl. 217. Trin. 35 Eliz. C. B. Sir John Sands vs. Brocas.

4. Action of Affe Imprisonment was brought by M. against two Bailiffs of a Corporation, who pleaded Not Guilty, and at the Nisi Prius the Plaintiff was nonuit; and now Sergeant Richardson moved upon the Statute of 7 Jac. cap. 5, for double Costs, and that upon the very Words of the Statute, and the Question was, whether the Costs ought to be taxed by this Court, or by the Judges of Affes; Herbert, that up in the Nonuit the Judges of Affes might have commanded the Jury to have taxed the single Costs, and then the same Judges might have doubted them, and that within the Words of the Statute; but if the Judges grants
grants this, then upon his Certificate the double Colts shall be affixed, for otherwise the Party shall be without any Remedy, and Brownlow Ch. Prothonatary agreed with that, as to the Certificate, that this Court shall affix the Colts, and Brownlow had a Precedent accordingly. Win. 16. Trin. 19 Jac. Major v. two Bailiffs.

5. After the Statutes made as to Colts, they began to make it a Rule for the better Execution of the Statute, that the Jury should tax the Damages apart, and the Colts apart, that so it might appear to the Court that the Colts were not considered in the Damages; and when it was Evident that the Colts taxed by the Jury were too little to answer the Colts of the Suit, the Plaintiff prayed, that the Officer might tax the Colts that were inferred in the Judgment, and therefore paid to be done Ex alienus of the Plaintiff, because at his Prayer. Gilb. Hist. of C. B. 215.

6. Where a Statute (as in Waife) gives treble Damages, the Jury give single Damages, which are afterwards trebled by the Court; for it is the Jury's Part as to Matter of Fact to ascertain the Damages, and it is the Business of the Court to see the Law executed, and consequently to treble them. Gilb. Hist. of C. B. 216.

7. An Inhabitants Affirmant had been brought against a Collector of the Land-Tax; The Defendant had a Verdict, but because it did not appear upon the Nisi Prius Roll that this Action was brought against an Officer, Motion was made, that this might be entered upon the Roll to intitle the Defendant to treble Colts; accordingly the Court ordered an Entry to be made in this Manner, Super examinationes Materie it appears to the Court, that the Action was brought against the Defendant as Collector; Ideo consideratum est, that he shall have his treble Colts; Arg. says, that such Case was cited in Case of the King v. Dolainy, and upon citing that Precedent, the Court made the same Rule that the like Entry should be made in that Case. He observed further, that in the Case of one Walker and Sir Wm. Egerton, Hill. 7 W. 3. the like Entry was made upon the Roll. Accordingly the Court ordered the same to be done in the present Case. 2 Barnard. Rep. in B. R. 117. Hill. 5 Geo. 2. in Case of Catherel v. Cowper.

(N) At what Time Cofts may be given.

1. Trefpafs against two for chasing in his Park at D. who pleaded Not Guilty, and the one was found Guilty at such a Day to the Damages of 30 s. and the other Guilty at another Day to the Damage of 13 s. The Plaintiff prayed double Damages, and imprisonment for 3 Years, according to the Statute, and could not have it, because he took his Action at Common Law, and not a Writ making Mention of the Statute; and it was awarded, that the Plaintiff should recover 30 s. against the one, and that the Plaintiff should be amerced, because he is acquitted of the Trefpafs done with the other, and that he recover 13 s. Damages against the other, and that he be amerced against him, because he is acquitted of the Trefpafs in common with the other. Br. Trefpafs, pl. 58. cites 47 E. 3. 10.—& concordat 9 H. 6. 2. of the Damages in Action upon Statute, and in Action at Common Law. Br. Ibid.

2. In Debt of 20 l. 10 l. is not deny'd, and [as to the other] 10 l. be pleaded in Bar, Judgment may be of the 10 l. immediately, but no Cofts till the Bar be try'd of the other 10 l. Br. Cofts, pl. 13. cites 22 H. 6. 47, 48.

4 Z (O) Cofts
(O) Cofts increased. In what Cases.

1. IN Attaint found upon Affes, the Plaintiff recovered Cofts, and because they were too little the Court increased them; in the written Book, fol. 12. and in the Printed, fol. 23. for it is false Printed. Br. Cofts, pl. 8. cites 8 H. 4. 23.

2. In Trespasis against three of breaking his Park and killing his Savages there &c. and the one appeared, and the others not; the Plaintiff counted that he chafig in, and broke his Park, and kill'd his Savages, the Defendant pleaded Not Guilty, and the Jury found that he came into the Park to chase and kill Savages, (but did not kill any of them) to the Damage of two Marks, viz. 13 s. 4 d. for the Trespasis, and 13 s. 4 d. for the Cofts, and the Plaintiff prayed his Judgment against him who is found Guilty, and releas'd his Suit against the others, by which the Court awarded, that the Plaintiff recover against the Defendant 40 s. viz. 13 s. 4 d. for the Damages, and 13 s. 4 d. for Cofts by the Jury atties'd, and 13 s. 4 d. more for Cofts increased by the Court. Br. Trespasis, pl. 106. cites 5 H. 5. 1.

3. In Trespasis the Defendant was found Guilty at the Nisi Prius to the Damage of 40 s. and because the Defendant had Superludes and Injunction that the Plaintiff should not pursue at Common Law till the Matter be disposed of in Chancery, by which the Plaintiff expended in the Chancery 10 Marks, and after the Injunction was dissolved, by which the Plaintiff pray'd Increase of Cofts in Banco; and it was awarded that the Plaintiff shall recover 40 s. in Damages, and 3 l. in Cofts. Br. Cofts, pl. 22. cites 21 E. 4. 78.

4. Error of a Judgment in Coventry was assigned, because the Verdict found 5 l. for Damages, and 26 s. 8 d. for Cofts, and the Court awarded he should recover the Damages and Cofts atties'd by the Jury, and that he should recover 53 s. 4 d. De Incremento ad requisitionem of the Plaintiff, and doth not say Pro Mijis suis, and it might be that the Incrementum was Pro Damnis. All the Court, Prater Berkeley, held it well enough; for it shall be intended Pro Mijis, which was the last Antecedent, and that which might lawfully be increased and not pro Damnis, which cannot be increased. Cro. C. 413. pl. 7. Trin. 11 Car. B. R. Anon.

(P) Payment inforced. How. Or New Actions stopp'd.

1. THE Lord Biron was Plaintiff in an Action, and upon a Non-suit 5 l. Cofts were taxed against him, and he brought another Action for the same Matter, which was laid to be meerly Vexation, and that he refused to pay the Cofts, neither could he be compelled, being a Peer, and in Parliament Time; wherefore the Court gave Day to show Cause, why this Action should not stay until he had paid the Cofts in the former. Vent. 100. Mich. 22 Car. 2. B. R. Lord Biron's Cafe.

2. The
2. The Court was moved on the Part of the Defendant, that in regard the Plaintiff had obtained the Cause between them to be tried at the Bar, and therefore he might be ordered by the Court to give Security to pay the Costs, in Case the Trial should be against him; But the Court would make no such Rule, but said, if he will not pay the Costs in Case the Verdict be against him, he shall take no Benefit here afterwards. Sty. 322. Pauch. 1652. Dudley v. Born.

3. A Motion was made to stay the Trial of an Ejectment at Bar till the Payment of Costs of a former Trial in Ejectment in C B. (Note, it was not between the same Persons, for there was another Lessor.) Doblen J. the Rule of staying a Trial for Non-payment of Costs at first was in the same Court where the former Trial was, but now the Rule is extended to other Courts, and forasmuch as it appears in this Case to be on the same Title, it is reasonable to grant the Motion. Holt said, we cannot take Notice that it is on the same Title. Doblen, it appears by Affidavit. Holt, admitting it to be the same Title, yet here is another Person, (viz. an Heir or a Devisee) who is not liable to pay the Costs of the former Action; And it was agreed, that where the Lessor makes a new Lessor in the second Action, that shall not avoid the Payment of Costs; Adjoindatur. Comb. 106. Pauch. 1 W. & M. in B. R. Tredway v. Harbert.

4. An Ejectment was brought in C. B. and a Verdict for the Plaintiff, but he had no Costs; and now the Defendant in that Action brought a new Ejectment in B. R. against the same Plaintiff, and Sir Francis Winnington moved, that he might have his Costs before he should be compelled to plead to the new Action; but it was not granted, because he had no Vexation, the Verdict being for him; But if it had been against him, or that he had been non-suited, he should not have brought another Action before the Costs of the first had been paid, because it was a Vexation to bring a new Action. 4 Mod. 379. Hill. 6 W. & M. in B. R. Roberts v. Cook.

5. The Plaintiff brought Indebitatus Assumpsit for Monies received after, Salk. 314. the Death of the Testator by the Defendant, to the Use of the Plaintiff as Executrix &c. Upon Non Assumpsit pleaded, the Plaintiff was non-suit, and now he brought a new Action; and the Defendant moved to have Costs before the Plaintiff should be permitted to proceed, but de- nied per Cur. But Note, that in another Action between these Parties, the Plaintiff paid Costs for not going on to Trial according to Notice. 2 Ld. Raym. Rep. 965, 666. Pauch. 2 Ann. Elwes v. Mocata, but not exactly S. P.

6. In Ejectment the Defendant had a Verdict, and Judgment, and Costs taxed, and then the Plaintiff brought a Writ of Error in the Exchequer Chamber, and pending that Writ, he brought a new Ejectment; and now it was moved, that he might not proceed on this Ejectment till he had paid the Costs of the first. The Court thought it hard that the Defendant should be doubly vexed by the Proceedings on the Writ of Error, and by a new Ejectment, therefore made a Rule, if the Plaintiff should proceed on the Ejectment he shall pay the Costs of the first, otherwise he shall not proceed on the second. 8 Mod. 225, 226. Hill. 10 Geo. Crundell v. Bodily.

7. In an Action for an Ejectment brought by an Executrix against the Marshall, Mr. Strange moved that Proceedings might be stayed till the paid the Costs of a Non-suit in a former Action upon the same Demand, and compared this Case to that of a Pauper; But the Court (Ch. J. absent) said, that this Motion has been often made, but never allowed; accordingly it was refused in the present Case. 2 Barnard. Rep. in B. R. 94. Hill. 5 Geo. 2. 1731. Holley v. Mullins.

8. The Plaintiff had brought a former Action as Administrator, but in the Declaration had left Blanks for the Time when the Administration was committed.
committed, and for some other Particulars relating to it; the Defendant
submitted to the Declaration for this Reason, but the Plaintiff instead of
moving to amend his Declaration, got Leave of the Court, upon a Side-
Bar Motion, to discontinue without Payment of Costs, as being an Admini-
strator. Notwithstanding this, the Plaintiff had since brought another
for the same Cause as the former; upon which Mr. Strange moved, that
Proceedings in it might be stayed till he paid Costs in the former, but the
Court refused the Motion, by reason that an Administrator is a Person in-
demnified by the Laws from all Costs on commencing any Action. 2 Barnard.
9. It was moved, that the Trial might be put off till the Plaintiff should
pay the Costs of a former Notice. The Court agreed that they grant these
Motions in Execution, but said they do it in no other Action, upon
which the Motion was refuted. It was then said, that it would be
but a fruitless Thing to pray an Attachment against the Plaintiff, be-
cause he abounded, so that he could not be served with it. Whereup-
on a Rule was made, that Service at his last Place of abode may be a
good Service, and accordingly that Rule was granted. 2 Barnard.

(Q) In Chancery.

See Tit.
Chancery
(A. a)
Br. Cofts, pl. 1.
22 cites
S. C.
1. IN Trespass, after Issue found by Nisi Prius for the Plaintiff, the
Defendant obtained Subpœna and Injunction to stay the Plaintiff's
Suit at Common Law, and after the Injunction was dissolved, and the Plain-
tiff had 3 l. Costs by rea.ion of the Delay in Chancery. Br. Confi-
ence, pl. 22. cites 21 E. 4. 78.
2. He who is vex'd tortuously by Subpœna, shall recover Damages by
Award of the Chancellor, and he who sues Subpœna shall find Surety to
render Damages if he does not prove his Bill true. Br. Confidence, pl.
24. cites Inter scituta tit. Subpœna.
3. Feme sole sues out a Subpœna, and the same Day is Married, is dis-
Cawle.
4. Costs tax'd for Scandal in a Bill in Chancery at 100 l. but tho' the
Scandal was very great, yet by Ld. Chancellor and the Judges it was re-
duced to 50 l. and the Counsel, whose Hand was fet to it, to pay the
Dallifon.
5. The Plaintiff exhibited a Bill against the Father of the new Defen-
dant, and revived it against the Defendant as his Son and Heir, which
Citation was afterwards dismiffled with Costs; And the Question was, whether
the Defendant should have the Costs expended by his Father in the Suit,
before the Proceedings were revived? And it was ruled he could not, for
they were dead with the Person. Nelf. Chan. Rep. 147. 22 Car. 2.
Lloyd v. Lord Powys.
6. Decree of the Commissioners of charitable Uses for Payment of Costs
& al.
7. The
The Plaintiff and Defendant having joined in Commission to examine the Defendant two Days before the Execution of the Commission, causes the Plaintiff to be taken in Execution for the same Cause depending here; the Court ordered the Defendant to pay Costs and Damages to the Plaintiff, and ordered to discharge the Plaintiff out of Execution at his the Defendant's Costs, and the Plaintiff giving a new Judgment, and also to be at the Expense of a new Commission, and order'd an Injunction till Hearing. P.R.C. 287.

9. Defendant was ordered to pay to the Plaintiff 120l. for putting in a scandalous Answer, and the Defendant who had set a Counselor's Hand to it was order'd to pay the Plaintiff 20l. and to stand committed to the Fleet till Payment. 2 Chan. Rep. 336, 337. 1 Jac. 2. Whitlock v. Marriott.

10. Decree against an Infant and his Trustees that the Costs should be paid out of the Trust-Money, but reserved, because the Money was to be laid out in Land wherein the Infant was to be but Tenant for Life. MS. Tab. May 5th. 1713. Peller als Pollin v. Husband.

11. Costs shall follow the Event of an Account; But if it be intricate or doubtful, there shall be no Costs. MS. Tab. May 8th, 1716. Pitts v. Page.

12. A voluntary Device brings a Bill to establish the Will against one who is not Heir at Law. Defendant by Answer claimed under some ancient Settlement which he could not find, and hoped when he could, he should have the Benefit of it. It was inquired for the Plaintiff, that the Defendant might try his Title by a certain Time, or in Default, that the Plaintiff might hold and enjoy against the Defendant. Bill dismissed with Costs. 2 Vern. 743. pl. 651. Hill. 1716. Chr. v. Philpott.


14. Bill to set aside Leases made pursuant to a Power. The Bill was dismissed because a Matter purely determinable at Law, (viz.) Whether the Power was well executed or not. Per Jekyl M. R. If a Bill is brought for a Matter properly determinable at Law, the Defendant ought to demur, and not suffer the Cause to go on to a Hearing, and if the Bill be dismissed upon Hearing, the Defendant shall not have Costs, because it was his Fault to let it proceed; and where the Title is purely Matter of Law, tho' the legal Defeas is vested in Trustees, the City que Trust ought first to apply to the Trustees to make use of their Names in an Action at Law before he brings a Bill in Equity; for a Bill in Equity in such a Case is only necessary where the Trustees refuse their Names to be made Use of in an Action at Law to determine the Right. MS. Rep. Patch. 4 Geo. in Chanc. Tichburn v. Leigh.

15. Mentioned to be a Rule that there shall be no Costs allowed a Party who could never come to his Right without the Act of a Court of Equity. MS. Tab. Feb. 13th, 1721. Walker v. Mackphersan.

16. This Bill being with Liberty to Defendants to try their Title at Law, in Ejectment upon the several Portraits inlaid on by their Answer, there being an Injunction granted in the Cause upon the Plaintiff, Peachy's giving Judgment in Ejectment was necessary to retain.
tain the Bill, and continue the Injunction till the Right was tried at Law, to prevent Execution being taken out upon the Judgment in Ejectment given by Order of the Court.

This Day the Cause was set down upon the Equity referred after a Trial at Bar in B. R. and Verdict for the Plaintiff as to a Meadow of 9 Acres, that it was forfeited to the Duke, Lord of the Manor, by making a Leafe thereof without Licence, and as to the Rest of the Lands in the Ejectment, the Jury find for Defendant, viz. that they were not forfeited.

Quere if the Plaintiff, Sir Henry Peachy, shall pay any, and what Costs in this Case, since the Jury have found 4 Parts in 5 for him in the Ejectment?

It was admitted, that at Law, if the Plaintiff recover any Part he shall have Costs; but it was said, that it was otherwise in Equity, where the Plaintiff prevails for some Things in Demand, he shall have Costs so far as he prevails, but as to the Remainder he shall pay Costs pro Rata; that this Ejectment being tried by Order of this Court, it should be subject as to Costs to the Rules of this Court, and now it is found by Verdict that the Duke did insist upon Forfeiture of several Parcels of Land, contrary to Law and Conscience, and therefore ought not to have Costs for what he unjustly demanded, and put the other Party to an Expense to defend.

Per Macclesfield C. I think in this Case the Defendant, the Duke, ought to have his Costs both in Law and Equity; by the Rules of Law, if the Plaintiff in Ejectment recover any Part he shall have Costs, and this is purely a Title at Law, and Equity has nothing to do with it; it is true, in this Case the Bill was proper so far as to have a Discovery of the several Forfeitures insisted on by the Duke, to enable him to make his Defence at Law, but Sir H. P. is not intitled to any Relief in Equity against the Forfeiture, and therefore the Bill should have been absolutely dismissed at the Hearing, and was retain'd only till alter the Trial in Ejectment to prevent the Duke of Somerset taking out Execution upon the Judgment given by Order of the Court upon granting an Injunction till the Hearing. Now, since the Defendant, the Duke of Somerset, has prevail'd both at Law and in Equity, he ought to have Costs in both Courts, and the Bill must now be absolutely dismissed, save only that the Plaintiff must have an Injunction to stay Execution upon the Judgment in Ejectment given by Order of the Court, with Liberty to the Duke to enter his Judgment upon the Verdict, and to bring a new Ejectment upon the other Forfeitures which was found against him, if he thinks fit. Costs to be taxed by the Maiter, both at Law and Equity. MS. Rep. Trin. 8 Geo. in Canc. Peachy v. Duke and Dutches of Somerset.

17. A Decree Nisi by Default was afterwards made absolute by Default also. Upon a Petition of Re-hearing, the Court refused to re-hear the Cause, because the Costs upon the first Decree Nisi were not paid for the Party cannot have Cause against a Decree Nisi by Default, unless he pays the Costs of the Hearing Nisi, and he shall not be in a better Condition by suffering that Decree to be made absolute by Default, than if he had appeared at the Day, and they had Cause against it. Per Macclesfield C. MS. Rep. Mich. 9 Geo. in Canc. Hoyle v. Hoyle.

18. A Bill was brought by a Devisee of Land to perpetuate the Testimony of a Will; the Maiter of the Rolls dismissed the Bill with Costs, declaring, that it being only for perpetuating the Testimony, it ought not to have been set down for Hearing. 2 Wms's Rep. 162. Trin. 1723. Hall v. Hodedefdon.


22. Costs
COTTAGES.

20. Coftis always to be allowed where the Facts contended are presumed to be in the Knowledge of the Party that contends them. MS. Tab. April 4th, 1726. Cockraine v. Blanfheir.

21. A Sum in Gross shall never be added to a Bill of Cofts after it is taxed by a proper Officer. MS. Tab. April 28th, 1726. Parker v. Stanley.

22. Defendant not confessing Plaintiff’s Title, but putting him to the Expense and Trouble of proving it is a Circumstance to give Cofts. MS. Tab. February 3d, 1726. Trinity House v. Ryala.

23. Plaintiff always pays Cofts, where an Account turns against him or where he prevails in making but what he might have insisted on at Law. MS. Tab. February 29th, 1727. Lyre v. Parnel.

24. The Order for making an Election relates only, that the Plaintiff projects the Defendant at Law and in Equity for one and the same Matter, so that the Defendant is doubly vexed; wherefore it provides that the Plaintiff his Clerk in Court and Attorney at Law, having Notice of the Order, do within 3 Days after such Notice, make his Election in which Court he will proceed; and if he elects to proceed in this Court (the Chancery), then the Proceedings at Law are by that Order to be stayed by Injunction. But if the Plaintiff shall elect to proceed at Law, or in default of such Election by the Time aforesaid, his Bill is to be disallowed with Cofts. 3 Wms’s. Rep. 90. Mich. 1730. Anon.


27. An Heir at Law is made a Defendant and insists on his Title; he shall have his Cofts, tho’ it goes against him; But if an Heir at Law be Plaintiff and miscarries in his Suit, he shall not have Cofts; but on his Suit appearing to be groundless, shall pay Cofts. 3 Wms’s. Rep. 373. Trin. 1735. Luxton v. Stephens.

For more of Cofts in general, See Chancery. Damages. Non suit. And other proper Titles.

(A) Cottages.

31. Eliz. cap. 7. Par. 1. FOR the avoiding of the great Inconveniences which are found by Experience to grow by erecting and building of great Numbers and Multitude of Cottages, which are daily more and more increas’d in many Parts of this Realme; Be it enacted that after the end of this Session of Parliament, no Person shall within this Realm of England make, build or ereft, or cause to be made, built or erected, any manner of Cottage for Habitation or Dwelling, unless the same Person do affign and ley to the said Cottage or Building, in the Acre or Acres of Ground at the legif, to be accounted according to the Statute or Ordinance De terris Menfurationis, being his or her own Freehold and Inheritance, lying near to the said Cottages, to be continually occupied and mantained therewith so long as the said Cottage or Building shall be inhabited, upon Pain that every such Offender shall forfeit to our Sovereign Lady the Queens Majesty, her Heirs and Successors, &c. of lawful Money of England, for every such Offence.

31dly, It prohibits the Conversion or ordainingof any Housing or Building, made or hereafter to be made, to be used as a Cottage.
This Branch

2. Par. 2. And be it further enacted by the Authority aforesaid, that every Person that after the end of this Session of Parliament, shall wilfully, unjustly, unjustly, upkeep, maintain, and continue any such Cottages hereafter to be erected, converted, or ordained for Habitation or Dwelling, whereunto 4 Acres of Ground so aforesaid, shall not be assigned and laid to be used and occupied with the same, shall forfeit to our said Sovereign Lady the Queens Majesty, for Heirs and Successors 40 s. for every Month, that any such Cottages shall be by him or them upheld and maintained and continued.

Cottages.

This Act shall not extend to any Cottage, which shall be ordained (that is converted) or erected for or to or for Habitation or Dwelling in any City, (Town Corporate, ancient Borough, or Market Town.

Nor to any Cottages or Buildings erected or converted for the necessary Habitation of any Labourers in any Mineral Works, Coal-Mines, Quarries, or Deeps of Mines, or Slate, or about making of Brick, Tile, Lime or COoles, so as the same Cottages or Buildings, be not above one Mile distant from the Mineral or other Works.

Nor to any Cottage to be made within 3 Places, viz. Within a Mile of the Sea. 2dly, Upon the Side of such Part of the navigable River where the Admiral ought to have Jurisdiction, so long as a Salter shall dwell there, or some Person of Manual Occupation, for the making, furnishing, or selling of any Ship &c. 3dly, In any Forest, Chase, Warren or Park, so long as the under Keeper or Harmer shall dwell therein &c. 4thly, Nor to any Cottage hereafter made. 10. For a common Herdmans, 2dly, For a common Shepherdess, (of whom his Cottage is called a Shepherds,) so long as a common Herdm an or Shepherd shall therein DWELL. 5dly, For a poor, lame, sick, or impotent Person. 2 Inhat. 737.

Note, this Exception extends only to Cottages erected or made before this Act, by reason of these Words (hereafter made) but none of these 5 can be erected after this Statute for any of these 5 Parishes, unless there be laid to it 4 Acres of Ground with the 4 Incidents aforesaid, Lambert Justice of Peace pg 479. mistakes this Part, and for (Hereafter) says (Hereafter.) But by the Statute 45 Eliz. cap 2 either the Churchwardens and Overseers or the greatest Part of them, by the Leave of the Lord of the Waife &c. in Writing under the Hand and Seal of the Lord, or by Order of the Justices of Peace at their general Quarter Sessions, by the Leave of the Lord as aforesaid, may erect convenient Houses of Habitation for poor Impotent People, and also to place Inmates, or more Families than one in one Cottage or House. 1th Note that extends only to such as be poor and impotent. It extends not to any common Herdm an or Shepherd, as hath been likewise made 2 Inhat. 77.

Nor doth our Act extend to any Cottages to be made and armed upon Complaint made to Justices of the Peace, in open Assizes or Quarter Sessions of the Peace, to continue for Habitation during the Time only of such Decree. This last Branch extends only to Cottages made after our Statute. 2 Inhat. 737.

Here seven Things are to be observed.

1. That no Inmate or Under-tenant can be within this Statute, but such Cottage, and be it crafted, that from and after the Feast of All Saints next coming, there shall not be any Inmate or more Families or Households than one, dwelling or inhabiting in any one Cottage made or to be made or erected, upon Pain that every Owner and Occupier of any such Cottage, placing or willingly suffering any such Inmate or other Family than one, shall forfeit and lose to the Lord, within which such Cottage shall be, the Sum of 10 s. of lawful Money of England, for every Month that any such Inmate or other Family than one, shall dwell or inhabit.
Cottages.

inhabit in any one Cottage as aforesaid. And that all and every Lord and in a Cottage, Lords of Leet, and Steward within the Precinct of the and their Leet, shall have full Power and Authority within their several Leets, to enquire and to take Prefentment by the Oath of Jurors, of all and every Offence and Offences in his Behalf and upon such tend to Cottages, as well made before this Prefentment had or made to levy by Diffrefs to the Use of the Lord of the Lest, all such Sums of Money as shall be forfeited: And moreover that it shall be lawful for the Lord of every such Eest where such Prefentment shall be made, to recover to his own Use any such Forfeiture, by Action of Debt in any of the Queen's Majesty's Courts of Record, whereunto no Jus, Precognition or Wager of Law shall be allowed.

Acres of Ground or more laid to them, as is aforesaid, as others that have no Ground at all.

4thly, Upon Pain that every Owner or Occupier of any such Cottage, placing or willingly suffering any such Inmate or other Family than one, shall forfeit and lose to the Lord of the Leet, within which such Cottage shall be, the Sum of 10s. for every Month &c. This Month is to account for, according to the Computation of 28 Days.

5thly, And upon such Prefentment had or made to levy by Diffrefs &c. that is to sell the Diffrefs which he shall take within the Precinct of the Leet for such Forfeiture, and if there be a Surplusage over the Value of the Forfeiture, to deliver it to the Owner.

6thly, This Act extends as well to Inmates in Cottages, in any City, Town Corporate, Ancient Borough, or Market Town, as in any other Cottage wheresoever. See Hill. S. 5. 1543, between Bates &c. in Trehuada, Salop, a Jusdicting upon this Statute for the Penalty for keeping an Inn.

7thly, Hereby the Act gives Election to the Lord, to take his Remedy by Action of Debt, in any of the King's Courts of Record. 2. Ind. 739.

In this Branch these 4 things are to be observed, and Authority within their several Limits and Jurisdictions, to enquire, hear and determine all Offences contrary to this present Act, as well by Indictment as otherwise by Prefentment or Information, and to award Execution, for the levying the general Forfeitures aforesaid by Piety facias, Elegit, Capitas, or otherwise, as the Case shall require.

8thly, By the Words (to award Execution by Piety facias, Elegit, Capitas or otherwise) greater Jurisdiction is given to the Leet, than it had at the Common Law, so as the Lord of the Leet has by the 3d Branch, Power to levy the Forfeiture due to him, by Diffrefs or by Action of Debt by the Common Law; And by this 4th Branch, by Piety facias, Elegit or Capitas. 2. Ind. 739.

5. S. 5. This Statute shall not extend to any Cottage, in any City, or Town see pl. 2 Corporate, or Ancient Borough, or Market-Town, nor to any Cottages for the Habitation of Workmen in Mineral Works, Coal-Mines, Quarries, or Delfs, or in the making of Brice, Tile, Lime, or Coals; jo as the same Cottages do not above one Mile distant from the Works, and be used only for the Habitation of Workmen.
Cottages.

6 S. 6. This Act shall not extend to any Cottage within a Mile of the Sea, or upon the side of any Navigable River, where the Admiral ought to have Jurisdiction, so long as no Person shall therein Inhabit, but a Sailor, or Man of manual Occupation, for making, furnishing or selling, of any Vessels used to serve on the Sea; nor to any Cottage in any Forest, Chase, Warren or Park, for so long as no Person shall therein Inhabit, but an Underkeeper or Warrener; nor to any Cottage heretofore made, so long as no other Person shall therein Inhabit, but a common Hermit or Shepherd, for keeping the Cattle of the Town, or a Poor, Lame, Sick, or Aged, or impotent Person; nor to any Cottage, which upon Complaint to the Justices of Assize, or to the Quarter Sessions, shall by their Order be deemed to continue for Habituation, during so long a Time, as by such Decease shall be limited.

7. 43 Eliz. cap. 2. Par. 5. Enacts that it shall and may be lawful for the Churchwardens and Overseers, or the greater part of them, by the Leave of the Lord or Lords of the Manor, whereof any Waffle or Common within their Parish, is or shall be Parcel, and upon Agreement before with him or them made in Writing under the Hands and Seals of the said Lord or Lords, or otherwise according to any Order to be set down by the Justices of Peace of the said County at their general Quarter Sessions, or the greater part of them, by the Leave and Agreement of the said Lord or Lords in Writing, under his or their Hands and Seals to erect, build, and set up in fit and convenient Places of Habitation in such Waffle or Common, as the general Charges of the Parish, or otherwise of the Hundred or County as aforesaid, to be taxed, rated, and gathered in Manner before expressed, convenient Houes of Dwelling for the said impotent Poor, and also to place Inmates or more Families than one in one Cottage or House. One Act made in the 31 Year of her Majesties Reign, entitled an Act against the erecting and maintaining of Cottages or any therein contained to the contrary notwithstanding, which Cottages and Places for Inmates shall not at any time hereafter be used or employed to or for any other Habitation, but only for impotent or poor of the same Parish, that shall be there placed from Time to Time by the Churchwardens and Overseers of the Poor of the same Parish or the most Part of them, upon the Pains and Forfeitures contained in the said former Act, made in the said 31 Year of her Majesties Reign.

8. The Inconveniences that grow by unlawful Cottages, and Inmates in Cottages against this Statute, as appears by the Preamble are great, being Nefts to hatch Idlenefs, the Mother of Pickings, Thievings, dealing of Wood &c. tending also to the Prejudice of Lawful Commoners; for that new erected Cottages within the Memory of Man, though they have 4 Acres of Ground or more laid to them according to the Act, ought not to Common in the Waffles of the Lord, but the greatest Inconvenience of all this is, the ill breeding and educating of Youth, which Inconveniences may be easily helped and remedied by the Provisions of this excellent Law, if Lords of Leets and their Stewards would look to the Execution of this Act, which we hold the readiest Means; For albeit the Cottages erected or converted, cannot by any Provision in this Statute be demolished or pulled down, yet the Execution of the Penalty of this Act will make it uninhabitable and work the desired Effect, and they may also be amerced for wrongfull Commoning in the Court Baron. 2 Inst. 749.

9. J. S. was indited upon the Statute 31 Eliz. because he had erected a Cottage 5 Years past, and had not allotted 4 Acres of Land according to the said Statute De terris mensurandi 33 E. 1. and had continued it ever since. The first Exception was that this Indictment was for erecting a Cottage 5 Years past, whereas every Offence ought to be punished within 2 Years by Indictment or Information, by the express Words of the Statute of 31 Eliz. cap. 5. otherwise it is not punishable, and therefore not good. 2dly, Because he does not say that he voluntarily continued
Cottages.

continued it; which are the express Words of the Statute. 3dly, For that it is to be by the Statute De terris Monsifrandis whereas there is not * any such Statute, but it is an Ordinance only; And for these Causes the Indictment was held to be ill; and the Defendant was discharged. Cro. J. 623, 604. pl. 30. Mich. 18 Jac. B. R. Stowes Cafe.

10. One was indicted for erecting of a Cottage. It was moved that the Indictment was insufficient, for that the Words of 31 Eliz. cap. 7. are (shall willingly uphold, maintain, and continue) and the Indictment is only, that be continued, and so wants the Words (willingly upheld) according to the Statute. It did not appear in the Indictment that it was newly erected, for it is only that he continued, and not that he erected. The Indictment was quashed, because being a Penal Law, it was not pursued. Godb. 583. pl. 470. Pach. 3 Car. B. R. Day's Cafe.

11. If Lord of a Manor will suffer poor Men to erect Cottages on his Waifs, though he takes no Rent for them, yet a Fine shall be fet upon them, and the Lord of the Manor shall pay the Fine, and after the Cottage built, if the Manor defends, or is convey'd to another, if he receives any small Rent for the Continuance of that Cottage, he also shall pay the Fine that shall be ass'd, because he upholds. Agreed. Jo. 272, 273. 3 Car. Christifian Smith's Cafe. In Itin'. Windfor.

12. The Statute which gives Power to erect Cottages in the Waste for poor People does not extend to Waste within Forests. Jo. 269. in Itiner Windfor, 8 Car, in Whitlock's Cafe.

13. In Windlesham in the County of Surry there were diverse Cottages and Inclosures made upon the King's Soil, and afterwards the King sells the Manor; Per Noy Attorney General this has not dispence'd with the Purperties, but the Patentee must be fin'd for the Continuance of them, and they are to be pull'd down if they be not now arrented; for else the King's Grant should be taken by Implication to continue a Wrong to his Forest, which the King never intended, and accordingly they were fin'd and arrented. Jo. 277. in Itin'. Windfor. 8 Car. the Cafe of the Manor of Windlesham.

14. If the Justice in Eyre will grant a Licence to erect a Cottage, or Building make an Inclosure, and Arrent in perpetuum at a certain Rent, yet if this be not done, fitting the Court, it may be pull'd down again, and if such a Licence and Arretration be Sedente Carita, it is good for ever. Jo. 277. in Itin'. Windfor. 8 Car. Matthew's Cafe.

ture to the Forrest, and is finalable, and the House demolishable. Jenk. 250. pl. 100. cites D. 240.

15. A Cafe in the Exchequer was cited by the Judge to be resolv'd, It is a good that a Cottage cannot by Law claim to have Common. Clayt. 48. pl. 82, August 1636. before Barkley J. Anon.

Claim for Cattle Le- want and

whether Sans Nomebre the Law is not setteld, but per Cur. it would be hard to defeat it if it were

precrib'd to Sans Nombre. 6 Mod. 114. Hill. 2 Ann. B. R. Anon.

16. It was moved to quash an Indictment for erecting of a Cottage contrary to the Statute; the Exception taken to it was, that be erected a Cottage for Habitation, but did not say it was used or inhabited as a Cottage; But Bacon J. answered, that the very Erection of it is an Offence against the Statute, and therefore the Indictment did very well pursue the Words of the Statute, and therefore would not quash it. Sty. 33. Trin. 23 Car. B. R. Anon.

17. Though the Erecting of a Cottage may be presented at a Court Law for the Information of the Lord, yet the Court cannot anmore the Offender for
Cottages.

18. A Parish erected a Cottage, but without any Allocaence by a Justice of Peace, as the Statute 31 Eliz. cap. 7. directs; Upon an Information in B. R. Illue was taken, and found for the King. It was moved to quash the Information; for that it does not lie in B. R. the Statute directing, that the Offence therein express'd should be punished by Justices of Alix, Justices of Peace in their Suits, and Lords of Leets, and no others. But Twelden J. held, that notwithstanding the Words (and no others) the Attorney General might sue in B. R. or in other Court if he please; Sed adjournatur. Sid. 359. pl. 2. Pach. 20. Car. 2. B. R. the King v. Mofely.

19. Saunders excepted to a Prefentment in a Leet for erecting a Cottage, not aversing there is no Land laid to it, nor contra Formam Statutum; and it is no Offence at Common Law, therefore they cannot amerce by Alixors otherwife than on the Statute, which the Court agreed, and that this lies at Common Law, nor is four Acres of Copyhold sufficient within the Statute; but being for incroaching so many Foot, and erecting a Cottage Ad commune Nocumentum, per Curiam, it is well as to this, not as to the Cottage only, & Affirmatur. 2 Keb. 666. pl. 38. Hill. 21 & 22 Car. 2. B. R. the King v. Dickinon.

20. Exception was taken to an Indictment for continuing a Cottage 11 Months, from 5 October, 21 Car. till the taking of the Indictment, viz. for the Space of 11 Months, which was 12 Months, led non Allocatur on 31 Eliz. cap. 7. and 18 Eliz. cap. 7. but if there were fewer Months it were void, but they would not quash it till pleaded; But Hale Ch. J. said, it was ill and uncertain either way; Adjournatur. 3 Keb. 25. pl. 40. Pach. 25 Car. 2. B. R. the King v. Nath.

21. Indictment for erecting a Cottage for Habitation contra Statum was quashed, because it was not said that any inhabited it. For else it is no Offence, per Rainford and Moreton qui foli adherant. Mod. 295. pl. 38. Trim. 29 Car. 2. B. R. the King v. Neville.

22. Exceptions were taken to an Indictment for erecting and continuing a Cottage, viz. 1st. It is said not to have four Acres assigned to it; the half of November, which is a Month before the Election was, for that is said to be the 1st of December, a Month after; for this it was quashed; Other Exceptions there were to it which were not moved; As 2dly, it is said to be at a certain Place infra candel Parochiam, and names no Parish before. 3dly, It does not say the Election was contra Formam Statutum, but only the Continuance is so concluded to be. 4thly, It does not say the Cottage was the Defendant's, and perhaps he might be only a Bricklayer or Carpenter, and built it for another, and so not within this Act of 31 Eliz. cap. 7. against Cottages and Inmates. 5thly, It does not say it was
Cottages.

Pro Habitatione Homini, perhaps it is only a Cow-House, or Dog-Kennel, and is not within the Statute; Sed Quare of these Exceptions. 2 Show. 280. pl. 270. Hill. 34 & 35 Car. 2. B. R. the King v. Cane.

23. Exceptions were taken to an Indictment for erecting and continuing a Cottage, because it does not say there were not 4 Acres assigned to thereto, which if there were it is no Offence within the Statute against Inmates and Cottages, and for this Exception it was quashed. 2 Show. 343. pl. 351. Pach. 35 Car. 2. The King v. Strange.

24. The Reporter says he had another Exception thereto, which is, that it is for Continuance of a Cottage unlawfully erected by the Space of one Year, from the 10th of December 35 Car. 2, and the Indictment is taken the 15th of January in that Year. 2 Show. 343. pl. 351. Pach. 35 Car. 2. in Cae of The King v. Strange.

25. The Reporter adds a Quare, if in those Indictments for Continuance of Cottages, they ought not to say they were inhabited during the Time they are continued; for it seems Prima Facie that such Continuance is no Offence, unless the Cottage be inhabited, on this Reason, because by the Statute the 4 Acres of Land are assigned to be occupied therewith so long as it shall be inhabited, and therefore if never inhabited, there needs not 4 Acres, nor can 4 Acres be occupied therewith, unless it be inhabited; An House built nor for Habitation, but for another Use, as a Granary, or the like, is not a Cottage within this Law; but if afterwards used for Habitation it becomes such, and the Continuance is an Offence, therefore c contra if not inhabited; for the Continuance can be no Offence; for by it, unless inhabited, there is no Damage to the Publick, nor seems it within the Intention of the Statute, which by its Provial against Inmates, seems designed to prevent Increase of poor Families &c. If it should be otherwise than a Cottage once erected for Habitation, though afterwards converted to another Use, yet its Continuance should be an Offence, which seems an Hardship; Contrader of this, on first Thoughts there is some Simblish of Reason of it. 2 Show. 343, 344. pl. 351. Pach. 35 Car. 2. in Cae of The King v. Strange.

26. An Indictment was for erecting a Cottage and not laying four Comb. 307. Acres of Land to it, & Ulterior presantant quod continuavit contra the King Formam Statutu; Judgment was for the King. It was assigned for Er. v. Turo (inter alia) that it was not paid Pro Habitatione, and it is no Off.-bridge. S. C. fence unless it be inhabited; For the Statute was made to prevent the and the Ex-Building of Cottages for the Habitation of poor People; Sed non Agg, assignation, that locatur; For if it be applied to any other Use than a Dwelling-House the Defendant must show it, or otherwise it shall be intended to be built for his Habitation. 4 Mod. 345. Mich. 6 W. & M. in B. R. the King and Habitatione, was overruled; For it suffices that it is according to the Statute. Skinn. 564. pl. 11. The King v. Trowbridge S. C. and the said Exception was overruled; For the Continuance shall be intended to be Pro Habitatione when the Erection was so; and if it was otherwise it ought to be thrown on the other Side.

27. Two Justices made an Order, viz. being informed that the Overseers of the Poor had refused to pay to s. a Week to a poor Man; they Order that the said Overseers shall continue to pay him the Arrears till they find him a House. It was objected against this Order, that the Overseers have not Power to find a House for him, that must be done by the Consent of the Lord of the Manor, or by the Justices in Seftions; It did not appear that he was poor or impotent, and for these Reasons it was quashed. 5 Mod. 397; Pach. 10 W. 3. Anon.

28. An Order of Seftions for suppressing a Cottage upon 31 Eliz. cap. 7. was
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7. was quail'd; because Cottages are not to be suppressed by Indictment. 12 Mod. 406. Trin. 12 W. 3. the King v. Harris.

29. A Cottage implies a Court and Backside; For a Cottage without four Acres of Land is against the Statute 31 Eliz. cap. 7. per Cur. 6 Mod. 114. Hill. 2 Ann. B. R. Anon.

30. An Information was moved for against a Man for building an House upon a Common, and enclosing Part thereof, and denied per Cur. and said, that they would not call a Perfon into this Court for a Thing of that Nature, but the Parties grieved might take their proper Remedy. The like Motion had been denied formerly for the fame Reason. MS Rep. Mich. 5 Geo. B. R. Anon.

31. 30 Years Possession of a Cottage erected by the Possessor, without Licence or Order, is a good Title against the Lord of the Manor by Virtue of the Statute of Limitations, if he should bring an Ejectment to recover the Possession. 8 Mod. 287. Trin. 10 Geo. the King v. Wilby Parilh.

32. A built a Cottage without Licence on the Waife of a Manor, and died, and his Heir is in Possiffion by Descent, this is a good Title against any Escheat the Lord might have at Common Law. 8 Mod. 287, 288. Trin. 10 Geo. in the Cafe of the King v. Parishioners of Wilby.

For more of Cottages in General, See Copyhold. Nullance. And other Proper Titles.

Covenant.

(A) How;
[In what Cases, and On what Deeds.]

1. A Action of Covenant lies upon a Deed indented without Doubt.

2. [So] An Action of Covenant lies upon a Deed-Poll.

The' Covenant may be brought upon a Deed-Poll, yet the Party must be nam'd in the Deed; Per Cur. 1 Salk. 107. pl. 3. Palm. 6 W. & M. in B. R. in Cafe of Green v. Horne.—Plaintiff may take Benefit, tho' not mentioned as a Party; and if I oblige myself to pay J. S. 100 l. the Obligation is made to him for what Benefit it is. Comb. 219. in S. C.

Cro. J. 50t. 3. As if A. recovers a Debt against B. and B. pays the Money to A. upon which A. releases all Actions and Executions &c. to B. and by the fame Deed promises him to discharge the said Judgment, and C adjudged per tot. Cur. for the Defendant. and B. not to sue Execution thereupon, and after he sues Execution against him, he may have a Writ of Covenant upon this Deed, and not an Action upon the Cafe. Pitch. 16 Jac. B. R. between. Bennife and Hiderfully adjudged.

4. In London a Man shall have a Writ of Covenant without a Deed for the Covenant broken. F. N. B. 146 (A) cited 27 H. 6. 10. 5. If
Covenant.

5. If a Man makes a Leafe by Deed-Poll and the Leflor puts out the Leflie, he shall have a Writ of Covenant upon the Deed-Poll; but if a Stranger who has no Right puts out the Leflie, he shall not have a Writ of Covenant against the Leflor, because he hath Remedy by Action against the Stranger; But if the Stranger enter by Eigue Title upon the Leflie, then he shall have an Action against the Leflor, because he hath no other Remedy. F. N. B. 145. (K)

6. Covenant lies only where the Thing covenanted to be done is to be done in Future by the Person of any, and differs from the Cafe where it refers to a Thing which is not to be done by the Person of any, but to a Thing to be executed in itself; Arg. Pl. C. 138. a. 6 E. 6. itself it is not properly a Covenant, but a Defeasance; And Windham said, (to which the other Judges agreed) that a Covenant to do a present Act is not properly a Covenant; As to stand Stated.

7. If a Man leases Lands for Life by Deed, and afterwards puts Leflie out, the Leflie shall not have a Writ of Covenant against him, but an Afsis. F. N. B. 145. (M).

8. The Queen by Letters Patents licensed A. to buy and transport in Debt unhither Wool. A. by Indenture grants the Licence to B. for 8 Years, and on an Obligation with Consideration thereof, B. covenants to pay him 100l. yearly at Lady Day and Michaelmas, and that every Year at Lady-Day, or within 20 Days after, he will make a new Bond for Payment of the Money; provided that if B. does not yearly make the Bond, or fails in Payment of the Money, that then, from thenceforth the Indenture, and every Clause &c. therein contained shall be void, and B. fails of making the Obligation at the first Day, yet A. may have an Action upon the Covenant, for it was said the Intent of the Parties was only that it should be void as to have any Benefit of Covenants broken in Future, but as to Covenants broken before, it was never their Intent but that the Party should have Advantage of them. Cro. E. 775, 78. pl. 37. Mich. 29 & 30 Eliz. Nuns v. Gee. the Defendant cancelled and avoided, and so demands Judgment if Action, and seems by Coke clearly, that the Plea is not good without Amortment that no Covenant was broken before the cancelling of the Indenture. a Brownl. 107. Patch. 10 Jac. C. B. Anon.

9. M. made a Leafe of a Parsonage of D. for seven Years, and did covenant to save the Leffe harmless against B. the Parson &c. in that Cafe it was held, if the Parson sue the Covenant by Right or Wrong, an Action lies upon the Covenant. Brownl. 21. Trin. 9 Jac. cites it as Mapet's Cafe.

10. Leafe by the Dean and Chapter of Norwich, dated 38 Eliz. to W. for 99 Years; afterward they made another Leafe 42 Eliz. to W. for three Lives, and covenanted to save him harmless against T. that the first Leafe; it was agreed that the Covenant is good, and yet in the Chapter force; for when an Estate is created in which is implied a Covenant in Law, there if the Estate is void, the Covenant is void also; but when there is an express Covenant in Deed, there it is otherwise, altho' the Leafe be void or voidable; As if he Covenants that the Leafe shall end, yet is the Covenant good, altho' the Term is gone. Ow. 156. Patch. 10 Jac. Waller v. the Dean and Chapter of Norwich.

the Leafe was not void; and therefore it was adjudged for the Plaintiff. Brownl. 21. S. C. and Coke
Covenant.

Coke said, that if the Lease was originally void, yet Covenant would lie; for otherwise great mischief might happen; for a Dean might make a Lease to a To-Day and keep it secret, and To-Morrow make a Lease to B, and covenant for Enjoyment, and to avoid the former Lease. 2 Brownl. 142. S. C. argued. — Ibid 158. Waters v. the Dean and Chapter of Norwich. S. C. argued by the Counsel, and afterwards by the Court, and Judgment for the Plaintiff.

11. A Man may covenant with two severally, because it differs from the Cafe of a Bond, for Covenant founds only in Damages; but the Covenantees ought not to join in Actions; Per Crawley and Reeve J. Mar. 103. pl. 176 Trin. 17 Car. C. B.

12. If I make a Lease for Years, reserving Rent to a Stranger, an Action of Covenant will lie for the Party to pay the Rent to the Stranger; Per Hale Ch. J. Mod. 113. pl. 12 Paich. 26 Car. 2. B. R. in Cafe of Deering v. Farrington.

13. If a Man assigns a Bond to J. S. and afterwards receives the Money of the Obligor, if he do not immediately pay it over to the Assignee, the Assignee may maintain an Action of Covenant against him upon the Word Assignavit, and that was the Cafe of Deering v. .... Per Holt Ch. J. 2 Ld. Raym. Rep. 1242. Hill 4 Ann. in Cafe of Seignorette v. Noguere.

14. So if the Obligee covenants to assign a Bond to J. S. such a Day, and will not assign it, or before the Day receives the Money of the Obli- gor, by which means he has disabled himself to assign it, in either of these Cases it is a Breach of Covenant, and yet in Stricture a Bond is not allignable. Per Holt Ch. J. 2 Ld. Raym. Rep. 1242. Hill 4 Ann. in Cafe of Seignorette v. Noguere.

(B) Upon what Deed [the Plaintiff might have Debt or Covenant.]


2. If a Man grants a Rent to B. payable at a certain Feast yearly, and covenances to pay the Rent at the Feast, an Action of Covenant lies for Nonpayment, though he might have had an Action of Debt for it. H. 7 Ja. B. between Stronge and Watts, per Curiam adjudged.

3. If one Man covenants with another to pay him 20 l. at a Day, though he may have an Action of Debt for the 20 l. yet he may have a Writ of Covenant at his Election. H. 7 Ja. B. per Curiam.

4. A Man shall have a Writ of Covenant against the Sureties who became Sureties, or gave Security that a Man should perform such Covenant &c. F. N. B. 146. (B) cites 39 E. 3. 9.

15. If
Covenant.

5. If I grant to my Tenant for Life, that he shall not be impeachable for Waste, he shall not plead this in Bar, but shall have an Action of Covenant thereupon. Bridgm. 117. cites 21 H. 7. 30. per Fines, in John de Pufteto's Cafe.

6. If I grant to one against whom I have Cause of Action, that I will not sue him within a Year, this is not any Suspension of the Action. Bridgm. 117. cites 21 H. 7. 30. per Brudennell, and lays, that upon this Cafe it is to be observed, that I may sue, and that the other is put to his Action of Covenant.

7. A Covenant in Law will go to lawful Eviction, though the Lease be void; But as to a Covenant real to warrant and defend, there must be a Title paramount, and a lawful Eviction; and Covenants in Leases shall be taken beneficially for the Leesee; per Coke Ch. 1. Brownl. 21. Trin. 9 Jac. in Cafe of Walter v. Dean &c. of Norwich.

8. Action of Covenant will lie on a void Lease, and Sir E. Coke sad, that so it should do though the Lease was originally void. Brownl. 165, 16. Palf. to Jac. C. B. the S. C. & S. P. held by Coke Ch. J. accordingly.


& S. P. agreed by the Counsel on both sides and the Court. — 2. Suind. 177. S. C. held accordingly.

10. A Covenant will lie on a Bond; For it proves an Agreement Though a Bond is not assignable in Point of Interest yet if it be assigned, it is a Covenant that the Assignee shall receive the Money to his own Use; Per Holt Ch. J. obiter Lord Raym. Rep. 683. Trin. 13 W. 3.

(C) What Words will make an express Covenant.

1. These words in a Deed of Lease, [viz.], and the Leesee shall repair the Mills (being the Thing leased) as often as need shall require, and shall leave them sufficiently repaired at the end of the Term, make a Covenant, because it is a clear Agreement of the Parties, and otherwise the Words shall have, or would have no effect. By Reports, 14. Ta. Sir J. Brett v. Cumberland Hill. 16. Ta. B. R. between the same Parties adjudged again in a new Action.

2. If Lease for Years covemants to repair, &c. provided after, the S. C. & S. P. and it is agreed, that the Leesor shall find great Timber, &c. (S. C.) as admitted.
Covenant.

3. But if the Lessor covenants to repair, provided always, that the Lessor shall find great timber, without the Word (agreed) this Proviso shall not make any Covenant on the Part of the Lessor, but it shall be only a Qualification of the Covenant of the Lessor. Tr. 12. Ja. B. between Holder and Taylor, per Curiam.

4. If there are Articles of Agreement made by Indenture between A. and B. in which A. agrees that B. shall have a House in a Street in London for certain Years, provided, and upon Condition, that B. shall receive and pay the Rents of the other Houses of A. in the same Street mentioned in a Schedule annexed to the Indenture; and it is further agreed, that B. shall have the Overplus of the Rents over and above such a certain Sum. This is not any Covenant on the Part of B. to bind him to receive and pay the Rents mentioned in the Schedule, but the Proviso and Condition only will make the Estate of B. void in the House, (this being a Lease) and will not make a Covenant. Mich. 4. Cat. B. R. between Geary and Read, adjudged upon a Demurrer upon a Declaration, which intrantic, 4. Cat. Rot. 43. 3.

5. If A. leaves to B. for Years, upon Condition, that he shall acquire the Lessor of ordinary and extraordinary Charges, and shall keep and leave the Houses at the End of the Term in as good plight as he found them. If he does not leave them well repaired at the End of the Term, an Action of Covenant lies. 40. C. 3. 5. b.

6. If A. leaves to B. for Life, with a Proviso, that if the Lessor dies within the Term of 40 Years, that then the Executors of the Lessor shall have it for so many of the Years as amount to the Number of 40 Years, to be accounted for the Date of the Indenture of Lease. This proviso shall not be a Lease, but only a Covenant, * D. 3. 4. Pa. 150. S. 83. † Co. 1. Rec. Ch. 155.

7. If there are Articles of Agreement between A. and B. by which it is agreed, upon a Marriage intended between A. and C. that all the Stock of C. shall remain in the Hands of B. till A. shall make a certain Jointure to C. ipso B. annuatim solvendo to A. Interest pro inde, secundum Ratam 81. per Centum, (*) et. If B. does not pay the said Interest, an Action of Covenant lies against him upon these Words, because every Agreement by Deed is a Covenant, and otherwise A. shall not have any Remedy for the Nancy. 8. Cat. B. R. between Crys and Northeby, adjudged upon a Demurrer. Intraire, 8. Cat. Rot. 1. My self being de Conciso Multicentric.

8. If A. makes a Deed to B. in these Words; I have in my Cullody one Writing Obligatory, in which Writing Obligatory one William makes a Covenant of the Part of the Lessor to find great Timber, by the Words (agreed) and it shall not be a Qualification of the Covenant of the Lessor. Tr. 12. Ja. B. between Holder and Taylor, per Curiam.

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425. pl. 1. cites S. C. adjudg'd.
Covenant.

William now standeth bound to the said B. for the Payment of 400 l. upon such a Day, being the proper Money of B. and I will be ready at all times, when I shall be required, to deliver the same Writing Obligatory to the said B. If B. after demands the said Obligation of A. and he refuses to deliver it, B. may have an Action of Covenant upon this Deed by Force of the Words (and I will be ready at all times when I shall be required to deliver the same.)

11. A Man conveys Land to another in Fee with Warranty, and after the Land is evicted by Elder Title for certain Years; the Grantee of the Land may have an Action of Covenant upon the said Words until the Grantee upon this Cursion, after which the Warranty be evicted to a Freehold; for the said Words make a Covenant, if a Chattel be evicted, and a Warranty if a Freehold be demanded. 

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Jenk. 224. pl. 85. cites S. C.

10. If a Man leaves for Years, reserving a Rent, an Action of S. P. per Covenant lies for Non-payment of the Rent; for the reddendo of the Rent is an Agreement for Payment of the Rent, which will make a Covenant.

But dubitatus if the Word (Reddendo) will maintain an Action of Covenant upon a Lease for Life


11. In Debt the Lessor leased by Indenture for 20 Years, rendering 10 l. per Annum at Easter, and other Covenants in the Indenture ex uraque parte &c. and to the Performance of all the Covenants &c. each by the same Indenture bound himself to the other in 20l. and for Non-Payment of the 10 l. at Easter he brought Action of the 20l. and per Newton clearly it does not lie; for Reservation of the Rent and Non-Payment of it is no Covenant, and Action of Covenant does not lie of it, therefore this is no Breach of Covenant, ad quod nemo respondit. Br. Covenant. pl. 21 cites 22 H. 6. 58.


13. The Words of an Obligation were, I am content to give to A. 10l. at Michaelmas and 10l. at our Lady Day; either Debt or Covenant lies upon it, per Cur. 3 Le. 119. pl. 199. Mich. 27 Eliz. B. R. Anon.
14. Gawdy and Fenner J., were of Opinion, that upon a Lease for Years by Indenture by Diminuit & ad firmam tradidit, that a Covenant lies against the Leilir, if it enters; but if a Stranger enters, it lies not without an express Warranty; for in a Covenant against the Leilir upon these Words he shall recover the Term itself. Cro. E. 214. pl. 6. Hill. 33 Eliz. B. R. Andrews's Cafe.

See Condition (T) pl. 15. and the Notes there.

S. C. cited 6 Mod. 35. by Holt Ch. J. by the Name of Luton and Crendon in the later End of Styles, that where a Thing is awarded to be done upon Payment and Receive, that Tender of Payment and Refusal intitles the Party to it as much as an actual Payment, and said the Authorities have been so ever since.

17. Covenant was brought upon these Words, viz. I oblige myself to pay so much at such a Day, and so much at another Day; Per Cur. clearly this Action lies, especially if both the Days of Payment are not past; but Hale Ch. E. doubted how the Law would be 't. the Words were Teneuri & firmiter Obligari; because those Words found in Debt, and not in Covenant, Hardr. 178. Hill. 12 & 13 Car. 2. in the Exchequer. Norris's Cafe.

18. In Debt the Plaintiff declared on Articles indented, by which C. upon the Marriage of M. was to receive the Marriage Portion of M's Wife, being 1500 /. and that C. should convey an Office to M. provided that M. out of the first Profits of the Office, should pay to C. 500 /. and averred that he had conveyed the Office, and that M. had received 500 /. of the Profits, but had not paid it to the Plaintiff, and upon Demurrer to the Declaration adjudged that the Action lies upon this Provifo; for it is not a Condition or Defeasance, but an Agreement to pay the 500 /. Lev. 155. Hill. 16 & 17 Car. 2. R. B. Clapham v. Moyle.

The Opinion was for the Plaintiff.

2. Le 104. pl. 121. S. C. lays it was held, and the Law is clear.

3. S. C. cited 620. pl. 71. S. C. 175. pl. 66. S. C. Twifden agreed the Provifo but a Covenant, but conceived that if it refer'd to a future Conveyance, and that it should be aver'd that he had made a Conveyance of the Office, and that, saying he had performed all Covenants on his Part, is not sufficient: but by the other Opinions Judgment was given for the Plaintiff.

23. If.
20. If a Man affigns and transfers a Thing which is not assignable or 
transferrable; As if he affigns &c. all the Money that shall be allow'd 
 softmax and per Hale, 
by a foreign State in lieu of his Share in a Ship, this is a Covenant though the 
and it is all one as if he had covenanted, that he should have all the Money Words 
which he should recover for Lofs of his Ship; Per Hale Ch. J. But sign, Trans-
Car. 2. B. R. Deering v. Farrington.

21. Where ever the Intent of the Parties can be collected out of a Deed for 
Covenant 
the doing or not doing a Thing, a Covenant lies. 1 Chan. Cafes. 294. 

22. Any Thing under the Hand and Seal of the Parties which imports an 
Agreement will amount to a Covenant; Per Lord Chancellor. 2 Mod. 
91 Pach. 28 Car. 2 in Canc. Hollis v. Carr.

23. Debt upon Bond with Condition, that the Obligor did acknowledge to 
be indebted to the Obligee in 40l. which he did thereby covenant to pay when 
such a Bill of Goods should be flated by two Attorney's indifferently, to be 
chosen by them; Plaintiffs declares, that he named an Attorney, and desired the 
Defendant to name another, which he refused. It was objected, that 
this shall not be taken for a Covenant, but an Agreement, solvendum 
the Money when the Bill of Goods should be flated, and by the Plaintiffs 
own flaying, the Bill was not flated, therefore nothing is due; 
Sen per Cur. this is not a Solvendum but a Covenant, which does not take 
away the Duty aforesaid by the Obligation, and if it should not be a Covenant, 
then it would be in the Power of the Obligor, whether ever it should be payable. 2 Mod. 266. Mich. 29 Car. 2. C. B. Otway v. Holdip.

24. Where a Party to a Deed agrees to pay, it amounts to a Covenant, 
though the Words Covenant, Grant, &c. are wanting. 2 Mod. 268, 

25. 6 Anna, cap. 25. All Covenants, Conditions, and Agreements, in 
every Grant, Lease, or Copy of Court-Roll so made, shall be good in Law, 
according to the Contents of the same against the Recoveror, and against them 
to whom the Interest thereof shall come.

(D) In what Cases the Heir or Executor shall be bound 
by the express Covenant of the Testator, without 
 naming them.

1. In every Case where the Testator is bound by a Covenant, the 
Exp. 43 E. 3. 2. 
Death. Finch, but Perley e contra. — Fitzh. Covenant, pl 21. cites 43 E. 3. 22. (but from misprinted, 
and
Covenants.

and that it should be t. b 2 a. pl. 4 j S. P. held by Finch, according to Roll; But Wyche negavitomarah. — helley and Fincher/hert held, that Covenant lies in such Case against the Executor, and said, that so 47 E. 5. 23. But Baldwin said privately, that there is a Difference between an Oblig- tion wherein there is no Mention of Executor, in as much as it is a Duty, but Covenant is Executive, and found only in Damage and Tort, which (as it terms) dies with the Person &c. D 14. a. pl. 69.

2. A Man covenants that neither be nor his Heirs shall essex any Mill in such A Place, and afterwards be ESSEX a Mill, and an Action of Cov- enant is thereupon brought by [against] the Heir, and well. 4 H. 3. 57. And so it is if the Lessee oufis the Lessee and dies, or Tenant in Tail leases for Years and dies, and the Issue oufis the Tenant, he shall have Cov- enant against the Executors. F. N. B. 145. (D) in the new Notes there (a) cites 47 E. 3. 14. 48 E. 3. 2. but 38 E. 3. is, that he shall recover the whole in Damages against the Heir if he has Affets by De- scent, per Knivet and Skipwith.

3. Covenant does not lie against the Heir upon a Lease by Deed of his Ancestor, if there is not express Warranty in the Indenture of the Lessee and his Heirs, and also, that the Heir has Affets. Br. Garranties, pl. 89. cites 32 H. 6. 52.

4. But where a Man covenants to make a House, and does not do it, but dies, Covenant lies against Executors, and not against the Heir, because there is no express Warranty against the Heir, and yet it lies against the Testator himself, for he broke the Covenant. Br. Garranties, pl. 89. cites 32 H. 6. 52.

5. A Bond of 1600 l. Penalty entered into 19 Jac. to perform Cov- enants in an Indenture, the Covenantors to pay 7 l. per Annu. till 1100 l. be paid, but the Covenantors not being performed, the Plaintiff sues the Bond against the Heir of the Obligor. This Court declared, that the the Bond against the Heir of the Obligor. This Court declared, that the 1100 l. and Interest thereupon, ought to be paid, and by the Consent of the Parties ordered and decreed, that the 1650 l. Penalty of the said Bond, be paid by the said Defendant to the Plaintiff, in full of all the Principal and Interest, and 40 l. Costs. Chan. Rep. 201, 202.

13 Car. 2. Wake v. Calley.

6. The Lien of a Covenant must be measured by the Estate in the Rent or Thing granted; Per Withers J. 2 Show. 334. Mich. 35 Car. 2. B. R. in Cafe of Fountain v. Guavera.

Executor.

(E) [Where it lies against an Executor, tho' not nam'd.]

Br. Cove-

nant pl. 12. 
cites S. C.

Finch. Co- 

venant pl. 

E. 3. 22. [Bat See (D) pl. 1. Supra and the Notes there]

1. If a Man covenants, That A. shall serve B. as an Apprentice for 7 Years, and dies; if A. departs within the Term, a Writ of Covenant lies against the Executor of the Covenantor, without naming. 48. E. 3. 2.

2. Covenant was brought against two Executors, inasmuch as their Testator put one to the Plaintiff to be his Apprentice who departed within the Term, and it was awarded that one Executor shall not answer without the other; For the one appear'd and other not, and the Statue does
does not remedy but in Debt and Desteine, and therefore by this Judgment it seems that Covenant lies against Executors. Br. Covenant. pl. 11. cites 47. E. 3. 22.

3. If Tenant in Tail leaves for Years and dies, and the Issue off the Tenant, he shall have Covenant against the Executor, which Finch deny'd. Ibid.

4. In Covenant against Executors the Plaintiff counted that the Testator put his Son to the Plaintiff for 7 Years Apprentice, and bound himself to the Covenant without mentioning his Executors, and that after the Death of the Testator the Son departed without leave within the Term, and came to the Executors and they retain'd him; and per Persey Covenant does not lie against the Executors; For it does not lie against any, but against him who is Party; as this Word Dedi is no Warranty to bind the Heir, but only him who made it, and so shall not bind Executors where Executors are not mention'd in the Deed; But Finch Contra, but Wiche was clear that the Executor is not bound, if Executor be not named in the Deed. Per Kirton if a Man Covenant to serve another for 7 Years and dies within the Term, the Covenant is discharged by the Death of the Party. And per Persey where a Man leaves for Years without Warranty, and the Termor is oust'd, the Termor shall not have Covenant; But Finch Contra clearly. Br. Covenant. pl. 12. cites 48 E. 3. 1.

5. If the Leafe for Years covenant for him to repair the Houses leaft within 6 Years, and dies within the 6 Years, yet his Executors shall make the Reparation, for it may be made by the Executors within the 6 Years as well as by himself; and so Executors bound tho' he does not express the Executors in the Covenant, but if the Covenant had been to have been perform'd by himself during his Life, the Executors shall not be charged. Br. Covenant pl. 50. cites 10 H. 7. 18.


Anon. S. C.

7. A Tenant for Life Remainder to B. in Fee; the Feoffee for Life makes a Lease for Years by (Dedi & Dimif) rendering Rent by Indenture and dies within the Term, he in Remainder enters; the Lease for Years brings Covenant against the Executors of A. Welch, Brown and Dyer, held, adjudged that it did not lie against the Executor, 1st. Because it is not shewn, that the Action did not lie.—And. Bid. 12. pl. 25. 12. 125. (M) in the new Notes there (c) cites S. C.

It Lease for Life leaves for Years and dies within the Term, as the Lease is vis'd by him in Remainder or Reversion, It was Refolv'd per 3 J. that by this Covenant in Law the Executors were not liable. Wentw. Off. Ex. 125. Held, that this was in Law expired with the Term. But Weton contra, because the Lease Stannel was by Indenture. But Judgement was afterwards given against the Plaintiff. D. 257. a. b. pl. 13, 14. Mich. 9 Eliz.

accordingly on Demurrer to the Declaration, because no express Covenant or Warranty of the Term was comprised in the Indenture, but only a naked Covenant in Law. D. 257. b. at the End of the principal Case cites Trin. 22 Eliz. Broderidge v. Windor. And 12 cites S. C. accordingly.—P. N. B. 145. (M) in the new Notes there (c) cites S. C.

If Lease for Life leaves for Years and dies within the Term, fo as the Lease is valid'd by him in Remainder or Reversion, It was Refolv'd per 3 J. that by this Covenant in Law the Executors were not liable. Wentw. Off. Ex. 125. and says, that in the same Case Lt. Dyer sets down another Resolution after, to the same Effect.

But Serjeant Benslee reporting this later Case to be of a Lease made by Tenant in Texas, before the Statute 32 H. 8 or not wrantable by it sets down the Opinion contrarily, viz. that the Action was maintainable against the Executors. Wentw. Off. 459. —— Bendl. 150. pl. 208. Mich. 7 & 8 Eliz. Stranham v. Searles. S. C. that this Action does not lie against the said Defendants, and cites D. 257. pl. 14.
Covenants.

8. But if A.'s heir in Fee makes a Leafe for Years and dies, and the Heir enfeals the Lease, he shall have Covenant against the Heir, for this Covenant in Law, by reason of the Privity; Per Brown. D. 237. b. in the Case above.

9. Leafe of a Term of a Stock of Sheep covenants for him and Assignees, Covenant lies not against Assignee because it is Peronal, but it binds Executors. Lat. 261. cites 3 Rep. 17. [Patch. 25. Eliz.] Spencer’s Case.

10. Leafe for Years of a House covenants to repair it within 6 Years, within which Term he dies, no Reparation being made. Covenant lies against Executors; otherwise if the Covenant had been to repair during Life. Per Cook. Arg. 4 Le 171.

11. Covenant by Leafe to Repair the Buildings, or to pay the Quit Rents falling out of the Land, Executor must do it tho' the Covenant mentioned nothing of Executors, the Opinions have been otherwise, and that it was only a personal Covenant, and cites 5 Rep. 24. [Mich. 43 & 44 Eliz. B. R.] Windsor v. Hide which at first seemed strong to that Purpose, but at last it was resolved to be a Covenant running with the Estate, and he both Executor and Assignee bound to perform it. Wrenw. Off. Ex. 124.

12. Wrenw. Off. Ex. 124 says, that in the said Case of Windsor v. Hide (5 Rep. 24) [Mich. 43 & 44 Eliz. B. R.] it was said per Popham Ch. 1. that if the Covenant had been to do a collateral Affidavit neither the Executor nor Assignee had been bound, and therefore a Covenant by Leafe for Years to build a new House upon the Land within two Years and dies within the Time, he doubted if the Executor be bound to do it or not, tho' it concerns the Land let, so as the Rent or Fine was the les in respect of the Charge of the new Buildings; But if the Covenant had been to build it effectually then upon the Land let, or to do any other collateral Thing not pertinent to the Land let, it is clear the Executors are not bound; Yet, if the Time expired in Leafe’s Life, and the Covenant not performed, the Executors are liable to Damages in Action of Covenant as the Judges agreed, tho’ not Reported by Ld. Coke, who Reported only the Point in Question.

13. If a Man makes a Lease by these Words, (Sanctifie and Grant) and dies, an Action of Covenant lies not against his Executors, as it is said in 9 Eliz. D. 237; but otherwise upon express Covenant; Per Coke Ch. J. 2 Brownl. 214. Hill 7 Jac.

14. Q. Eliz. made a Lease for Years, rending Rent and the Leffe covenanted to pay it. The Q. died and the Reversion descended to K. James Afterwards the Lease assign’d over the Term, and the Assignee paid the Rent to the King; The King granted the Reversion by his Letters Patents; The Patentee accepted the Rent of the Assignee; The Patentee brought Action of Covenant against the Executors of the first Leafe, and adjudg’d maintainable, which must necessarily be by reason of the Privy of Contract transferr’d by force of the said Statute of 32 H. 8. cap. 34. For there was no Privy of Estate between them, the first Leafe having allign’d his Term before the Grant of the Reversion to the Patentee, which proves that by the Privy of the Plaintiff is transferr’d; cited per Cur. Saund. 240, 241. Patch. 21 Car. B. R. as Cro. J. 521, 522. [pl. 7. Hill 16. Jac. B. R. Brett v. Cumberland.]

15. Leafe
Covenant.

15. Leave for Years, yielding and paying Rent &c. the Lees died. In Covenant against his Executor, Exception was taken that this was a
mear Covenant in Law, comprised only in the Words Yielding and Pay-
ing, and not an express Covenant to pay it; But Roll Ch. J. anser-
ed that Covenant lies against an Executor upon a Covenant in Law, tho'
be he not named, though otherwise of an Heir; For he is not
Osborne.

16. In Covenant against an Executor upon a Writing sealed by Tenants, whereby he was covenanted to be accountable for all Monies as should be charged by him upon A. payable to B. The Court held that the Action & C. was it well laid, and that it would do so upon any Words purporting an Agree-
ment for Payment of Money. Lev. 47. Mich. 13 Car. 2. B. R. Brice v. that Action 
Carre and Emerson.

17. Executrix of a Termor for Years affigns all the Remains of the said 
Term to P. referring a Rent, and P. covenanted to repair. P. dies, and S. C. that 
P's Executrix enters &c. Parker Ch. J. held, that P's Execurrix may
be charged either as Executrix or Assignee, but that Plaintiff having Poffeifion
charged her as Executrix, Judgment can be only against her as Ex-

(F) Covenant in Law. In what Cases the Law will
create a Covénant without the Words of the Party.

1. If a Man leaves for Years, and ouits the Termor, he shall have 
I Covenant against him, though there be no express Covenant

Termon shall not have Covenant, but Finch e contra clearly. — Fitzh. Covenant, pl. 81. S. P.
by Parley, (as supra) but Finch laid it was an erroneous Opinion.
† Br. Trefpafs, pl. 65. cites S. C.

2. If a Man leaves certain Goods for Years by Indenture, which
are evicted within the Term, let he shall not have a Writ of Coven-
ant; for there the Law does not create any Covenant upon such Per-
donal Thing. Contra Mich. 37 Eliz. between Bedford and Ball.

held, that Action of Covenant would not lie, but Cleric seemed e contra; fed adjourn.

3. If a Man leaves Land for Years without Warranty, and the Lees
is ouits by F. N. by Title, there he shall not have Writ of Covenant a-
against his Leifor, for he has not broke the Covenant there; Contra if
he had made thereof Warranty, but contra per Needham J. tho' no 
5 F War.
Covenant.

Warranty be in the Deed, yet Writ of Covenant lies Brooke lays, and so see here, and often elsewhere, that Writ of Covenant lies often upon Indenture without this Word (Covenant,) Br. Covenant, pl. 38. cites 32 H. 6. 32. And so it was said per Jusdictarios. P. 1. M. 1.

4. If a Man leaves for Years, rendering Rent, this is a Covenant in Law, Per Coke Ch. J. 2 Brownl. 215. cites Dyer 15 H. 3.

5. Leafe is made for Years, and the Words are such, and the Leesee shall do such a Thing, these Words imply Covenant without any thing more; Per Car. No. 135 in pl. 230. Trin. 23 Eliz.


7. Action of Covenant lies upon the Words Demise and Grant, in an Indenture of Lease, though there are no other Words comprehending a Warranty in them. Resolved by all the Judges. Cro. J. 73. pl. 1. Trin. 3 Jac. B. R. in Cafe of Style v. Herring.

8. A Man made a Lease for Years, with Exception of divers Things, and that the Leesee shall have Convenience Lignum non sucedendo &c. vendendo Arboraes &c. Now the Leesee cut down Trees, and the Leesor brought an Action of Covenant; and the Opinion of the Court was, that the Action would lie, and that it is as a Covenant on the Part of the Leesee, because the Law gives him reasonable Easours, and by this Covenant he abrides his Privilege. Mar. 9. Pacli. 15 Car. Anon.

9. If a Man grants a Water-Course by Deed, and the Grantor holds it, the Grantee shall have an Action of Covenant; Per 3 Judges, and agreed by Twifden. Saund. 322. Mich. 21 Car. 2. in Cafe of Pomfret v. Ricroft.

So if a Lease be made of an House and Easours, if the Leesor destroys all the Wood out of which &c, Covenant lies Ibd. per 3 Judges, which Twifden J. agreed. —

So if a Man demise a middle Room in a House, and afterwards does not repair the Roof, so as the Leesor cannot enjoy the middle Room, Covenant lies; Per Rainford. But Twifden J. laid, that there are voluntary Acts of the Leesor or Grantor, and it is a Misfeasance in them to annul and defeat their own Grant; but that in the principal Cafe, (which was a Demise of a House, with the Use of a Pump, which he suffered to be out of Repair, so that it became useless) there is only a Nonfeasance, for which no Action lies; As if I grant a Way over my Land, I am not bound to repair this, but if I voluntarily stop it, an Action lies against me for the Misfeasance. Judgment was given in B. R., according to the Opinion of three Judges, but was afterwards reversed in Can. Sacce, for the Reasons given by Twifden. 1 Saund. 322. Mich. 21 Car. 2. B. R. in Cafe of Pomfret v. Ricroft —— Sid. 429. 432. pl. 17 S. C. adjudged, and Judgment reversed. —— Vent. 44. 45. S. C. adjudged in B. R. by three Judges, contra Twifden. —— 2 Keb. 569. pl. 73. B. R. the S. C. adjudged for the Plaintiff.

10. If a Leesor enters upon the Lands leased, and cuts down the Timber Trees, and carries them away, whereby the Leesee loses the Laps and Shade of them, yet he shall not have Covenant, but he may have Trepass, or an Action Sur Cafe upon his special Damage; and in the Principal Cafe the Leesee might repair the Pump, for though the Soil, or the Pump, be not granted, yet when the Use is granted all is granted whereby the Grantee may have and enjoy such Use; Per Twifden J. Saund. 322. Mich. 21 Car. 2. B. R. in Cafe of Pomfret v. Ricroft.

11. In Articles of Agreement for a Marriage, and Payment of 600 l. Portion, these Words, viz. Whereas it is intended to levy a Fine &c. amount to a Covenant to levy a Fine; Per Finch C. 2 Mod. 91. Pacli. 29 Car. 2. in Cafe. Hollis v. Carr.

12. If the Leesor be disenfranchised by the Lord paramount, though he cannot have a Writ of Myness, yet he shall have a Writ of Covenant in lieu thereof. Raym. 277. Hill. 30 & 31 Car. 2. C. B. and cites Mich. 2 H. 6. 1. b.
13. Covenant will lie on a Reservation; As where Rent, or such a Reservation together with a Passeage to it, is referred, Covenant will lie on the Words of Reservation without any express Words of Covenant. Carth. 232. Pauch 4 W. & M. in B. R. Bush v. Coles.

14. Per Holt Ch. J. the very referring a Thing to Arbitration is a mutual Undertaking, that each Party shall perform his Part of the Award; for otherwise it cannot be said to be referred. 11 Mod. 170, 171 pl. 8. Patch. 7 Ann. B. R. Lupart v. Welfon.

15. If a Man assigns a Bond, and afterwards brings an Action thereon in his Name, this is a Breach of the Agreement; for the very Assignment imports a Covenant, that the Assignee shall bring the Action in the Assignor's Name, and recover, and have the Money to his own Use. 11 Mod. 171. pl. 8. Patch. 7 Ann. B. R. Lupart v. Welfon.

(G) In what Cases the Law will create a Covenant.

1. If a Man leaves to me by Indenture the Land of J. S. of which J. S. was seised at the Time, upon which I enter, and he re-enters, I shall have a Weir of Covenant upon this Indenture, though I was not in the Land by the Lease, but by Effopel; for the Lessor is obliged to say, that I was not in of his Lease. Trin. 3 Jac. B. R. between Style and Harring adjudged, and that such Traveller is not good.

2. So for the Cause aforesaid, if a Man leaves to me my own Land, of which I am seised in Fee, or otherwise by Indenture, if I am ousted by another that hath Right, I shall have a Weir of Covenant. Tr. 3 Jak. B. R. in Style and Harring's Cafe, per Cuitian.

3. When a Man leaves to me the Land of J. S. of which J. S. is seised at the Time, I shall have a Weir of Covenant before Entry upon pl. 24 S. C. J. S. and Re-entry by him, for I need not allege an Eviction; for this is a Covenant in Law, which is broke when he is not seised of the Land at the Time of the Demise; for the Word Demise imports a Power of Letting, and it is not reasonable to enforce the Lessor to enter into the Land, and to do commit a Trepass. Hobart's Reports 18. P. 11 Jac. between Holder and Taylor adjudged. Contra Tr. 3 Jak. B. R. in + Style's Cafe before cited.

Quiet Enjoyment, there perhaps it was otherwise. — Brownl. 23 S. C. but S. P. does not appear.


4. If a Man leaves the Land of J. S. by Deed to J. D. J. S. Ow. 105; being in Possession of the Land at the Time of the Lease, and the Leasee enters upon J. S. who re-enters, pet J. D. shall [not] have any Act of Covenant thereupon, because the Covenant in Law ought to be fixed upon an Estate, but here was no Estate, for it was a void H. Ill. 56 Lease, and the Lessor a Districtor by his Entry. Dich. 37 Eliz. B. R. in Wore's Cafe, per Fenner.
5. So if a Man leave certain Goods to I. D. which are the Goods of another, and in his Possession, if he cannot enjoy them, yet he shall not have any Covenant against the Lessee, because he was never a Lessee. *Ctth. 37 Eliz. B. R. Were's Case, dibituract.*

9. If a Man leaves Lands for Years, and a Stranger enters before the Lessee enters, he shall not have an Action of Covenant upon this Deed, because he was never a Lessee in Privy to have the Action. *Ctth. 37 Eliz. per Fenner.*

7. Indenture of Lease recited, that in Consideration H. the Lessee should build a Mill upon the Land demised, and a Water-Course by the Land demised, F. the Lessee (the Defendant) leased the said Land to H. (the Plaintiff) by the Words Dedi & Concessi. The Plaintiff alleged the Breach of the said Covenant in Law, in that the Defendant had stopped the said Water-Course so made by the Plaintiff; but in the Indenture there is not any express Covenant, Clause, or Agreement that the Lessee should enjoy the Water-Course to make, but only the Covenant in Law arising upon the Words Dedi & Concessi, which, it seems admitted, cannot extend to a thing not in Efe at the Time of making the Indenture. *Le. 278, 279. pl. 377. Hill 23 Eliz. B. R. in Case of Huddy v. Filber.*

8. Bill of Sale of Goods for 48 l. 10s. with a Warranty and Covenant &c. Breach alleged, that at the Time of Sale the Defendant had not the Possession or Property of the Goods. Demurrer to the Declaration, &c. Just. C. B. Writ of Error in B. R. because it could be no Breach; for the Intention of the Covenant was only to secure the Possession, so that till Eviction the Covenant was not broken. Parker Ch. J. said, that the Plaintiff cannot use the Goods without being liable to an Action, which is a Damage. If the Cafe had been, that the Defendant had the equitable Right, but another the legal one, it had been proper to have laid it before the Court by Pleading it; And Eyre J. said, that Warranty, in the Nature of it, imports as well Warranty of the Property as Possession, and Judgment affirmed. *10 Mod. 142. Hill 11 Ann. B. R. Hacket v. Glover.*

(G. 2) What is a Real and what a Personal Covenant.

1. *WRITS of Covenants are of divers Natures, for some are merely Personal, and some Covenants are Real, to have a real Thing, as Lands and Tenements. As a Covenant to levy a Fine of Land is a real Covenant. But a Writ of Covenant, which is mere Personal, is, where a Man by Deed does covenant with another to build him a House &c. or to serve him, or to ingress &c. and he does not the same according to the Covenant, then he be with whom the Covenant was fo made shall have a Writ of Covenant against him; And there is a Note in the Register, which is this, A Writ of Covenant ought not to be made according to the Law Merchant without a Deed, because no Plea of Covenant can be without Deed, and every Man ought to be judged according to his Deed, and not by another Law.* F. N. B. 145. (A).

2. *Lesfor covenants to pay Quit Rents during the Lease, and dies; Quere, if the Executors of Lesfor are bound to pay them.* D. 114. pl. 60. Pach. 2 & 3 P. & M. Anon.

They are bound.

*Writt Off. Ex. 125.*

Lesfor co-
venanted to repair and allow all Taxes; His Grandson and Heir being only Tenant for Life, is not H ili-

able to these Covenants. *Fin.R. 86. Hill 25 Car. 2. Woodward v. Earl of Lincoln.*
Covenant.

3. A conveys a Manor to J, and covenants with them, & quolibet co-rum, that he has conveyed a good Estate to them; This is a real Covenant, and goes with the Estate, and therefore after Partition, and by Reason of the Word (Quolibet) the said Feoffees may have several Actions of Covenant. Jenk. 252. pl. 63. cites 5 Rep. 18. b. Slingsby's Cafe.

4. Three Co partners purchase Land in Fee, and mutually covenant for And. 53. them and their Heirs, and every of them, and their Heirs, that Survivors shall convey to the Heirs of such as shall die first, at the Will. 16 Costs of such Heirs. Resolved, that this is a real Covenant, and goes to the Heir of Covenantee. Jenk. 241. pl. 24.

5. A grants Lands, and covenants that the Lands shall be discharged Salee of 14 of the Rent, it is no more than an ordinary and personal Covenant, Shares out of 56 Shares which must charge the Heir only in respect of Allers, and not other- wise, and thereupon the Bill was dismissed. Hard. 87. pl. 5. Mich. 1656. Cook v. the Earl of Arundel.


7. Covenant in general to settle Lands of such a Value, and names none, this binds all the Lands; but where a mansettles such Lands in particular for a Jointure, and covenants that they are of such a Value, there such Covenant binds the Person only, and not the Land; Per Mr. Keck, Counsel; and decreed accordingly. Vern. 64. pl. 60. Mich. 1682. Girling v. Lee.

8. A granted a Water-Course to B. and his Heirs through Bl. Acre and Wh Acre, and covenanted for himself, his Heirs, and Affignies, to cleanse Cafes 27. the same, and that Fines and Recoveries levied &c. of the said Grounds pl. 4 S.G. should be, and enure to confirm &c. the said Water-Course. Afterwards a mandamus Recovery was had, and a Deed executed, declaring the Ues as afore- said. The Court held, that this was a Covenant running with the Land, and made good by the Recovery. Chan. Prec. 39. 40. pl. 41. Hill. 1691. Holmes v. Buckley.

9. If Tenant in Fee grants a Rent-charge out of Lands, and covenants to pay it without Deduction, for himself and his Heirs, you may maintain pl. 4. Brew- Covenant against the Grantee and his Heirs, but not against the Affignee. Kidgell, for it is a mere Personal Covenant, and cannot run with the Land; Per S. C & S. P. Holt Ch. J. Ld. Raym. Rep. 322. Hill. 9 W. 3. in Cate of Brewster v. by Holt Ch. Kitchin. a

List the other three Judges thought that this Covenant might charge the Land, being in Nature of a Grant, or at least a Declaration going along with the Grant, showing in what Manner the Thing granted should be taken, and this being Indorsement, they reckoned the Indorsement as Part of the Deed, and so Judgment was given for the Plaintiff. 12 Mod. 171. in S.C

5 G 10. Leefee
Covenant.

10. Leave for 6 Years covenanted to Doze and Live the Land during Term. The Court was of Opinion, that this was a Covenant relating to the Land, and for the Advantages of the Reversion, and would have gone to an Assignee without his being named in the Covenant, and attends upon the Reversion, and the Heir may bring an Action upon it. 10 Mod. 158. Patch. 12 Ann. B. R. Sail v. Kitchingham.


1. CONTRACT made by A. with 20 others, that A. shall have all the Wool growing of their Sheep, or all the Skins coming of their Beasts killed, or all the Milk of his Cows, this is not Contract, but Covenant. Mo. 174. pl. 307. Mich. 25 & 26 Eliz. Anon.

2. Covenant is when a Man covenants by Deed to do, or that he has done some Thing; As to make a Feoffment &c. But if I covenant and grant with you, that my black Horse shall henceforward be your Horse, you shall have no Action of Covenant against me, though I retain the Horse; for I have not covenanted to do any Thing in Future, nor that any Thing was done in Time past. Finch. 49. 5.

(H) What Persons shall have the Advantage of a Covenant. The Heir.

Fitzh. Covenant, pl. 17. cites S. C. & S. P. by Thorpe, and to he says of some Inhabitants [Tenants] of the Land, so that every one that has the Land shall have the Covenant.

2. Covenants of Inheritance shall descend to the Heir.

But where there is an Alienation of the Estate to which &c. the Assignee shall have Covenant. Br. Covenant pl. 5; cites 42. E. 3. 5. — Fitzh. Covenant pl. 5; cites 42. E. 3. 5.

Fitzh. Covenant, pl. 17. cites S. C. — Br. Covenant, pl. 5. cites S. C.

* Br. Covenant, pl. 17. cites S. C. But Brooke says that it seems if the Lord alienates the Manor, the Heir shall not have Covenant — Fitzh. Covenant, pl. 17. cites S. C.

3. As if an Abbot covenants, and hath used Time out of Mind to ring in the Manor of B. for him and his Servants, his Heirs shall have Advantages of this Covenant, if B. does not alien. 42 Ed. 3. 3.

4. [So] If an Abbot and Covenant covenant to sing for the Covenant, and his Heirs in such a Chapel], his Heirs at all Times shall have a Writ of Covenant for the not doing the Col. * 2 P. 4. 6. b. adjudged Co. 5. Spencer 18.

As if the Heirs shall have a Writ of Covenant where the Covenant is made to him and his Assigns. F. N. B. 145. (C.)

If I covenant with A. and his Heirs to convey Land to him and his Heirs, the Feoffment shall be to the Heir; For the Heir shall have Covenant; Per H. de C: J. Palm. 558. Trin. 4 Car.
6. If A. covenants with J. S. and his Heirs to make a Conveyance to one and his Heirs, his Heir cannot have Covenant, because it is a Covenant in Gros; But otherwise it is where such Covenant is in another Conveyance, and goes with the Estate. Psalm 553. cites it as said by Jones J. Patch.

4 Car.

7. A. conveyed Land to B. in Fee and covenanted with him his Heirs and Vests for Quiet Enjoyment. B's was ejected and died and his Executors brought Action of Covenant; Resolv'd that the Eviction being of the Tettator, he could not have either Heir or Assignee of this Land, that the Damages shall be recovered by the Executors tho' not named in the Covenant; Because they represent the Person of the Tettator. 2 Lev. 26. Mich. 23. Car. 2 B.R. Lucy v. Levington.


(I) [Who shall have advantage of the Covenant.]

The Assignee.

1. If a Man leaves Land to another by Indenture, this Covenant in Law, created by the word (Demise) shall go to the Assignee of the Term, and he shall have Advantage of it. Contrast, Ech. 52 Cl.

2. A. by Indenture let an House to J. S. for 40 Years. The Lessee S P. and covenanted, with the Lessor, that he would repair the House during the Term, and [Lessee covenanted that] if it should be repaired upon the View of the Lessor, then the Lessee should hold the Lease during 40 Year after the first Years ended. J. S. granted over his Term by thee Words, To-Mo. 119. rum intereye termun &c. termecum thet habuit in tenementis illis. pl. 502.

Carlin held that the Possibility of taking the lift 40 Years was inherent to the Land and Term and should go to the Assignee, but three other Justices held that the Words (tortum Termini &c. quem tunc habuit &c.) did not extend to the Possibility of the future Term, but that the Assignment was a Separation between the first Term, and the Possibility of the 2d. and consequently determined; For it could not stand in Gros divided from the Term to which it was first annex'd. But they all resolved that the want of the Word (Assigns) did not hinder the Possibility; for it was a thing inherent which passed without such Word, but yet they held if there had been the Word (Assigns) yet the Assigns could not have taken the Possibility. Mo. 27. pl. 88. Patch. 3 Eliz. B. R. Skene's Cafe.


4. Lessee for Years makes a Lease for Part of the Term, the Under-Lessee covenants not to do such an Act, and then Lessee grants his Reversion. The Question was if the Covenant pass'd to the Grantee or remain'd with the Grantor. It was inferred that the Words of the Statute H. 8. are Affirmative.
Covenant.

Affirmative only that the Grantor shall have Action on the Covenant, and
that this in Reason ought to imply a Negative, that the Grantor shall not
have Action thereupon and not to subject the Lessee after Assignment
to two Actions; But to this the Court delivered no Opinion because
the Assignment of the Reversion not being pleaded to be by Deed it was
said notwithstanding Lessee had attorn'd, and for this Reason Judgment
was given for the Plaintiff, notwithstanding what else was alleg'd.

(K) In what Cases the Assignee shall have Advantage
of a Covenant.

1. There are some Covenants that none shall have Advantage
of but the Party to the Covenant, or his Heirs. 42 Ed. 3. 4.

2. There are some Covenants which have an Inheritance of the
Land, which shall pass with the Land. 42 Ed. 3. 4.

3. As if a Prior covenants with B. to sing in a Chapell in his Ma-
nor of D. for him and his Servants (in Fee, as it seems to be in-
tended) the Assignee of the Manor shall have Covenant for a De-
fault. * 42 Ed. 3. 3. b. Co. 5. Spencer 17. b. because it is an-
nered to Manor. † 2 H. 4. 6. b.

4. But if the Covenant be to sing in the Chapell of a Stranger,
the Assignee shall not have Covenant. 2 H. 4. 9. adjudged, Co.
5. Spencer 18.

5. Upon Equality of Partition, if one Coparcener covenants to ac-
quirit the other and her Heirs, the Assignee of the Land shall
not have Covenant, for want of Privity of Blood.—Ca Litt. 385. a. S. P. and cites S. C

* Br. Cov-

† Firth.

by the Reporter, and says the Reason is, because the Acquittal falls upon the Land,

6. If A. seised of Lands in Fee conveys it by Deed indented to B.
and covenants with B. his Heirs and Assigns to make any other Asso-
ciation upon Request, for the better Settlement of the Land &c, and
after B. conveys it to C. who conveys it to D. and after D. requires
A. to make another Assignment according to the Covenant, and he re
fuses, D. shall have an Action of Covenant in this Case against A.
by the Common Law, as Assignee to B. Tr. 14 Car. B. R. be-

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by the Common Law, as Assignee to B. Tr. 14 Car. B. R. be-
Covenant.

between Midlemore and Goodale, upon a Demurrer admitted and agreed for Certain, but Judgment was given against the Plaintiff for another Cause.

was brought as Affiance of Affiance of the Covenantee, and shows that the Conveyance was made to alone, without naming his Wife, who is yet alive, and so not good, whereupon (abente Brampton) it was adjudged for the Defendant. — Jo 456. pl. 4 S. C. & S. P. held accordingly. By Action brought by the Affiancee attaches it to in his Person that the Covenantee cannot release it, he being interceded in it; though before any Breach or Suit commenced a Release by him had been a good cited Arg. Skinn. 257.

7. None shall have Advantage of Warranty Real but he who is Tenter; contra of Warranty Personal, as by Writ of Covenant; Note the Diversity. Br. Covenant, pl. 1. cites 26 H. 8. 3. per Cur.

8. Where Covenant is made to one and his Affigns, and where Leafe F.N.B. for Years leaves over his Term, the second Leafe, if he be ousted, shall 145 (M) have Action of Covenant against the Leifor. Thel. Dig. 18. Lib. 1. cap. 21. S. 4 cites F. N. B. Tit. Covenant.

the first Leafe and his Affigns with Warranty.

9. Where a Man leaves Land Habendum to the Leafe and his Affigns for 20 Years, the Affignee shall have Action of Covenant against the Leifor, by reason of the Word (Affigns) in the Deed of the Leafe; and it was said there, that the Affignee of the Leafe brought Writ of Covenant against the Leifor where no Affigns were expressed in the Deed. Hill. 48 E. 3. and lay well; but this Case is not in the Printed Report. Br. Covenant, pl. 45. cites F. N. B.

10. B. covenanted, that if R. pay 400 l. to him, or his Affigns before such a Day, he would stand seized to his Use in Fee. Before the Day B. infeped one W. of the Land, at which Day the Money was tendered to W. Adjudged that it was due to him as Affignee of the Land, and not to B. who was the Covenantor. Cited by Coke. Mo. 243. pl. 382. as 14 Eliz. in the Court of Wards. Randall v. Barker.

11. A Man made a Feoffment in Fee, referring Rent, Suit of Court, and Mo. 185. Relief, and by the Deed granted, that if the Feoffee, his Heirs and Affigns, should be disseized for other Services than are referred in the Deed to him, that then it should be lawful for the Feoffee, his Heirs and Affigns, to distrain in his Manor of D. and keep the Disters till he was satisfied of fo 36 Eliz. much as he had sustained in Damage by the Diirsters. The Feoffee made a Feoffment over. It was resolved, that in such Cafe the second Feoffee might distrain, because it was a Covenant which ran with the Lands; and if the Word (Affigns) had not been in, yet the Word for Defaults in the Avo may they have given Judgment for the Plaintiff to have a Return of the Bealls.

12. It was resolved, that the Affignee of an Affignee shall have an Action of Covenant; so the Executors of an Affignee of an Affignee, so the Affignees of the Executors or Administrators of every Affignee for all these are within the Word Affigns, for the same Right which was in the Tector or Intestate shall go to his Executors or Administrators. 5 Rep. 17. b. Patch. 25 Eliz. B. R. the 7th Resolution, in Spencer's Case. The Man makes a Leafe for Years by the Word Convey, or Distress, which imply a Covenant, if the Affignee of the Leafe be ousted, he shall have a Writ of Covenant; for the Leafe and his Affignee have the annual Profits of the Land which accrue for the annual Rent, and in as much as the Affignee applies his Labour, and employs his Colt upon the Land
Covenant.

Land, and is evicted, whereby he loses all, it is Reason that he should take as much Benefit of the Demise and Grant as the first Leesee might, with the Leesor has no other Prejudice than what his Special Contract with the first Leesee had bound him to. 5 Rep. 17. a. Pach. 25 Eliz. B. R. the 4th Resolution in Spencer’s Cafe.

14. A leased to B. for Years. B. covenanted that it should be lawfull for A. his Heirs and Assigns to enter, and fee in what Reparations the Houses were, and that he and his Assigns, within one Month after Notice, would repair. The Houses afterwards fell into Decay, and A. granted the Reversion over to C. for Life * [in Fee, who upon View gave Warning.] C. as Assignee of A. brought Covenant; it was said the Action did not lie, because the House became ruinous before his Interest in the Reversion; but Anderson and others e contra; because the Covenant is, that after Notice he would repair, and therefore be the House ruinous when it will, and in whose Time forever, yet if he does not repair upon Notice, he breaks the Covenant. Mo. 424. pl. 380. Mich. 29 Eliz. Macall’s Cafe.

Mo. 243. pl. 82. Parfrey’s Cafe.
S. argued, but not resolved.

15. A Man was poss’d for the Term of 6 Years of a Tavern in London, and leased the same unto another for 3 Years, and it was covenanted between them, that during the 3 Years quieted menage, Monthly, the Leesor should give an Account to the Leesor of the Wine which was sold, and should pay unto him for every Ton sold so much Money; and afterwards the Leesor granted the 3 Years which were remaining of the 6 Years to another, and he did request the Leesor to Account, and he would not, whereupon he brought an Action of Covenant; and the Defendant pleaded, that he had account to the Assignee of the 3 Years, and upon that there was a Demurrer joined; and the better Opinion of the Court was, that it was no Plea, because it was not a Covenant which did go with the Land, or the Reversion, but was a collateral Thing, and did not pass by the Assignment of the 3 Years. Godd. 120. pl. 140. Hill. 29 Eliz. B. R. Anon.

Cro. E. 456,
16. Lease for Years assigned over his Term by Deed to J. S. and covenanted that J. S. and his Assigns should enjoy the Land during the Term without Interruption of any. Afterwards J. S. assigned over his Term by Parol, and the Assignee being disturbed brought Covenant. Adjudged that it lies, although the Assignment was but by Parol, because there was Privity of Estate. Mo. 419. pl. 577. Hill. 33 Eliz. Awder v. Nokes.

Mo. 419. pl. 577;

17. Where a Covenant is annexed to a Thing, which of its Nature cannot pass without Deed at first, in such Case the Assignee ought to be in by Deed, otherwise he will not have Advantage of the Covenant; but where the Covenant is not so, but runs with the Estate, the Assignee shall have Covenant without showing any Deed of Assignment. Cro. E. 373. pl. 21. and 456. pl. 52. Hill. 37 & 38 Eliz. B. R. Nokes v. Awder.


Mo. 527; pl. 624. Mathews v. Wefburny, S. C. ad. jected ac-
Covenant.

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Car. this is a Covenant that runs with the Land, and broken instantly with
the Determination of the Estate, but because he did not over, that he had
the Reversion at the Time of the Grant, it was held to be an apparent
Fault, and for that Cause Judgment was for the Defendant. Cro. E. of the Determina-
tion of the Term,


as to leave peaceable Possession to the Lessor, his Executors, Administrators or Assigns, is a Covenant
annexed to the Estate, and runs with the Land, and therefore the Assignee shall have Advantage over
it; Per Gowy. J. but Fenner J. contra, for that the Estate is determined, and no Reversion, and
so Defendant now is but Tenant at Sufferance. Goldsb. 176. Matures v. Weftwood.

20. A. feized of Lands in Fee made a Leafe for Life, the Remainder for
Life rendring Rent, and after acknowledged a Statute, and afterwards bar-
gained and sold the Reversion and covenanted with the Bargaine, his Heirs and Assigns, that it should be discharged within two Years of all Statutes and
Innuencements, excepting the Estates for Life; the Statute is extended, and
thereupon the Rent and Reversion is extended; the Bargaine grants the
Reversion to the Plaintiff who brought Covenant ; resolved because the
Covenant was broken before the Plaintiff's Purchafe, that the Action was not maintainable by him against the Defendant. Cro. E. 863. pl. 40.

21. If Leffe to Covenants to do any Thing upon the Land as to build or re-
pair a Houfe, there a Covenant will lie for the Assignee by the Common
Law; but if it do not by the Common Law, yet it is clear that it will
lie by the Statute 32 H. 8. Resolv'd. Qw. 151. Mich. 8 Jac. in Caze
of All f'o v. Henning.

22. If Leffe for Years covenants to repair and maintain the Houses in as
good Flight as they were at the Time of the Leafe made ; and afterwards, the
Leffe assigns over his Tennc, and the Leffe for his Reversion ; the Assignee
of the Reversion shall maintain an Action of Covenant for the Breach
of the Covenants against the firit Leffe ; Per Doderidge J. and Moun-
tague Ch. J. against the Opinion of Haughton J. Godsb. 272, 271. pl.

23. In Debt for Rent, and shewed that B. by Indenture leased to J. S. Jo. 242. pl.
for 200 Years rendring Rent at Michaelmas, and afterwards conveyed the 7. Patch. 7
Reversion to the Plaintiff who for Rent behind brought the Action against the
Assignee of J. S. who confeized the Leafe, but faid, that B. covenanted to be S. C.
for him, his Heirs and Assigns with J. S. his Executors and Assigns, that
if be be disturbed for Repife of Homage, or be forced to pay any Charge, or
Issues lost, that he would retain so much of his Rent, as he should be en-
forced, and forced to pay ; And, that by the Force of a Writ influing out of the Ex-
The-Court chequer for Repife of Homage and Issues lost, so much was levied by
held, that the Sheriff, which he hath retained of his faid Rent. Resolv'd, that
the Assignee shall have Benefit of the Covenant, both by the Common
Law and by the Statute 32 H. 8. for that it was a Covenant which did D e
run with the Land ; and at the Common Law he might have taken Ad-
vantage to retain the Rent referred upon the Leafe, for it may be ap-
pointed to ceafe at the Will of the Parties. Cro. C. 137. pl. 11. Mich.

Action, but it appearing that the Charge for refpite of Homage was not good, and the Covenant did
not extend in Law but to a legal Charge, therefore Judgment was given for the Defendant; but says,
that Crooke said nothing, but seemed to be contra.

24. A. leased Land to J. S. for 21 Years rendering a Rent, and likewise a
grofs Sum by Way of Fine payable after the Death of W. R. Provided
for default of Payment A. might re-enter. A. leased a Fine and assign'd the
Reversion to B. adjug'd, that this Cafe is not within the Statute 32
H. 8. and the Condition of Entry not transfer'd over by transferring
over the Reversion; For a Man cannot by his own Act divide a Condi-

Covenant.

25. As Assignee of Leafe shall be charged in Covenant for Repairs (though the Assignes are not nam'd in the Covenant) in respect of his having the Pollenion according to 5 Rep. Spencer's Case, so the Assignee of the Reversion shall have Action of Covenant for Default of Repairs in respect of his having the Reversion, though Assignees are not named in the Covenant; Arg. to which all the Court agreed. Lev. 199. Mich. 14 Car. 2. B. R. in Case of Kitchen v. Bucklev.

26. Covenant by B. an Assignee of a Reversion against M. and N. two Leases, upon a Lease for Years, rendering 70l. per Ann. Rent, which they for themselves, and for their Executors, Administrators and Assigns, covenant'd to pay to the Leafe, his Heirs or Assigns, according to the Reservation; and for Rent Arrear, and incurred after the Assignment, B. brings Covenant. M.Nildeit. N. the other Defendant pleaded in Bar, that before the Assignment to the Plaintiff be by the Consent of the Leafe, releas'd to M. and that the Leafe accepted him as his Sole Tenant, and that he paid the Rent to him, which the Leafe accepted as of his Tenant; and upon Demurrer it was objected, that the Covenant enfoiting the Rent, a Discharge of the Rent is a Discharge of the Covenant. But on the other Side was cited the Case of Bres and Cumberland, that no Act of the Leefe can discharge himself, or his Executors of a special Covenant, of which also the Assignee of the Reversion shall have Benefit by the Statute 32 H. 8. and Judgment for the Plaintiff accordingly. 2 Jo. 144. Pach. 33 Car. 2. B. R. Ashurf v. Mingy.

(K. 2) Who shall take Advantage of a Covenant. Persons coming in by Act in Law, or not named.

1. Executors shall have a Writ of Covenant of a Covenant made unto their Tefators for a Personal Thing. And it appears by the Register he may sue a Plaintiff of Covenant in the County, or in the Hundred-Court &c. and that he shall have a Recordare to the Sheriff for to remove the same out of the County into C. B. as it shall be done in a Replevin sued there; and if the Plaintiff of Covenant be sued in the Hundred, or in other Court of other Lord, he shall have an Accedas ad Curiam directed unto the Sheriff to remove the Plaintiff into C. B. F. N. B. (D)

2. If a Man demise or grant to a Woman for Years, and the Leefe covenants with the Leefe to repair the Houfe during the Term, the Feme takes Husband and dies, the Baron shall have an Action of Covenant as well upon the Covenant in Law upon these Words, Demife or Grant, as upon the express Covenant. 5 Rep. 17. a. per Cur. Pach. 25 Eliz. B. R. in the 5th Resolution in Spencer's Case.

3. do it is of a Tenant by Statute Merchant, or Statute Staple, or Elegit of a Term, and be to whom a Lease for Years is sold by Force of an Execution, shall have an Action of Covenant in such Case, as a Thing annexed to the Land, although that they come to the Term by Act in Law. 5 Rep. 17. a. per Cur. Pach. 25 Eliz. B. R. in the 5th Resolution in Spencer's Case.

4. As if a Man grant to a Leefe for Years that be shall have so much Executors as will force to repair his House, or that he shall burn within his House, this is appurtenant to, and shall run with the Land into whose Handssoever that the Lands shall come. 5 Rep. 17. a. b. per Cur. obiter.
Covenant.


5. Lessée covenanted with the Lessor, his Executors and Admini-
trators, to repair, and leave in Repair, at the End of the Term. In some Reporter
Covenant brought by the Heir it was objected, that it lay not for him;
but it was answered, that it is a Covenant running with the Lord, and
shall go to the Heir though not named. Besides, it appears that the several v.
Intent was, that it should continue after the Death of the Lessor, it being
with him, his * Executors and Administrators, and therefore shall not
determine by his Death, upon which Judgment was given in the Ex-
Williams.

6. Ceily que que Use of a Rent-charge executed by the Statute cannot
bring Action upon a collateral Covenant, for that remains with the Feoffee
&c. though Ceily que Use may detain as incident to the Eatee to be

7. But of Covenants running with the Land he may take Advantage ;
Arg. 3 Le. 223. in the Cafe of Scot v. Scot lays the Statute 32 H.

8. has been fo expounded before.

8. A Bishop granted a Lease to J. 8. who covenanted with the Bishop
and his successors, to repair and leave repair'd at the End of the Term; the
Bishop died, and the Lease expired in his Successor's Time, and the Repairs
did not done; The Successor died, and the Executor of the Successor brought of the Bi-
Action of Covenant, and adjudged that it lay for him. 2 Vent. 50.


made, and adjudged the Action well brought by them.

9. Lessor covenanted to renew the Lease at the Request of the Lessée with-
in the Term. The Lessée died within the Term, having laid out a
considerable Sum of Money in improving the Premisses, and the Execu-
tors of Lessée requested a new Lease within the Term. It was objected
that the Executors might be insolvent Persons, and to the Lessor in
danger of losing his Rent. Ld. C. Maclesfield said, that the Meaning of this Covenant was, that the Lessée might be reimbursed what he had
laid out in Improvements, and therefore immaterial whether the Lessée
or his Executors require the Renewal; And that there is to be a Clause of Re-entry in the Lease, and the Value of the Premisses being doubled
by the Improvements of the original Lessée, such Clause will secure the
Landlord against any Inolvency of the Tenant, and therefore ordered
Defendant the Lessor to pay Costs in this Court, and at Law for an
Ejection brought against the Plaintiff, and in which he had recovered

(K. 3) Who shall take Advantage of a Covenant,
and against whom.

By Statute 32 H. 8. cap. 34.

1. 32 H. 8. cap. 34. WHEREAS divers had leased Manors &c. and Resolutions
other Hidrendents for Life or Lives or Terms and Judgments
by Writing, containing certain Conditions, Covenants, and Agreements
as well as on the Part of the Leases and Grants to their Executors and Assigns; 32 H. 8.
as on the Part of the Lessors and Grantors, their Heirs and Successors;
and whereas by the common Law, no Stranger to any Condition or Coven-
ant could take Advantage thereof, by Reason whereof all Grants of Re-

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ral, viz. that the
Covenant and all Grantees and
Patentees of the King of Abbey-Lands, shall
have no Entry or Action for any Breach &c.

It is enacted that all Persons, Bodies Politick, their Heirs, Successors,
and Assigns which have or shall have any Grant of our said Lord the
King, of any Lordship &c. Rents, Titles, Portions, or other Hereditaments, or
any Covenant thereof which belonged to the Munificent &c. or which be-
longed to any other Person &c. and also to all other Persons being Grantees
or Assignees to or by our said Lord the King, or to or by any other Person or
Persons, and the Heirs, Executors, Successors and Assigns of every of them
shall and may have like Advantage by Entry for Nonpayment of Rent,
or for doing Waifs or other Forfeiture, and the same Remedy by Action only
for not performing other Conditions. Covenants and Agreements contained
in the said Leases, against the Leesees and Grantees their Executors Admin-
istrators and Assignees as the Lessors and Grantees, their Heirs or Success-
sors of every of them, theirs ought, found or might, have bad at any time or times &c.
the King be only named to the Act.

3. Where the Statue speaks of Leesees, that the same doth not extend to Gris in Wall.

4. Where the Statue speaks of Grantees and Assignees of the Reverzion as Assignee of part of the State of Reverzion may take advantage of the Conditions. As if Leess for Life be, &c. &c. the Reverzion granted for Life &c. So if Leess for Years &c. be, and the Reverzion is granted for Years, the Grantee for Years shall take benefit of the Condition in respect of the Word (Executors) in the Act.

5. A Grantee of part of the Reverzion shall not take Advantage of the Condition. As if the Leess be of three abovesayd upon Condition, and the Reverzion is granted of two Acres, the Rent shall be apportioned by the act of the Parties, but the Condition is destroyed, for that it is entire and against common right.

6. In the King's Cafe, no Condition in that Cafe is not destroyed, but remains still in the King.

7. By all in Law a Condition is apportioned in the Cafe of a common Person; as if a Leess for Years be made of two Acres, one of the Nature of Borough English, the other at the Common Law, and the Leessor have g Lieue two Sons, dies. Each of them shall enter for the Condition broken, and a Condition may be apportioned by the act and wrong of the Leesee.

8. If a Leess for Life be made referring a Rent upon Condition &c. and the Leessor leaves a Fine of the Reverzion, he is Grantee or Assignee of the Reverzion, but without Assignment he shall not take Advantage of the Condition; so the makers of the Nature intended to have all necessary incidents observed, otherwise it might be mischievous to the Leesee.

9. There is a Diversion by a Condition that is compulsory, and a power of Revocation that is voluntary; for a Man that has power of Revocation, may by his Act extinguish his power of Revocation in part, as by leasing of a Fine of part, and yet the Power shall remain for the Residue. Because it is in Nature of a Limitation, and not of a Condition; and so it was resolved in the Earl of Cork's Cafe. Deed 39.

10. If the Leessor bargain and sells the Reverzion by Deed Indented and enrolled, the Bargaineree is not in title Per by the Bargainer, and yet he is an Assignee within the Nature, so if the Leessor grants the Reverzion in Fee to the life of A. and his Heirs, A. is a sufficient Assignee within the Nature; because he comes in by the act and limitation of the Party, albeit he is in the Fold, and the words of the Statute be To or By, and they are Assignees to him, tho' they are not by him. But such as come in merely by an off in Lease, as the Lord of the Fidevit, the Lord by Esteat, the Lord that enters or claims for Maintains or the like, shall not take Benefit of this Nature.

11. If the Leessor in the Cafe before, bargain and sells the Reverzion by Deed Indented and enrolled, or if the Leessor makes a Forfeiture in Fee, and the Leesee re-enters, the Grantee or Feeces shall not take any Advantage of any Condition without making Notice to the Leesee.

12. Alibit the whole Words of the Statute be, for non-payment of Rent, or for doing of Waifs, or other Forfeiture, yet the Grantees or Assignees shall not take benefit of every Forfeiture by force of a Condition, but only of such Conditions as are either incident to the Reverzion, As Rent, or for the benefit of the State, As for not doing of Waifs, for keeping the Houses in reparations, for making of Fences, Towing of Ditches, for preferring of Woods, or such like, and not for the payment of any Sum in profits, delivery of Corn, Wood, or the like, for so (other Forfeitures) shall be taken as other Forfeitures, like to those Examples which were there put, viz. of payment of Rent, and not doing of Waifs, which are for the benefit of the Reverzion. Co. Litt. 215. a. b.

This Act extends not to Grants of Easies in Fee or in Wall, but only to Leases for Life or Years. Cron. E. 863. pl. 48 Mich. 42. & 43 Eliz. C. B. Lewis v. Ride.——— Extends not to a Nomine.

2. If Leess for Years of 20 Acres grants his Interest of 10 Acres, this was Apportionment at Common Law, and the Leessor shall have several Assignees and several Assignees of Debt; for in this Cafe no Majesty was created as was at Common Law, but Very Lord and Very Tenant, and
and for this Mistake the Statute was made; For it the Tenant before the Statute had made a Poultiment of divers Parcels, to hold by an Halfpenny or such little Thing, then the Lord should know the Ward of this Moity &c. Per Plowden. Mo. 93. pl. 230. Patch. 12 Eliz. Anon.

3. A Lease was made for 30 Years, and Leffor covenanted to repair the House, and to do other Things. The Lease granted parcel of the Term for ten Years; It was holden that his Grantee should not have an Action of Covenant, by the Statute of 32 H. 5 of Conditions, for he is not Tenant to the first Leffor; But if Leffor grants his Reversion for Years, his Grantee shall have Covenant or benefit of Condition with which the Leffice is charged, for he is an Allignee within the Statute, because the Leffice holds of him; Per Plowden, Nichols and Chambers, but Spelce e contra strongly. Mo. 93. pl. 230. Patch. 12 Eliz. Anon.

4. A Lease of three Manors, rendering for one 6 l. for another 5 l. Mo. 97. 98. for the third 10 l. with Condition of re-entry for Non-payment, the pl. 141. Ap. Leffor granted the Reversion of one Millhouse; and the Leffice attorned 1 Mon. S. after the Leffor bargained and sold the Reversion of all and the Leffice attorneed, and Rent in one Manor is behind. It seemed to several that accordingly, the Bargain of the Reversion is aided by the Words (to or by the Leffor &c.) for this is the Intent of the Law &c. and within Statute 32 the Court H. 8. to take Advantage of a Condition; They all But Mounle, held held that an that the Allignee ought to be of the same Reversion, as it was in the Leffor himself, and not of part of the Reversion, nor the Grant of it of Part of a Reversion as les Estate than was in the Leffor himself at the Time of the making may take the Condition, and upon that adjudged not; and holden that the Re-Advantage Reversion within 32 H. 8. ought to be expeditious upon a Term or Frankl of the Conrelement, and not upon Tail. Dy. 308. b. 309. a. pl. 75. Patch. 14. Eliz. Winter's Case.

Reversion of all the Thing demised. And Coke Ch. J. said, that the Opinion of Mounlion 14 Eliz. 309. a. was good Law. Ow. 152. Mich. 8 Jac. in Case of Alfo v. Heming——Godh. 162. in pl. 227. Warburton J. cited D. 209. Winter's Case, that he that brings Action upon the Statute, ought to have the whole Reversion. But Coke Ch. J. and Fuller said, that he need not; For it had been adjudged, that if the Reversion be granted in Tail, the Grantee shall take Advantage of this Statute, and shall enter for the Condition broken——S C. cited 2 Bulk 282. and Coke Ch. J. said, it is as common as may be, that an Allignee of a Reversion for part shall have Benefit of a Covenant, and that it is in the Case of Ett v. Gratte, in Pl. C.

5. If Tenant for Life be dispossessed and Reversioner confirms the Estate of Disposer, and the Tenant for Life re-enters, the Disposer is now an Allignee, but otherwise it is, if Reversioner relieves to Disposer. Per Manwood. 4 Le. 29. in Case of Lee v. Arnold.

6. A fend of Copyhold Lands, part Borough English and part at Common Law, by Licence of the Lord leases them on Condition and dies within the Term, leaving two Sons, the younger purkaches the Reversion of the Lands at Common Law of the eldest; for the one part as Heir in Borough English, and of the other as Allignee of his elder Brother he shall take Advantage of the Condition. Mo. 115. 114. pl. 254. Patch 20 Eliz. Anon.

7. Allignee of an Allignee shall have Action of Covenant; Resolv'd.

8. So of the Executors of the Allignee of the Allignee. Ibid.

9. So of the Executors or Administrators of every Allignee; for all are comprised within the Word (Allignees,) because the same Right which is in the Tenant or Intestate shall go to his Executors or Administrators. Ibid.

10. This
Covenant.

10. This Act extends to Covenants which concern the Thing demised, but not to Collateral Covenants cited as Resolv'd. 5 Rep. 18. a. Path. 25 Eliz. B. R. in Spencer's Case.

11. A seised of a Manor leased the same for Years, rendiring Rent with clause of Re-entry; A levies a Fine for Convenion de Droit to the Use of himself and his Heirs. The Rent being demanded is behind. The Question was whether the Conunel be an Affinity within the Statute 32 H. 8. 34. Manwood thought that he is in by All in Law he might awow and re-enter without Attornment, for that he is in by the Statute 27 H. 8. But that if the Right had been in the Conunel and he had died without Heir, that the Lord by Efcheat might awoth, tho' the Comtitle himself could not. Harper J. held that the Heir might awow and re-enter without Attornment. Dyer J. held that Conunel cannot enter or awow before Attornment, and is not Affinity within the Statute. 3 Le. 103, 104. pl. 152. Path. 26 Eliz. C. B. Anon.

12. He who is in by a common Recovery is not an Affinity, tho' the Recovery was to his Use, for the Writ affirms his Possession. Per Mountion J. 4 Le. 29. pl. 92. Mich. 27 Eliz. C. B. in Cafe of Lee v. Arnold.

The Report is referred upon by Sergeant Maynard, and said, that there was no such Resolvation. Mod. 192, but Ibid 193, the Court said, that that Report in Lincoln College's Cafe, whether there was any Resolvation in the Cafe or not, is founded on no good Reason, that Covenants since have gone according to it.

14. A Lease for Years was made to A, rendering Rent with a Clause of Re-entry for Non-payment; the Reversion was granted to C. who levied a Fine thereon to B. who before any Attornment granted the said Reversion to C., his Son and Heir, to whom A. attorned; the Rent was in Arrear and C. entered; Resolv'd, that the Entry was lawful by Virtue of the Statute 32 H. 8. of Conditions; for tho' the Statute is General, viz. (other Persons being Grantees or Affignees, shall have like Advantages &c.) Grantee or Affignee by Fine shall not take Advantage without Attornment; for when a Statute speaks of Affigns, it shall be intended such compleat Affigness as have all the Ceremonies and Incidents requisite by Law; yet here the Son was a compleat Affignee within the Statute, because there was an actual Attornment made to him, and the Words viz. (as the Grantors or Leflors might) are not to be intended of the immediate Grantor, but of any Grantor, before he can take any Benefit of the Condition. 5 Rep. 111. b. Path. 43 Eliz. B. R. Mallory's Cafe.

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15. Assignee not named is not bound by collateral Covenants, as to build a House De Novo; but though not named he is bound by Covenants that are for the Benefit of the Estate according to the Nature of the Soil, as to lay so many Acres every Year to Pasture. Cro. J. 125, pl. 4. Juc. B. R. Cockfon v. Cock.

16. A leased Land to B. for 7 Years, who covenanted to pay the Rent to A. His Heirs and Assigns. Afterwards A. leased to C. for Life, and demised the Reversion to D. for 40 Years if she so long lived; and B. attorned. The Court held, that D. the Assignee for 40 Years may have Covenant raters it, that for Non-payment of the Rent. Ow. 151, 152. Mich. 8. Jac. B. R. A devised the Reversion to C. His Wife, for who granted it over to D. if C. shall so long live. B. attorned; and adjudged that D. may have Covenant for the Rent. —— Roll Rep. 80. 4th. 4th. S. C. but Hemmings.

17. Lease to Husband and Wife; Husband dies; The Wife accepts the Land; she shall not be charged with collateral Covenants though the covenants to the Estate, because they don't depend on the Estate; Arg. 2. Brownl. 136. Mich. 9. Co. R. in Case of Bagum v. Tucker.

18. Copyhold Land is not within the 32 H. 8. For the Assignee is not in Cro. J. 391. by the Copyholder, nor is privy to the Lease made by him, but is in pl. 7. Real only by the Covenants, and may plead his Estate immediately under the Lords v. Braier, per rot. Cur. on the first Opening. Yelv. 222. Trin. 10 Jac. B. R. Williams and Fenner (Defence). Fleming) ruled that he could not, neither by the Common Law, nor by the Statute, and Judgment accordingly for the Defendant. —— Brownl. 149. S. C. per 1ot. Cur. —— Co. Comp. Cop. 87, S. 21. cites S. C. accordingly.

19. Grantee for Years of the Reversion shall take Advantage of a Condition within the Statute 33 H. 8. cited by Coke Ch. J. 2. Bullf. 282. Cok. Ch. J. Mich. 12. Jac. as adjudged in C. B. in Leonard's Cafe, and said that it cites s. C. is very plain and clear that such Grantee may have an Action of Covenants in the Case of the Common Law, and that the old Difference was between a Le Dyer's Covenant Perfonal and Real.

20. A Lease for Years covinants for himself, his Executors and Assigns, Jo 223. pl. that he would not cvel any Building in the Garden demisd to the Prejudice of the Plaintiff's Light &c. The Lease alligned, and his Assignee adjudged; But if it was a covenanted an House in the Garden to the Prejudice of the Plaintiff's Light &c. collateral Co. In Covenant for this against the Executor of the Lease, he pleaded that covenanted the Lease bad alligned to J. S. who earned and paid his Rent to the Plaintiff, and that the Plaintiff accepted him for his Tenant &c. On Demurrer &c. Per Cur. the Action lies, and that here being an express Covenant, it first Lease, shall bind him and his Executors, and no Assignment or Acceptance of the Rent from the Assignee shall take from him the Advantage of suing him or his Executors upon express Covenant, no more than if a Lease had obliged himself in an Obligation to pay his Rent, his Assignment over of his Tenem, and the Acceptance of the Rent by the Lessor of the Assignee shall not take from him the Advantage of the Obligation. Cro. C. 188. pl. 8. Pach. 6. Car. B. R. Bachelor v. Gage Executor of Gage.
Covenants.

21. The Earl of Lincoln makes a Lease of Lands in Lincolnshire at London, rendring Rent, which the Tenant covenants to pay; the Earl assigns the Reversion to Thursby, who for Non-payment of the Rent brings an Action at London. The Defendant pleaded a Surrender, and thereupon Rule; Resolved, that Debt is maintainable only upon the Privity of Estate, and goes with the Reversion at Common Law, and the Assignee might have maintain'd it before the Statute; but Covenant did not go to the Assignee before the Statute, because it went only in Privity of Contract, and now, though by the Statute, the Covenant doth pass to the Assignee, yet the Nature of it is not altered by the Statute, but it is assignable only as a Contract, and therefore may be brought where the Contract was made. 1 Lev. 259, 260. Hill. 20 & 21 Car. 2. B. R. Thursby v. Plant.

22. Condition that Leissee shall not assign over to any but his Kindred. Leissee assigns over the Reversion, and Leissee assigns over his Term, and breaks the Condition; Quære, if this be a Condition within 32 H. 8. 34. or a collateral Condition? Atkins J. thought it a Condition within the Statute 32 H. 8. cap. 34. but others thought it a collateral Condition, & Adjournatur. Raym. 250. Hill. 30 & 31 Car. 2. C. B. Lucas v. How.

23. Devise of the Reversion of a Term for 1000 Years to A. for Life, and if he died within the Term, then to his first Son &c. A. may bring Covenant; For the Devise of the Term to him passed the whole Estate, and the Remainder to the Son was a Possibility and an executory Devise. 2 Vent. 128. Hill. 1 & 2 W. & M. in C. B. in Cafe of Dowle v. Cale, and cites 9 Rep. 95. Manning's Cafe, and 10 Rep. Lampet's Cafe.

24. At the Common Law an Assignee of a Reversion might have maintained an Action of Covenant for anything agreed to be done upon the Land itself; Privity of Contract is not thereby transferred so as to make the Assign tranfitory, but it must be brought upon the Privity of Estate; for if a Man does covenant to do any collateral Thing not in the Demise, and the Word assigns is in the Deed, yet they are not bound if they have no Estate, so that it is not the naming of them, but by Reason of the Estate in the Land they are made chargeable; Per Cur. 3 Mod. 388. Hill. 2 W. 3. B. R. in Cafe of Barker v. Damers.

25. A Copyholder makes a Lease; the Leissee covenants to repair; the Copyholder surrenders to the Use of A. who is admitted; the Leissee assigns his Term. A. may bring Covenant against the Assignee for not repairing, for that he is within the 32 H. 8. cap. 34. as much as any Thing can be within the Equity of the Statute; Per Holt Ch. J. Show. 284. 288. and Judgment accordingly. Mich. 3 W. & M. Glover v. Cope.

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(L) **Who shall be bound by it without naming.**

The Assignee.

1. If a Man leases for Years, and the Leesee covenants in this Man; Rep. 24, Tit; Prov'd tempest, &c. pretend the Leesee doth covenant, that if the Grantor, P. 4. Ibid, Elle a little, As charged, shall make his Will, and thereby the Houses upon the Premisses, Chapter of ad omnia Tempora necessaria, during all the said Term; and after the Winder's Leesee assigns over the Term, the Assignee shall be bound by this Covenant, S. C. to repair the Houses during the Life of the first Leesee, tho' the Assignee be not named, because the Covenant runs with the Land, Mich. 43 &c. being made for the Maintenance of a Thing in Esse at the Time of the B. R. per Leas. made. P. 38 El. B. R. between the Dean of Windsor and the King. Hyde assigned in a Writ of Error upon a Judgment in Bank. Thereof. - Cro. E. (357) pl. 1. Patch. 38. Eliz. B. R. Judgment affirmed. - Mo. 359 pl. 525. S. C. adjournment, but afterwards adjudged with the first Judgment.

2. But the Assignee shall not be charged in a Writ of Covenant. S. P. by any Breach after the Death of the first Leesee, as much as it is personal to the Leesee himself. P. 38 El. B. R. agreed between the Dean of Windsor and Hyde, v. the Dean &c. of Windsor, S. C. - S. P. by Gawdy J. accordingly, and Fenner J. informed to it; But Popham and Clenche contra, and so it was afterwards adjudged. Mo. 399, 450. pl. 525. in S. C.

3. Resolved, that when a Covenant extends to a Thing in Esse, Parcel of the Demise, the Thing to be done by Force of the Covenant is quoad modo annexed and appertaining to the Demise, and shall run with the Land, and shall bind the Assignee though he be not bound by express Words; but when the Covenant extends to a Thing which had not Evidence at the Time of the Demise made, this cannot be appurtenant or annexed to a Thing which had not Evidence; As if the Leesee covenant to repair the Houses &c. this is Parcel of the Contract, and extends to the Supportation of the Thing demised, and shall bind the Assignee though he be not expressly named; But in the Case above, the Covenant concerns a Thing which was not in Esse at the Time of the Demise made, but to be newly made afterwards, and therefore it shall bind the Leesee, his Executors and Administrators, and not the Assignee. Rep. 16. Patch. 25 Eliz. B. R. the first Resolution in Spencer's Cafe.

4. It was resolved, that if the Leesee covenant for himself and his Assignee to make a new Wall, upon Parcel of the Land demised, there, in as much as this is to be done upon the Land demised, it shall bind the Assignee; for this being to be done upon the Thing demised, the Assignee is to take Benefit of it, and therefore he shall be bound by express Words. But if the Covenant be for him and his Assignee, if the Thing to be done be merely collateral to the Land, and does not touch the Wall, or the Thing demised in any Sort, there the Assignee shall not be charged; As if the Leesee covenant for him and his Assignee to build an House upon the Land of the Leesee, which is not Part of the Demise, or to pay any collateral Sum to the Leesee, or to a Stranger, this shall not bind the Assignee.
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Affignee, and here the Affignee shall not be charged any more than any other Stranger. 5 Rep. 16. b. the second Resolution in Spencer's Cafe.

5. If a Man demiseth Sheep, or other Stock of Cattle, or any other Personal Goods, for any Time, and the Lefsee covenants for him and his Affigns, to deliver at the End of the Time such Cattle or Goods as good as the Things demised are, or such a Price for them, and the Lefsee affigns over &c. this Covenant shall not bind the Affignee, because it is but a Personal Contract, and wants such a Privity as that is between the Leftor and Lefsee and his Affigns upon Account of the Reverion. 5 Rep. 16. b. 17. a. the third Resolution in Spencer's Cafe.

6. But in Case of a Lease of Goods Personal there is not any Privity, nor any Reverion, but meery a Chafe en Action in the Personalty, but cannot bind any but the Covenantor, his Executors and Administrators; so it is if a Man demiseth for Years a House and Land with a Stock or Sum of Money, rendering Rent, and the Lefsee covenants for himself, his Executors and Affigns, to deliver the Stock or Sum of Money at the End of the Term, yet the Affignee shall not be charg'd with this Covenant, for though the Rent referred was increased in respect of the Stock or Sum, yet the Rent does not issue out of the Stock or Sum, but out of the Land only; and therefore as to the Stock or Sum, the Covenant is Personal, and shall bind the Covenantor, his Executors and Administrators, but not his Affignee; And it is not certain that the Stock or Sum will come to the Hands of the Affignee, because it may be withheld, or otherwife confum'd or perished by the Lefsee, and consequently the Law cannot determine at the Time of the Lease made that such Covenant will bind the Affignee. 5 Rep. 17. a. in the 3d Resolution in Spencer's Cafe.

7. If a Lefsee for Years covenants to repair the Houses during the Term, this shall bind all others as a Thing appurtenant and which runneth with the Land into whole Hands forever the Lands shall come, whether by Act in Law, or by the Act of the Party, for all is one with regard to the Leflor; and if the Law should not be so, great Prejudice would accrue to him; and it is but Reason that they who take Benefit of such Covenant made by Leflor with the Lefsee, shall be bound by such Covenants made by Lefsee with the Leflor. 5 Rep. 17. b. Pulch. 25 Eliz. B. R. the 6th Resolution in Spencer's Cafe.

8. Affignee of Lefsee for Years is chargeable with a Nonme Print incurre'd after the Affignment, but not before. Mo. 357. pl. 4. 456. Trin. 36 Eliz. Thyn v. Cholmley.

9. If a Lefsee covenants to discharge the Leflor De omnibus operibus Ordinaris et Extraordinaris, and to repair the Houses, an Action lies against the Affignee, in respect that the Lefsee has taken upon him the Charges of the Reparation, the annual Rent was the less, which trenches to the Benefit of the Affignee, Et Qui tentit Commodo, tentire debet et Onus. 5 Rep. 24. b. Mich. 43 & 44 Eliz. B. R. Dean and Chapter of Windfor's Cafe.

10. Error; Lefsee for Years covenanted to pay yearly during the Term, to the Church-Warden of 8. 20 s. and to repair the Houses, and because the Affignee did not pay the 20 s. nor repair, Covenant was brought against the
Covenants.

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the Assignee; Resolved, the Assignee is not to pay this 20s. because it is a collateral Thing to the Covenant; also it is not shewed for what Time the Sum was behind; and therefore adjudged that the Declaration was not good, and the Damages being intire, a Judgment in B. R. was reversed. Cro. J. 438. pl. 10. Mich. 15 Jac. in Cam. Scacc. Mayho v. Buckhurst.

11. In Debt for Rent an Assignee is chargeable for the Time he enjoys it, and is in Possession; Per Holt Ch. J. Show. 348. Pach. 4 W. & M. Buck v. Bernard.

(L. 2) Extent of Covenant to discharge.

1. Bond to make Appropriation discharged of Incumbrances though a Pension was charg’d upon it, yet held that the Obligee was not to discharge it of that Pension; Arg. 3 Le. 44. cites 3 H. 7. 4.

2. A Covenant in a Feoffment with Warranty that it is discharged of all Rents, this shall not extend to Rent-Services which are incident to the Lands of Common Right; Arg. 3 Le. 44. in pl. 64. Mich. 15 Eliz.

3. Bond or Covenant to make a Feoffment of Land discharged &c does not oblige to discharge it of such Things with which it is charged by the Law; Arg. 3 Le. 44.

4. A Bishop in 1635 leased Lands, and covenanted to pay all Taxes during the Term. Adjudg’d that this Covenant cannot bind the Successor, unlesss such Covenants had been usual in former Leases; and though such Covenants had been in former Leases, yet it cannot bind to pay a new Tax (as the Tax for a Royal Aid made in 1665.) made by Parliament, but Ch. J. said, ought to be intended of such as were then in Use, viz. Synodals &c. would be too hard to extend it to new Taxes; and that they all knew how late this way of Taxes came in. —— 3 Keb. 69. pl. 11. S. C. and Successor is not bound but only by ancient Charges.

5. A Covenant to discharge from Taxes extends to subsequent Taxes of the same Nature, not of a different Nature. 1 Salk. 198. pl. 4. Hill.


(L. 3) To repair. Extent thereof.

1. Covenant was to repair the Houses, Edifices and Buildings, with 2 Brownl. necessary Reparations, and to keep the demised Premises with 56. S. C. at-Paling and Fencing, and at the End of the Term would leave the Premises and Hovels, and other the Premises, sufficiently repaired, maintained &c. —— 2 Balif. Breach was assign’d in not repairing &c. the Paving in the Court, and 162. S. C. and in carrying away Locks and Keys of a Cupboard, the breaking of the Glass in Windows, carrying away a Shelf, which was not shown to be fixed &c. id.
It was objected, that the Pavement was out of the Covenant; for it is neither building, Paling, nor Fencing; fed non allocatur; for it is within the Intention of the Covenant, and is Quaer the Building, and within the Words of (leaving them sufficiently maintained, repaired &c.) And it was objected, that the Assignment of the Breach in Glass being broken cannot be in Glass which is but crack'd, and it is not within the Intention of the Covenant that such pety Things should be a Breach thereof; fed non allocatur; and as to the Shelves, though not shown to be fixed, they shall be intended to be so, and it is said, that Diverse Res aliquote apropriate fuerunt, and so a former Judgment was affirmed. Cro. J. 329, 330 pl. 8. Mich. 11. Jac. B. R. Pyott v. Lady St. John.

2. Tenant in Fee of a House and Mill made a Lease to L. for 31 Years, and L. demised the Mill to J. S. for 5 Years; afterwards L. demised the Houfe and Mill to F. for 31 Years. F. covenanted to repair during the aforesaid Term of 31 Years; J. S. refused to attend. The Question was, if F. was bound to repair the Mill, the Covenant being to repair during the Term, and nothing in the Mill pass'd during the 5 Years for want of Attornment; But refolv'd, that he was bound to repair; For Hale said, that though the Lease did not commence in Point of Interest, yet it did in Point of Computation, and this Covenant was to repair during the 31 Years. Vent. 185. Hill. 23 & 24. Car. 2. B. R. Lewin v. Forth.

3. Covenant in a Lease to repair &c. pro demisso from the Time of the Lease to the Determination thereof, and to well keep in Repair, shall give up at the End of the Term, not saying from Time to Time; afterwards the Lessee builds a Mill-House, and if the Covenant shall extend to it was the Question; and held that it should in this Case; For it is a continuing Covenant, and though the House had no actual, yet it had a potential Being at the Time of the Lease; Judgment Non. Skin. 121. pl. 17. Trin. 35 Car. 2. B. R. Brown v. Blundon.

4. A. grants a building Lease of 3 Messages to B. who covenants to pull them down, and build 3 others in their Room, and to keep and leave the said 3 new built Messages, and all other the said Premises, Houses and Buildings, to be erected in good Repair. B. builds 4 Houses instead of 3; per 3 judges, contra Rokeby B. must leave all 4 in Repair, because of the last Words which they held made a distinct Covenant. Vent. 126. Hill. 1 & 2 W. & M. in C. B. Dowse v. Cale.

5. A Covenant was to keep in good Repair the House, Outhouses and Stables; The permitting the Racks in the Stable to be in Decay is a Breach of Covenant if they were fix'd up for Use, and lay not loose; Admitted. 2 Vent. 214. Mich. 2 W. & M. in C. B. Anon.

(L. 4) Constriction, and Extent of Covenants in general.


2. A Covenant for perfecting a Conveyance by further assurance, and for Quiet enjoyment &c. when they follow an express Grant, they are not to


Constitution and Extent as to Repairs. And Pleadings.

1. A Leased a House and Land to B. B. covenanted to leave it in the same Plight at the End of the Term as they were at the Commencement. At the time of the Demise the Land was sown, and the Houses in good Repair, and now in Action of Covenant the Count was that the House was ruinous and the Land not sown, and it was held well, and that a Man by special Act [of Covenant] may bind himself to a Thing which the Law does not bind him to, As where a House is burnt by sudden Adventure, Covenant lies though Waite does not. Br. Covenant, pl. 4 cites 40 E. 3 5.

2. If a Man covenants to leave the Land as he found it, and the Wind Br. Waite, tears up the Trees by the Roots, the Covenant [as to this] is void. Br. pl. 18. cites S. C.

3. If aliens come suddenly and burn a House, Waite does not lie, As where but Contra of Covenant by special Words. per Cand. Br. Covenant, pl. 4 cites 40 E. 3 5.

4. If I have a Farm with a Stock of Cattle and I covenant to render so many at the End of the Term, there if they die by a sudden Murrain, yet I must make them good at the End of the Term, per Morrice quod Cand. conceal. Br. Covenant, pl. 4 cites 40 E. 3 5.

5. If a Man Leases for Years, and a Strangers enters by Title, the Lefsee shall not have Covenant against the Lessor himself; For he has not broken the Covenant, and also there is no Warranty, but per Needham he shall have Covenant, for the Lefsee has no other Remedy. Br. Guaranties pl. 89. cites 32 H. 6. 32.

6. If a Man leases a Manor for Years, and the Lefsee Covenants to keep the Houses of the Manor in as good Estate as he found them, during the Term, Arg. S. P. the view. Temp. 315.
Covenants.

E. 1. Fitch
Covenant. 
29 —— 7
Rep. 15. a
S. C. cited
per Cur. ——
S. C. cited
by Dods-
ridge J.
Godb 335. pl. 429 —— S. C. cited by Chamberlaine J. 2 Roll Rep. 347. —— Mo. 525. Arg. cites 12 E. 5. tit. Covenant. pl. 2. S. P. —— 2 Roll Rep. 332. Doderidge J. cites 10 E. 3. tit. Covenant (but it seems misprinted for 12 E. 3.) but says that Covenant does not lie during that Term, because he was to relinquish his Farm, and this is not during the Term, but that Waife lies presently.

7. Leffor covenants to repair, provided Leffor finds him Timber. Le-
ffee is not bound to repair without Timber found by Leffor. Per An-
derson Ch. J. 2 And. 72. cites 5 Eliz.

8. Strueta & Pavimenta are Synonymous and a Covenant to repair, and
leave in Repair the Structures extends to the Pavements. 2 Build.

9. Tenant for Life of a Park made a Leafe thereof, with all Profits
of the Deer for 5 Years, and the Leffee covenanted to repair the Park,
and to leave it well repaired in the End of the Term; and in an Action
of Covenant brought by the Leffor, after the End of the Term, the
Breach assigned was, that the Defendant did not repair, but at the End of
the Term fecit valetum, (viz.) in Permitendo the Park Pales to be in De-
cay &c. it was objected, that this Breach was not well assigned; be-
cause there was an Infant of Time in which it could not be properly
said, that fecit Valetum; Sed per Curiam, though a thing cannot be
done in an Infant of Time, the Waife cannot [may] happen Permit-
tendo in fine Termini, lo Note the Difference between doing a Thing,
and permitting a Thing to be done. 2 Roll Rep. 38. Trin. 16 Jac.
B. R. Talbot v. Leivilon.

10. Leffee Covenants to repair the Houfe to him dimifed, during the
Term, or within three Months after Notice given, and to leave it in re-
pair’d. Adjudged that it is the Election of the Leffor either to give
Notice, or if the Leffee does not repair the Houfe during the Term
to bring Covenant, and that they were severall Covenants, and if the
Leffee comes without licence after the Term to repair the Houfe, he
is a Trefpofor, the first Covenant being absolute, the second Condi-
tional, and the one does not take away the effect of the other. 2 Roll R.

This Houfe consisted of severall Hou-
se and Out-
house, now
this Co-
vent-
s of the
Leffor thain't
be confined,
to extend
only to such Buildings as wanted Repair. Ibid. —— Adjudged that Covenant does not lie, for tho'
it was in good Repair and Leffee pull’d them down, yet it is not within the Reach of the Covenant,
if the Leffor does not first Repair, but the true remedy was by Action of Waife. 2 Roll R.
248. S. C.
Covenant.

12. In Covenant the Plaintiff declared on a Covenant to repair all the Pales in a Garden denised (except the Pales on the Weel-Side) and affirmed the Breach in not repairing the Pales contra formam conventionis, &c. but did not show that the Defect was of Repairing the Pales not excepted; The Defendant pleaded, that he had repair'd the Pales secundum conventionem, &c. After Verdict for the Plaintiff it was moved in Arrêt, that the Breach was not well assigned; For the Defect might be in the Pales excepted; Sed non allocatur; For it shall be intended after a Verdict, that the Jury gave Damages, for that the Defect was in the Pales to be repaired by the Covenant, and the rather, because the Issue was upon the Repair Secundum Conventionem, which does not extend to the Pales excepted. But agreed that if the Defendant had demurred, Judgment ought to have been for him. 2 Jo. 125. Hill. 31 & 32 Car. 2. B. R., Anon.

(L. 6) Constructions. Exclusive of Legal Incidents or Advantages.

1. LESE E. for Life Covenants sufficiently to repair the Housier at Dal. 28 pl. his own Costs during the Term; he is not expehted by this Co- venant or excluded by it of the Benefit, given him by the Law, of Freeholders, Feoffor's, &c. cutting Timber for the Repairs. Mo. 23. pl. 80. Pauch. 3 Eliz. Anon. Mo. 7. in pl 22. Pauch.

If Leffor Covenants that Leffee may cut Trees in other Lands not leased, Dal. 28 pl. yet Leffee may cut the Trees growing upon the Land in Lease. Mo. 23. pl. 80. Pauch. 3 Eliz. Anon.


(L. 7) Breach or Performance what. And by whom.

1. If a Man makes a Feoffment of Land by Deed with Warranty, and a Stranger extends a Recognisance of the Feoffor's upon the Feoffor, Covenant lies here. 17 Ed. 3. 18. a.

2. If a Parish makes a Lease for Years, and afterwards retransfers, it is a Breach of Covenant. Hob. 35. cites 12 H. 4. 3.

3. Where a Man is bound to make sure Estate by such a Day of Land, called H. to the Annual Value of 10l, and he makes Estate by the Day of Lands called H. to the Yearly Value of 8 l, he has not perform'd his Covenant, Quere. Br. Conditions pl. 9. cites 27. H. 8. 29.

4. If Lord of a Manor, in which are Freeholders and Copyholders, is self-So if A. is Tenant to B who holds of his Tenants or Undertainers should dig Gravel, other than for Repairs; of C. In this if Leffee of a Copyholder digs, the Covenant is broke; Per Hyde. Keb. Cale A. in 775. in pl. 11. Mich. 16 Jac. B. R. in Cale of Bourman v. Aftou. Undertenant to C. and A. digs; this is a French, for though he is not the Immediate Tenant to C, yet he is immediately, and Judgment accordingly. Lev. 144. Bourman v Aftou. S. C. — Keb. 86. pl. 76. S. C. and per Cor. Undertenant is any that comes in under the Lord's Interest, and cited the Caes of *Vermisselb. Cliffliminc, where the Covenant was that Leffee a d his Alligns would pay the Rent, and so judged.
Covenant.

judged that the Tenant at Will or his Assignee is within the meaning thereof; and so per Hale. If Lease for 60 Years be of Copyhold, which has Common in the Waste, and Leafe; covenant that he nor his assigns shall not use the Waste with Cattle, in this Case if his Under-Aginsree of part passes in Cattle it is a breach, and Judgment accordingly.

* Smy. 497, 469. Hill. 1649. B. R. adjudge'd Niff.

Freem. Rep. 20, 21, pl. 24 S. C. resolved according, and that the Covenant if he will not revoke &c. extends only to the Grant of the Scribe's Place. And Vaughan Ch. J. said, that it is no more than if a Justice of Peace grants to one to be his Clerk, and covenants not to revoke or annul the said Grant, yet if he be afterwards put out of Commission he hath not broke the Covenant. For this but while he is Justice of Peace; And so of a Bailiff of a Manor, or Keeper of a Park, the Owner may disband.

5. The Tefator of G. was Register to the Archdeacon of Suffolk, and grants the Office of his Scribe to the Plaintiff, and covenants that he shall enjoy it as long as he or any other Person had or did claim the Place of Register under him, and that he would not revoke, annul, or evacuate the said Grant; afterwards he surrenderis his Place to the Archdeacon, and the Plaintiff being disturbed brings Covenant; Resolved that it would not lie, because that having surrendered his Place, the Archdeacon did not claim under him, but his Estate was absolutely drowned; and the Covenant was but for as long as he or any Body claiming under him had the office of Register. Freem. Rep. pl. 19. Mich. 1671 in C. B. Ste- ping v. Gladding.

6. Leafe covenanted with the Leffor, that Leffor shall cut 20 of the best Trees growing on the Land at any Time during the Term; but before the Leffor cut the Trees the Leafe cut 5 Trees for Houfe-boot. The Court held that this is a Breach of Covenant, by destroying the Election of the Leffor, and it was the Leafe's own Fault to make such a Bargain. Freem. Rep. 307, pl. 316. Trin. 1675. Moorerton v. Jollin.

7. Debt was brought on a Covenant in a Charter Party to pay the Plaintiff's l. a Ten for Goods imported; The Breach assign'd was in not paying for so many Tons, and one Hoghead, which amounts to so much. The Declaration and Breach in assigning the Non-Payment for the Hoghead is ill; For the Covenant is only to pay so much per Ton, but otherwise it would have if it had been to pay Secundum Rentam of so much per Ton. 2 Lev. 124. Hill. 26 & 27. Car. 2. B. R. Rea v. Burns.

8. 30,000 l. is Covenanted to be laid out in Land, the Money need not be laid out all together upon one Purchase, but if laid out at several Times it is sufficient. Per Lord Talbot. 3 Wms's. Rep. 228. Mich. 1733. Lechmire v. Earl of Carlisle.

(L. 8) Actions. When the Action shall be brought.

1. A Man made a Lease for Years, and the Leafe Covenant to make Reparations; The Leffor granted the Reversion to another, and the Leafe for Years made his Wife his Executrix, and died; It was held in this Case by the Court, that the Grantor of the Reversion should not recover Damages, but from the time of the Grant, and not for any time before; But yet the Wife the Executrix should be charged for the not
Covenant.

4 I I

not repairing as well in time of her Husband as in her own time; And if she do make the Reparation, depending the Suit; Yet thereby the Suit shall not abate, but it shall be a good cause to qualify the Damages according to that which may be supposed, that the Party is dammified for the not repairing from the time of the Purchase of the Reversion, unto the time of the bringing the Action. 3 Le. 51. pl. 72.

Trin. 15 Eliz. C. B. Anon.

2. Covenant to suffer a Recovery within a Year. All the Terms are past and no Recovery suffered, yet no Action lies on that Covenant before the Year be fully Expired though all the Terms are past, and that it is impossible to do it within the time prefixed. Per Popham Arg. 4 Le. 170.

3. Leifie covenanted to leave the Houses, Trees and Woods at the End Arg. Mo. of the Term in as good Plight as he found them. Leifie cuts down a Tree, the Covenant is broke and the Leifie shall not stay till the End & P. accord that the Tree can't grow again, and be in as good Plight as it was the Tree; when he took the Leaf. Per Doderidge J. Goldb. 335. Trin. 21 Jac. B. R. in Case of Waterer v. Mountague, cites E. 1. Covenant, 29.

shall not have Action of Covenant before the End of the Term. P. N. B. 143. (I) cites E. 1. Covenant, 29.

4. I oblige myself to pay so much Money at such a Day and so much at another Day; The Court held clearly that Action of lies if both Days are not passed. Hardr. 178. pl. 4. Hill. 12 & 13 Car. 2. in Scacc. Notice of Right is Company to pay.

Cafe, that Covenant lies at the first Day, but that there is a Squire there as to Debt.

5. Debt against the Assignee after the Leifie has several Times refused to accept him for his Tenant. 2 Saund. 181. Mich. 22 Car. 2. Devereux v. Barlow.

6. Covenant was brought against the Defendant as Assignee of one J. V. and the Breach assigned was, that neither the said J. V. in his Lifetime, nor the Defendant since his Death, had kept the Fences &c. in Repair. After Verdict for the Plaintiff Judgment was arrested, because the Action does not lie against the Defendant as Assignee for a Breach in the Life-time of the Assignor, and this Breach being assigned for a Default of Reparation of the Fence, as well in the Life-time of the Assignor, as in the Time of the Defendant since his Death, and intire Damages given, the Plaintiff cannot have Judgment. Lutw. 362. 363. Trin. 12 W. 3. Britton v. Vaux.

(M) In what Cases it lies against an Assignee.

Fol. 522.

1. If A. demises to B. several Parcels of Land, and the Leifie cove-Cro. C. 221, nants for him and his Assigns to repair &c. and after the Leifie at-igns to D. all his Estate, in Parcel of the Land demised, and after D. King, S. C. Exception was taken, that the De- not repair that to him assigned, the Leifie may have an Action of Covenant against D. the Assignor. Tr. 7 Car. B. R. between Cochran and King adjudged per Curiam, this being moved in Action of Judgment.

only of the Thing demised, he is not chargeable with this Covenant any more than the Assignee of Parcel.
Covenant.

Parcel shall be charged in Debt for the Rent; and non assumpsit; for this Covenant is divisible, and follows the Land with which the Defendant as Assignee is chargeable by Common Law, or by the Stat. 23 H. 8 and Judgment for the Plaintiff. —— Jo. 243. pl. 5. Conant v. Kemel, S. C. adjudged.

2. If a Man leases for Years, and the Lessee covenants to make Reparations and other Covenants, and assigns his Term over, the Assignee shall be bound to those Covenants; For they run with the Land. Br. Deputy, pl. 16 cites 23 H. 8.


4. Covenant by Grants of the Reversion lies against the Lessee after Assignment of the Term, though no Notice nor Acceptance of the Rent had been pleaded, where there is an express Covenant for Payment of the Rent; Per Cur. 3 Lev. 233. Trin. 1 Jac. 2. C. B. Edwards v. Morgan.

5. Covenant will not lie against one merely as Assignee of the Land. 1 Salk. 198. pl. 4. Hill. 9 W. 3. B. R. in Case of Brewster v. Kidgec, cites Hard. 87. pl. 5.

6. Lessee covenants to rebuild and finish a House within such a Time; the Time expires; the House not rebuilt. Lessee assigns. Per Holt Ch. J. The Assignee is not liable for Breach before Assignment; But if the Lessee had assigned before the Term expired, the Assignee would be bound. 1 Salk. 199. Patch. 12 W. 3. B. R. Greecot v. Green.

(N) In what Cases it ought to be brought against the Assignee; And in what Cases against the Assignor.

* S. C. cited 1. If a Man leases for Years, rendering Rent, and the Lessee covenants for him and his Assigns to repair the House during the Term, and after the Lessee assigns over the Term, and the Lessee assigns over the Term, and the Lessee accepts the Rent from the Assignee, and after the Covenant is broke, notwithstanding the Acceptance of the Rent from the Assignee, yet an Action of Covenant lies against the first Lessee, for the Lessee hath covenanted expressly for him and his Assigns, and this Personal Covenant cannot be transferred by the Acceptance of the Rent. P. 10 Ja. B. R. between Ventris and Goodscap adjudged; and the same Term, between + Bernard and Godskall adjudged. P. 16 Ja. B. R. between Sir J. + Brett and Cumberland adjudged upon Demurrer. P. 16 Car. B. R. between Norton and Ackland adjudged upon Demurrer. Instracut. 15 Car. Rot. 549. Cr. 6 Car. B. R. between the Counties of Devon and Colier adjudged where the Breach was for Nonpayment of Rent. P. 20 Car. B. R. between Codis and Taller adjudged upon Demurrer, where the Breach was for Nonpayment of Rent. Instracut. Hill. 19 Car. Rot. Barnard.

much Argument was at length resolved, that he was chargeable with the Breach of this Cov—
Covenant.

Covenant, and that the Assignee of the Reversion should have the Action, by the Statute 32 H. 8, for it is a Covenant in Fault, and by the express Words runs along with the Land; and notwithstanding the Assignment, the Covenantor and his Executors are always chargeable, so that neither by the Assignment over of his Estate, nor by any Act he can do, can he discharge himself or his Executors, who are chargeable by any Act of their Tffects, having Acts as long as the Lessee continues the Reversion in him; for the Executors are not chargeable by reason of the Privity of Contract, but by reason of the Covenant itself, and by the express Words of the Statute of 32 H. 8. Such Remedy as the Lessee might have had against the Assignee or his Executors, such Remedy the Assignee shall have against him, it being a Covenant in Fault, which runs with the Land; but otherwise it is of a Covenant in Law, which is only created by the Law, or of a Rent, which is created by reason of the Contract, and is by reason of the Profits of the Land, wherein none is longer charged with them than the Privity of the Estate continues with them, and this Covenant may charge the Assignee who has the Estate, and the Lessee and his Executors who made the Covenant, all as one and the self same Time, but Execution shall only be against one of them; for if he sue an Action against the one, and after against the other, as he well may do, if he take several Executions, he who is last taken in Execution shall have an Audita Querela; wherefore it was adjudged for the Plaintiff. — — Roll Rep. 259. pl. 11. S. C. and it was held by Coke, Doderidge, and Houghton, that the Assignee should have Advantage of this Covenant at the Common Law, because it is a Covenant for Reparation of the Thing leas'd. — — Roll Rep. 63; 62 S. C. adjudged for the Plaintiff. — Poph. 136, 137 S. C. adjournatur. — Godd. 276 pl. 351. S. C. adjournatur. — S. C. cited Cro. C. 188. in pl. 8. — supra.

2. If a Lessee covenants, that he and his Assigns will repair the See the House disennom, and the Lessee grants over his Term, and the Asginee doth not repair it, an Action of Covenant lies either against the Assignee at Common Law, because this Covenant runs with the Land, or it lies against the Lessee at the Election of the Lessee. in pl. 1. 23 H. 8. Brook Covenant 32.

3. Q. Eliz. made a Lease for Years, rendering Rent, and Lessee co- S. C. cited venanted to pay it. The Queen died, and the Reversion descended to Arg. Show. K. James; after which the Lessee assign'd over his Term. The Act since paid the Rent to the King, and afterwards the King granted the Reversion by his Letters Patents, and the Patentee accepted the Rent of the Assignee, and after brought Covenant against the Executors of the first Lessee; and adjudg'd maintainable. Saund. 240, 241. per Cur. cites Cro. J. 521, 522. 16 Jac. * Brett v. Cumberland, and says, that this must necessarily be by Reason of the Privity of Contract transfer'd by Force of the Statute 32 H. cap. 34. for their was no Privity of Estate between them; because the first Lessee had assign'd his Term before the Grant of the Reversion to the Patentee, which prove that by the Statute the Privity of Contract is transfer'd.

4. If Lessee for Years assign'd over his Term, the Lessee having Notice thereof, and he accepts the Rent from the Assignee, he cannot demand the Rent of the Lessee afterwards, yet he may sue other Covenants contained in the Lease against him, As for Reparations or the like; Per Jerman J. Sty. 300. Mich. 1651. Whiteway v. Pinfent.

5. A Diversity was observ'd between Debt for Rent and Covenant for Rent; For if the Lessee assign'd over, and after Lessee accepts the Assignee for his Tenant, he cannot afterwards maintain the Debt for Rent against the first Lessee, but he maintain Covenant against him; And one Mid- dlejan's Cafe in 13 Car. 1. was cited by the Chief Justice, and it was also now agreed, that if Lessee assigns his Term, and after Lessee assigns his Reversion, and the Assignee of the Reversion accepts the Rent of the Assignee of the Term, yet he may have Covenant against the first Lessee, Sid. 401. in pl. 8. Hill. 20 & 21 Car. 2. B. R.

6 Though upon an express Covenant for Payment of Rent Coven- ant lies against the Lessee for Rent arrear after his Assignment, yet it seems that such Action lies not against Lessee on a Covenant in Law, as upon (Yielding and Paying) after Assignment; Nota. Sid. 447. pl. 9. Patch. 22 Car. 2. B. R. Anon.

7. If a Man covenants to pay Rent, and after assign's, the Lessee may upon this Covenant charge the Party, or his Executors, or the Assignee,
Covenant.

at his Election; and so it is if there be 20 Assignments, for the Party and his Executors are always liable upon the Deed to the Covenant; Ditton v. Freem. Rep. 337. pl. 417. Trin. 1673. in B. R. Anon.

8. If the Assignee breaks the Covenant he may be charged, or the Lessor, or his Executors; but if an Assignee assigns over, and the second Assignee breaks the Covenant, the first Assignee cannot be charged, but the second Assignee that broke the Covenant, or the Lessor, or his Executors may; Per Hale Ch. J. Freem. Rep. 336. pl. 417. Trin. 1673. in B. R. Anon. 2 Vent. 234. Mich. 2 W. & M. in C. B. and 4 W. & M. in B. R. Tombv & v. Pitcher.

9. A Lease is made for Years to E. G. reserving Rent, G. enters, and dies possessed; S. his Executor, 4th June 1659, assigns to P. and P. the 4th June 1689, Covenant, and for half a Year's Rent due on the 1st of January 1689, Covenant was brought against P. The sole Question was, if Notice of the Assignment should be given to the Plaintiff, and adjudged maintainable by 3 Justices, contra Ventris. But this Judgment was afterwards reversed in B. R. upon the Matter in Law, viz., that Notice of the Assignment to the Plaintiff was not necessary; For by the Assignment the Privy of Estate was gone, and there was nothing to support the Action against the Defendant, he being only Assignee.

10. Executors of a Term assigns it over. The Assignee assigns it over to another. The Executor still liable, but it seems that the Executor's Assignee is discharged on his assigning it over. 4 Mod. 78. Hill. 3 & 4 W. & M. in B. R. in Case of Pitcher v. Tovey.

(N. 2) Against whom. By Agreement to the Estate.
Lies against whom. Grantee. On Covenants by the Grantor, Feoffor, or Leffor.

If a Man covenants with Tenant for Life of an House to find a Chaplain to sing on in the House every Saturday during the Life of the Covenantee, if the Covenantee surrenders to the Leffee the House, and re-takes an Estate for Years, Yet the Covenant remains.

2. The same Law if he had granted the House over, and he had not retook an Estate. 6 D. 4. 3. (Where this, for after the Grant, how is it lawful for the Chaplain to come into the house without a Warrant?)

3. A Covenant in Law is abridged by an express Covenant, though it be * See Tr. in the Affirmative. D. 19. 6. Marg. pl. 115. cites 4 Rep. 8. and 31 H. Reservations 8. 4. pl. 2. that * Reservations to the Leffee excludes the Generality of the Law, and that the Heir shall not have the Rent.

4. It is said by Manwood Ch. B. that by the Recovery of the Damages, the Leffee should be excused for ever after, for making of Reparations; so as if he suffer the Houses for want of Reparations to decay, that no Action shall thereupon after be brought for the same, but that the Covenant is extinct. 3 Le 51. pl. 72. Eliz. C. B. Anon.

5. A collateral Covenant in a Lease to do a Thing upon other Land not leased is not gone by Leffor's Entry into the Land leased. Mo. 452. pl. 334. Pasch. 37 Eliz. Carill v. Read.

6. If a Man by Deed doth covenant to build a House, or make an Estate, and before the Covenant broken the Covenantor releases to him all Actions, Suits and Quarrels, this does not discharge the Covenant itself, because at the Time of the Release nihil uti debuit, there was no Debit or Duty, or cause of Action in being; But in that Case a Release of all Covenants is a good Discharge of the Covenant before it be broken. Co. Litt. 292. b.

7. If an Estate be created, and a Covenant in Law annex'd to it, the Covenant shall cease if the Estate ceases. But if an express Covenant is annex'd, and the Covenantor does not perform it, Action lies for not performing it, though the Estate be avoided; Agreed Arg. 2. Brownl. 159. Pasch. to Jac. C. B.

8. Where
Covenant.

8. Where an Estate is determinable and relative covenants are in the same Deed, there when the Estate determines the Covenants are gone; but if Estate palls, the Covenants may be good enough; as where a Charter of Feoffment is made with a Letter of Attorney to make Livery, and a Covenant to quietly enjoy from henceforth, if the Party be disturbed before Livery the Covenant is broken; Arg. Freem. Rep. 175. in pl. 187. Mich. 1674. Done v. Dr. Barebone.

9. A covenants with B. to pay a Rent to the Use of C. though the Covenant (being Collateral) is not transferr'd by the Statute of Uses with the Remedies incident by Law to the Grant, yet the Covenant is not discharg'd; and Judgment accordingly. Mod. 223. pl. 12. Mich. 28. Car. 2. C. B. boscowen v. Crooke.

10. A Covenant however good in its Creation may be extinguished afterwards by the Death of the Covenantor to whom the Covenant was Heri; Agreed by all the Judges of C. B. Comyns's Rep. 333 Mich. 6 Geo. 1. Madge v. Mudge.

11. A. covenants on his Marriage to lay out 3000 l. in the Purchase of Land, and to settle it on A. in tail, Remainder to B. A. Purchases the Manner of D. with this 3000 l. and never settles it, but suffers a Recovery thereof; as the Covenant was a Lien on the Land, so the Recovery suffered of it, discharges the Lien, and bars B. of the benefit of the Covenant, and of the Remainder. Resolved without Difficulty. 3 Wms's Rep. 171. Hill. 1732. in Café of Sir Sam. Marwood v. Turner.

12. If Leesee covenants to repair he is bound to do it, though the House is burnt down. Comyns's Rep. 637. pl. 268. Hill. 12 Geo. 2. Chelferfield (Earl of) v. Bolton (Duke of).

(P) What an Extinguishment, tho' the Lease continues.

1. By Recovery of Damages in Action of Covenant for Non-reparation, the Leesee shall be excus'd for ever after from making Reparations, so as if he suffer the Houses for want of Reparation to decay, no Action shall hereupon be brought for the same, but the Covenant is extinguit; Per Manwood. 3 Le. 51. in pl. 72. Trin. 15 Eliz. C. B.

2. The Prior of N. made a Lease for Life by Indenture, by which Leesee covenanted to find Victualls for the Cellerer at all Times when the Cellerer came thither to hold Court; The Prior was dissolv'd, and the Poolefions given to the Dean and Chapter newly erected, it was held, that Leesee should perform the Covenant to him that supplied the Office of Cellerer, viz. the Steward. 4 Le. 187. M. 17 & 18 Eliz. B. R. Anon.

3. A. leas'd a Mill to B. and A. covenanted to find eight Men to grind in the Mill every Day, and that if A. fail'd therein, B. should retain so much out of his Rent. B. pull'd down the Corn Mill and made it a Horse Mill. Per tot. Cur. By the Alteration A. is discharg'd of his Covenant and the Convenion is Waffe, tho' for the Leisfor's Advantage. Cro. J. 182. Trin. 3 Jac. B. R. City of London v. Graham.

4. Debt on Bond condition'd to perform Covenants in a Lease; Defendant pleads, that after and before the Original purchased, the Lease was cancelld'd by Consent of Plaintiff and Defendant. Per Coke Ch. 1. held clearly, the Plea is not good without Averment, that no Covenant was
(Q) Continuing Covenant, tho' the Lease &c. is determined or surrendered.

1. If a Parson leaves his Glebe for Years and after resigns, by which the Lease is void, yet Action of Covenant lies against him; Quod Nota. Br. Covenant. pl. 42. cites 12 H. 4. 5.

2. B. held certain Land for term of 10 Years of A. It is Covenanted between A. and B. that if B. pay 100l. to A. within the said 10 Years, that then he shall be seised to the Use of B. in Fee, and B. surrendered his Term to A. and after paid him 100l. within the 10 Years; there B. shall have Fee. For the Years are certain; Contra where it is covenanted that if he pays 100l. within the Term aforesaid, and he surrenders and pays the 100l. this is not good; For there the Term is determined, but in the other Case the 10 Years remain notwithstanding the Surrender. Br. Exploitation pl. 44. cites 35 H. 8.

3. By the Statute 13 Eliz. [cap. 25.] of Leaves it is enacted, that Cro. Eliz. if a Parson is Non-releident on his Living for the space of 80 Days, all 245. in pl. Leaves made by him, and all Obligations and Covenants &c. for en-joining it shall be void. It was adjudged that where a Parson made a S. P. held Lease for Years, in which were divers Covenants on the Leiffer's part, accordingly, and afterwards the Lease became void for Non-residency &c. that for a Covenant broka before, an Action of Covenant did lie. Cro. E. 76. in pl. 37. Arg. cites 26 Eliz. Walls v. Cox.

4. In Covenant the Cafe was, Tenant for Life leased for Years, and Le 179. pl. the Leiffer by Indenture granted bargained and sold all his Estate, to have Leafe v. Langley v. Langley in amplus Modo & Forma as he ought to hold it; this in-jury. S. C. implies no Warranty, being the Words of the Leiffer for Years of a Tenant for Life, but determines with the Estate on the Death of Tenant for any War-Life. Cro. E. 157. pl. 42. Mich. 31 & 32 Eliz. B. R. Landy v. Cheney; For to whom this Warranty in Law cannot extend; but admits that the Warranty extends to the Plaintiff, yet it determined with the Estate of the Tenant for Life, and to the Covenant ended with the Estate.

5. If Tenant in Tail makes a Lease for Years and dies without Issue, the Le. 179. in Covenant determines with the Estate; Arg. And of that Opinion was pl. 234 S. P. the Court. Cro. E. 157. in pl. 42. Mich. 31 & 32 Eliz. B. R.

6. Leiffer for Years of a Diffentor covenants to leave the &c. in good Noy. 75 S. Repair, and yield them up to the Leisser. Leiffer brings Covenant and the Court thought the Leiffer pleads, that A. was seised in Fee till by the Plaintiff dispossessed, Leiffer dispossessed, and afterwards A. re-entered who intituled J. S. who is yet seised &c. and charged up upon demurrer adjudged a good Barr. Cro. E. 636. pl. 21. Hill. the Covenant. For ¶ 41 Eliz. B. R. Andrews v. Needham.

be gone the Obligation is discharged, and cites 20 H. 6. and 45 E. 3. 8.

7. A. leaves to B. for 10 Years, and covenants at the end of the Term to have four Acres of the Land fallow'd and plow'd, and in the Leafe was a Previso that if B. mislike his Bargain, that on a Year's Warning B. may surrender his Estate; B. afterwards surrendered accordingly. The acceptance of the Surrender is no dispensation of the Covenant, but other-wise.
Covenant.

wife it the Provfo had been in the end of 10 Years; for then if the
Leitor accepts the Surrender before the 10 Years expires, it is impoit-
for the Leifee to perform the Covenant. Nov. 118. Auidia v.
Moyle.

8. An Action was brought upon an express Covenant in a voidable
Leafe; adjudged that the Action would lie though the Leafe was void,
and Coke Ch. J. said, that if the Action should not lie, a great Mis-
catch might happen; For a Dean might as To-day make a Leafe to A.
and keep it secret, and To-morrow make another to B. and covenant
to enjoy, and to avoid the second Leafe. Brownl. 21. Trin. 9 Jac.
Walter v. the Dean &c. of Norwich.

9. If a Covenant depends on the Interest of a Leafe, As a Covenant to
repair the Thing demifed, or to pay Rent, these Covenants are void if the
Leafe is void, because they immediately depend on the Leafe; But
where the Covenant is for a Collateral Thing, as a Covenant that the
Leitor is Owner at the time of the Leafe, or the Leifee shall enjoy it,
or shall be discharged and saved Harmlefe, these Covenants being Col-
lateral to the Leafe and Interest are good tho' the Leafe is void; Per
Haughton Serjeant. Arg. Ow. 136. Patch. 10 Jac. in Case of Wal-
er v. Dean &c. of Norwich.

Lev. 45 S. 5. G the Co-

Covenant and

Obligation

being both

for the Cor-

roboration

of a Grant,

which was

void, they

are also both

void; and

Judgment

(as the Re-


corder say,

be heared) for

the Defendant —— Kebr. 139. pl. 54. 164. pl. 118. 182. pl. 156. adjudged for the Defendant.

—-S. C. cited 1 Salk. 199 Arg. Et hoc fuit concilium, per Holt Ch. J. because that was a
relative and dependent Covenant, and if there be no Eftate granted the Covenant fails. —— S. C.
cited Ed. Raym. Rep. 588 but per Cur. the Covenant in this Case was that the Covenantee
enjoy the Term which was impoffible, where no Term paft by the Deck.

Watcr v. Dean &c.

of Norwich

12. Where there is a Covenant and a Bond to perform it, and it re-
fers to an Eftate and is to wait upon it, if there be no Eftate granted, as
where there is a Bargain and Sale but not enrolled, the Covenant fails
affirmed. * Ow. 136.

Walter v.

Dean &c.

of Norwich

(R) Dispensed withall by becoming afterwards Unlawful.

1. If a Parson has a Term with Condition not to alien, and then A Leaf for comes the Statute against keeping a Farm, yet it seems the Condition is good. Arg. 2 Brownl. 142. in Cafe of Forthington v. Rogers, Clergyman cites [D. 28. b. pl. 189] 28 H. 8. Leoman's Cafe. Before 21 H. 8. who

covenanted not to alien without Licence, and then the 21 H. 8. was made, which prohibited any Clergyman to hold any Land in Farm, whereupon the Clergyman pleaded without Licence, and the Covenant was held not to be broken, because 21 H. 8. 15. made it unlawful for him to hold it. 12 Mod. 169. Per Holt Ch. J. in delivering the Opinion of the Court, Hill 9 W. 3. cites D. 27.

2. A had Estate in the Lands of B. and before the Statute 32 H. 8. Because the Act had 21 Years was made to a

covenanting Tenant in Tail to make Leaves for 21 Years or three Lives ; A. was enablig to A. could not leave for 21 Years without Forfeiture notwithstanding the Statute ; But if he left for 21 Years or three Lives, they thought that Remainder-man could not avoid the Leaf after A's. Death without issue, nor the Donor neither, though in the Statute were no dispensed Words of the Donor or Remainder-man. D. 48. b. Pach. 33 H. 8. pl. 5. E. of Bridgwater's Cafe. 169. Hill. 9 W. 3. cites S. C. in Cafe of Brewey v. Kidgell.

3. Covenant upon a Charter-Party for Freight was dated 10 of February, then comes an Act of Parliament, and says that all French Goods imported after the 9th of March shall be forfeited, and prohibited the importing; And this Agreement was for the Freight of the French Goods, and this was pleaded in Bar, to which the Plaintiff demurred and the Court inclined for the Plaintiff, not being a thing that was natura in se; the Court seemed strongly for the Plaintiff; Sed quare. Skin. 161. pl. 9. Hill. 35 & 36 Car. 2. B. R. Dean v. Tracy.

4. Covenant upon a Charter Party for the Freight of a Ship, the Defendant pleaded, that the Ship was laden with French Goods prohibited by which seems to be S. C., to be imported, and upon a Demurrer the Plaintiff had Judgment; For the Court were all of Opinion that if the Thing to be done was legal at the time when the Defendant entered into the Covenant, though it was afterwards prohibited by Act of Parliament, yet the Covenant is binding. 3 Mod. 39. Hill. 35 Car. 2. B. R. Bronson v. Deane.

5. Where H. Covenant not to Do an Act or Thing which was lawful, and an Act of Parliament comes after and compels him to Do 169. S. C. it, the Statute repeals the Covenant. 1 Salk. 193. Hill. 9 W. 3 & S. P. by Holt Ch. J. in delivering Comb. 467 S. C. & S. P. by

6. So if H. Covenant to Do a Thing which is lawful and an Act of Parliament comes in and binds him from Doing it, the Covenant is of the Court, repeal'd. Ibid.

7. But if a Man Covenant not to Do a Thing which then was unlawful and an Act comes and makes it lawful to do 169. S. C. Parliament

8. But if a Man covenants to do a Thing which was not lawful before, and an Act makes it lawful, that Act does not repeal the Covenant. 12 Mod. 169. Hill. 9 W. 3. per Holt Ch. J. in delivering his Opinion of the Court in the Cafe of Brewster v. Kidgell.

(S) What is a Covenant; And what a Conditional Lease &c.

1. LEASE of a House for Life by Indenture, provided always, that if the Lessee die within 60 Years then next ensuing, that then his Executors and Assigns shall have and enjoy the Land as in Right of the Lessee until the 60 Years are expired; The Court thought that this was not a Lease but only a Covenant. Dy. 150. a. pl.83. Trin. 3 & 4 P. & M. Parker v. Gravenor.

2. Lessee covenanted that it should be lawful for the Lessee to cut the Timber-Trees, and the Lessee covenanted that it should be lawful for the Lessee to take Underwood, provided and the Lessee covenanted that he would not cut Timber-Trees. This Proviso was adjudged a Covenant and not a Condition, because the Intent appears to be only to abridge the Generality of the Covenant, precedent to which it is adjoined. Mo. 707. pl. 987. cited per Cur. as Patch. 16 Eliz. Hannington v. Holland.

3. Arbitrators award that A. shall have the Lands, yielding and paying 10l. per Ann. In this case it is not a Condition; for it is not knit to the Land by the Owner it self but by a Stranger, viz. the Arbitrator. 3 Le. 58. Mich. 17 Eliz. B. R. Tresham v. Robins.

4. A Recoveror made a Lease for Years, Provise that if the Lessee dies within the Term, his Executors shall pay the Rent to him who suffered the Recovery, this was adjudg'd a Covenant. Mo. 707. pl. 987. cited per Cur. as Mich. 28 & 29 Eliz. Pott's Cafe.

5. A Recital in an Indenture, that before the Indenture the Parties were agreed to do so or so, this was a Covenant, As to say, whereas it was agreed to pay 20l. For now the Indenture itself confirms the Agreement and Intent Precedent, though it be relative to the former Act in Pais, when it is declar'd by Deed it is now a Covenant by the Indenture; Per Hale Ch. J. and Judgment accordingly. 3 Keb. 465. pl. 47. Patch. 27 Car. 2 B. R. Baretoot v. Frewell.

6. A Power to dig up Trees making up the Hedges is not a Condition, but Covenant lies for not repairing the Hedge. 2 Show. 202. pl. 209. Patch. 34 Car. 2. Anon.

Or Non payment of the Rent. 2 Brown. 214. per Fleming Ch. J.

(T) That
(T) That Vendor &c. has a lawful Estate &c. notwithstanding any Act done. And Pleadings.

1. Covenant that the Lands are of the Value of 1000 l. per Ann. and Ann. 134. to shall continue notwithstanding any Act done, or to be done by pl. 185. S. C. & S. P. a- him; Adjudged that the Words (Notwithstanding any Act) extends as well to the Time of the Covenant made as to the Time future, and the Judges, though they were not then of that Value, the Covenant was not broken except some Act done by him was the Cause of it. Cro. E. 43. pl. 4. Mich. 27 & 28 Eliz. C. B. Rich v. Rich.

2. The lesser covenanted, that he had lawful Right and Estate to lease Rep. co. b. the Lands &c. and in Covenant brought by the Lessee, the Breed assigned was, that the Lessee had not a lawful Right and Estate to make a Lease, and so he broke his Covenant; and adjudged that the Covenant being general the Breed may be assigned as General, and it lies for the Plaintiff to show by the Plaintiff's Notice who has the rightfull Estate, but the De- under s C. s. Tenant ought to have maintained that he was seized in Fee and had a good Estate to demesne; and then the Plaintiff ought to show a special Title in some other; But Prima Facie the Count is good, the Covenant being general, has laid in to assign a general Breed; therefore the Judgment was affirmed. Cro. J. 304. pl. 6. Trin. 10 Jac. B. R. Salmon v. Bradhaw.

3. A and B. were Jointenants for Years of a Mill; A. assigns all his Yelverton. C. ad- ture, recites the Lease, and that it came to him by Survivorship, and grants the Refidue of the Term to J. S. and covenants that J. S. shall quietly enjoy notwithstanding any Act done by him. C. ejects J. S. and adjudged that the Words (for any Act done by him) did not qualify the gen- eral Covenant to J. S. Cited per Yelverton J. Litt. R. Mich. 4. Car. C. S. P. cited per Harvey J. as ad- judged in B. as the Case of Johnson v. Proctor.

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4. A. and B. were Jointenants for Years of a Mill; A. assigns all his Yelverton. C. ad- ture, recites the Lease, and that it came to him by Survivorship, and grants the Refidue of the Term to J. S. and covenants that J. S. shall quietly enjoy notwithstanding any Act done by him. C. ejects J. S. and adjudged that the Words (for any Act done by him) did not qualify the general Covenant to J. S. Cited per Yelverton J. Litt. R. Mich. 4. Car. C. S. P. cited per Harvey J. as ad- judged in B. as the Case of Johnson v. Proctor.

Sir Thomas Erasfield's Case.
(U) **Covenant** that he has full Power &c. to convey &c.

A. **Makes a Lease** by Indenture to B. for 21 Years; if C. so long lives; C. is dead at the Time; This Lease is absolute. A. covenants by this Indenture with B. that A. has full Power to demise this Land to B. as aforesaid. In covenant brought by B. against A. upon this, he need not shew how A. had not full Power; it is sufficient for him to declare generally that A. had not full Power; for what Power he had lies in the Knowledge of the Covenantor, and not in Knowledge of the Covenantee. Jenk. 305. pl. 79.

2. If one enters into Articles to sell Land, and he had not any good Title at the Time, yet it is sufficient if Vendor has a good Title at the Time of the Deed, the Direction of the Court being in all such Cases to inquire whether the Seller can, but not whether he could make a Title at the Time of the executing the Agreement; for the Matter of the Rolls. 2 Wms Rep. 630. Trin. 1731. Langlord v. Pitt.

3. A. articled to sell to B. but neither at the Time of the Articles, nor at the Time of a Deed pronounced thereupon, could make any Title, the Reversion in Fee being in the Crown, and yet the Court indulged him with Time more than once for getting in this Title from the Crown, which could not be effected without an Act of Parliament to be obtained in the following Sessions; However, it was at length procured, and it decreed to be the Purchaser. Cited by the Matter of the Rolls. 2 Wms Rep. 630. to have been the Case of Lord Sturton v. Sir Tho. Meers.

(W) **To convey at the Costs of &c. as Vendee or his Counsel should advise.**

1. **The Plaintiff** covenanted to make an Assurance by a Day of Lands, as the Counsel of the Defendant shall advise; and on perfecting thereof the Defendant is to pay 500 l. and 500 l. more, generally within 3. Months when demanded. Breach was assailed in Non-payment of the whole. The Defendant pleads the Plaintiff had no Estate which he could convey, to which the Plaintiff demurred, in regard this Payment is collateral, and the latter is general, without Reference to the to the former; But per Cur. the first depending on the Assurance, the latter must be to that is subsequent; So if no Assurance, nor Thing is to be paid, and fo the Pleas of the Defendant is good, although the Plaintiff avers he was always ready to perfect it, and that the Defendant never tendered, nor has paid &c. prater Twidten, who conceived it is
Covenant. 423

at the Defendant’s Peril to cause an Assurance, and if the Plaintiff refruses for to convey by Fine &c. then he is liable, else not; But per Cur. this is good in Action by the Defendant for Non-assurance, but here the Action is for the Money, and so the Defendant hath Election to plead, as here, or that he tendered special Conveyance by Advice, and the Plaintiff refrused; Judgment for the Defendant nili. Keb. 734. 735. pl. 15. Trin. 16. Car. 2. B. R. Audley v. Berry.

2. There is a manifest Difference between a Covenant to make a Conveyance at Charge of Covenantor, and a Covenant to convey to Covenantor, and be covenants to be at the Charge of it; For in the first Case, Covenantor is not obliged to perform till Tender of the Charges; but in the second he is to convey at his Peril; and if Covenantor will not pay, he has his Remedy against him upon his Covenant; but where Covenant is to make Conveyance at Charge of Covenantor, Covenantor ought to give Notice to Covenantor what Sort of Conveyance he intends to make, that Covenantor may judge what Charge to tender; Per Holt Ch. J. 12 Mod. 400. Paish. 12 W. 3. Steer v. Shalicroft.

(X) To convey. Notice; in what Cases to be given.

1. If covenant be to make a Feoffment &c. before such a Day, Covenantor ought to give Notice when he will make it, that Covenantor may be there to receive it; other wise if it be to make a Feoffment on a Day certain; but in that Case, Covenantor must plead a Tender on the last convenient Time of that Day; Per Holt Ch. J. 12 Mod. 401. Paish. 12 W. 3. in Cafe of Steer v. Shalicroft.

2. If A. covenants with B. to make further Assurance to B. at the Costs of B. A. ought to give Notice to B. what Sort of Assurance he will make, and then B. ought to tender the Costs, and then A. ought to make the Assurance; But if the Covenant is, that A. shall make a new Demise to B. at the Costs of B. (as the Covenant, upon which this Action was brought, was) or any particular Assurance specified in the Covenant, then B. ought first to tender the Costs, and then A. ought to make the Assurance; For in the former Case B. cannot know what Costs will be sufficient to tender, before he knows what Sort of Assurance A. will make; but in the latter Case, by the Inspection of the Covenant itself, he will know what Sort of Assurance will be made. Ruled by Holt Ch. J. upon Evidence at the Trial, at Lent Aisles, at Southwark. 2 Ld. Rym. Rep. 750. March 27. 1 Ann. 1702. Heron v. Teyne.

(Y) That he is feised in Fee &c. And Pleadings.

1. Covenants that he is seised of Black Acre in Fee-simple, where in Truth it was Copyhold in Fee according to the Customs; Per Cur. it is no Breach of Covenant, and the Jury shall give Damages in their Consciences according to the Rate that the Country values Fee-simple Land more than Copyhold. Noy. 142. Grey v. Brifcoe.
Covenant.

2. Lease of a Meadow for Years, in which the Lessor covenanted, that he was lawfully seized in Fee; Lefsee brought Covenant, and assigned for Breach, that the Lessor was not seized in Fee, and had a Verdict. It was moved in arrest of Judgment, that the Breach was too general, because he did not shew that any other Person was seized in Fee, nor any Cause why the Lessor was not seized; Sed non allocatur; For as the Covenant is general, so the Breach may be assigned generally; especially since in this Case where the Defendant by pleading Non eff actum has made the Declaration good, and so allows the Breach if it had been his Deed; And Judgment for the Plaintiff. Cro. J. 369. pl. 3. Patch. 13 Jac. B. R. Mucicet v. Baller.

3. Debt upon a Bond conditioned to perform Covenants, one whereof was, that the Defendant was seized of an indefeasible Estate in Fee-simple. The Defendant pleaded Performance. The Plaintiff replied, that he was not seized of an indefeasible Estate in Fee-simple; The Defendant demurred generally, because he supposed the Plaintiff ought to shew of what Estate the Defendant was seized, because he had parted with all his Writings to the Plaintiff, who must therefore well know the Title, and it is not like 27thnu's Case, because there the Covenant was with the Lefsee for Years, who had not the Writings, but adjudged that the Breach was well assigned according to the Words of the Covenant. Raym. 14. Patch 13 Car. 2. B. R. Gliniter v. Audley.

(Z) For quiet Enjoyment. And Pleadings.

1. Covenant was brought by the Lefsee against the Lessor, because the Lessor after the Lease made a Feoffment to one who ousted the Lefsee, and it was awarded that it lies well; Quod Nata, and yet the Lefsee might have had Re-entry, or have had Quare eject infra Terminum by the Statute, and yet this does not toll the Action of Covenant which is given by the Common Law, notwithstanding that Quare eject infra Terminum is given by the Statute; but Brooks makes a Quare, if he cannot recover against the Lessor by the one Writ, and against the Feoffee by the other Writ; for he may recover by two Quare Impedits of one Avoidance. Br. Covenant, pl. 7. cites 46 E. 3. 4.

2. Covenant that Lessor might be 4 Days a Year in the House without being put out, on Pain of 100 l. The Lessor came to enter, and Lefsee shut the Doors and the Windows. This was held to be no Breach of Covenant without saying that the Lefsee put him out; Arg. Godb. 75. cites 3 H. 4. 6. Br. Condition, 35.

3. If a Termor be ousted by him who has no Right, he shall not have Covenant against the Lessor, for he may have Ejecitio Personæ; but if he be ousted by him who has Right, there lies Writ of Covenant. Br. Covenant, pl. 20. cites 22 H. 6. 32.


5. In Debt, if the Defendant pleads Condition or Defeance, that be and his Feoffees permit N. N. Plaintiff to enjoy two Hovses in S. for 20 Years, that then &c. It suffices to say that he and his Feoffees suffered him to enjoy them &c. without showing the Names of the Feoffees, because Sufferance is no Act; But if it was that he and his Feoffees shall make E-
Covenant.

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state, there it is Contra; For this is an Act; Note the Diversity; Pet Cur. Br. Conditions, pl. 157, cites 17 E. 4. 2.

6. Bond was continued to surrender certain Copyholds, and to suffer him and his Heirs quietly to enjoy the same without Interruption of any; the Defendant pleaded Performance, and that the Plaintiff continued peaceable in Possession, for a certain Time, according to the Condition; but that afterwards the Rent being arrear, the Lord entered for a Forfeiture according to the Custom. This was held a good Plea, for if he was Tenant at Common Law, and the Obligee sealed, the Obligation is saved; because it was the Act of the Plaintiff himself. Dyer 32. a. pl. 205. 28 H. 8. Anon.

7. In Debt upon Bond; the Condition was, that whereas W. the Obligor had sold a certain Meadow to G. the Obligee, that he would warrant the same against the King, Lord, and all others, and that he should enjoy the same peaceably to him and his Heirs to hold of the Lord of W. by the Services thereof, according to the Custom of the Manor. The Defendant pleaded, that the Meadow was Copyhold, Parcel of the Manor of B. the Custom whereof was, that it the Rent be in arrear &c. the Lord might enter for a Forfeiture, and that G. was admitted to him and his Heirs, and had peaceably enjoyed the Lands, and died taint, and that the same defended to his Son who did not pay the Rent, and therefore the Lord entered for a Forfeiture; and upon a Demurrer to this Plea all the Justices agreed, that when a Man binds himself and his Heirs to Warranty, they are not bound to warrant new Titles of Actions accrued by the Feoffee, or any other after the Warranty made, but only against such Titles as were then in Effe at the Time of the Warranty, and therefore, because the Title to enter, given to the Lord by the Custom for Non-payment of Rent, accrued after the Warranty, the Defendant was not bound to warrant against it. Dy. 42. Mich. 30 H. Greenly's Cafe.

8. Bond for quiet Enjoyment, as that Leefe shall take, reap, and carry away his Corn peaceably, without Interruption; Letfor coming on the Land in Harvest when Leefe is reaping, and saying that he shall not reap any Corn there, though he reaps and carries away, yet it is a Forfeiture. Godb. 22. pl. 30. Hill. 26 Eliz. C. B. Anon.

9. Leafe for 6 Years with a Covenant that Leefe should enjoy it quietly during the Term discharged of Tithes, and that it Tithes should be recovered, he should recoupe in his Hands the Value of the Tithes to recovered. Covenant lies against Letfor if Leefe is sued for the Tithes after the Leafe ended, for that is within the Intent of the Covenant; Per tot. Cur. Cro. E. 916. pl. 7. Hill. 45 Eliz. B. R. Lanning v. Lovering.

10. In Debt on Bond to perform Covenants; the Covenant was for quiet Enjoyment, without Let, Trouble, Interruption, &c. The Plaintiff aligned the Breach, that the Defendant forbade the Tenant to pay Rent to the Plaintiff. The Court held this to be no Breach, unless there were some other Act; And the Defendant pleaded, that after the Time the Plaintiff said, that the Defendant forbade the Tenant to pay the Rent, the Tenant paid it to the Plaintiff. Brown. 81. Trin. 9 Jac. Whitecot v. Lindley.

11. Deed upon Obligation upon a Condition, that where the Plaintiff had a Lease for Years from the Leffer of certain Land, that the Leefe should enjoy this Land during this Lease without Eviction; the Breach was alleged in the Replication, in a Recovery of this Land by A by Verdict, and upon a good Title; the Issue was, that the Recovery was by Covin; and it was found for the Plaintiff; he had Judgment, which was reversed in the Exchequer-Chamber; For A might recover this Land by Verdict, and without Covin, under a Title derived from the Plaintiff himself; therefore the Plaintiff ought to shew that A had an elder Title to the said Leale made to the Plaintiff. Jenk. 340. pl. 45.
12. In Actions on Breach of Promise or Covenant for Enjoyment &c. against Incumbrances, the Plaintiff ought to show a lawful Incumbrance. 1 Co. J. 425. Patch. 15 Jac. B. R. Brooking v. Cham.

13. The Lessor made a Lease for Years, and covenanted that neither he nor his Executors, or Heirs, should interrupt the Lessees, but that he should quietly enjoy during the Term. In an Action of Covenant brought for the Entry of the Executors, it was adjudged that the Plaintiff need not show that the Executors executed by an elder and good Title, for as to the Plaintiff it is all one, whether the Action is brought against the Covenantor or his Executors, but if the Entry had been by a Stranger, then he must set forth an Entry by an elder and good Title. 1 Rell Rep. 21. Patch. 16 Jac. B. R. Forte v. Vines.

14. G. L. brought an Action of Covenant against N. M. and declared that C. C. had granted the next Avoidance of the Church of D. to T. M. and that N. M. was his Executor, and that N. M. assigned this to G. L. his Executors, and Affirms, to present to the same Church when that shall become void, and covenanted that the same Person, who shall be so presented by him, shall have and enjoy that without the Let or Disturbance of the said C. C. or N. M. or any of them, or any by their Procurement; and after G. L. presented J. S. and after J. W. presented another, claiming the first and next Avoidance by the Procurement of C. C. and ruled that Declaration was not good; for it ought to say that C. C. granted to J. W. the next Avoidance, and procured him to disturb, and that by his Procurement he was disturbed; Athiswaid, it seems to me to be but little Difference to say he defiled me by the Procurement of J. S. and he commanded J. S. to disturb me, and he did that accordingly at his Command. Win. 4. Patch. 19 Jac. Lewings v. March.

15. Lease for Life by A. to B. A. covenants for him and his Heirs, that he would give B. harmless from any claiming by, from, or under him. A died. A's Wife brought Dower, and recovered. B brought an Action of Covenant against the Heir; Adjudged against the Heir, because the Wife claimed under her Husband who was the Lessor; but if the Woman had been Mother of A. the Action would not have lain against the Heir, because the did not claim by, from, or under A. Godb. 333. Trin. 21 Jac. and says it was so adjudged 11 H. 7. 7.b.

16. In an Action of Covenant to perform Articles, which were, that the Plaintiff should hold and enjoy Lands free from all Titles and Incumbrances, and for Breach the Plaintiff swore that B. died seized, and that his Wife had Title to Dower, to which the Plaintiff demurred; and per Cur. this Covenant goes to the Land, and there can be no Difference between a Covenant to discharge the Land of all Titles, and that the Defendant shall hold the Land to discharged; Judgment for the Plaintiff Niti. Keb. 937. pl. 53. Trin. 17 Car. 2. B. R. Andrews v. Tanner.

17. If a Man sells Land with a Covenant for quiet Enjoyment without any Disturbance &c. these Words must be intended a lawful Disturbance. Vaughan. 119. 122. Patch. 21 Car. 2. C. B. in Case of Hayes v. Bickerstaff.

18. But per Vaughan. If the Covenant be express that he shall enjoy his Term without the Interruption of any, whether such Interruption be lawful or tortious, there the Lessor shall be charg'd for the tortious Entry of a Stranger, because the Covenant can have no other Meaning.
Covenant.

The Defendant covenanted that the Plaintiff should enjoy Black-Acre without any lawful Let, Suit or Interruption, immediately after the Death of Z., and the Plaintiff swore in his Declaration that the Lands were part of the Duchy of Cornwall and did belong to the King; and that be by his Letters Patent had conveyed them to J. S. &c. The Defendant demurred because the Plaintiff did not allege an Entry, and it could not be disturbed. Per. Cur. the Declaration is good enough, for having set forth a Title in the Preamble of the King, the Plaintiff shall not be enforced to enter, and subject himself to an Action by a tortious Act. Judgment for the Plaintiff. Freem. Rep. 122. pl. 143. Trin. 1673. Clouke v. Hooper.

20. The Defendant leased Lands to the Plaintiff, and promised that he should enjoy it quietly, without Interruption of any Person; and the Plaintiff swore an Interruption, but did not show any Title in the Intermptor, nor any lawful Interruption. The Court gave Judgment for the Plaintiff, upon the Authority of Dyer 328. and Hob. 35. And Wylly said, that where in a Deed a Man covenants, that be hath a good Right to convey, &c. and that the Party shall quietly enjoy, one Covenant goes to the Title, and the other to the Possession. Freem. Rep. 452. pl. 612. Pahl. 1677. Anon.

21. In Covenant the Plaintiff declar'd on a Demise of a Mansuage to the Defendant together with a Garden, and an House of Office at the upper end thereof, and covenanted for Enjoyment of the Premises so demised, and aligins a Breach, that the Defendant had built a House on part of the Garden, whereby the Plaintiff could not have the Use of the Garden, according to the Form and Effect of the Demise; the Defendant pleaded, that notwithstanding the said Building, the Plaintiff might have the Use of the Garden according to the true Intent of the said Demise, and traversed, that the Building did hinder the Plaintiff from the Use thereof, according to the true Intent of the said Indenture; and upon Demurrer it was adjudged, that the Use of the Garden is the Use of the whole Garden, and not a Pajillage only to the House of Office; and the Traverse is of more alleged in the Breach Secundum veram Intentionem of the said Indenture, and the Court cannot understand the true Meaning of the Indenture but only by the Words in it; and Judgment for the Plaintiff. 3 Lev. 167. Trin. 36 Car. 2. C. B. Kidder v. Weift.

22. A Suit in Chancery for Waste tho' groundless, is no Interruption or Disturbance within the Covenant for quiet Enjoyment without any manner of Interruption, it not touching the Lettee's Estate or Title.


23. All which said Profits, Salaries, Penions &c. of the said Office I do hereby engage my self, that the said A. shall receive and enjoy during his Life, S. C. in C. and that I will not receive any Part thereof during A's Life. This was a B. — 4 Mod. Covenant from one that was admitted to an Office to him that resigned the same. The Court of Common Pleas were of Opinion that this Agreement did not bind the Covenator to pay the Money. But Holt Ch. J. and Eyre doubted of that Matter; But all agreed that A. must have for Breach that he could not receive any of the Money. Carth. 189. Mich. 3 W. & M. in B. R. Killigrew v. Sayler.

24. Covenant in an allignment of a Leafe, that the Affiance should quietly Enjoy &c. free and clear of and from all Arrears of Rent; the Breach alleged was, that the Rent was arrear, and not paid; the Defendant pleaded that he left so much Money in the Hands of the Plaintiff, at Intention to pay it over to the Lessor in discharge of what Rent was then pl. 2. S. C. arrear &c. And upon a Demurrer this Plea was held good notwithstanding the Court standing the Objection, that the Intention was put in Issue; for if it been Ad tolleendum, it would have been good, and in this Case the Plea was good, Plaintiff.
Covenant.

but held clearly that it had been relinguish'd, that is that it had been good, and that Non reliquit Modo & Forma had been a good Travers.

25. Vendor covenanted that Vendee should enjoy, quietly and clearly acquired of and from all Grants &c. in manibus suis ad fordom, &c. 4 Mod. 249. Mich. 5 W. & M. in B. R. Griffith v. Harford.

26. A Covenant to enjoy without Disturbance generally shall be construed a Disturbance by legal Title, but where a Man covenants expressly against those who claim or pretend to have a Right, the Breach is well aligned tho' the Disturber has no legal Right. Comyn's Rep. 232. pl. 127. Mich. 2 Geo. C. B. Southgate v. Chaplin.

27. A Covenants that B. shall quietly enjoy, and that he will not do anything to molest, hinder &c. Setting up a Gate crofs a Lane, through which there was a Way to the Land, is a Breach; Adjudg'd in B. & affirm'd in B. R. It was urged for the Plaintiff in Error, that nothing appear'd in the Replication to shew that the setting up the Gate was unlawful; for there may be another Way which might make it necessary and lawful to set up a Gate. But per Cur. this appearing to be a necessary Way for the Enjoyment of the Clefe it is not material to B. whether it is set up by Right or Wrong. For in either Case, if it is an Obstruction, it ought not to be erected there. 8 Mod. 318. Mich. 11 Geo. Andrews v. Paradise.

(A. a) That it is clear of, and discharged of Incumbrances, and shall be saved Harmles.

1. If a Man be bound to make a Feoffment of certain Land discharged, and after makes the Feoffment, and Seigniory is infuming out of it, yet the Bond is not forfeited; For this is a Thing of common Right. Br. Conditions. pl. 126. cites 3 H. 7. 14.

2. The Earl of H. covenanted with the Lord C. to make him a good pure sufficiency and lawful Estate in Fee-simple of the Manor of D., before Eater, discharged of all former Incumbrances except Leases, whereupon the ancient Rent, or more is reserved; after, and before the Feoffment be made a new Lease rending the ancient Rent. By the Opinion of 2 contra 2. is no Breach. Dy. 139. pl. 34. Hill. 4 B. & M. Huntington v. Clinton.

3. A bargained and sold Land, and covenanted that it should be discharged of all Charges. He had granted a Rent before to begin 20 Years after; when the Rent begins it shall be said a Breach. Arg. Goldsb. 59. cites it as adjudged in 8 Eliz.

4. A Man leaves a Fine of certain Land, and after covenants that the Land is discharged of all Acts and Incumbrances done by him, and in
Truth the Post-Fine was not paid. Per Dier it is clear that the Covenant is broken; for all the Lands of him that levies the Fine are chargeable for the Post-Fine, and especially this Land of which the Fine was lev'd. Dal. 78. pl. 11. 14 Eliz.

5. Covenant &c. upon an Indenture vesting a Lease made by D. B. of a Messuage, &c. in which Indenture the Defendant covenanted, that the Original Lease was good and was incumbred; then he alleged the Breach, that A. and B. claim'd a Title under the Defendant to part of Premises, by Virtue of a Lease which he made to them; the Defendant pleaded as to Parcel, that A. and B. had no Title under him, and as to the Residue, that the Plaintiff had Notice of the Lease before the Defendant assigned the Original Lease to the Plaintiff, and that after the Death of A. the other Tenant B. attorned Tenant to the Plaintiff, upon Demurrer to this Plea the Plaintiff had Judgment. 1 Lew. 517. Levert v. Witherington.

(B. a) That the Lands are or shall be of such a Value. Extent thereof.


2. If A. Limits an Estate to A. for Life Remainder to B. for Life, Remainder to the 4th. 6th. &c. Son of their 2 Bodies, Remainder to his own Right Heirs, with such a Covenant annexed to it, that the Lands should be and for ever continue of the Value of 200 l. a Year, it will extend to the Estates for Life, and the Estates Tail; but if for Default of Issue of the Bodies of A. and B. the Reversion devolved to the collateral or lineal Heir of H. be shall never take Advantage of it, because he is not privy to the consideration of the Deed nor party to the Deed, nor is his Estate vested by the Deed. But if in such Case the Remainder had been limited to the right Heirs of A. or B. or of J. S. they might sue upon this Covenant because they had taken by the Limitation of the Deed, and are privy to it. Per Holt Ch. J. Lord Raym. Rep. 366. Mich. 10 W. 3. Anon.

(C. a) Where it restrains the Generality of the Grant &c. the Covenant being particular, and referring to Words, viz. until &c. shewing the Intent.

1. A is bound to B. to make him a sure and sufficient Estate of the 5 Rep. 23.

the Manor of Dale by the Advice of J. S. If J. S. advised in Lamp's Cave, cites the Estate, and it is not sufficient, yet the Obligation is saved; by S. C. & the Justices of both Benches; Qui amat periculum in Periculo peribit.S. P.

If the Condition of the Obligation had been to make him a sure Estate; the Obliger is to do it at his Peril. If he be to make a sure Estate as the Obligee or his Counsel shall advise, the Obligee ought to certify what Estate he will have; and if it be not sure, yet the Obliga-
Covenants.

2. In a Lease by Demise, Grant &c. there was a Covenant for Lessor's Quiet Enjoyment without Election by Lessor or any claiming under him; it was held by Popham Ch. J. and the whole Court, that the said Express Covenant qualifies the Generality of the Covenant in Law, and restrains it by the mutual Confent of both Parties that it shall not extend farther than the Express Covenant; For Chitty v. Generalis non refriger ad expressa. 4 Rep. 80. a. Trin. 41 Eliz. Nokes's Cafe, alias, Nokes v. James.

3. A. and B. Jointenants for Years of a Mill; A. grants his Moity to J. S. and dies; B. not knowing of the Grant by A. and thinking himself intitled to the whole as Survivor grants the Mill, Lands &c. and all his Estate, Title &c. in it to J. N. and covenants that J. N. shall enjoy for any All by him &c. J. S. evicted J. N. of a Moity; adjudged and affirmed in Error that Covenant lies. For this Cafe is not like to Nokes's Cafe 4 Rep. 80. b. For there the Grant was once good for the whole and became ill by Election afterwards, and therefore the Covenant ensuing qualified the General Covenant, But here the Grant according to the Purport of it never was good; For B. had no Power to grant the Moity of A. that being granted away by A. to J. S. and yet in B's. grant to J.N. he has expressly granted the Mill, and Land &c. so that the Grant being Defective at first as to a Moity, which is the Substante and Agreement of the Parties, this does not qualify the General Covenant. Per to. Cur. Yelv. 175. Pash 5 Jac. ed Nif. &c. and nothing was said. — S. C. cited by Yelverton J. as a Cafe in which he was of Counsell. Litt. Rep. 205, 206. Mich. 4 Car. ——— S. C. cited Arg. 2 Show. 450.

4. Tenant in Fee-simple grants 100 Trees to B. and covenants that B. may take them within 5 Years; the Grant implies an absolute Liberty to B. to take; but if the Covenant were on the Part of B. not to take after the 5 Years it would not extinguish his property, nor consequently his Power to take them after the 5 Years, and therefore if he took them he might plead Not-Guilty in Trespass but should be answerable to an Action of Covenant for it; Per Hobert Ch. J. Hob. 173. Hill. 12 Jac. in Cafe of Stukely v. Butler.

5. Condition was that if A. shall truly exercise his Office &c. and also shall Quarterly make his Account of all Monies by him receiv'd for Caufons, and Pay all Monies by him receiv'd, and do Account at such Times as he shall be thereinunto reasonably require'd then &c. the Clause of reasonably require'd goes only to the Payment of the Money being the last Antecedent, and also the Account is limited to be made Quarterly and expres'd by Words, and therefore the Words can't extend to it. Litt. R. 101. Trin. 4 Car. in Seacc. The King v. Points.

6. In Covenant the Plaintiff declared, that the Defendant sold Lands to him which he had Purchased of one Woolaston, a Trustee for the Sale of Delinquents Estates, and covenanted, that he was feized of a good Estate in Fee according to the Indenture made to him by Woolaston and assigned the Breach, that he was not feized of a good Estate in Fee; the Defendant pleaded, that he was feized of as good an Estate as Woolaston &c. conveyed to him; The Plaintiff Demurred and had Judgment; for the Covenant was absolute that he was feized of a good Estate in Fee, and the Reference to the Conveyance by Woolaston serves only to the Limitation.
Covenants.

Limitation and Quantity of the Estate, and not the Defeasibleness or Indefeasibleness of the Title. Lev. 42. Trin. 13 Car. 2. B. R. Cook v. Founds.

7. The Defendant granted a Fee-Farm Rent to the Plaintiff, and covenanted that he was feided in Sec, and had good right to sell; and in an Action of Covenant the Plaintiff assigns the Breach, that the Defendant had no good right to Sell, by having Purchased it of the late Trifles for the Sale of the King's Lands, pleased that it was farther agreed in the Indenture, that all the Covenants therein should not extend farther than to Ali's done by the Vendor and his Heirs; whereupon the Plaintiff Demurred and though it was placed at the end of the Indenture far distant from the other Covenants it was adjudged, that this had qualified the first Covenant, and restrained it to Ali's done by the Covenantor. Lev. 57.


8. Levior of certain Gravel-pits in Black-Acre covenanted that he his Heirs, Assigns or Undertainers would not dig or sell any Gravel there. In pl. 11. S. C. Covenant brought by the Lessee he assigned the Breach, that J. S. an Undertainer dug and sold Gravel in other Pits in Black-Acre. It was objected that Covenant extended only to the Pits demised; but the Court held that it ought to be intended of other Pits in the Clofe and not of those demised to the Plaintiff, and Judgment for the Plaintiff. Lev. 144. Mich. 16. Car. 2. M. Brown v. Alton.

9. A poor Covenant shall not be restrained by a subsequent one when they make but one entire Sentence, and not distinct Covenants, in which Case the Construction must be upon the whole Sentence. Saund. 58.


10. Where there are restrictive Words at the end of the last Sentence, and may be indifferently applied to both the Precedent Sentences. Ibid.

11. And a general Covenant in Law may be restrained by a Particular Covenant in Fact. Ibid.

12. Again it a restrictive clause be in the first or the last Part of a Sentence, or as the beginning of the first or at the last Sentence, which in good sense may be applied either to the one or the other, there it shall extend to both Sentences. Ibid.


14. In the Condition of a Bond to perform Instructions in a Paper annex'd &c. reciting, that whereas Lord A. had deputed J. Deputy Post-Master of the Stage of O. to execute the said Office for 6 Months, if the said J. should fail and during all the Time that it should continue Post-Master &c. perform the Instructions in a Paper annex'd &c. Here, though the Words (during all the Time &c.) are indefinite, yet by the Intention of the Condition the Obligor is not to be answerable for T. for any more Time than the 6 Months; the Condition shall refer to the Deputa-

Recital only. So in a Condition it was recited, that a Sheriff had constituted such a one to be Bailiff of a Hundred &c. if therefore the said Defendant should execute all Warrants to him directed then &c. Warrants here are only such as were directed to him as Bailiff of the hundred, and not other Warrants. 2 Saund. 413, 414. Patch. 23 & 24. Car. 2. Lord Arlington v. Merrick.

15. Where the Generality of the Covenants were restrained to Ali's of his own, but there was one Covenant absolute, as that he had good and lawful Power to grant &c. which was contrary to the Intent of the Parties and the Tenor of the Deed, it was relieved. Fin. R. 50. Hill. 25. Car. 2. Feilding v. Studley.

16. Charles
Covenant.

MS Rep. 16. Charles Harward in Consideration of Marriage, and Marriage Settlement, covenants "That he the said Charles Harward shall and will, by Deed or Deeds in his Life-time, or by his Will, give, grant, convey, settle or devise for ever, all other his Lands &c. and all Rights, "Title &c. after his and his Wife's Death, unto the said Katherine his "Daughter, and such Child or Children of her the said Katherine his "Daughter by A. C. her Intended Husband, to be begotten in such Manner "and Proportion as to him the said C. Harward shall seem meet, and shall "not, neither will, give or grant to the said Katherine his Daughter any "further or other Estate therein than for her Life; provided that the said "Katherine, or any Child or Children of the said Katherine, by the said "A. C. to be begotten, shall be living at the Time of the Death of him the "said Charles Harward, and no otherwise."

Lord Chancellor said, The first Thing is as to the Construction of the Covenant; The next Thing is as to the Rents and Profits of the Estate of Charles Harward.—By the Covenant he put himself under an Obligation to dispose of the whole Estate subject to the Estate for Life to his Wife.

By the Will he gives the whole Estate to Trustees and their Heirs, to the Ufe of his Grandton for Life, Remainder to his first and other Sons in Tail, then to his Grand-daughter, and the Heirs of her Body, Remainder to his own right Heirs, i.e. to his Daughter, who is his Heir at Law. He directs that his Trustees should present such Persons to the Church of Tallerton as his Daughter should appoint. All the Benefit that his Daughter was to have out of his Estate, was the next Presentation to Tallerton as his Daughter should appoint, (probably he intended the second Husband) and the Remainder in Fee, although he took the same by Defect, not properly by the Devil.—And what ariseth by this Covenant?

On this Covenant there are two Questions:

1st. Whether Charles Harward was under a Necessity of giving any Thing at all to his Daughter? if not under a Necessity, whether the Disposition he had made in Favour of his Grand children was good or not? And then another Question, that supposing he was under a Necessity of giving something to his Daughter, what that something was? Whether she was to have an Estate in the whole, or whether it was in his Power to adjust the Proportions between her and her Children, and leave her some minute Thing or Part?

The Words are, unto Catherine his Daughter, and such Child or Children, and if the Word (or) disjoins the whole, then it is clear he had an Election to give to any Child, or to all the Children exclusive of the Daughter, and it would be equally clear to give it to the Daughter, exclusive of the Children, were it not for the reiterative Words, which exclude him from giving her a greater Estate than for Life.

In the Cases mentioned, (to wit) Co. Litt. 225. a. 1 Le. 71. Mo. 239. the Rule is laid down generally, (See the Books) but Cases may happen from the different Penning of the Clauses, where the Intent of the Parties may appear to clear, that a Conjunctive shall stand for a Disjunctive, and a Disjunctive for a Conjunctive, but the Court ought not to do Violence to the Words where there is not any Thing in them to take away the natural Sense and Meaning of those Words.

In this Case, if the Words had been only to the Daughter, and to such Child &c. as to him should seem meet, then the Daughter must have had something, but the Word (or) afterwards makes the Difficulty.

If the Words had been, I give to my Daughter, and such Child of my Daughter &c. as he should think fit, or to my Daughter and the Children of my Daughter, there would be no Necessity there should be a Construction to vary the Words, or put (or) for (and) but here...
there is no Violence done to the Words to use the whole in the Disjunctive, it may be taken in that Sense, and therefore he rather thought they would be taken in the disjunctive Sense throughout.

Provided that the said Katherine, or any Child or Children &c.

What Event was here to be provided for? If the Daughter, or any Child or Children were living, the Provision was to take Place.

If in the Beginning the Words are to be taken in the Conjunctive, so as to oblige him to give something to the Daughter, then the last Words, which are plainly in the Disjunctive, would bind him to convey to his Daughter though his Daughter was dead. Another Reason why he thought the Words should be taken in the disjunctive Sense was, from the other Provision that was made, that he should not, nor would give or grant to his Daughter any further or other Estate than for Life.—He is bound to make a Disposition of the whole; he must give the whole to his Daughter, but that was not his Meaning.—This is put upon him by negative and restrictive Words—The Family, not the Daughter only, but the Issue of the Marriage, was chiefly under the Consideration of the Parties.

With regard to the Daughter, he might chuse whether he would or would not give any Thing to her, but he might have an Estate for Life if he thought fit.

Another Reason, and that is from the whole Tenor of the Covenant. If the Words (in such Manner and Proportion as he should see meet) refer to the Children only, and the Power of Disposition is not over the Whole, and the Daughter must have an Estate for Life in the whole in all Events, it would be an absurd Provision to say, I give to my Daughter, or her Child or Children &c. provided that I do not give her more than an Estate for Life, is plain, if not, to put them all under one Restriction, that Negative is far from affording an Argument for the Construction contended for, for the Event was uncertain whether she should have Children or not.

But if the Daughter was under the Power of her Father, he might give her as minute a Part as he thought fit, if he was under a Necessity of giving something to her, what that was to be was in his Discretion, but not more than an Estate for Life.—A further Reason for taking the Words in the Disjunctive is, that it seems to have been the Intent, and to be stipulated that he might give to one, or 2, or to 3 &c. in such Proportion as he thought fit.

But he relied chiefly upon the Words of the Proviso (provided that said Katherine, or any Child or Children &c.)—The Authorities seem to warrant this disjunctive Sense, but the Reason of the Thing that arises from the same Place and Words doth warrant this Construction. And as to the negative Words, that he should not, nor would give or grant any further or other Estate, do refer to the subsequent Words (for her Life.) It was to be left in Doubt, whether the should have even that, or not, and the other Clauses will fall in with it when the Whole is taken disjunctively.—He has done as far as he was bound to do, he was obliged to convey the Inheritance for ever, he has by his Will given to his Grandson an Estate Tail, Remainder to his Grand-daughter in Tail, Remainder to his right Heirs.

His Lordship's present Thoughts were, that Charles Harward had understood the Covenant in the right Way, that he would not take any Thing from the Grand Children which he had given them, but the Rents and Profits are to go for the Benefit of the Plaintiff Charles; And decreed accordingly.
(D. a) Negative and Affirmative Covenants. Construction and Pleadings.

1. Affirmative Covenants do not take away the Power which the Law gives; as where Lessor may take Hedge-boot &c. by Assignment, yet he may take it without Assignment; Arg. Cro. J. 41st, cites D. 19. [b. pl. 115. &c. Trin. 28 H. 8. Anon.]
   Hob. 173.
   ches S. C.
   that Leffer that Leffer may take it without Assignment, but otherwise had it been in the Negative.

2. Lessor covenanted that Leffer shall have sufficient Hedgeboot by Assignment of the Lessor's Bailiff; Bauldwin and Fitzherbert held that he may take it without Assignment; For the Law by Implication gives it to him, but Shelly e contra. D. 19. b. pl. 15. 28 H. 8.

Ibid. Marg.

3. If A. leaves 2 Acres of Meadows to B. and covenants that it shall be lawful for B. to cut the Gras at the Assignment of A. yet B. may cut the Gras notwithstanding those Words; But if B. covenants on his Part in a Negative, Action of Covenant will lie; or if it was a Condition, which is a Negative in Law, as Provifo that he shall not &c. without Assignment &c. in this Case if he does, then clearly A. may enter; But in the other Case it is a Grant of the Lessor in the Affirmative; Per Baldwin and Fitzherbert; but Shelley e contra. The Reporter adds, Quere bene Casmum. D. 19. b. pl. 116, 117. Trin. 28 H. 8.

4. Debt on Bond for Performance of Covenants in an Indenture, whereof some were in the Affirmative, and some in the Negative; Defendant pleaded a Performance of all the Covenants generally. Upon Demurrer it was adjudged for the Plaintiff. Cro. E. 691. pl. 29. Trin. 41 Eliz. B. R. Cropwell v. Peachy.

5. In Debt upon an Obligation condition'd to perform Covenants of Under-Sheriff's Bailiff, Part in Negative, Part in the Affirmative, the Defendant as to those in the Negative pleaded negatively, and those in the Affirmative, that he had observed them; to which the Plaintiff replies, that the Defendant was not affixing at the Assrt of f. S. to which the Defendant demurred; the Court conceived the Plea ill, without knowing how he had performed them, and yet the Replication is good to show a Cause of Action; for the naughty Plea was a Trap that the Plaintiff should have demurred, and so no Cause of Action would appear; Judgment pro Plaintiff Nifi. 2 Reb. 403. pl. 21. Mich. 20 Car. 2. B. R. Clavell v. Galler.

(E. a)
Covenant.

(E. a) Distinct and Independent Covenants. What shall be said of such.

1. A Covenant, that notwithstanding any Act done by him, be Lit. Rep. 80, 81. Crayford v. Crayford, held, and further, that it was of the annual Value of 300 l. a Year. The Court upon the first Argument resolv'd, that the last Covenant was absolute and distinct, and had no Defendence upon the first Part of the Covenant. Cro. C. 106, pl. 8. Hill. 3 Car. C. B. Crayford v. Crayford.

S. C cited by North Ch. J. 3 Lev. 46. Trin. 25. Car. 2. C. B. in Case of Martin v. Mills, which was, viz. Covenant &c. in which the Plaintiff declared on a Possession of Lands, wherein the Defendant's Testament covenanted, that notwithstanding any thing by him done, he was seised in Fee &c. without any Condition &c. and also, That he had full Power to sell. And also, That the Lands were clear of all Incumbrance by him or his Father. And 4thly, That the Feoffee should enjoy against Perpetual claiming under him, his Father, or Grandfather, and assign the Breach, that the Testator had no Power to sell. Upon Demurrer it was agreed, that these were distinct Covenants, and 3 Judges against North Ch. J. held, that though the Covenants were distinct, yet the two first are of the same import; for if he is seised in Fee he hath Power to sell, and when by the first he covenants only against his own Acts, it can never be intended, that immediately by another Covenant of the same Effect he would covenant against the whole World. Now in Crayford's Case the Covenants were of different Nature, and concerning different Things, though of the same Lands; but in this Case the two subseuent Covenants are particular and restrained, and therefore the middle Covenant shall not be indefinite and general.

(F. a) Not to alien &c.

1. LeR for Years covenant'd, that if he, or his Executors, or Assigns, did alien, it should be lawful for the Lessor and his Heirs to enter;缴费 afterwards made his Wife Executrix, and died; She married again, and the Husband being possessed of the Term in Right of his Wife, who was Executrix as aforesaid, aliened the said Term. Baldwin Ch. J. held this no Breach of the Condition, for that the second Husband cannot be said Assignee; his Estate being given him by the Law, and not by Assignment of any more than a Tenant by the Curtesy &c. But Brown and Shelly held, that the Husband was Assignee in Law, and that an Assignment in Law is as an Assignment in Deed, and that the Lands are subject to the Condition in whole Hands forever they shall come. D. 6. a. 6. Patch. 28 H. 8. Anon.

2. LeR for Years covenant'd that he would not assign the Land, or any Part thereof, without the Consent of the Lessor. The Lessor, during the Term, entered into Part of the Land demised, and then the LeR assign'd the Residue of the Term in the rest of the Land, without the Consent of the Lessor. LeR brought Covenant. Roll Ch. J. held, that the Covenant was collateral, and consequently broken by the Assignment of the Term, notwithstanding the Lessor had entered on Part of the Lands; And Judgment Nifi. Sty. 265. Patch. 1651. Collins v. Shelley.

3. LeR covenants not to assign his Term without the Lessor's Consent in Writing. If LeR devys the Term to J. S. without the Lessor's Consent, it is no Breach; For a Devise is not a Lease; Sic Dictum luit. Sty. 483. Mich. 1655. B. R. in Case of Fox v. Swan.

(G. a)
(G. a) For further Assurance.

3 Le. 1. pl.
2 Anon.
S. C. held accordingly.

1. A Covenant and said his Lands to B. in Fee by Deed indented, and covenanted to make to the Vendee a good Estate in Fee before Christmas next following; afterwards, and before Christmas, the Bargainer caused the Deed to be enrolled; the Question was, whether he had performed his Covenant without doing more? The Court held that he had not, but that he ought to have levied a Fine, or made a Feoffment before Christmas; and so it seems, that where the Feoffment had been made before the Inrolment, the Fee had passed thereby, and not by the Inrolment. And. 27. pl. 61. Mich. 6 E. 6. Anon.

2. Baron and Feme make Leafe for Life, and the Covenant was, that he should make such reasonable Assurance as the Counsel of Lefsee should advise, and the Counsel advised a Fine with Warranty by the Husband and Wife with Warranty against the Baron and his Heirs. Defendant refused; Covenant was brought, and it was moved, that it was not a reasonable Assurance to have a Fine with Warranty, because the Warranty did trench to other Land; but per Cur. it is the ordinary Course in every Fine to have a Warranty, and the Party may rebut the Warranty. Godb. 435. pl. 499. Patch. 3 Car. B. R. Goad v. Winch.

3. A Covenant for further Assurance will not be sufferd in Chancery where the original Conveyance is still in void; as if a Man covenants to stand seised to the Use of a Moor Stringer, and covenants to make further Assurance, this Covenant depending on the Nature of the Conveyance, if that be void, the Covenant which is only Auxiliary, and goes along with the Estate, must be void too. Arg. Ch. Prec. 476. pl. 298. Mich. 1717. and decreed accordingly. Furfaker v. Robinson.

(H. a) What are mutual Covenants; and Pleadings.

1. The Plaintiff covenants, that if the Defendant would pay 40 l. he would convey as the Counsel of the Defendant should advise; these being mutual Covenants cannot be pleaded in Bar one of another, which was assigned for Error, and Judgment affirmed Nisi. Keb. 178. pl. 143. Mich. 13 Car. 2. B. R. Hames v. Baily.

2. Covenant to pay an annual Rent of 60 l. and to repair. Plaintiff says the Defendant entered, but does not aver a Leafe made. Defendant pleads he ought not to have Rent because no Leafe was made. Per Holt, in mutual Covenants where the Performance of one does depend upon another, the precedent Covenant must be performed first. Per Eyres and Dolben, the Covenant and Entry amount to a Leafe; And lo was Harrington and Wife's Cafe; But per Holt, it has been held alter ever since; Judgment for the Plaintiff. 12 Mod. 1. Mich. 2 W. & M. in B. R. Copley v. Hepworth.

Plaintiff covenanted with the Defendant facere Dimissionem to him of a Mill, paying 20 l. Rent per Annum for many Years, and the Defendant covenanted to pay the Rent during the Term. The Plaintiff brought this Action for Nonpayment of Rent, in which he set forth that the Defendant entered and enjoyed the Mill &c. The Defendant pleaded, that the Plaintiff did not make any Leafe to him; and upon Demurrer to this Plea it was adjudged, that these Articles did not amount to a Leafe, being only a Covenant Facere Dimissionem, and Holt Ch. J. held, that the making a Leafe was a Matter precedent,
Covenant.

3. In Deed on a Deed, in which the Plaintiff in Consideration of 1100 l. to be paid to him by the Defendant, covenanted to assign to the Defendant 10 Shares in the Corporation of Linen Manufacture on the 30th of January next, and the Defendant covenanted that he would then accept those Shares, and at the same Time pay the Plaintiff the said 1100 l. &c. Both Parties bound themselves to each other in the Penal Sum of 2200 l. to perform Covenants. Breach was ass'd in Non-payment of the 1100 l. on the said 30th of January after the Date of the Indenture. It was initiated for the Defendant, the Affirmative ought to precede the Payment, because the Covenant to pay it was in Nature of a Condition of Defeasance to save the Forfeiture of the 2200 l. and therefore the Condition shall be taken most favourably for the Obligor, so that if it may have 2 Intentions the best shall be taken for him. And by the Resolution of the Case in D. 17. a. the Payment in the present Case must relate to the Acceptance of the Affirmative, and not to the Day of making it, and if so, it was impossible Defendant should accept it before it was made; so that the true Meaning was, that the Plaintiff should assign the Shares on the 30th of January, and the Defendant should accept it; and upon such Acceptance the Money should be paid; and of this Opinion was the whole Court. Lutw. 490, 492, 493. Padsh. 5 W. & M. Elwick v. Cudworth.

4. Covenant upon Articles of Agreement between the Testator S. and the Defendant, by which it was covenanted and agreed between them, that S. should assign to the Defendant his Interest in a House, &c. and that the Defendant should pay to S. 30 l. The Plaintiff assigns for Breach, that the Defendant has not paid the 30 l. &c. The Defendant pleads, that S. did not assign his Interest in the House to the Defendant. The Defendant demurrs; and adjudged for him, because these are mutual and independent Covenants, and the Parties may have reciprocal Actions, and therefore the Plaintiff may bring his Action before the Assignment of the House, and the Defendant has a Remedy after, if the other Party does not perform his Part. Lord Raym. Rep. 124, 125. Mich. 8 W. 3. Trench v. Trevin.

5. The Plaintiff's Testator undertook a Voyage to Russia, and there was to observe the Orders of the Defendant's Brother, which was to draw the Cear of Muscovy's Teeth. The Defendant paid him 56 l. and covenanted to pay him 100 l. more such a Day of January then following, and for Non-Payment of this 100 l. an Action of Covenant was brought. The Defendant pleads, that the Plaintiff's Testator did not perform his Part of the Agreement; but it was held, that the Agreement here was reciprocal, and not conditional, and the Defendant must bring his Action for non-performing of the Agreement on the Plaintiff's Part; and this is not like where I promise to give a Man Money for building a House, here I am not to pay the Money until the House is built, and here likewise is a Day certain when the Money is to be paid. Judgment per Quer. Mich. 7 Ann. B. R. Sheffield v. Styles.

6. A Lease for Years was made rendering Rent, and a Covenant to repair, with a Re-entry for Non-performance. Ejaculatum was brought, and Breach aligned generally for Non-performance of Covenants. The Lessee's Agent ask'd Leifer what Rent was due, and that it should be paid him; but Leifer replied, hewould not trouble himself about the Rent, but would let aside the Leafe; and the Defendant being prepared to prove a Tender pleaded Performance generally. At the Trial
Covenant.

the Defendant offering to prove the Tender, the Plaintiff did not insist on the Non-payment of the Rent, but proved a Breach of Covenant for not keeping a Barn well thatched, and found for the Plaintiff. The Defendant was turned out of Possession, and after brought his Bill for Relief against the said Verdict, and to have a new Lease granted for so much of the Term as was not expired. Per Cur. if a Bond had been given for Performance of the Covenants this Court could not relieve against it; but Ed. Chancellor said, he could not apprehend what Damage the Leflor could suffer if the Leasee suffered the Buildings to be out of Repair, so as he kept the main Timber from being rotten, and left all in good Repair before the End of the Term; and therefore referred it to a Matter to see what Damage was done (if any) for Non-performance of Covenants, and at what Time &c. 2 Mod. Cases 93. Hill. 10 Geo. 1. Hack v. Leonard.

7. It was admitted Arg. that where Covenants are mutual an Action will lie for either of the Parties, without requiring Performance on his Part, though one is the Consideration of the other, and though Pro or In Consideration is in the Declaration. 3 Mod. 294. Trim. 10 Geo. in Cofe of Shelbourne v. Stapleton.

(I. a) Determin’d and waiv’d. In what Cases.

1. A Sold Lands to B. and it was covenantated betwixt them, that they were to be held for ever. B. may tender a Bill for Non-payment of the Rent, and the Plaintiff was found for. But A. may determine and waive the Covenant, and not insist for payment of the Rent, but may perform the Covenant; and if he do so, then the Defendant's Action will lie for Non-payment of the Rent, as the Covenant has been determined and waived. 4 Le. cit. M. v. Moulton.

2. A. leaves by Deed to M. for 10 Years, and M. covenants at the End of the Term to leave four Acres of the Land fallow'd and plow'd, and in that there was also a Provifo, that if M. sellis his Bargain, that upon a Year's Warning be may surrender his Estate, and after M. surrenders accordingly, but had not left any fallow'd; and adjudged by the Court that that Acceptance of the Surrender has not dispensed with the Covenant. Noy 118. Auffin v. Moyle.

3. Otherwise it had been if the Provifo had been in the End of the 10 Years, for then if the Leflor accepts the Surrender before the 10 Years expire, it is impossible for the Leflee to perform the Covenant; Judgment that the Plaintiff should recover. Noy 118. Auffin v. Moyle.

4. The Defendant sold Lands to the Plaintif, and covenantated that he had a good Title and Right to sell, and there was a Provifo in the Deed, that if 100l. was not paid at a future Day, that the Grant, and Bargain and Sale all should be void. The Money was not paid at the Day, and so the Estate was void; but yet the Plaintiff brought an Action of Covenant, for that the Defendant had no Right to sell; and the Defendant demanded Oyer of the Deed, and demurs. The Question was, Whether the Estate and all being void by the Non-payment of the Money, an Action of Covenant would lie? And the Court inclined it would, for there was an Action attacked in the Bargains immediately upon the Sealing of the Deed, which cannot be defeated by the Non-payment of the Money, for he might have brought his Action as soon as the Deed was sealed; But if the Words had been, that the Indenture shall be void, it would have been
Covenant.

been stronger against the Plaintiff, for then there would have been nothing to ground his Action upon. Freem. Rep. 41. pl 48. Trin 1672. Raynol's v. Woolmer.

3. A. covenants with B. to pay 20l. at his Marriage, or when 7. S. shall die, which shall first happen; though B. brings no Action when J. S. dies, he may when be afterwards marries; For per Cur. though the Plaintiff was intited to his Action upon the first Contingency, if he tarry till the second happen, it is but in his own Delay, and the Defendant shall not take Advantage of it; Judgment for the Plaintiff. Ld. Raym. Rep. 133. Mich 8 W. 3. Loggins v. Orrery (Lord.)

(K. a) Count.

Covenant because the Defendant did not hold Covenant of all the Lands and Tenements that he had leased in D. and because he did not shew the Certainty of the Lands and Tenements, therefore Writ was abated. Br. Covenant, pl. 8. cites 46 E. 3. 4.

2. in Writ of Covenant to levy a Fine, it shall be of so many Houses, so many Acres of Land, to many Acres of Meadow &c. Ibid.

3. Covenant was brought, and the Writ was Quod tecneat Conventionem inter eos Factum de Omnibus Terris et Tenementis which he had in the Counties of L. and G. and counted that he covenanted to make him Surity of all Lands and Tenements which he had in the Counties aforesaid, and that he prays him &c. and he would not make it, to the Damage &c. and the Defendant pleaded to the Writ, because it was general De omnibus Terris et Tenementis &c. without Certainty, et non allocatur; but the Writ awarded good per Judicium, and yet contra 46 E. 3. 4, and allo Writ of Covenant to levy a Fine shall be more certain, and the fame of Preample quod reddat; but it was said, that contra here, because it is only to recover Damages, and no Land. Br. Covenant, pl. 9. cites 47 E. 3. 3.

4. Covenant upon a Deed to deliver two Pieces of Cloth, Price 40s. and Br. Vari the Price was omitted in the Writ; and yet the Writ awarded good; for cites S. C. he may put in the Count, and in Covenant he shall recover only Damages. Br. Brief, pl. 364. cites 7 E. 4. 25. 26.

5. In Pleading to say in such an Indenture it is contained so and so, is no 39 cites direct Affirmative that the Party did thus and thus covenant and grant, for to say that it is contained in the Indenture, and to say that it is covenanted in the Indenture, are two Things; Per Bromley Ch. J. Pl. C. 143. a. b. Trin. 1 Mar. in Case of Browning v. Beiton.

6. But the Indenture had been introlled De Verbo in Verbo, then it had been sufficient to have said ut supra; for by the Inrolment it had appeared to the Justices judicially, and then the saying that it is contained in the Indenture is a putting them in Remembrance of a Thing apparent to them in the Record; but as it is here it is no good Plea, Per Bromley Ch. J. Pl. C. 143. b. Hill. 2 Mar. in Case of Browning v. Beiton.

7. Tenant for Life made a Lease for 15 Years, rendering Rent to him, or to his Heirs or Assigns; but there was no express Covenant that the Lessee should enjoy it during the Term; the Tenant for Life died within the Term, and he in remainder entered on the Lessee, who thereupon brought an Action of Covenant against the Executor of the Tenant for Life; but it was adjudged against him upon the insufficiency of his Declaration; rft. Because he had not alleged in Fact that he was possessed and afterwards expelled, but only by Imposition; 2dly. Because the particular Estate
Covenants.

In Covenant the Plaintiff declared that by Indenture Testamentavit, that he had a Mesneage and Garden, and that Leafe covenanted not to sell any Building in the Garden. It was moved that this Declaration was not good, because it is that by such Indenture Testamentavit exists, and does not expressly that Exhibit & Covenant, and compared it to the Case of Brakelings b. Bllon Plowd 141. where it is Contenuit in tal Indentura &c and s E. 4. 21. But all the Court conceived it well enough, and that the usual Course in this Court is to declare in this Manner, that by such Indenture Testamentavit existit &c. Cro. C. 158. pl. 8. Patch. 6 Car. B. R. Bachelour v. Gage——Jo. 223. pl. 5. S. C. but S. P. does not appear.

Rule 31.
S. C. but S. P. does not appear.

9. Leafe for 21 Years covenanted to repair, and leave in Repair. Leafe bargain'd and sold the Reversion to A. and B. who bargain'd and sold to E. who brought Covenant against the Leafe for not repairing, but in the Declaration did not name himself Affigne, yet adjudg'd good. Cro. J. 240. pl. 5. Patch. 8 Jac. B. R. Id. Eare v. Strickland.

10. Covenant is brought upon an Indenture, that where A. had infeoffed B. of certain Land that B. should hold it discharged of all Dowers; and alleges Dower recovered against him; and the Court is quod Testamentavit existit; and the Said Indenture that such Indentment was made, and that the Covenant was made ut supra, without a positive Affirmation that the Covenantor had infeoffed the Covenantee, and had covenanted ut supra; The Declaration was held good by the Words Testamentavit existit; But such Words will not serve where a Deed is pleaded in Bar, nor in a Replication. Judged and affirmed in Error. Jenk. 331. pl. 63. cites Cro. J. 537. 17 Jac. Bultivant v. Holman.

11. A. leased an Advozioni to B. for 40 Years, B. covenanted that he would not alien without the Affent of A. and because he had aliened, without Affent A. brought an Action of Covenant; the Defendant pleaded, that he had not aliened without his Affent, and found for the Plaintiff; It was moved in arrest of Judgment, that the Plaintiff had not alleged that the Alienation was by Deed, because an Advozioni cannot pass without Deed; but adjudged for the Plaintiff, For it shall therefore be intended, that the Alienation was by Deed, and fo the Breach well laid. Winch. 34. Trim. 20 Jac. Anon.

12. In Covenant &c. the Defendant demurred to the Declaration, for that the Covenant was, that the Plaintiff and his Wife should enjoy certain Farms &c. and the Breach alleged was, that the Defendant did enter on the Plaintiff’s, but per Coke Ch. J. it is well enough. 2d. Objection was, that the Declaration is, that heet the Plaintiff had performed all the Covenants on his Part, the Defendant had not performed the Covenants on his Part; Now the (licet) is not good without the Word (Tamen), For it ought to have been (tamen) the Defendant had not performed his Covenants, otherwife (licet) is not direct Affirmative; Coke Ch. J. thought it would be better with a Tamen, but upon the Matter it femeas good; And Judgment for the Plaintiff. Roll Rep. 267. pl. 41. Mich. 13 Jac. B. R. Pemberton v. Platt.

13. Feue Tenant for Life Remainder to Baron in Fee made a Lease to J. S. for Years, wherein J. S. covenanted with Baron and none their Heirs and Affigns to repair, and they conveyed the Reversion to A. And for Default of Repairs, A. brought Action as Affigne to the Baron, without averring the Feue to be Dead. And resolved to be well brought, because the
Covenant.


A brought Covenant against J. S. and express'd all this in his Declaration, and that the Defendant had not performed the Covenant in repairing the House, which is come to him as Assignee of the Heir of the Baron, without laying that the Wife was Dead. It was objected that the Covenant ought to be as Assignee of the Feem to long as the Heir, and not as Assignee of the Heir of the Baron during her Life, and cited Brod'cot's Case and Treppor's Case; But three Judges (among Richardson Ch. J) e contra; For they agreed that each paid his own Estate to the Grantee, and in regard to Strangers who may receive Prejudice, the Feme's Estate continues, so that if any Rent-Charge or other Charge was made by the Feme, the Grantee shall hold it charg'd during the Life of the Feem, but if Truth the Estate of the Feme was merged in the Reversion in Fee, and this is no Prejudice to the Leefee for Years; For he is subject to the Covenant, as well after the Determination of the Feme's Estate as in her Life; And adjudg'd that the Action was well brought. —— S. C. cited Vent. 160.

14. In Covenant brought against an Executor, the Breach alleged was 2 Kcb. 400. for Non-payment of Rent; the Defendant pleaded Plea Administrat. Pl. 4. 5. C. and the After Verdict for the Plaintiff it was moved in arrest of Judgment, that the Declaration was ill, for it was (by a certain Writing, for the Per quod of Testator existit, that the Testator covenanted, whereas, the Testator (per quod) should be omitted; For this in Covenant (Per quod) ought to be scriptum Testator existit) has been allow'd to be good, yet it ought to be with such Addition, because it is not to precise an Affirmation if the Court thought it to be all of one and the same Sense, and therefore good, and Judgment for the Plaintiff. Sid. 375. 376. pl. 2. Mich. 20 Car. 2. B. R. Stephenfon v. Stephenion.

15. Covenant to deliver Coals upon Request at the Port of N. and to put them in such Quantities as the Plaintiff should appoint, in such Vessels as the Plaintiff should prepare; and the Plaintiff alleges that he did request his, &c. at London. The Defendant pleaded he was ready at the Day to deliver them. And the Plaintiff demurred. And it seemed to the Court that the Defendant's Plea had not been good, but the Declaration was ought for want of sufficient Avowment, for he ought to have averred, that he did appoint the Defendant what Quantities he should put into such and such Vessels as he had prepared; 3rd where the Plaintiff is to do the first As, he ought to aver Performance, and cited 7 Rep. 10 Sty. 47. Parmarer v. Greffam. Besides, when the Thing to be done or delivered is a matter of Bulk, there ought to be a certain Time agreed, and the Party ought to give convenient Notice cites 1 Inf. 210. Semble's Declaration suit male. Freem. Rep. 93. pl. 107. Pauch. 1673. Griffith v. Mansfell.

Covenant &c the Plaintiff declared on an Indenture, in which the Defendant covenanted, that he was seated in Fee, &c. and that he would free the Lands from all Incumberances; and also for quiet Enjoyment; and the Breach alleged was upon an Entry and Forfeition by T. S. and concludes Et sic conventionem fumum praeeditam fregit, in the singular Number; and upon a Demurrer to this Declaration it was objected, that the Breach did relate to all the three Covenants, and therefore the Conclusion was ill, because he did not shew what Covenant in particular. But it was answer'd, that Covenant is Nomen Collectivum, and if 20 Breaches had been alleged, he still counts De placito quod teneat Et Conventionem inter cos factam; And of that Opinion was the Court, and that the Breach being of all three Covenants, the Recovery
Covenant.

in one would be a good Bar in any Action to be brought afterwards on either of those Covenants. 2 Mod. 311. Trin. 39 Car. 2. C. B. Aftler v. Mazeen.

17. In Covenant brought for disturbing the Plaintiff in a Way, the
Breach alleged was, that J. S. disturbed but showed not what Title J. S. bad, and therefore ill. 3 Lev. 353. Trin. 3 W. & M. in C. B. Holmes v. Seller.

So if Bond is given for Performance of Covenants and Obligation being both for the Corroboration of a Grant which was void, they are all void. Lev. 45. Mich. 13 Car. 2.—So it is in case of Promises. Mich. 44 & 45 Eliz. B. R. Soprani & Bernardi v. Skurro.

19. Covenant for not repairing brought against an Assignee of an Assignee; The Plaintiff need not set forth the intermediate Assignments. 8 Mod. 72. Patch. 8 Geo. Lovelock v. Sorrel.

(L. a) Affirmation of the Breach.

1. I N Covenant notwithstanding that diverse Covenants are mention
ed in the Writ, yet in the Court be need not shew the breaking of all. Thel. Dig. 85. Lib. 9. cap. 6. S. 4. cites Hill. 40 E. 3. 5.

2. Covenant by Indenture between the Leilor and Leffe that the Le-
fors during the Leafe shall be four Days in the Year in the House without being ousted in Pain of 10l. and the Leffer comes to enter, and the Leffe softens the Doors and the Windows, this is no breaking of the Covenant without saying that he ousted him, and the same Law seems to be of other such like Condition. Br. Condition. pl. 35. cites 3 H. 4. 8.

3. D. Leffe for Years among other Covenants, covenanted that he shall not cut any Trees, by which they shall be washed and was obliged to perform &c. In Debt brought upon the Obligation, and Breach alleged in cutting 20 Oaks, the Defendant pleaded that he did cut the said 20 or any of them Modo & Forma prout &c. the the Plaintiff said quod succidit 20 prout &c. The Jury found that he had cut 10, yet the Plaintiff had Judgment; for the Covenant is broken if he cut but 10, and the rest is only Surplusage. Dy. 115. b. pl. 67. Patch. 2 & 3 P. & M. Tiri-
ril v. Dun.

4. Leafe for Years of several Messuages dated in November, and to com-
merce at Michaelmas next following, in which the Leffe covenanted to re-
pair all the said Messuages, except such as the Leffer shall by Writing appoint to be pulled down during the Term, and gave Bond for performance. In Debt on the Bond by the Leffer, Defendant pleaded Performance &c. the Plaintiff replied, and the said the Breach in not repairing one Messuage, parcel of the demised Premises, and aver'd that the said Messuage was not appointed to be pulled down during the Term, and upon this they were at Ifiue, (viz.) whether the Defendant had repaired it or not; and it being found for the Plaintiff, it was mov'd in Arrest of Judgment, that the Averment in the Replication was insufficient; For the Leafe being dated in November, and the Term being to commence not before Michaelmas.
Michaelmas following, the House might be appointed to be pulled down before the commencement of the Term, and then the Defendant is not bound to repair it; And so the Averment does not Answer the Exception; but after many Motions it was resolv'd by all the Judges, that this Averment was spurious for it had been sufficient to have assigned the Breach in not repairing the Mewsage without averring that it was not appointed to be pulled down. And if it had been so appointed, it ought to be shewed on the Defendant's Part, because it tends to his Advantage; for such Appointment would discharge the Covenant as to that. Le. 17. pl. 21. Pafch. 26 Eliz. Smith v. Peaze.

5. In Covenant the Plaintiff declared that the Defendant by his Deed dated 1 Oct. 28 Eliz. did Covenant that he would use his best endeavours to prove the Will of J. S. or otherwise that he would procure Letters of Administration by which he might lawfully convey such Term to the Plaintiff, which he had not done, Lictet sequentius &c. The Defendant pleaded that be came to Drury into the Court of the Archb., and there offered to prove the Will &c. but because the Wife of the said J. S. would not swear that it was his Will, they could not be receive'd to prove it; upon Demurrer it was inquired for the Defendant, that the Action did not lie; for the Covenant limits no Time when the Thing should be done by the Defendant, so that it being a Collateral thing he has Time during Life, but admitting that he had covenanted to prove the Will upon Requêt, then the Plaintiff ought to shew an express Requêt, and the Time and Place when and where it was made, because it is for his Benefit, and without such a Requêt specially and certainly laid, it was held per rot. Cur. that the Action would not lie, and that the Bar shall not help the in sufficiency of the Declaration. Le. 124. pl. 170. Trin. 30 Eliz. B. R. Cater v. Booth.

6. In Covenant the Plaintiff declared, that the Defendant assigned to him all the Right and Interest which he had to the Lands in N. lately granted by the Lord D. to one F. for the Term of 20 Years, and covenanted, that the said Premises then were, and should continue Free from all Incumbrances and former Grants made by the Defendant, and the said F. or either of them, and that the Defendant was lawful Owner of the said Leafe, Term and Premises, and assigned a Breach, that F. before the Assignment of the Term to the Plaintiff, had granted two several Parts to two Persons severally for 20 Years, &c. the Defendant pleaded, that F. had granted his Interest in the Lands, except the Lands so severally demised by him. The Plaintiff Demurred, the Question was, whether by this Covenant the Defendant shall be intended to be Owner of the Term only, or of the whole Land during the Term, and held the Word (Premises) extends as well to the Land, as to the Term of Years; For it takes in every Thing before-mentioned, and which might be incumber'd; and this appears more Plain by the subsequent Words, viz. that the Defendant is lawful Owner of the Leafe, Demise, Term of Years, and Premises, which Word (Premises) needed not to be in the Deed, if it were intended only, that the Term granted should be discharged from Incumbrances. And. 236. pl. 253. Trin. 32 Eliz. Anley v. Piske.

7. Covenant for that the Defendant by Indenture did Covenant that he his Executors and Assignees would repair a Mill let to the Defendant, and alleges that the Mill was defective on Reparations, and the Defendant his Executors and Assignees did not repair it, and it was demurred upon the Declaration, because he did not allege that he nor his Executors or Assigns did not repair it the Action does not lie and it ought to be alleged in the disjunctive, and not in the conjunctive, and of that Opinion was the Court. Cro. E. 349. pl. 23. Mich. 36. and 37. Eliz. B. R. Colt v. Howe.

8. An
8. An House is leas'd by the Words grant, demis &c. and the
Leffer covenants that the Leffe shall enjoy &c. without Reuision by the
Leffer or any claiming under him, and a Bond is given for performance of
Covenants, the Leffe affirms, and in an Ejcctment the Leffe is recovered
from the Allignes; per Cur. the Plaintiff (who was the Obligees) ought
to shew that the recoveror had Eighe-Tite; For otherwise the covenant
in Law was not broken. 4 Rep. 85. Trin. 41 Eliz. Nokes's Case.

9. The Covenant was for Quiet Enjoyment against B. and all claiming
under him; the Breach alligned was because he was ou't by J. S. who
did claim under B. but did not bring Hove. But all the Court of B. R.
held it well enough; For he is a Stranger thereto and cannot shew it
certainly; And adjudg'd in B. R. for the Plaintiff, but by the Opini-
on of all the Justices and Barons, Judgment was reversed in the Exche-

10. Apprentice Bond was conditioned, if To serve well, adily, To
Account duly. 

dly, To make satisfactions within 3 Months after No-
tice, of all Loffices which he should sustain by the Apprenticeship. De-
fendant pleads performance generally, the Plaintiff alligned for Breach,
because upon Account he was found in Arrears 60l. of Polish Money which
be received and converted to his own Use. And fo &c. And th' he
did not alledge be received it as Apprentice yet it may well be intended,
for it is Merchandize and Judgment for the Plaintiff. Cro. E. 830,

11. A leased to J. S. the Plaintiff 35 Eliz. the Barton of B. for 6
Years, and covenanted that he should enjoy it during the Term quietly and
without Interruption, and discharged from Tithes &c. and that
if the Tithes were demanded and recovered against him during
the Term he should recoup in his Hands so much of the Rent as the
Tithes amounted to. J. S. brought Covenant and alligned the Breach that
42 Eliz. the Parson fiend him for Tithes there growing 38 & 30 Eliz.
All the Court held that this Suit after the determination of the Term was
a Breach of the Covenant, for he did not enjoy it discharged &c. within
the Intent of the Covenant; but because it was alledged that the Suit
was lawful, or that the Tithes were due, for he was not bound to dis-
charge him from illegal Suits &c. and so the Breach was not well
alligned, it was adjudg'd for the Defendant. Cro. E. 916. pl. 7. Hill.
45 Eliz. B. R. Lanning v. Lowering.

12. In Debt on Covenant to pay 100 l. Quarterly, the Plaintiff de-
clared that 100 l. for 4 Quarterly Payments were unpaid, and says not
when due and ending it is not good. Show. 8. Mich. 4. Jac. 2. in Cam.
Scacc. fo a Judgment in B. R. was reverfed. Piltarre v. Darby.

13. Covenant for that the Plaintiff by Indenture let to the Teflactor
a House in Fleet-street, for Years; and the Leffee covenanted to repair
it well from Time to Time during the Term; and at the end of the Term to
leave the same well repaired to the Leffor; and Alligns the Breach, for
that he did not leave it well repaired at the end of the Term. Excep-
tion was taken to the Declaration, because the Breach was alligned in noc
delivering up the House well repaired at the end of the Term, and he
Covenant.

he does not flow in what Point it was not well repaired; Sed non Allocatur tor, For the Breach being according to the Covenant is sufficient. But if the Defendant had pleaded, that at the end of the Term be delivered it up well repaired; Then if the Plaintiff will align any Breach, he ought Particularly to shew in what Point it was not repaired, so as the Defendant might give Particular Answer thereto; And Williams J. said, it was so resolved in a Case between Boyle and Sharp, in a Declaration in Action of Covenant, it suffices to align the Breach as general as the Covenant is; wherefore it was adjudged for the Plaintiff. Cro. J. 170, 171. pl. ni. Tin. 5 Jac. B. R. Hancock v. Field & al.


14. In a Covenant were insinuous Words and though the Deed was Roll Rep. only between A. of the one Part, and B. and J. S. of the other, yet F. S. who was not Party nor sealed the Indenture was named as a Covenantor. In aligning the Breach the Insinuous Words, and also the Word Name of J. S. may be omitted. Cro. J. 358. pl. 18. Mich. 12 Jac. B. R. Goodman v. Knight.

15. Covenant &c. against the Defendant, for ploughing Lands which were not Nuper laid down to Leisure. The Question was, what time shall be comprehended by the (Nuper) but not resolved; but in some Case 14 Years may be Nuper and in some Case 20 Years may be said Nuper, but all the Court agreed that the Plaintiff ought to have showed a certain Breach (viz) that the Defendant had ploughed up Lands, and shewed what Lands which were not lately Arable; and therefore adjudged, quod Querene nil capiatur brevi. 2 Bulst. 258. Tin. 12 Jac. Genner v. Larking.

16. Tenant for Life of a Park made a Lease thereof, with all Pro-Popham. fits of the Deer for 5 Years, and the Life covenanted Yearly, and in 146 Talbot quilibet differentium annorum, to deliver to the Lessor so many Deer. Breach was v. Racen, affirming a certain covenant in the Annies, not after the 5 Years; But per Curiam, those Words, in quilibit discordantly, torum annorum, shall not have Relation to the natural Life of Lessor, but only to the 5 Years, and not to the Life of the Lessor. 2 Roll. Rep. 38. Tin. 16 Jac. B. R. Talbot v. Levinson.

18. Covenant whereby the Defendant covenanted to find the Plaintiff in Covenant with Meat, Drink, and Apparel, and other Necessaries, and affirms the same, that the Breach as general as the Covenant, and does not flow what other Things were not done; and therefore the Court held, that the Declaration was Maller &c. ill, and the Judgment being upon Nihil Dicit, and Intire Damages Breach alleged, the Judgment was reversed. Cro. J. 486. pl. 5. Tin. 16 Jac. 18, signed that find a Day diligent be departed from his

Humphreys, and did not impress his Apprentices in his Trade, nor find him Meat, Drink, and other Necessaries, &c. Upon a Demurrer, because his Necessaries was too general, the Court held the Breach certain in the very Words of the Covenant, and Alia Necessaria is intended of small Things, as Trimming, Washing &c. which would be too long to infer, and the Plaintiff being here particularly assigned, there is no need to assign the Small so particularly; and Judgment for the Plaintiff. 3 Jaco. 170. Tin. 35 Car. 2 4. B. Procter v. Burdett. —— 2 Show. 445 pl. 475. Burdett v. Proctor, S. & C. and Judgment in C. B. affirmed in B. R. —— Ibid. 173 cites 5 C. —— 5 Mod. 69. S. C. and Judgment affirmed. —— 1 Show. 242, 243. In the Case above it is said, that the Rule where the Covenant is general that the Breach may be too, as in Cro. J. 304. 369. Cro. Eliz. 914. Nay 52. reaches not this Case, those Cases being all of Covenant to enjoy, and there it lies not in the Party's Knowledge.
Covenant.

19. **Covenant**, whereas he had sold to the Defendant all his Copyhold Land in F. that if it did exceed the Quantity of 8 Acres, to be admeasured according to the Proportion of 16 Feet and an half for every Pole, that he should pay for every Acre over and above the 8 Acres so to be admeasured, according to the said Rate of 4 l. for every Acre, and alleged that the Copyhold Land was 12 Acres measured by the said Measurement. The Defendant said, there were not 12 Acres measured; but found for the Plaintiff; it was said, the Breach was not well affirmed, because it was not alleged that the Lands were admeasured, and till then the Surplusage cannot be known; and non allocatur; for the Plaintiff might measure it privately, and he be not tell the Defendant when he be measured it, and the little being found that they contained to much, it was helden by the Court the Declaration was good. *Cro. J.* 472. pl. 1. *Pacht.* 10 *Jac. B. R. Burwell v. Wood.*

20. **Covenant**, for that he let to M. a Water-Mill in the Parish of S. and all Houses, Buildings, Walls &c. and Dams, to the said Mill belonging for 21 Years, and that he covenanted to repair the Houses, Dams, Water-Courses and Banks to the Mill belonging, and leave them sufficiently repaired &c. and four Mill-Stones. A Breach alleged was in not repairing the Mill and Mill-Banks, and for not leaving the Mill-Stones; Exception was, because not specified what if they were, nor whether it was a Crown-Mill, or Falling-Mill; Sed non allocatur; For all is one, the Breach being alleged in not repairing &c. And adjudged for the Plaintiff. *Cro. J.* 557. pl. 2. *Hill.* 17 *Jac. B. R. Brethley v. Humphry.*

21. **Debt** for 60 l. upon a Deed reciting, that whereas W. C. had given divers of his Goods to J. A. the Tenant; he covenanted, that if the said C. should pay a Debt of 63 l. (for which the said J. A. fixed bound in 120 l. to pay to one J. S. upon the 2d of June then next following) and should leave barns full the said J. A. from the same, that then the Plaintiff should have and enjoy Convenience of the said J. A. of the Money of the said Goods; Adjus Conveniones performance to be obliged himself by the said Writing to the Plaintiff in 60 l. and alleged in Pains that the said W. C. upon the 2d of June lendem Formam & Effectur Scriptur praeeditum 63 l. by which W. C. has fancied him barns full from the said 63 l. so that he was not damaged, and that neither the said J. A. in his Life-time, nor the said E. his Executors since had made any Grant unto him of the Money of the said Goods granted him by the said J. A. per quod Atio accretum &c. The Defendant pleaded, that the said W. C. had not paid the said 63 l. &c. Whereupon they were at issue, and Verdict and Judgment for the Plaintiff, and now adjured for Error, that there was not a good Breach. 1st. Because he does not allege what the Goods were wherein the Debt of Gift was made; Sed non allocatur, because the Generality is sufficient. 2dly, The Allegation is, that he has fancied him barns full from the 63 l. whereas it ought to have been from the 120 l. 3dly. Because he does not show that he required a Grant of the Money of the Goods, and tender'd a Writing between him to seal, for he being the Party who is to have the Benefit thereof, ought to make the Tender; And for these Causes, but principally for the second, the Judgment was reversed. *Cro. J.* 661. pl. 10. *Hill.* 20 *Jac. B. R. Archer v. Dalby.*

22. A Conuene of a Statute, extends and assigns it to B. and afterwards grants the Land to C. and covenants that notwithstanding any Act done by A, or any other by his Consent, the Statute extended, and Execution remains in Force; Adjudged that this Assignment was a Breach; But reversed in Error; For notwithstanding the Assignment the Statute stands in Force, but if the Declaration had concluded Eo quod concefsit to him &c. which implies a Covenant, this Action had lain; But notwithstanding this Assignment, the Statute is in Force, and the Conuene may
Covenant.

may release it. But if he had covenanted that the Grantee should have it without Disurbance, this Affirmment would be a Breach by reason of the Word (Grant) but here the Affiit is brought on a Covenant in End. 2 Roll Rep. 393 Mich. 21 Jac. B. R. Pearson v. Jones.

23. Upon a Marriage between the Son of T. and the Daughter of C. Lat. 162. it was covenanted, that after the Marriage &c. T. should pay to his Son S. C. held and Wife, and their Issues, competent Entertainment of Meat and Drink and during the Life of T. and to live with him in his House, and that if the Son T. the Son, and his Wife, should dislike to live together, that then the Wife and Son and Wife should have such Lands and Goods of T. the Father, and to live where they please. The Son having Issue dies. The Wife takes a free Husband. The Wife and T. the Father dislike, and disaffire &c. Husband &c.

And now R. brought Covenant upon the Indenture for the Lands and Goods, and Whitlock said, that that is a Disagreement within the Covenant, he gave it in lieu of Maintenance. Dedridge and Jones on the contrary; For the Disagreement between the Father and Son, in the Title of the Son, had not been sufficient; But by the Court, that the Son, brought ought to find Meat and Drink &c. to the Wife and her Issue by the first Husband, during the Life of T. and Judgment was given according to the Opinion of Dedridge and Jones. Nov. 86, 87. Hill 1 Car., B. R. Crabb v. Touker.

the Son's Wife and her second Baron, but adjudged that a mutual Disagreement between all ought to be alleged, and therefore Judgment was Quod Quemque nil capiat; but all agreed that the Wife might have bounded with T. the Father if she would, but the second Husband could not.

24. S. covenants to surrender her Estate for Life in a Copyhold upon R. 2 Show. 173. quit; and to permit B. to enjoy the same, and to take the Rents, Issue and Profits. In Covenant B. affirms a Breach, that he did not suffer him to enjoy the said Lands, but had received the Rents &c. from the making of a W. 3. cap.

Indenture to the Time of the Wife &c. Exception was taken, that there was no Request as to the Permission; Sed non allocatur; For the Request is only to the Surrender. 2dly, That a special Disturbance is not alleged. 3dly, The Breed is too generally without stating what Profits the Receiver; But the Court conceived, that in Covenant a Man may assign as many Breaches as he will; but not in Debt upon an Obligation for Performance of Covenants, for in that Case there ought to be a Certainty, and certainly assigned, but in a Covenant it may be assigned as general as the Covenant is. Cro. C. 176. pl. 23. Mich. 5 Car. B. R. Symms v. Smyth.

25. Leffee covenanted to repair the House without convenient, necessary, and tenantable Reparations, and the Breach assigned was in not repairing for want of Tiles and daubing with Mortar, but did show that the House not tenantable; and the Court were of Opinion, that he ought to have flown it, for there might be a few Tiles and a little Mortar wanting, and yet the House might have convenient, necessary, and tenantable Reparations. Mar. 17. pl. 39. Patch. 15 Car. 1. Conysby's Cafe.

26. In Covenant against the Leffe for Years of a House for not repairing, he pleaded that the House was casually burnt down; and upon Demurrer it was infitléd, that the Plea was contrary to what Leffe had expressly covenanted to do; And Roll Ch. J. held, that though the House was burnt by Negligence, or any other Means, the Leffe is still bound by his Covenant; and Judgment Nihil for the Plaintiff. Sty. 162 Mich. 1649. Compton v. Allen.

27. Covenant in a Lease for Years was to pay yearly 20l. at Michaelmas and Lady-Day, by equal Portions, and the Breach assigned was, that he did not pay the Rent due at the aforesaid several Feasts, during theTerm aforesaid. It was objected, that the Breach ought to have been assigned par-
particulars; but adjudged, that it was well aligned, for perhaps he never paid any Rent at any of the Days; and to a Judgment in Durham was affirmed in Error. 1 Lev. 75. Mich. 14 Car. B. R. Coniers v. Smith.

28. In Covenant on a Warrant in a Fine the Plaintiff declared, that one 8. batons legale just & Titulum did enter upon him, and evict him of a Term for Years. Exception was taken, that this might be by a Title derived from the Plaintiff himself. Adjornatur. Mod. 66. pl. 14. Mich. 22 Car. 2 B. R. Wootton v. Heal.

29. In Debt upon a Deed, containing several Covenants, for Performance whereof the Defendant obliged himself in the Penalty of 40 l. and counts, that the Defendant had broke the Covenants. Upon Non est Factum pleaded, the Plaintiff had a Verdict, and it was moved in arrest of Judgment, that the Declaration was ill, for there was no particular Breach assigned of any one Covenant; adjudged for the Plaintiff; for though this would have been ill upon Demurrer, yet here it is cured by the Verdict. 1 Vent. 114. 126. Patch. 23 Car. 2. B. R. Barnard v. Michell.

30. Covenant that Baron and Vene should surrender at the next Audit at C. and Breach assigned that there was an Audit 6th of April, and no Surrender; to which the Defendant demurred, because this is not said (the next Audit) but being averred that he did not surrender ad praeditum maximum iter, it is well enough; Per Twidwell and Rainford, the rest being absent, and Judgment for the Plaintiff. 2 Keb. 865. pl. 18. Hill. 23 & 24 Car. 2. B. R. Read v. Jackson.

31. Debt upon a Bond for Performance of Covenants, among which one was, that the Defendant should convey such a Tenement for the Life of the Plaintiff, and the Life of two others, such as the Plaintiff should name, and that he would give him Possession before Christmas. The Defendant pleaded, that he always was, and is ready to convey, if the Plaintiff would name his Lives, but by reason the Plaintiff would not name his Lives, he could not make his Conveyance. Upon this Plea the Plaintiff's demurs, and shews for Caufe, because the Defendant had not alleged that he gave him Possession before Christmas, and that he might have done, though he could not convey till the Plaintiff had named; fed per Cur. Judgment was given for Defendant, because the Possession shall not be intended a divided Thing, but a Possession pursuant to the Lease that he was to make; for otherwise the Possession given would be an Act done to no Purpose, for he might turn him out again presently; Adjudged for Defendant. Freem. Rep. 121. pl. 142. Trin. 1673. In C. B. Twyford v. Buntley.

32. Covenant for quiet Enjoyment against all Persons claiming un-
der Sir P. V. and shews that such a one did disturb him, claims Titulum under Sir P. V. and the Defendant demurred, because he did not say Leg-alem Titulum; and for that the Court took this Difference, that where a Man makes a general Covenant against all Persons, there a Breach of Cov-
enant shall not be alleged by a Disturbance, unless it be by a lawful Dis-
trubance; but otherwise it is when the Covenant is to enjoy quietly against a particular Person, according to the Difference taken in Case of The
Bill v. Effex in Hob. 34. And the Court said generally in Covenant it
Covenant.


33. A. and B. were bound to a Bond to C. for the Payment of 50 l. at a certain Day. A. covenanteth with B. to save him harmlesse from the said Bond. B. brings an Action of Covenant, and alleges for Breach that C. failed him in the Exchequer upon the said Bond, and had Judgment against him, but he does not allege that A. did not pay the Money at the Day. It was urged for the Defendant, that for all appears, the Money might be paid at the Day, and then, though C. did sue B. and recover, yet it was no Breach of the Covenant, because the Suit was tortious, and the Covenant shall not be extended to save harmlesse from Wrongs, and therefore he ought to have averred that the Money was not paid at the Day; but on the other Side it was said, that there is a great Difference between a general Covenant to save harmlesse, (for that shall be intended only against lawful Wrongs) and to save harmlesse against a particular Person, for that is against tortious as well as rightful Acts, cites Hob. 35. Besides, it cannot be averred, that the Money was paid when it is set forth that C. sued and recovered; but Vaughan Ch. J. said, the Books did generally make a Difference between a general Saving harmlesse, and when it is against a particular Person, but he did conceive there was none at all; for the Reason was, the same in both, which is, when a Man is wronged the Law gives him his Remedy, which holds as well against every Body as against a particular Person; but the other Judges were of a contrary Opinion, and gave Judgment pro Quo, Vaughan being gone into Parliament. Freem. Rep. 142, 143. pl. 163. Hill 1673. Hill v. Browne.

34. Covenant, in which the Plaintiff declared, that the Defendant 3 Knee. 143. covenanteth to build him an House according to the Rules prescribed per S. C. said, that he did not cover the Bakehouse with Lead, according to the Rules prescribed per S. C. Citation. but there was Judgment by Default, and a Writ of Enquiry, 5S. C. & 15 1. Damages. It was moved in Arrest, that the Bakehouse was not sufficiently aligned, he not alleging in Fact, that by the Act the Bakehouse ought to be covered with Lead; but per Hale, it being said that he did not cover them with Lead, Secundum Regulas per pridie Statutum prescripsit is an Averment, that the Statute fo prescribed. 2 Lev. 85. Pach. 23. Car. 2. B. R. Dixo v. Jemnna.

35. In Covenant on a Bill of Sale, that the Defendant was the legal Proprietor of W. field, and bad Power; the Plaintiff alleges Breach, that he was not Proprietor, and does not say Est sic non tenent Covenanten, et infra; the Defendant pleads tenent Covenanten, to which the Plaintiff demurred; and per Car. the Breed is sufficient, and the Est sic intersit is but Form, and well enough beside: Judgment for the Plaintiff 3 Kee. 396. pl. 97. Mich. 26. Car. 2. B. R. Streeting v. Hinde.

36. In Covenant for not repairing a House let in S. being in Decay, not said wherein, to which the Defendant demurred, and thence for Cause, that it was not particularly set forth wherein it was in Decay, which per Car. is ill, as well as in Walle; And Judgment for the Defendant, if Parties do not agree to amend. 3 Kee. 478. pl. 11. Trin. 27. Car. 2. B. R. Portland (Councils of) v. Andrews.

37. A. granted a Rent-Charge of 200 l. to B. and C. their Heirs, for a Masl. 138. the Life of M. ad Opus & Ufum of M. and covenanteth to pay the Rent ad Opus & Ufum of M. The Rent not being paid, B. and C. bring Covenant, and align the Breach in not paying the Rent to themselves Ad Opus & Ufum of the said M. The Defendant demurred, because the Words in ordinarly, which the Breach is aligned contains a Negative Pregnant; But it being aligned in the Words of the Covenant, the Court held it good. Mod. 223. pl. 12. Mich. 28. Car. 2. C. B. Bafcauen v. Cooke.

might have pleaded it, that being a Performance in Substance, but it shall not be intended without pleading it, and Judgment for the Plaintiff. 5 Y. 38. Co.
Covenant.

38. Covenant that the Plaintiff should have the first Quarter's Rent due at Lady-Day, after the Date of the Deed; Breach alleged, that the Defendant disobstant and impediment with (the Plaintiff) a recipendo &c. It was moved in arrest of Judgment, because the Plaintiff shews not how he was hindred, and cited 1 Bulst. 139. 3 Cr. 124. [Def v. Clout.] But it was answered and confes'd, that Non permitt is too general, for there is no Act done, but by impediment & obstruix it is clear some Act was done to the Plaintiff's Hindrance, which Act the Defendant beth knowes himself; Adjournatur. 2 Show. 75. pl. 58. Trin. 31 Car. 2. B. R. Prefcott v. Pemberton.

39. Covenant for Payment of Rent which was reserved payable at the 2d usual freight of the Year, St. John the Baptist and Christmas, or within 14 Days after, the first Payment to be at Christmas next after the Date, Breach alleged in Non-payment of the Rent at Christmas first, and took no Notice of the 14th Day after; and upon Demurrer it was urged, that the 14 Days after should not refer to the first Payment at Christmas, but that it was to be absolutely on Christmas Day; but held by the Court, that the Defendant had 14 Days after the first Christmas as well as any other to pay his Rent in; and therefore Judgment was given for the Defendant. 2 Show. 77. Trin. 31 Car. 2. Anon.

40. Plaintiff declar'd of a Covenant to repair all the Pales of the Garden demised, except all the Pales of the West Side, and alleged the Breach in not repairing the Pales contrary to former Covenants, without specifying that the Default was in the Pales not excepted. Defendant pleaded that he had repair'd the Pales according to the Covenant. Verdict for the Plaintiff, and Judgment accordingly by reason of the Verdict; but it was agreed, that if the Defendant had demurred, Judgment ought to have been for him. 2 Jo. 125. 126. Hill. 31 & 32. Car. 2. B. R. Anon.

41. A Breach may be well alleged though not directly within the Words of the Covenant; as where in a Charter-Party it was mutually covenanted, that the Master of the Ship (who was the Plaintiff) should pay two Parts of the Port-Charges, and the Patron of the Defendant the 3d Part of the Whole Voyage. The Master declares, that he failed from L. to C. and paid 2 Parts of the Port-Charges for himself, and the 3d Part for the Defendant, who not paid him. After Judgment by Default, and a Writ of Enquiry return'd, it was objected, that the Defendant was not bound by this Covenant to pay the 3d Part to the Plaintiff, but to the Collector of the Port-Charges, and therefore he ought to have shewn, that the Defendant had not paid the 3d Part; Sed per Curiam, the Plaintiff having aver'd, that he paid the 3d Part, it shall be intended, that the Defendant did not, and in his Default the Plaintiff was forced to pay the Whole to prevent the Ship's being stopped in the Port; And though it was not said, that they were paid in this Voyage, yet it shall be intended so to be, it being alleged to be paid in the fame Ports where the Voyage was paid to be made. 2 Jo. 186. Hill. 33 & 34 Car. 2. B. R. Bellamy v. Ruffell.

42. Covenant with a Brewer for Grains; the Brewer mixes Hops with the Grains and spoils them; Covenant lies though he declares specially. 2 Jo. 194. 195. Patch. 34 Car. 2. B. R. Goodhand v. Griffith.

43. Covenant brought on Articles indented, and in the Memorandum it was, De Placito Conventionis fracta? but the Declaration was, as it is in Action for be Cafe, quod cum per falsam Indentatum refertur; Sed Defendens concipit, and concludes not pross folet in Covenant, Et sic infrigit Conventionem. After a Breach alleged, and a Demurrer, the Court was of Opinion, that this is an Action of Covenant, and that it is not necessary to conclude Et sic infrigis, nor usual in Plending to say De Placito quod retenat Conventionem; But the Covenant being that the Defendant non relaxa et a Debt
a Deed assignd to the Plaintiff without his Leave, the Court was of adjudg'd the Declaration, that the Breach was not well assignd; and gave Judgment, that the Querens nil capiat per Billam. 2 Jo. 229. Mich. 34 Car. 2. Copping v. Slaymaker.

should not alien without Licence, and the Breach was, that he made a Leave contra Formam & Effectum Convenioni propridies, and does not for abjunct Licence; Held ought, and Judgment for the Defendant. — Skyn. 129. pl. 15 S C. that the Plaintiff not alleging the Releas'd to be without his Assent, for ought appears it may be with it, and for no Breach of Covenant. — 2 Show. 509. pl. 319. S. C. but S. P. does not appear.

44. Covenant &c. upon a Lease, wherein the Defendant covenanted to repair the Buildings with all needful Reparations, principal Timber only excepted; and the Breach assignd was, that after the Demise 2 Barns, Parcel of the Tenements demised, were in Decay for want of Thatching and Walling; and not for want of principal Timber. The Defendant Protested that the Barns were not in Decay, plead that he was ready to repair &c. where necessary; (principal Timber only excepted) but there was a Necessity of two principal Barns of Timber to support the said Barns, of which the Plaintiff had Notice, but refused to deliver them; and upon a Demurrer to this Plea the Plaintiff had Judgment, because the Defendant gave no Answer to the Breach particularly alleged by the Plaintiff, that the Barns were in Decay for want of Thatching and Walling, and not for want of Timber. 3 Nels. Ab. 122. pl. 3. [Mich. 3 Jac. 2.] cites Lutw. 308. Brasilllord v. Parions.

45. Covenant &c. on a Lease of an House for Years, wherein the Defendant covenanted to repair it at his own Charge, and all Apparatus, Bridges, and Pences &c. with Banking, Cleaning, and Pencing &c. during the Term; the Breach assignd was, that the House and 20 Perches of Bank, 10 Bridges, and 40 Perches of Pence were broken, pulled up, broke down and spoiled. Exception was taken to this Declaration, that the Breach assignd so generally was not good; but adjudged that the Declaration was good, the Breach being assignd according to the Words of the Covenant. 1 Lutw. 326. Hill. 3 & 4 Jac. 2. B. R. Lee v. Johnson.

46. A. covenanted with B. to obtain a Grant of Lands from C. A is bound though C has no Title. Comb. 172. Mich. 1 W. & M. in B. R. Scounden v. Hawley.

47. Covenant to permit the Defendant to carry away Trees; Breach quod non permitte, fed obtinuit & obtinuuit; held well upon Demurrer, and Judgment for the Plaintiff. 1 Show. 252. Hill. 2 W. & M. Dye v. Wells.


49. Covenant to keep in good Repair the House, Outhouses and Stables; and the Breach assignd was, that the Defendant had permitted the Racks in the Stable to be in Decay. After Verdict it was moved, that the Plaintiff should have set forth, that the Racks were fixed in the Stable, and to Part of the Freehold, for they might be in the Stable and lay loose, and Pollexfen Ch. J. was of that Opinion; but the other Justices conceived, that it should be intended that they were fixed for Use there, and it would be very remote to give it any other Construction; and so Judgment was given for the Plaintiff. 2 Vent. 214. Mich. 2 W. & M. in C B. Anon.

50. In a Deed assignd to the Plaintiff the Defendant declared, that he would permit the Plaintiff to make a Drain &c. and the Breach assignd was, that he assignd the Lands where the Drain should be made to one T. who would not permit the Plaintiff to make the Drain; there was a Plea, and Replication, and Demurrer; and it was objected against this Declar-
Clarion that it was ill, because the Covenant was for the Defendant &c. or her Alligns, to permit &c. and the Breach is laid in the Allignes's not permitting, and it appears by the Pleading that the Assignment made to T. was diverse Yeors before the Demise made to the Plaintiff, and this Covenant cannot extend but only to the Alligns of the Defendant after the Lease made. Besides, to try Non permit, without the Noting some special Disturbance, and which ought to have been particularly set forth, that the Court may judge of it, is ill; and judgment accordingly. 2 Vent. 279. Hill. 2 & 3 W. & M. in C. B. Targett v. Lloyd.

51. Covenant by the Alligree of a Term against the first Leesee, in which he covenants, that the Plaintiff shall enjoy free and clear of all Incumbrances, and saved hazards and indemnities from all arrears of Rent, and alligns for Breach, that 61. Rent was arrear, and that he defined the Defendant to pay it, but he did not do it; the Defendant pleads, that as to 60 l. Part of the said 63 l. that he had left it in the hands of the Plaintiff, ca Intenitone that the Plaintiff should pay it to the Leesor, and as to the 4 l. Rest of it, that he had paid it himself to the Lessor &c. to which the Plaintiff demurred, because ca Intentione ad favedent is uncertain; for his Intenion is not a Thing infallibe; See also Allocaur; for he might reply, Non religuit Modo & Forma, and thereupon Illie might be joined, and upon this Illie he might give in Evidence any Matter to prove his Intenion; and it was excepted from the Declaration, because no Damnification is shown, for it is not like to give a Condition of a Bond broken, for there is a Damage immediately by the Parties being subject to the Penalty, but it is otherwise here, till an Action brought, or Distress taken, or other Damages accrued; and Roll, Tr. Condition, Cooper and Pollard 433. was cited, which was the same Case in Eiffet; and another Case lately adjudged upon the same Reason. Skin. 397. pl. 31. Mich. 5 W. & M. in B. R. Griffin v. Har...
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his interest that ought to be shewed on the Side; And so a Judgment in C. B. was affirmed. 1 Salk. 139. pl. 4. Mich. 7 W. 3. B. R. Smith v. Sharp.

54. In an Action of Covenant the Breach may be assigned as large as the Covenant is, for all is recoverable in Damages, and those Damages shall be for the real Damages which the Party can prove that he has actually suffered. But in Debt upon a Bond conditioned to perform Covenants in a form certain Indenture specified, there is a precise Breach must be proved, because a wants you Breach is forfeiture of the whole Bond; Per Cur. Ld. Raym. Rep. 107. Mich. 8 W. 3. in Case of Briggcock v. Stanion.


55. 8 & 9 W. 3. cap. 11. 8. Enacts, that in all Actions in any of his Majesty’s Courts of Record, upon any Bond, or on any Penal Sum, for Non-Promission of Covenants, the Plaintiff may assign as many Breaches as he shall think fit, and the Jury upon Trial of such Action shall affix, not only such Damages and Costs as have been actually done, but also Damages for other of the said Breaches as the Plaintiff shall prove, and the Judgment shall be entered on such Verdict as hath been actually done in such Actions, and if Judgment shall be given for the Plaintiff on a Demurrer, or by Confession, or Nihil diez, the Plaintiff upon the Roll may assign as many Breaches as he shall think fit, upon which shall issue a Writ to the Sheriff, to summon a Jury to appear before the Justices of Affidavit, or Nihil Prius, to inquire the Truth of those Breaches, and to assign the Damages.

56. By the 8 & 9 W. 3. cap. 10, and 4 & 5 Anne cap. 16, the Plaintiff may assign as many Breaches as he pleases on Bonds to perform Covenants.

57. Covenant was brought on a Penalty of certain Articles, wherein the Defendant had agreed to pay so much per Chaldron for all Coals laden either in Newcastle or in the River Tyne, and brought to London; the Breach assigned was, that the Coals were laden on such a Ship infra Portus de Tinnmouth, (viz.) at North-Shields, and brought from thence to London. The Defendant demurred, because it did not appear that Tinnmouth is upon the River Tynne, and so the Breach not well assigned, and the Court cannot take Notice of it judicially, and therefore inclined against the Plaintiff, but gave Leave to discontinue on Payment of Costs. 5 Mod. 352. Trin. 9 W. 3. Toddard v. Middledon.

58. Defendant covenanted with the Plaintiff, that he would pay him 100l. in Money, and give him Credit for 100l. more upon the Plaintiff’s assigning him 1000l. Stock in the Bank of England, and that the Defendant would accept the same upon Notice on or before 24th of May next following. In Covenant Plaintiff alleged Notice to Defendant, that Plaintiff would be ready to make the Transfer on the said 24th of May, but the Defendant did not come to accept, and Non-payment of Money assign’d for Breach &c. And per Cur. the Breach is ill assigned, for they should assign for Breach, that they had tendered a Transfer, and that Defendant did not accept, for there was nothing to be paid but after Transfer. 12 Mod. 248. Mich. 10 W. 3. Shales v. Seignoret.

59. In Debt on Bond to perform in Covenants, the Replication must shew a certain Breach; But in Covenant it is enough to assign a general Breach; Per Holt Ch. J. 1 Salk. 140. pl. 5. Trin. 11 W. 3. B. R. Treby.

60. Apprentice covenanted with his Master not to buy or sell without the Ld. Raym. certain Breach; But in Covenant the Breach is enough to assign a general Breach; 107. Rep. 138. S. P. 27. B. R. Ch. 1. Apprentice Covenanted with his Master to buy and sell within Two Years; in Covenant the Breach assign’d was that the Defendant Diverts Debts & Victoria, between such a Day and the next, that such a Day, sold to H. and other Persons unknown, Goods to the Value of another 5 Z. 1001.
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Breach was laid for having bought Goods in the same Manner; and adjudged accordingly.

100. After Verdict for the Plaintiff it was moved in arrest of Judgment, that the Breach was uncertain, both as to Times and Persons; but per Holt it is certain enough; for it is so described, that if another Action be brought the Defendant may plead a former Recovery for the same Cause, and aver this to be the same Selling; to which Gould J. agreed, and that the Action here being only for Damages it is well enough; and Judgment for the Plaintiff. 1 Salk. 139. pl. 5. Trin. 11 W. 3. B. R. Farrow v. Chevalier.

61. Covenant to grind all his Corn which he should use in his House at Plaintiff's Mill; Breach affirmed, that there were 500 Barrels of Wheat ground and used in Defendant's House which he did not grind at Plaintiff's Mill; but ill, it not being said it was his Corn. 12 Mod. 327. Mich. 11 W. 3. Hamley v. Hendon.

62. Affumptive to deliver Corn on or before the 5th of January into a Barge to be brought by the Plaintiff to receive the said Corn. The Breach affirmed was, that he did not deliver on the 5th of January; it is good without a Verdict, because there must be a Concurrency of both Parties; Per Holt. 1 Salk. 140. pl. 6. Mich. 12 W. 3. B. R. Harmon v. Owden.

But however, it is aided by the Verdict, and Judgment for the Plaintiff.

2 Lord Raym. Rep. 620 S. C. & S. P. per Holt, as to its being without a Verdict; but however,

63. In Covenant for not repairing the Heir appurs Breach that the Premises were out of Repair, talli Die & per Decem Annos ante tunc which included his Ancesters Time, and held good. 1 Salk. 141. Paish. 4 Ann. B. R. Vivian v. Campion.

94. A Covenant was, that the Defendant should Dance, Sing and Act, under the Society of Comedians, and obey Orders; and should Act and be Affiliating to no other Theatre, but what was appointed by R. and the Breach affirmed was that he Acted at Oxford, without the consent of the Plaintiff. The Defendant demurs to the Declaration; and Pengelly for the Defendant excepted to the Declaration. If. That it is set out with Post hoc &c. which must be construed from the filing of the Declaration (or bringing the Writ) and it should have been Poit confectionem indenture, i.e. That he the said W. did Covenant that he, for five Years after the making, would not Act &c. 2dly. This Breach is not well affirmed; because it does not appear that the Play he Acted was publick, and if not so it was no Damage to the Plaintiff, and the design of the Covenant was not to restrain any Dancing Acting &c. unless where it drew others (to lay out their Money at other Playhouses) from the Play-house of R. Salkeld contra that this Breach is well affirmed according to the Covenant, and it is not material whether the Acting were for Gain or not, but take it to be for no Gain; 'tis yet prejudicial to the Plaintiff, for no Body will see his Play when they can see another for nothing. Holt and Powell held, that quod Poit hee non ageret &c. in the Declaration should have been Quod abinde non ageret &c now Poit hee was right in the Receipt of the Covenant but wrong in the Declaration; because Poit hee must be taken to be after the present Time; So that the Breach is laid to be after the Declaration. But it was adjudged tho' the Court thought it could not be made good. 11 Mod. 133. pl. 13. Trin. 6 Ann. B. R. Rich v. Wilks.

65. Covenant to leave the Premises in good repair at the end of the Term &c. Breach affirmed that by one Month before the end of the Term they were not in repair in any Part thereof, contrary to the Form and effect of the Covenant; Exception was for that they ought to have said that the Defendant did not leave that in good repair at the end of the Term, fed non allocator. Trin. 10 Ann. B. R. Hamond v. Royton.

66. Cove-
Covenant.

66. Covenant by Leffor with his Leffice, that he should repair the Premises denailed before Michaelmas next. Breach assign'd by Leffice, that the 25th September the Premises were out of repair to be done by the Leffor according to the Covenants contain'd in the Deed. On Demurrer to the Declaration, Judgment was for Defendant, for this is altogether uncertain, and it is but Argumentation, that the Leffor had not repair'd; the Breach should be assign'd in the Words of the Covenant, that he did not repair. There is a Difference between a Covenant Executory and one not, and saying (according to the Covenant) is uncertain. Patch. 10 Ann. B. R. Mitchell v. Hamond.

67. A Leffice for Years Covenants that it shall be lawful for W. and two others his Leffors, their Executors, Administrators or Affigns, or any of them with Workmen, and other Company to enter and view the Premises if in repair &c. W. brings Covenant and assign'd a Breach, to be with Workmen came to the Defendants Houle such a Day and at such an Hour and requested him that they might enter and that the Defendant recusavit et non permitit, and that W. and the two other Leffors came the Day and Hour to the Defendant's House, and requested, and Defendant recusavit &c. without saying to them Seal. &c. Defendant pleads to the whole, and says he did not refuse the Plaintiff to enter, but anwires nothing as to the 2d Breach assign'd &c. Sed per Cur. It is a good Plea; for the two Assignments in the Declaration are but one Breach, it being all said to be at the same Time and Hour for all three might come together and request, and not W. first, and then he and the other two afterwards &c. Mich. 10 Ann. B. R. Wright v. Nicholls.

68. In assigning of a Breach if there be a varying between the Assignment and the Words of the Covenant, such a Faiil must be assign'd as is a Breach in Law of the Covenant; per Parker C. J. Patch. 11. Ann. B. R.

69. Leffice covenant'd to lime and dung the Land durante Termino. Leffor died within the Term, and his Heir brought Covenant and assign'd the Breach, that after the Deffent of the Land the Defendant did not Durante Termino Lime and Dung the Land. The Court held the Breach not well assign'd; because the not Dunging and Liming it since the Defendant is no Breach of the Covenant, it it was limed and dung'd so sufficiently before, that it did not need it. Adornatur. Per Pyre J. the Plaintiff should have said that the Defendant did not Durante Termino Lime and Dung the Land; and the Court held the Breach not well assign'd; because the not Dunging and Liming it since the Defendant is no Breach of the Covenant, it it was limed and dung'd so sufficiently before, that it did not need it. Adornatur. For the Breach ought to be assign'd in the Words of the Covenant; and per Parker Ch. J. he should have said the Defendant did not lime it at all, and that the Closes remained unlim'd during the Residue of the Term; that where a Man is to do one Particular Act during the Term, and which is not an Act of Continuance, once doing it within the Term is well enough. MSS. Rep. S. C.

70. In Covenant the Plaintiff declares that he the Plaintiff, did Covenant with the Defendant to transfer at a certain Day, such a Share of Stock with the Dividends and Profits that in the mean time should arise upon the same to the Defendant at the South Sea House, at the usual Hours, when the Books of the Company are open, and that the Defendant did Covenant to accept the same, and pay so much to the Plaintiff for it, provided the Plaintiff did tender it at the Time and Place above mentioned; and he avers that he was at the South Sea House at the Day, at the usual Hours when the Books are open, to tender the said Share of Stock with the Dividends and Profits of the same to the Defendant; but that the Defendant did not accept the same, Sed penitus Recusavit & adiunct recusat acceptare &c. The Defendant demurs specially. Per Cur. the Plaintiff has not intitled himself to his Action, for that he has not proved, what are the usual Hours of keeping the Books open, and that he was at the Place a convenient Time before putting the Books, ready to make a Tender; and
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and the Restraint being not expressly laid to be at the Time and Place, shall not be so intended; if it had been so laid, it would have been good. Gibb. 61, 62, 63. pl. 9. Pauch. 2 Geo. B. R. Bowles v. Markwik.

71. Where the Covenant was that Leefe should quietly enjoy two Closfs against all claiming or pretending to claim any Right in them, he assigned the Breach thus that J. S. having or pretending to have a Claim Time out of Mind did enter upon the said Closfs, and held well assigned, and that this Case differed from the Case of Kerby v. Hanfker, for it is impossible here that the Diflurber could claim under the Plaintiff himself, by reason of the Words Time out of Mind. 10 Mod. 383, 384. Hill. 3 Geo. 1. B. R. Chaplin v. Southgate.

(M. a) Pleadings and Assignments of the Breach. Joint and Several.

1. Two made Indentures between them quod cum uterque Obligatus suum et aliter in two single Obligations they Covenanted between them Quod si Uterque eorum feterit et obediens Arbitrio et Ordinationi A. et B. &c. that then the Obligation of him who shall be void and the Obligation of him who shall not perform it shall be in force, and therefore per Littleton each has bound himself as well for his Companion that he shall perform the Award, as that he himself shall perform it, and the Defendant pleaded Performance and did not say that the Plaintiff had performed as also and yet good per tot. Cur. For it shall be intended that each shall perform his own Part, for these Words quod uterque feterit is as much as if he had said quod uterque eorum pro parte suae feterit; For it is no more but every one for his own Part, and these Words quod uterque Obligatus alteri in 100 l. is good also, and shall not be taken by this, that both of them are bound to each of them, but shall be taken, quod uterque pro se tenetur alteri separaliter. Br. Covenant pl. 27. cites 39 H. 6. 9.

2. And alfo in Indentures they fay in the end, ad quas quidem conventiones perimplendas uterque tenetur alteri in 100 l. is good and every one by himself separately is bound to the other; For these Words are good several Words in themselves. And fo fee that thofe short Words are several in themselves as well as it eferally by two Covenants had Covenanted with the other. Quod Nota, per Cur. Ibid.

3. R. B. by Deed covenants with 4 Persons and their Assigns & ad & cum quolibet eorum, that he was lawfully and solely fojed of a Refto.

Two of the Covenanters being Covenant against R. B. and held ill, because it was a Joint Covenant and the others ought to have joined. Where it appears that every of the Covenanters hath a certain Interest or Estate, the Covenant shall be severall in respect of their several Interests; and if Covenant be with the Covenanters et cum quolibet eorum, these Words make the Covenant severall, As if a Man demise Black Ace to A. and White Ace to B. and Covenant with them et quolibet eorum, &c. the Covenant is severall, but if the Demise had been to them Jointly, the Words cum quolibet eorum are void; for a Man by his Covenant in respect of severall Interest cannot make it first Joint, and then severally by the words cum quolibet eorum. 15 Rep. 18. b. 19. a. Mich. 29 & 30 Eliz. in Cam. Scacc. Slingby’s Cafe.

—2 Le. 7. pl. 9. Anon. S. C. in the Exchequer, and adjudg’d there by the whole Court, that Covenant did not lie by one of them only but ought to be brought by all. —S. C. cited by Coke Ch. 3 Bulst. 29 — S. C. cited by Fleming Ch. J. Bulst. 29.

4. One
Covenant.

4. One, Lydiate and 6 other Merchants covenant separatum with the Cro. E. 25. Mollifer and Owners of a Ship by a Charter Party, that one shall pay for much, another for much &c. for Carrying of Goods, and the Mollifer and Lydiate S. C. Owners covenant with the Merchants to Ship certain Merchandizes to York, such a Port &c. Held that though the Merchants join in the Covenant (id eti) covenant separatum, yet this Word separatum makes S. C. but this several Covenants and not a joint Covenant, and whereas it was not reduced further added, performanceon omnium &c. &c. Conventionum in the Court, quilibet mercator Separatum obligat feipsum &c. in double the Freight, differing in This is several too by reason of the Word separatum, and this Word shall refer to the several Covenants before, and when Covenants are several they are as several Deeds, and the Covenant here on the Part of the &c. Mollifer and Owners is joint. 5 Rep. 22, 23. Hill. 39 Eliz. C. B. to compound. 1bid. 156 S. C. adjudg'd that it is several—S. C. cited per Williams, J. Built. 26. to be adjudg'd that the Word (separatum) makes the same to be several Covenants, and not Joint.

5. The Plaintiff declared that A. and B. dissimulant; This imports a Comb. 97. Joint Covenant as to the Interest granted, but as is subsidiaries it imports a several Covenant. 1 Salk. 137. Mich. 1 W. & M. in B. R. — Comb. 165. S. C. — Show 79. S. C.

6. If A. conveys 3 Manors to B. C. and D. severally, and covenants with them &c. so that, that he has convey'd to them a good Estate; There are several Covenants and not a Joint Covenant. Jenk. 262. pl. 63.

7. E. seized in Fee of a Manor convey'd it to the Use of himself for Life, and then to his Wife till T. his Son should be 24, and died. T. granted a Remi-charge to N. and covenanted that he had not altered any Estate made by his Father, and had done no Act whereby it should be altered, and that the Land should be open to the Diletries of N. Adjudg'd that there were several Covenants; For the two first were Negative, and the last Affirmative. Lit. Rep. 63. Arg. cites Mich. 1 Jac. C. B. Erselfield v. Napper, and says, that this Grant was before T. was 24, and that T. covenanted that he had good and lawful Power to grant notwithstanding any Act done by him, and that the Land charged shall be open and sufficient to his Dilidries; and for that the Land was not open to the Diletries, Action was brought; that T. pleaded that he had done no Act, but that the Land should be open, and adjudged against him, that the Words (Notwithstanding any Act &c.) do not extend to this last Covenant as to the Land's being open, which is absolutely of itself.

8. The Plaintiff had a Reversion of two Houles, one in Fee, and the other for Years, with Covenant [* by 192. St. Leffe] for Reparations of both Houles; and Question was, whether the Plaintiff should have one Action, or several Actions, and adjudged that in B. R. and he should have a joint Action for both. Brownl. 20. Mich. 7 Jac. Pyot v. Ld. St. John.

9. Indenture of Covenant between A. and B. of the one Part, and C. of the other Part. Among the Owners one was, it is agreed between R. Roll to the Parties, that C. enter into Bond to pay A. 160 l. by such a Day, which S. C. was not paid. A. dies. B. and not the Administrator of A. shall have judg'd; for the Action on this Covenant; For the 160 l. payable to A. in his Life being to be obtain'd by his Suit on this Indenture, no one can have it is a joint Covenant. — Built. 25, B. R. Roll to the Parties during their Lives, and after 26 S. C. their Death the Executor or Administrator of the Survivor. Yelv. 177. held accordingly, and no Judgment in C. B. affirmed. And per Fleming Ch. J. where there is Matter precedent, and apt Words to draw
Covenant.

Coveitaiit.  

10. Covenant against B. and C. on a Covenant in an Indemnity Artifici- 
tally to erect an House &c. Judgment was against B. by Default. C. 
pleaded that he and B. had artificially erected &c. and is to issue, and 
and found for C. A Writ to inquire of Damages was mov'd for against B. 
be-cause the Act to be done was to be done by both, and B. is condemn'd 
of Non-leaveance by the Judgment; But the Court denied it, and held 
that B. should not be charg'd with any Damages; For it appears that 
the Covenant is perform'd, and C. shall have Costs against the Plain-

11. And Windham J. held, that if C. had pleaded that the House 
was artificially erected by him, (without saying by them) and the 
Jury had found accordingly, it had been good Performance, because 
the Thing requir'd to be done is done; and therefore there is Difference 
between this Case and the Case where two covenant to go to York, thar 
the one cannot plead that he went, but must plead that they went, 
For there is a Personal Act to be done; and the one cannot go to York by 
Ford.

12. The Court conceived, a Covenant to do several Things is as several 
Covenants, and though he might have alligned one Breach, yet several 
are good enough; Judgment for Plaintiff. 2 Keb. 69. pl. 43. Patch. 
18 Car. 2. Young v. Goffing.

13. A Covenant was between A. of the one Part, and B. and C. of the 
other Part, &quantib evacuam. A. brings Covenant against B. only, and 

14. A. and B. covenant with C. for themselves, and every of them, that 
if they renew such a Lease, they will affix the Term to C. A. dies, 
and the Covenant being broken, C. sues the Executor of A. Objection that this 
is a joint Covenant, and so ought to survive in Charge to B. But per 
Cur it is joint and severall, for (every of them) is as much as for (each 
of them) and so the Party hath Election to sue either the Executor or 

15. A Covenant which is joint in itself shall be taken severally when the 
Breach alligned is a separate Act of one of the Parties; per Holt Ch. 

16. A. B. and C. in Consideration of such a Kent referred by a 
Deed-Poll covenant &c disimbursement to the Plaintiff; and on this Covenant 
Law in the Plaintiff brought an Action against A. and alligned for Breach 
that A. and another by his Command enter'd on the Plaintiff; and he 
shewed further, that A. B. and C. had nothing but that one D. was fals'd 
in Fec. A. the Defendant pleased that B. and C. were fals'd, and had 
Power to demife, and traversed that D. was fals'd, and likewise traver-
sed that the Defendant entered and kept the Plaintiff out; and upon 
Demurrer to this Plea it was adjudged, that this Action must be founded 
upon the Word Disimbursement, which is a Covenant in Law; for there was 
no express Covenant, and therefore as the Interesse granted to the De-
tendant by that Word is joint, so must the Covenant be; and if so, 
then this Action being brought against the Defendant alone, cannot be 
maintained, but it ought to be brought jointly against A. B. and C. who 
were the Lessors. 1 Salk. 137. Mich. 1 W. & M. in B. R. Coleman v. 
Sherwin.

Comb. 164. S. C. —— And Holt Ch. J opening the Matter, did, that this Action was brought on a 
Covenant
Covenant.

Covenant in Law made by the Word Conccffs; and it appears here; that the Deniile was a joint De-

nife made by the Defendant Sherwin, Dover, and Embled, and therefore this Covenant implied by

Law, ought regularly to be joint; &c. per Curt. in such a particular Case as this is, where one of

the Lettours had already done cargo by his Entry on the Leafe without the Agent of the others, the Covenant

in Law shall not be taken to be joint, so as to charge the other Letlours with this Personal Wrong of

their Companion; for it is more durable that the Innocent should be purified with the Guilt, therefore

as to this Breach, (viz.) the Entry of Sherwin, and running the Plaintiff out of Possession, the

Action is well brought against him alone; but as to the two other Breaches unfolded in the Declara-
tion, this Action of Covenant ought to be brought against the Lettours, for as to that Purpose the Co-

venant in Law is joint, and not several; &c. in such Case there is no particular Personal Tort done by

one more than another, and if severall Actions should be permitted in such Cases, the Plaintiff would

recover Damages two or three Times for the same Thing.——Carth. 93, 99. S.C.

(N. 2) Pleadings. In Bar &c.

1. There was taking for Tall contrary to the Grant of H. 3. the De-

fendant pleaded Grant of King Sebth of the aforesaid Cythum; the

Plaintiff alleged Composition between the two Villis, and that the Defendant

by the taking had broke the Composition; And per Knivet clearly he shall

plead it as here, and shall not be drove to Writ of Covenant, and by

Consequence may rebut in this Case, and shall not be drove to Writ of


2. If a Lease for Years be by Deed, and that the Lease shall not be

charged of Reparations, he shall rebut by this in Action of Waite, and

shall not be put to Action of Covenant. Br. Covenant, pl. 42. cites 21

H. 6. 46.

3. Where a Man grants to his Tenant that he will not distrain him be-

fore such a Leafe, there if he distrains he shall have only an Action of

Covenant; per Fineux Ch. J. But Brook makes a Quere thereof, for

he says it seems that it shall be pleaded in Bar to avoid Circuit of Action.

Br. Barre, pl. 52. cites 21 H. 7. 23.

4. And if a Man leases Land for Life or Years, and after grants by an-

other Deed that he shall not be impeached of Waite, there if he brings Waite,

the other shall have only Action of Covenant, per Fineux Ch. J. But

Brook says, that it is us'd to the contrary, lo he may plead it in Bar to

avoid Circuit of Action. Ibid.

5. If a Covenant be to make an Estate by the Advice of J. S. it ought to

be shewn what Advice J. S. gave; Per Hobart Ch. J. Arg. Hob. 295. cites

20 H. 8. 1. and 16 E. 4. 9.

6. In Covenant for not Repairing, if Damages are recovered, it was

said by Manwood, that by this Recovery of Damages the Leafe shall be

exempted for ever after from making of Reparations; So as if he suffer the

Houses for want of Reparations to decay, no Action shall be afterwards

brought thereupon for the fame, but that the Covenant is extinct. 3 Le.


7. In Debt upon an Obligation to perform certain Covendnts in a Pair of

Indentures; the Plaintiff alleged the Breach in one of the Covendnts, viz.

that the Defendant should do all Reparations of such a House denis'd to him,

and that he had not repaired, but suffered the same to decay. Defendant

said, that the Plaintiff had acquitted and discharged him of the Reparations.

Plaintiff demurred. Manwood said, that the fame is an Acquittal and

Discharge of the Reparations, as well for the Time past, as for the

Time to come, by Force of the said Covenant, and amounts to as much
as if he had releas'd the Covenant. Then it was moved, if the Covenant being broken for want of Reparations? If now the Acquisition and Discharge, or Release of the Covenant, should take away the Action upon the Obligation which was once forfeited before? And Manwood held that it should not; for it non be bound in an Obligation for the Performance of Covenants, and before the Breach of any of them the Oblige releaseth the Covenants, and afterwards one of the Covenants is broken, the Obligation is not forfeited, for there is not now any Covenant which may be broken, and therefore the Obligation is discharged; but if the Release had been after the Covenant broken, otherwise; all which Dyer and Mounton conceiv'd.


9. It was said to be adjudged, that in Covenants perpetual, if they are once broken, and an Action of Covenant brought, and a Recovery upon it, if they are afterwards broken, a Seize Fakis shall be upon the Judgment, and need not bring a new Writ of Covenant. Cro. C. 3. pl. 7. Hill. 24 Eliz. B. R. Swan's Cafe.

10. Leffee for Years covenanted to build an House on the Land within the first 10 Years. In Covenant the Defendant pleaded that the Leffor entered, and had Possession for Part of the 9th Year &c. Per Gawdy be should have proceeded, that the Plaintiff would not suffer him to build; and the other Justices seeming of the same Opinion; but would advise. GODl. 69. pl. 84. Mich. 28 & 29 Eliz. B. R. Barker v. Fretwell.

11. The Leffor covenants that the Leffor shall repair the Tenements, when they are ruinous, at the Charge of the Leffor; In Debt for Rent, the Leffor pleaded that Matter, and that according to the Covenant he had repaired the Tenements, being then ruinous, with the Rent, and demanded Judgment if Action &c. and good; Per Gawdy and Clench Justices; cite R. 2. Bar. 102. but Fenner J. contrary, for shall have Action against the other, if there be not an expres Covenant to do it. Le. 237. in pl. 320. Mich. 32 & 33 Eliz. B. R. Beal v. Taylor.

Cove-nants.

Brownl. 89. 
Mich. 5
Jac. Jeffery
v. Guy, &c.
-Yelv. 13.
S. C.
Brownl.
seems only
a Translation
of Yelv.

Brownl. 89.
S. C.
but
seems only
a Translation
of Yelverton.

B. in Debt on Bond for Performance of Covenants the Defendant pleads a Release, and Iffie is join'd upon it, and found for the Plaintiff, and he has Judgment, and affirm'd in Error, though the Plaintiff did not allege any Part of the Bond, and a Breach of it in the Defendant; For the Plaintiff is for the Defendant's Plea to answer to the Release, and has no Occasion to show any Breach of Covenant; for the Law requires that, when it is pleaded that no Bond was made, and not where the Bond and Breach are confest, as in this Case is impliedly done. Jenk. 280.

12. In Debt on Bond for Performance of Covenants the Defendant pleads a Release, and Iffie is join'd upon it, and found for the Plaintiff, and he has Judgment, and affirm'd in Error, though the Plaintiff did not allege any Part of the Bond, and a Breach of it in the Defendant; For the Plaintiff is for the Defendant's Plea to answer to the Release, and has no Occasion to show any Breach of Covenant; for the Law requires that, when it is pleaded that no Bond was made, and not where the Bond and Breach are confest, as in this Case is impliedly done. Jenk. 280.

13. The Plaintiff is not bound to allege a special Breach when the Defendant's Plea contains special Matter. [As in] Debt upon Bond for Performance of Covenants in a Lease made by A. Tenant in Tail, in which was a Covenant, that A. might enter from Time to Time to view the Reparations. Defendant pleaded, that A. die'd, and that B. the Issue in Tail entered before any Covenant was broken. The Plaintiff replied, that B. came with him on the Land to view the Reparations, and traversed that B. entered Medo & Perma prout &c. The Plaintiff had a Verdict. Error
Covenant.

was brought, for that no Breach was alleged in Covenant in the Defendant, and so there was no Cause of Action. But per Cur it needed not in the Case; for by the special Issue tendered by the Defendant, viz. that the Issue in Tail made an Entry on him before any Covenant broken, he inquired the Plaintiff to make a special Replication to the Point tendered, and so cannot affign any Breach of Covenant, but must necessarily answer to the special Matter alleged. Yelv. 78. Mich. 3 Jac. B. R. Jeffrey v. Guy.

14. A Warrantia Charter depending is no Bar in Covenant, because they are of several Matters, one Real, and the other Personal. See Hob. 3. pl. 6. Hill. 5 Jac. Pincombe v. Rudge. And ibid. 28. S. C. cited by Hobart Ch. J. And see Yelv. 139. S. C.

15. In Covenant against Leeflee for Non-payment of Rent, he pleaded, Lied by Discreet. Plaintiff demurr’d, and Judgment for him; for no Covenant on this Plea is a Confession that it was not paid according to the Reservation brought up for, and for the Plaintiff could not distrain unles it was behind after the Day as an Indenture upon a special Covenant. To pay Rent at certain Days therein specified and referred. The Defendant pleads, that no Rent was behind. The Plaintiff demurs to that Plea; and it was held by the whole Court to be a bad Plea in Covenant, for by that Plea the Defendant contrefles the Covenant broken, and that Plea tends but in Mitigation of Damages. Brownl. 19. Trin. 7 Jac. Hare v. Savill.

16. In Debt upon an Obligation with Condition to perform Covenants in an Indenture of Leese, the Defendant pleads, that after, and before the Original purchased, the Indenture was by the Assent of the Plaintiff, and the Defendant cancelled and avoided, and to demands Judgment of the Action; and feems by Coke clearly, that the Plea is not good without Acknowledgment that no Covenant was broken before the cancelling of the Indenture. Brownl. 273. Mich. 7 Jac. C. B. Hare v. Savill.

17. Action of Covenant brought, for that the Defendant did not pay a Rent with which the Land was charged; the Defendant pleads he was to enjoy the Land sufficiently safe and harmless, and answers not to the Breach; and adjudg’d a naughty Bar by the whole Court. Brownl. 22. Mich. 12 Jac. Cowling v. Drury.

18. Accord with Satisfaction by Deed is a good Plea in Discharge of Covenant, as well before the Breach as after, because it is an Aëtion merely Personal, in which only Damages shall be recovered, and it is not pleasurable ensues as Releafe of Covenant. Palm. 110. Pach. 17 Jac. B. R. Roberts v. Stoker.

19. Pleading by way of Bar or Replication that Testament exicit per 2 Roll Rep. talem Indenturum is not good, though in a Declaration it is sufficient to induce the Action and assign the Breach; Per tot. Cur. Gro. J. 537. pl. 2. Trin. 17 Jac. B. R. in Cæfe of Bultivant v. Holman.


20. Leeflee covenants to do all reasonable Carriages for his Lefflor with his Carts &c. Leeflee pleads he has no Cart &c. A good Plea; for he is not bound to keep Carts &c. on Purpose. Lat. 202. Hill. 2 Car. Manners v. Velcy.

21. The Plaintiff brings an Action for Breach of Covenant upon a Deed; the Defendant pleads a parol Agreement afterwards in Discharge of the former Covenant, but the Court held the Plea not good. Sty. 8. Hill. 22 Car. B. K. Fortescue v. Brograve.

6 B 22. In
Covenant.

22. In Covenant for not repairing &c. the Plaintiff shews for Breach; but no J udg-

23. In Covenant &c. for Non-payment of Rent, the Defendant pleaded in Bar, that the Plaintiff entered into Part of the Land demised before the Rent due, for which the Action was brought, and so had suspended his Rent; The Defendant replied, that the Defendant did re-enter, and so was justified of his former EJate. Upon Demurrer Rolf Ch. J. said, the Plaintiff ought to shew that the Defendants entered and continued in Possession till after the Rent became due; therefore Nil capiat per Billam, Nil. Scy. 432. Hill. 1654. Page v. Parr.

24. In an Action of Covenant on Demise of a Free-Ione-Quarry to the Defendant, the Defendant covenants not to dig in any other Part of the Common, and now Breach being affixed in digging, the Defendant pleads Non locutis, &c. to which the Plaintiff demurs, the Demise being by Indenture, and the Covenant collateral. The Court agreed the Plea frivolous; Judgment for the Plaintiff, Nili. Keb. 752. pl. 44. Trin. 16 Car. 2. B. R. Armin v. Bowes.

25. In Deeds for Rent on a Lease for Years, the Defendant pleaded in Bar that the Lessee did Covenant, that the Lessee might destitute so much for Charges, and upon Demurrer this was adjudged a good Plea, it being a thing Executory and the Covenant in the same Deed, and the Party shall not be put to Circuit of Action and to bring an action of Covenant. Lev. 152. Mich. 16 Car. 2. B. R. Johnson v. Carre.

26. In Covenant or a Conveyance upon a Covenant, that the Vendor was seized in Fee and Breach alleged that he was not seized in Fee, the Defendant pleaded good non infriget Conventionem, (viz.) it is ill, being too General and argumentative, upon a Demurrer, but it is help'd after a Verdict. 1 Lev. 183. Trin. 18 Car. 2. B. R. Wallingham v. Comb.

27. Defendant pleads in Bar of Breach for Non payment of Rent a former Bargain and Sale of the same Land, without pleading Entry accordingly, it was said no Entry was requisite being on the Statute of Uses. Sid. 399. pl. 6. Hill. 20 & 21 Car. 2. B. R. Banks v. Smith.

28. If Lessee after Assignment of the Reversion brings Covenant, Lessee can't plead that he has assign'd over his Reversion, but either Lessee or his Grantee, who brings the first Action of Covenant and recovers, shall Bar the other (viz.) Lessee shall plead such Recovery in Bar to the 2d Action. Sid. 402. per Twidten J. Hill. 20 & 21 Car. 2. B. R.

29. In an Action of Covenant to repair from Time to Time a House demised, the Defendant pleaded that before the Action brought, the House demised being burnt in the Fire was repaired in convenient Time, to which the Plaintiff demurred, because it was not known by whom it was repaired; and in Truth it was rebuilt by the Plaintiff; and per Twidten J. this is no Performance of the Covenant, unless it be pleaded to be done by the Defendant himself, though Reparation by a Stranger be an Excuse of Waite; sed curia contra, that being repaired it is a good Plea by whom ever; but this being a hard Case, the Court gave Leave to the Plaintiff to waive his Demurrer, and take Issue that he did not repair it.
it in convenient Time, the House being yet uncovered. 2 Keb. 335.

Executive and Judgment for the Plaintiff.— 2 Saund. 420. S. C. adjudg'd that the Plea was ill, because not shown by whom it was rebuilt; though it was objected that it was not material by whom it was rebuilt; and if by a Stranger it could not be built again by the Defendant; and he has assigned all his Interest before, it lay not in his Notice by whom it was built, but that it could not be presumed to be built by the Plaintiff, for that he could not intermeddle with the Possession during the Term; But by the Reporter, it being alleged, that the Plaintiff had rebuilt at his own Charge, Hales refused to bear the Reason, & quaf in a Partition without considering the Matter in Law, gave Judgment for the Plaintiff.

30. Debt upon Bond, conditioned to perform Covenants, one of which was for Payment of so much Money upon making such an Assurance; The Defendant pleaded that he paid the Money on such a Day; upon a Demurrer the Plaintiff had Judgment, because the Defendant did not say in the Plea when the Assurance was made, that the Court ought judge that the Money was immediately paid pursuant to the Condition. 2 Mod. 33. Pauch 27 Car. 2. C. B. Duck v. Vincent.

31. It was agreed, that a Rehearse of all Debts, Duties and Demands, did not release Covenants that were broken; nor any other Word but the Word Covenant. Freem. Rep. 235. pl. 245. Mich. 1677. Anon.

32. When Debt on Bond to perform Covenants in a Deed is brought, and the Defendant cannot plead Covenants performed without the Deed, because the Plaintiff has the original Deed, (and perhaps Defendant took not a Counterpart of it) we use to grant Importances till the Plaintiff brings in the Deed, and upon Evidence if it be proved, that the other Party has the Deed, we admit Copies to be given in Evidence. Per Cur. Mod. 256. pl. 17. Trin. 29. Car. 2. C. B. Anon.

33. Where Covenants are reciprocal, Non performance by one is no Bar to the Action of the other. 2 Jo. 216. Trin. 24 Car. 2. Shower v. Cudmore.

34. In Covenant the Breach assign'd was, that the Defendant did not repair. The Defendant pleaded generally Quad reparavit & de hoc point fe super Patriami. This was held good after a Verdict. 2 Mod. 176. Hill. 28 & 29 Car. 2. C. B. Harman's Case.

35. In Covenant on an Indenture for Rent, Nil Debit is no Plea, and Judgment was given for the Plaintiff. 3 Lev. 170. Trin. 36 Car. 2. C. B. Tindal v. Hutchinson.

36. Covenant upon a Demand for Years, rendering Rent; and Breach assigned for Nonpayment. Defendant pleads, that part of the Rent was to be allowed &c. Per Cur. This a Covenant against a Covenant, and Judgment Nisi for the Plaintiff. Comb. 21. Pauch. 2 Jac. 2. in B. R. Burroughs v. Hays.

37. In an Action of Covenant the Plaintiff declared, that whereas by an Agreement in Writing made between him and the Defendant, it was agreed between the said Parties for a Deem of a Leaf for 99 Years, of and in a certain Messuage &c. under a certain Rent, and the usual Covenants as in all Demises granted by the Trustees of the Earl of Rockefur were used, common quorum considerations, the said P. did agree to pay the said C. 18d. at Michaelmas next following, & cist the Plaintiff performed all of his Part, the Defendant has not paid the Money, &c. the Defendant pleaded in Bar, that the Plaintiff temporarily suspending prand covenantam fieri ne sequatur poena nihil habens in Tenementis prand so agreed to be demised. To this the Plaintiff demurred, and Judgment by the whole Court was given for the Plaintiff, for though that may be pleaded in an Action for Debt for Rent, yet it cannot be pleaded in Covenant for a Sum in Gros. Besides, the Agreement does not necessarily import that the Leaf should be made by the Plaintiff; it may be understood, that it was agreed that he should procure a Leaf for the Defendant. 2 Vent. 99. Mich. 1 W. & M. in C. B. Clarke v. Peppen.

38. A.
Covenant.

2 Vent. 217. 38. A. covenants with B. to Pay him 300l. for the Use of the Wife of
A. for her Life only, and Covenant brought upon this, and Breach aligned, that there was so much of the 300l. arrear; Defendant pleads that there was another Indenture between him and the Plaintiff since the Date or Delivery of the Covenant-Deed declared on, resting the said Covenant and Agreement for the Payment of the 300l. wherein it was covenanted and agreed, that so long as A. and his Wife did cohabit, the Payment of the 300l. should cease and over, that they did cohabit for the Time the said Arrear became due and pleaseth, this in Bar of the first Agreement. There are express Words that the Payment shall cease during the Cohabitation; and there had been no great Harm to continue this as a Release of the Arrears during the Cohabitation; But yet it being a Sum in Gros, and the Covenant Temporary and not Perpetual, they held it no good Bar. 12 Mod. 552. cites 2 Vent. 217. Gawden v Draper.

39. Where Provist goes by way of Decease of a Covenant, it must be pleaded on the other Side, but it is otherwise where it goes by way of Explanation or Refrission of the Covenant; Per Holt Ch. J. and Judgment accordingly. 2. Salk. 574. pl. 2. Hill. 10 W. 3. B. R. Clayton v. Kinaught.

40. If A. covenants with B. to convey to him all his Right and Title to the Manor of D. to which A. has no Right, it is not a good Plea in an Action of Covenant, that He had no Right &c. But he must make such a Conveyance as would in Truth pass all his Title in Cafe he had any; And he is stopped by his Covenant to say he had no Title. Per Holt. 12. Mod. 399. Pach. 12 W. 3. Anon.

41. In Debt on Bond for Performance of Covenants if the Defendant pleads an ill Bar, and the Plaintiff replies and assigns a Breast which of his own seeing appears to be no Breast, the Defendant shall have Judgment; Arg. 2. Ld. Raym. Rep. 1080, 1081. Mich. 3 Ann.

(O. a) Plea in Excuse.

1. In Covenant the Defendant covenanted to give Security; the Defendant pleaded that he offered Security, and resolved that it was not good. Poph. 206. Arg. cites Mich. 2 Car. B. R. Rolfe v. Harvey.

2. A private Act of Parliament which makes the Conveyances of A. void, is no Excuse of Breed of Covenant entered into by B. to C. for quiet Enjoyment by C. of Lands conveyed by B. to C. being Part of the Lands before conveyed by A. to B. and the Conveyance whereof is made void by the private Act of Parliament. Vent. 175. Mich. 23 Car.


3. In pleading an Excuse for Non-performance the Party must shew all done by him that he was obliged to do; Per Holt. Ch. J. Show. 335. Mich. 3 W. & M. Wynne v. Fellowes.

(P. a)
Covenant.

(P. a) Pleadings. Performance.

1. A Man cannot plead generally Quod Performavit omnes et singulas &c. Conditions in Indentures praecept. specific exception Partes conditioni, &c. Perimplendas, but shall show certainly in every Part how he has performed. H. 8. S. C. and where in Covenant the Defendant says that the Covenants are that he shall pay 10 l. by such a Day, and intoll him by the same Day, quas quidem Covenantes idem Def bene perimplavit, this is no good Plea; for he shall shew how he has performed it certainly. Br. Covenant, pl. 35. cites 31 & 33 H. 8.

2. Debt upon Bond for Non-performance of Covenants in a Lease, one of which was, that the Defendant and his Assigns should discharge the Plaintiff of all Charges ordinary and extraordinary. The Defendant pleaded, that he was justified, till such a such a Day, during which time he paid the Rent, which was all the Charge ordinary or extraordinary, to that Day, and then be assign'd the Premisses to P. And upon a Demurrer this was held an ill Plea, because the Covenant being in the Copulative, that he and his Assigns should discharge the Plaintiff, it ought to have been pleaded Conjunctively, viz. that he and his Assigns did discharge him. D. 26. b. pl. 172. and 27. b. pl. 177. Hill. 28 H. 3. Abbots of Welt-minster v. Leman.

3. A bound himself in a Recognizance to B. to perform B. and all his Tenants in D. to have Common Pasture for their Cattle in the Fields of D. when they should pay Fallow. and A. further covenanted not to do suffer, or cause to be done, any Act or Thing to alter the Courses of the Fields in D. otherwise than now they are. In a Scire Facias brought in Chancery upon this Recognizance &c. A. pleaded as to the first Covenant, that he had permitted he said B. and all the Tenants of D. to have common &c. And to the other Covenant he pleaded in Bar Generally, that he had not altered the Course &c. On Demurrer, because the Pleading was General, the Opinion of divers Justices was that the Plea was good; But Harper toatis Viribus e contra; but it was ordered against him. Dy. 279. pl. 6. Mich. 10 & 11 Eliz.

4. Articles or Covenants which are in the * Disjunctive ought always * Co. Litt. to be pleaded Specially to be perform'd, but such as are in the Copulative, and in the † Affirmative may be pleaded to be perform'd Generally: he must shew which of them he has performed. † Co. Litt. 303. b. S. P.

5. Where any of the Covenants are in the Disjunctive, so that it is in Co. F 222. the Election of the Covenant to do the one or the other, there it ought to be pleaded generally, and the Performance of it; For otherwise the Court &c. held accordingly, and cannot know what Part hath been performed. Le. 311. pl. 430. Patch. 93 Eliz. C. B. Oglethorpe v. Hide.

upon Bond to perform Covenants, whereas some are in the Negative, and some in the Affirmative, and the Defendant pleaded Performance generally, it was held to be only Matter of Form, and aided by the Stat. 27 Eliz. unless shown for Cause of Diminution, that some are in the Negative, and some in the Affirmative, For the Court shall judge according to the Truth of the Matter. — Co. J. 559. pl. 7 Hill. 17 le. B. R. Lea v. Luttrell. S. P. adjudged accordingly. — Pallm. 170. Ley v. Lutrel. S. C. & S. P. agreed by all. — Co. Litt. 303. b. S. P. accordingly; For a Negative cannot be performed. — S. P. per Cur. 8 Rep. 113 b. But if the Plaintiff pleads an ill Bread, and the Defendant denies, he shall have Judgment, because upon the whole Record it does not appear that the Plaintiff had any Cause of Action —— S. Rep. 165. Mich. 1679. B. R. Fear v. Delly, it was held on Denmurrer, that because some of the Covenants were in the Affirmative, and others in the Negative, a general Pleading of Performance to all is not sufficient; but as to the Covenants in the Affirmative, he
Covenant.

He ought to plead a special Performance, and shew how he has performed them, and Judgment Nifi. — Gilsb. Enc Rep. 235, cites S. C. of Oplethorpe v. Hyde, and 8 Rep. 122, Patch. 8 Jac. Turner's Case, alias, Turner v. Lawrence, and says, that a Negative cannot be laid to be performed in a proper literal Sense, (though the not doing may improperly be called a Performance) and therefore on a special Demurrer the Defendant's Plea would be bad; alter on a general Demurrer, Where some of the Covenants are in the Disjunctive, the Defendant cannot plead Performance generally, because both the Alternatives are not to be performed, and by Pleading Performance generally he does not shew in which is performed by him, and therefore this is bad on a General Demurrer, which shews the want of that Certainty; but where the Plaintiff does not demur for want of such Certainty, it shall be intended that the Defendant performed one of them, and therefore good enough; but in both these Cases, where the Covenants are in the Negative, or the Disjunctive, and the Defendant pleads Performance generally, and the Plaintiff replies and aligns a Breach which is ill aligned, and the Defendant demurs, the Plaintiff shall not take Advantage of this ill Pleading of the Defendant, because by his Replication he admits the Performance of all the other Covenants, but that only where he undertakes to align the Breach.

6. When there are in an Indenture Covenants in the Negative for not doing, and in the Affirmative for doing, the Defendant ought to plead specially to the Negatives that he has not broken them, and to the Covenants in the Affirmative Generally, that he has performed them all. Mo. 856, pl. 1175. Mich. 11 Jac. C. B. Redfeldt, per ter. Cur. Norton v. Symms. 8. P. Holt's Rep. 207, Arg in Cafe of Aunthority v. Turner, cetera. Keb. 234, pl. 4, Lathwell v. Bather, S. C. adpecutor. — Ibid. 272, pl. 70, Lathwell v. Palmer, S. C. the Court held the Plea ill, as if they had been several Covenants, but the Court advised Amendments by Agreement.

9. Covenant to go in such a Skip out of the River Thames to C. in Spain, and that decreder, procederet & non devieret. The Defendant pleaded Performance generally. The Court held the Plea ill, and took a Difference between a Negative Covenant which is only in Affirmation of an Affirmative Covenant precedent, and a Negative Covenant, which is additional to the Affirmative Covenant, as here; For in the first Cafe Performance generally is a good Plea, but not in the last; but he ought to plead specially; and in the principal Cafe the Defendant ought to have departed and proceeded, and might have gone to Africa or the West-Indies if he had not been restrained by the Negative Covenant, viz. Quod non devierat, and if it is clearly conditional. Sid. 87. pl. 1, Mich. 14 Car. 2, B. R. Laughwell v. Palmer.

10. In Alignment of a Lease it is covenanted, that the Lease then was Bona, Certa, Persefla, & Indefeasible Dimiffa in Lege Anglie Leafe in Lawe &c. & ita flabit & remanet quiete durante Riffione of the said Term &c. and that the Plaintiff Quiete & pacifice habet, tenest &c. durante toto Rejudio Termini, without any Le &c. of the Defendant &c. A Stranger enters, and a Breach is aligned, that at the time of making the Alignment the Lease Non ait Bona, Persefla, & Indefeasible &c. &c. Et Judic' pro Quer' for the first Sentence is indefinite, and has no Connection with the latter Sentence. Saund. 51. 61. Patch. 19 Car. 2. Gainsford v. Griffith.

Sid. 328, pl. 9. Gamfard v. Griffith, S. C. the Court upon several Arguments in clude, [enable] that the last Words did not qualify or mitigate the first, but that they are distinct Clauses, yet they allowed the Rule, that relating Clauses at the Beginning, or at the End of a Sentence, shall govern the whole; but that here the last Words, (That he shall enjoy it without the Let or Interruption) cannot, without Impropriety of Speech, be applied to the first Clause of (Indefeasible Lease). 2 Keb. 201, 202, pl. 34, S. C. the Court agreed, that the Words were to be enjy without hindering any Act, that should happen to the whole;
Covenant.

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whole; 46d adorantur. — Ibid 217 pl. 51 8. C the Court agreed, that the latter Words could not qualify the former, they not being Sour if joined together; and Judgment for the Defendant.


12. An ill Plea of Performance of Affirmative Covenants is not aided by the Replication, as the Plea of Performance generally to Negative Covenants may be. Show 1. Patch. 1 W. & M. Fitzpatrick v. Robinson.

13. M. bargained and sold to B. the Plaintiff and his Heirs a Melleague &c. and also Trustees, Egress, and Regress at all Times for B. his Heirs and Assigns, from the Gatehouse to a Well adjoyning, to draw Water for his and their necessary Occasions. Debt upon Bond for Performance of Covenants, one of which was, that he was feised in Fee of the Premises, and another was for quiet Enjoyment, and free from all Incumbrances, and another was for a further Affurance &c. The Defendant pleaded Performance generally. The Plaintiff replied, that at the Time of Sealing &c. he was not feised in Fee Seuondum Formam &c. Covenants &c. of the said Well, proud &c. And upon Demurrer it was objected, that there was no Covenant in the Indenture that he was feised in Fee of the Well, and of this Opinion were all the Court, and consequently, (though it was not expressly said by the Court) the other Covenant, that he was feised in Fee of the Melleague and Premises, do not extend thereto, and therefore the Replication was not good. But Powell J. said, that the Plaintiff ought to have alleged, that the Plaintiff (Defendant) had not any Power to grant the said Liberty to draw Water out of the said Well. But in Forsan Exception was taken to the Plea, because in the Indenture is a Covenant for quiet Enjoyment against all Incumbrances &c. and to such Covenant the Defendant could not plead Performance generally, but he ought to have set forth, that the House was free from Incumbrances at the Time of the Conveyance made, and not incumbered in any Manner, and that no farther Affurance has been required, or such an Affurance, and no other, which he had executed. But per Cur. this Plea was held good in Substante, but Powell J. said it was not the best way of Pleading, but that it had been better if pleaded as above-mentioned. Latw. 603. 608. Hill. 13 W. 3. Butterfield v. Marshall.

14. Where the Covenants are to do a Matter of Law, As to convey, discharge an Obligation, ratify, or to confirm &c. there it must be pleaded specially, because it being a Matter of Law to be performed, it ought to be exhibited to the Court to see it be well performed, who are Judges of the Law, and not to a Jury who are Judges of the Fact only. Gilb. Equ. Rep. 253. in Case of Fitzpatrick v. Strong, cites 1 Le. 172. Dy. 229.

(Q. a)
(Q. a) Pleadings as to Conditions for Performance of Covenants.

1.

DEBT upon Obligation; the Defendant said, that it is imposed upon Condition, that if the Defendant observes the Covenants contained in certain Indentures, that then &c. and said, that in the Indenture is contained, that he shall do such and such a thing, and that he has done them, and the Plaintiff e contra, and found for the Plaintiff; and the Defendant pleaded in arrest of Judgment, that the Defendant has not alleged that those are all the Covenants contained in the Indenture, and yet good by all the Justices; for where the Plea is referred to a Certainty, as here, to the Indenture, it shall be intended that this is all which is in the Indenture, and alter the Plaintiff recovered; Quod Nota. Br. Conditions, pl. 144, cites 6 E. 4. 1.

2. Debt upon Obligation with Condition to perform all Covenants contained in certain Indentures, the Defendant cannot plead the Conditions and rehearse the Covenants, and say generally, that he has performed all the Covenants, but shall show how; Per tot. Cur. Br. Conditions, pl. 2. cites 26 H. 8. 5. and 20 H. 8. and 35 H. 8. accordingly; Quod Nota.

3. As touching Conditions for the Performance of Covenants in Indentures, the Defendant ought to plead the Indenture, and the special Manner particularly, how he hath performed every Covenant. Heath's Max. 46. cites 27 H. 8. 1. and 33 H. 8. Brook Covenant, 32. and D. 279. 11 & 12 Eliz. and D. 26. 28 H. 8. But says, that as it seems there one need not aver, Quae sunt ennia & singulara Covenantes &c. because referred to a Matter in Writing. The like of a Record; and for that reason it seems of Necessity that he need not to plead proin in cadem Indentura &c. Quare tamen. But if not referred to Writing or Record then it shall be otherwise, As if I am bound to incoff you of all my Lands in Dale, I must shew the Number of Acres, and plead also Quae sunt ennia &c. But says, that at this Day the Course of the Practice is, (notwithstanding the Covenants are reduced into Writing after they are recited in the Plea) to insert this Clause, Proin per cadem Indenturam placens apparat. Heath's Max. 46.

4. Debt on Bond against H. P. for Performance of Covenants, by which the Plaintiff covenanted, that E. the Defendant's Brother should enjoy such Lands till Michaelmas following, rendering Rent, and H. the Defendant covenanted, that his Brother should quietly surrender the Lands to the Plaintiff, and that the Defendant would permit the Plaintiff to have in the mean Time free Ingress, Egress &c. to such Lands as by the Calfon of the Country should be freed. The Defendant pleaded, that he did did permit the Plaintiff to have free Egress and Regrets &c. into such Lands as by the Culton of the Country did then lie there. Exception was taken to this Plea, for that the Defendant did not shew which Lands did he shew according to the Culton of the said Country; but adjudged, that where an Act is to be done according to a Covenant, he who pleads the Performance of it ought to plead it specially; but in the principal Case no Act was to be done but a Permittance as aforesaid, and it is in the Negative, not a Disturbance, in which Case Permitt is a good Plea, and then it shall come on the Plaintiff's Part to shew into what Lands the Defendant non permit him to have free Ingress and Regrets &c. and cited this Difference to be so agreed by the whole Court.
Covenant.

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5. Debt upon Obligation to perform Covenants in an Indenture, which 2 Roll Rep. were, if. That he should marry M. the Plaintiff’s Daughter before Engineer, 2dly, that J. S. [a Stranger] and [E.] his Wife should S. C. say, levy & Fine of such Lands to the Defendant and the said M. to the that Judges of their Bodies. 3dly, That the Inheritance of the said Lands might be given a should remain in the said J. S. or himself till the Fine levied. 4thly, that the Whereas he had made a Leaf for Years of Part of Marsh-wood to the Defendant said M. the Plaintiff’s Daughter, that he bad not made any former Grant, upon the nor should make any thereof without the Plaintiff’s Affent. To the last Co- venant in the Negative the Defendant pleaded, that he had not made any former Grant of the Leaf, nor any Grant alter the Obligation without Record, the Plaintiff’s Affent, and as to all the other Covenants that he had performed that formed them. Resolved, because the Covenant to levy the Fine is an the better Act to be done by a Stranger, and to be performed on Record, in both was, that which Cales he ought to plead and shew how he had performed it ; the Plea for * Acts of Record must be shewn specially ; 2dly, The Covenant being was not in the ? Dissuaded, he ought to have shewed specially which of the, if that, and not pleaded Performance generally. And 3dly, He pleads J. S. and his he did not grant without the Plaintiff’s Consent, which is a ? Negative Wife were Pregnant, and so not good, and Judgment for the Plaintiff. Cro. J. Strangers to the

559. pl. 7. Hill. 17 Jac. in B. R. Lea v. Luthell.

Act, viz. to the levying of the Fine, and also to the Indenture of Covenants, but says the Court were not agreed as to this Reason — Palm. v. C. S. adjudged upon the Point as mentioned in 2 Roll Rep. sup. But Montague said, he saw no Difference in Reason, when the Act is to be done by a Stranger, and when by the Party; and if a Condition be, that the Obliger should do an Act to a Stranger, there, he ought to shew how he has performed it. Dodridge said, that the Reason is, because the Obliger a Stranger to him who ought to do the Act, and therefore the Obliger ought to shew how this Act was performed by the Stranger ; and Haughton said, that the Reason is, because he cannot say that he performed all Covenants when the Act is not done by him. ——— But Kelw. 95. b. pl. 3. Mich. 22 H. 7. cites Mich. 1 H. 7, where it was agreed, that if the Condition be, that J. S. A Stranger a shall inform the Obliger, the pleading a General Performance is sufficient.

* But Co. Litt. 505. b. says, that if any Covenants in the Condition are to be done of Record, the Defendant must shew the Performance specially, and cannot involve it in general Pleading.

† Co. Litt. 505. b. S. P. accordingly.

6. In Debt upon Bond for Performance of Covenants, which was, that the Defendant (being a Sheriff’s Officer) should not let go at large any Person arrested without the Licence or Warrant of the Sheriff; and the Breach alleged was, that he let at large at Westminster, without any Warrant &c. such a Person who was arrested, but did not set forth the Place, or the Time when the Person was arrested. All the Court held the Declaration good, because the Escape, or the Letting at large, was the material Part of the Covenant, and the Modus or Manner of the Arrest is not in Question, nor any Part of the Covenant, but the letting him go at large is the Substance of the Covenant, and that is alleged to be at Westminster. Sid. 30. pl. 6. Hill. 12 Car. 2. C. B. Jenkins v. Hancock.

7. There is a Diversity between Covenants in Indenture consisting of the Plaintif several Parts in the Affirmative, and a Condition of a Bond consisting of several Parts; for in the last Case he must shew in Pleading that he has had performed the several Things comprised in the Condition particularly sought to but in the Case of Covenants Performance generally is a good Plea, have pleased.

Sid. 215. in pl. 18. cites Mich. 16 Car. 2. BLOOKS R. DOWN, where in Debt on Bond condition to deliver a Brief at every Church &c. before such a Time &c. the Defendant pleaded, that he delivered at the Words of Church &c. but did not say at what Time &c. and upon Demurrer it the Condition, and was adjudged for the Plaintiff, that the Bar was insufficient.

not generally, as he did by this Plea; and of such Opinion the Court framed to be; sed adjuratur, Lev. 146.

5 D

Mich.
Covenant.

Mich. 16. Car. 2. B. R. Brooks v. Dean, S. C. — So where the Condition further was to deliver the Money collected on such Briefs before such a Time, and because he did not set forth particularly what Sums he received, but only pleaded Performance generally, it was adjudged ill. Sid. 215. Trin. 16 Car. 2. B. R. Woodcock v. Cole.

8. Action of Debt upon a Bond, the Condition was to seal an Indenture of Demise, and to perform all the Covenants contained therein. The Defendant pleaded, that he sealed the Demise, and performed all the Covenants therein. The Plaintiff demurred, because he does not set forth what the Covenants are. Judgment pro Quer' Nili. Freem. Rep. 20. pl. 23. Mich. 1671. in B. R. Brian v. Munteth.

9. Debt upon Bond for Performance of Articles, which were, that the Defendant should educate, keep, maintain, and provide for C. the Defendant's Son, in one of the Universities in this Kingdom, until he had passed all his Degrees, and was a Master of Arts in one of the said Universities; and when he became Master of Arts, as aforesaid, the Plaintiff was to pay so much to the Defendant for his said Son's Use. Defendant in his Plea answered to every thing, but only that he did not know who maintained him from the Time he became Bachelor of Arts, until he became Master of Arts, and for that Reason Judgment was for the Plaintiff. Holt's Rep. 206. pl. 12. Hill. 5 Ann. Annelley v. Cutter.


If the Term 1. If the Lessee ousts the Lessee he shall have Covenant, and shall recover his Term and Damages, and if the Term be expired he shall recover all in Damages. Br. Covenant, pl. 33. cites 26 E. 3. and Pittzh. Covenant, 3.

2. If Tenant in Tail makes a Lease for Years by Deed, and dies seized of Affairs in Fee-Simple, yet the Issue on Tail may enter, and therefore the Lessee shall have a Writ of Covenant against him to recover Damages, but not to recover the Term; for his Entry was lawful cites 38 E. 3. 24. Note, the Writ of Covenant for the Lessee who is ousted by a Stranger by Title is, Quod tenat Convent &c. De Damnis & de Perditis. F. N. B. 145. (M) in the new Notes there (c).

3. Covenant by the Lessee for Years against the Leisir for oustong him within the Term, and the other justified by Claus of Re-entry for Rent arrear; and the Plaintiff said, that there was a Parllance between him and the Defendant, that the Defendant shall be at Table with the Plaintiff and recoup the Rent according to the Rate, by which for such Time he recoup'd so much, and the rent was 4s. which he tendered, and the Defendant refused, and yet he is ready, and tender the Money to the Court, Judgment; and prayed Restitution of the Term and Damages; and so fec, that by Action of Covenant he shall recover his Term; and the Defendant said, that such a Day the Plaintiff shewed to him that Victuals were dear, and therefore desired him &c. by which he re-entered for the Rent; and the other said, that he departed of his own free Will, abique hoc that he desired him; and after he waiv'd this, and said that he was ready at the Day to have paid &c. if any had come to demand it &c. Brooke makes a Square, if such Parllance, as above,
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above, without Deed, be sufficient to discharge Covenant which is by Deed; for it is not sufficient; Per Parle. Br. Covenant, pl. 13. cites 47 E. 3. 24.

4. In Covenant the Plaintiff counted upon several Covenants, and well, and the Defendant answered to all; for he shall recover Damages severally for every Covenant. Br. Covenant, pl. 34. cites Fitzh. 86. and M. 10 H. 6. 23. accordingly.

5. In Action of Covenant a Man may take Issue upon every Covenant to have the more in Damages; Contra in Debt upon an Obligation for Non-performance of several Covenants, for there the Breach of any Covenant is a Forfeiture of the whole Obligation. Br. Covenant, pl. 47. cites 10 H. 6. 23.

(S. a) Qualified or relieved in Equity.

1. "THE Bill is to be relieved against the Forfeiture of a Leafe, in which there is a Covenant, that if the Lessee should let the Premises for any longer than three Years, except to the Wife or Children of the said Lessee, without Licence o£ the Lessee or his Assigns first had, then the said Lease to be void; That the Defendants have entered upon the Premises, on Pretense that the Executors of the Lessee did alien the same to the Plaintiff without Licence, and have ouuted the Plaintiff who purchased the same; This Court on reading Precedents, forasmuch as the said Executors sold the Lease for Payment of Debt to which the same was liable, and if the had not been Executrix there had been no Forfeiture, this Court decreed the Plaintiff to be relieved against the said Forfeiture. Chan. Rep. 170. 1656. Cox v. Brown.

2. Covenant to perform Articles for the settling of Lands of which the Covenantor had no Possession, but only a Possibility of Defect, after a Defect decreed to be settled. Chan. Rep. 158. 21 Car. 1. Wifeman v. Roper.

3. Breach of Covenant, though proved to be much to the Advantage of the Lessee, yet no Relief in Chancery, though it was urged that the Penalty was excessive, beyond that of a Bond of double the Value, and no Restitution. 2 Chan. Cases 198. Trin. 22 Car. 2. Blake v. the East India Company.

4. A. sells a Parliament and covenants against his own AEs, but there was likewise a Covenant that he had good and lawful Power to grant and convey the Premises to the said Vendee, and his Heirs, which was contrary to the true Intent of the Parties; Decreed that the general Words ought not to oblige the Plaintiff, being contradicted by all the Subsequent Covenants, and the Plaintiff selling only such an Estate as he had. Fin. R. 90. Hill. 25 Car. 2. Field v. Studeley.

5. A. Assignee by way of a Mortgage of a Leafe for Years of a House. But where with Covenant to repair. A. was never in Possession. Per Cur. it was a Ground for the Rents was never in Possession, so that the deffer'd on to the Covenants in the Original Leafe; yet as he is only a Mortor of a Leafe and has no Title, the Leafe of the Plaintiff to recover at Law, as well as he can; per Commissiorn. Mich. 1692. 2 Vern. R. 275. Sparkes v. Smith.

1001. A. never ever'd and left the 1001. Mortgage Money, but was paid by the Leesee for the Ground. A. brought a Bill for Relief but it was dismissed, the Mortgage being by way of Alignement, and not by way of Underlease. 2 Vern. 374. pl. 316. Pilkington v. Shaller.

6. Tenant
The Court observed that the Covenant was likewise that the Premises should be both and enjoyed Purport to the use inherent, which latter Covenant being Executory, was the stronger as it might afford some Pretence for a Specific Execution thereof. But upon the whole his Lordship thought the later Covenant cited to be contrived as Relative to and dependent upon the former and to be Refrained by that, and to have meant no more than that the Father should not by suffering a Recovery, prevent the Premises from being enjoyed according to the said Limitations. Wms. Rep. 104. 108. S. C.

7. But where Tenant for Life with Power to make Leaves, covenanted in a subsequent Deed not to make Leaves, yet afterwards executed his Power, the Court of Chancery set aside the Leaves; But the reason was as Lord Chancellor observed in the Case of Collins v. Plummer, that this was an Agreement subsequent to the raising of the Power, to extinguish it whereas in Collins and Plummers Cafe, the Covenant was in the Deed. 2 Vern. 635. and Wms. Rep. 105. 107. cites it as Lord Peterborough’s Cafe.

8. A. the Father of M. (a Feme sole) mortgaged Land for raising part of a Portion on her Marriage with f. s. and afterwards died, leaving only M. his Heir. M. afterwards join’d with B. in a Fine and by Deed declared the Uses to her Husband and fell, and the Heirs Male of the Body of the Husband. The Mortgagee calling in his Money, f. s. join’d with M. in an Assignment of the Mortgage and covenanted that he and Wife or one of them would pay the Money. f. s. died leaving W. S. his Son by M. and after M. inter-married with W. R. and died. Lord C. Cowper decreed that the Personal Estate of f. s. shall not go in Case of the Mortgaged Premisses, the Debt being originally A’s and continuing so to be, the Covenant, upon transferring the Mortgage, was an additional Security for Satisfaction only of the Lender, and not intended to alter the Nature of the Debt. Wms’s. Rep. 347. Pach. 1717. Bagot v. Oughton.

9. So that it seems as the Reporter observes, if a Feme sole mortgages and receives the Money, and an after Husband joins in assigning the Mortgage and covenants to pay the Money and dies; his Personal Estate shall not be liable to the Payment; Secus if the Husband had received the Money. Ibid. 348.


For more of Covenant in general, See Action (M. c. 3.). Condition. Debt. Estate. Grants (H. 7.) and other proper Tides.

Coven.
* Covin.

(A) *Discountenanc'd in Law.*

1. If a Man that has a Right of Action to certain Lands by Covin, of 3 or more Men caueth another to oust the Tenant of the Land, to the intent to recover it from him, and he recovers accordingly against him by Action tried, yet he shall not be remitted to his ancient Right, but is in of the Estate of him who was the Duffer. * 41 Att. 28. Curia. Monmouth.

2. If a Man disfigures the Land, to which a Woman hath Title by R. Falstaff, Dower, of Covin, and with Consent of the Woman, to the Intent de Recovery to endow her, and he endows her in the Country accordingly, yet is of no Effect against me, but I may out him because of the Covin. Dibiratnam, 44. Att. 29.

3. The same Law, though the Endowment was upon a Recovery by Br. Falstaff against him in a Writ of Dower, because of the Covin. 44 Att. 29.


5. An Estate is made to the King and by Letters Patents granted over, and all this by Covin between him, that granted to the King and the Patentee, to make an Exaction out of the Statute of Mortmain, shall not bind but be repealed. 3 Rep. 78. b. cites 17 E. 3. 59. and 21. E. 3. 49.


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* Covin is a secret Assent determined in the heart of another, per Fraud may be by one alone. 9 Rep. 110. b. per Curiam.


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S. P. by Littleton, and Cur. cited.—S. C. cited 8 Rep. 157. b.—S. C. cited by Montague Ch. J. Pl. 54. b.—Co. Lit. 35 a. S. P.—Co. Lit. 357. b. S. P. and says, that so it is in all Cases where a Man has a rightful and just Covin, yet if he of Covin and consent does raise up a Tenant by wrong, against whom he may recover, the Covin sacrifices the Right, to the Recovery, though upon good Title, shall not bind or refere the Demandant to his Right. But if a Disturber, Abator or Intruder do endow a Woman that has lawful Title of Dower, this is good and shall bind him that has Right, if there was no such Covin or Consent before the Disturbing, Abatement or Intrusion.—Br. Dower. pl. 49. cites 12 Att. 20. 6. P.—Br. Affiche pl. 191. cites S. C. & S. P. accordingly.—Br. Damages pl. 96. cites S. C. & S. P.—Pirah. Dower pl. 42. cites Hill 24 E. 3. 46. S. P.—Percy. S. 394. 395. 396.—3 Rep. 78. a. S. P. per Cur. in Fermon's Cafe, and cites several Year Books, and D 295. For though her Right be lawful and she has purpoused her Recovery by Judgment in the King's Court, yet the said Covin makes all illegal and tortious though Recoveries, and especially where they are upon good Title are much favoured in Law.
7. A woman and her husband as administrators of the first husband, recovered a debt and while that suit was depending, the son of the intestate by covin between him and the defendant, procured new letters of administration to him and his mother jointly, and after judgment released to the debtor; the husband and wife sued execution, the debtor brought an audita querela, hanging which the 2d administration was repealed per sentence, and the covin and the repeal pleaded in bar, and upon demurrer judgment was against the plaintiff in the audita querela. D. 339. pl. 46. Hill. 17. Eliz. Anon.

8. Covin is always to the prejudice of a third person; per fray. Le. 150. pl. 255. Trin. 31 Eliz. B. R. in case of filth and brown v. Sadler.

9. The common law abhors fraud and covin, that all acts as well judicial as others, and which of themselves are just and lawful, yet being mixt with fraud and deceit, shall in judgment of law be tortious and not lawful; quod alias bonum et juitem est, hi per vim vel fraudem petatur, malum et injusum efficitur. 3 Rep. 78. a. Hill. 44. Eliz. in fermor's cafe.

10. A diffeiior enjoys a. with warranty, and the diffelior afterwards with others procures b. to diffuse a. and that c. who has an elder right and cannot enter, shall bring a scire facias against b. to execute a fine levied to him; by which means a. is to lose his warranty; for upon the scire facias no voucher lies; all this is done accordingly, and judgment is given for c. against b. a upon this covin may well maintain a writ of conspiracy in the nature of an action upon the cafe against the diffelior and the other conspirators, and the judgment in the scire facias shall be avoided; and this action upon the cafe shall avoid it for the vexation and falsehood, and lose of warranty. Resolved by the council. Understand this regularly by all the judges of England. The remedy for c. is, he may have a scire facias against a. now the terrenant; if the fine was not executed and pending this scire facias, a. shall bring a warrantia charta against the diffelior, and so the right of every one shall be saved. Jenk. 49. pl. 94.

11. Tenant in tail discontinues, and dies, his heir within age; a stranger by covin diffuses the discontinuance, and enjoys the infant within age; the infant is not remitted, although he knew nothing of the covin. By all the judges of England. Jenk. 193.

12. Tenants in tail who have a wife makes a separation and dies; the wife is diffused to the intent that the diffelior shall induce the wife; this dower is worth nothing because of the covin. Jenk. 193.

13. Debt is brought by a woman administrator; she has judgment; before execution this administration is revoked by covin, and committed to the said woman and her son; the son releases the debt; the woman sues execution; the debtor brings an audita querela; it does not lie because of the covin. Jenk. 283. pl. 17.

14. The plaintiff, a woman, who had 150l. given her by her brother, the defendant, upon her marriage, gives a bond privately to her brother to repay the said money; the husband being dead without issue, the defendant paid the bond at law upon the plaintiff; whereupon she preferred her bill here to be relieved against it, being a fraud by reason it was done without the privy of her husband. It was urged for the defendant, that it was good reason for the husband or any of his life to be
be relieved, in Case they had been concerned, but that there was no Reason that the Woman herself, who gave the Bond, should be relieved. But ordered that the Bond should be delivered up; for being once a Fraud no accident of Death or Course of Time should alter the Case; and the Plaintiff was relieved notwithstanding it was her own Agreement, being done in Fraud of the Husband. 2 Freem. Rep. 101. pl. 111. Mich. 1872. Gay v. Wendow.

(A. 2) What Person or Persons may do it.

1. Covin cannot be but between two. 39 D. 6. 19. b. Br. Collu-


2. Covin may be upon good Title; As a Where had for her Joyned

Estate Tail with Warranty, and been impleaded by Action upon good Title, and by Covin had confes'd the Action; it is within the

11 H. 7. 20. For though the Title of the Action is good, yet if the has

vouch'd and recover'd in Value this Recovery in Value would go in

Benefit of the Itue in Tail which is now lost by the Covin. Per Hales


(B) What Things may be averred to be upon Collusion. Records.

If a Recovery by a Stranger, pending the Writ, he pleaded in Firsh Brief

Abatement, the Demandant cannot aver it to be by Covin

between the Tenant and the Stranger. 41 E. 3. 11.

Dower the

Tenant said that he himself dissised J. N. who re entred pending the Writ, Judgment of the Writ; and a good Plea ; The Demandant said that J. N. entred by Covin to abate the Writ; and no Plea; For where this Entry is lawful, it cannot be by Covin. Br. Collusion Ecc. pl. 20. cites 15 E. 4. 4. — S. C. cited 8 Rep. 152. b. as held, because the Entry is lawful and mix'd with no Torne.—— S. C. cited

Pl. 48. b. 44. a. as held by the Opinion of the whole Court that the Demandant cannot have such general Averment of Covin without Afe on—— Ibid. 48. 8. S. C. cited accordingly; For as the Demandant had not denied the Title of J. N. such Averment of Covin is repugnant to the Thing

confes'd.

2. Formedon was brought by Covin of the Tenant against himself, because he was Feoffee upon Condition and had broken the Condition and would have the Land to be lost against the Feoffor, and this Matter was al-

leged by Feoffor who was a Stranger to the Action; for the Defendant confes'd the Action, and thereupon Proclamation was made, if any one could say any Thing why the Demandant shou'd not have Judgment and Execution? Whereupon the Feoffor came in as above, and they'd as above, and the Matter was examin'd and confes'd, and the Tenant put to give Bail to attend his Punishment for the Difect. Br. Collusion

Ecc. pl. 15. cites 7 H. 4. 19.

3. In an Action Personal Collusion shall not be inferred, nor in Acce,

nor in Writ of Entry at the Common Law, per Frowike quod Kingmill

Conceit; and said, that in Quatere Impedit, the Collusion shall be in-


4. In
In what Case the ordinary Course shall be changed by Covin.

1. * 39 H. 6. 50. A Man comes by Habeas Corpus out of London, and had no Cause to have the Prison but by his Covin, it was ordered, that he should be in Execution till he had paid the Debt recovered against him after the Writ brought, and that after he should be remanded to answer the Plaints there. A Judgment shall be stay'd for Collusion. † 7 P. 4. 19. b.


This in Dyer 149. a. pl. 5. & 6. P. & M. is a Quere started in the Case, and Brooke thought that upon such Return by the Sheriff a new Writ should issue receiving it. —— Ibid. Mag. cites Trin. 55 Eliz. B. R. Robins's Case who brought Debt against B. as Heir, who pleaded Riens per Defendent the Day of the Writ, and found that before the Writ brought he had alien'd the Affairs by Covin to defraud this Debt, and Judgment for the Plaintiff; and that it is well found for him upon Office of Affairs by Defendent.

3. If a Man makes a Deed of Gift of his Goods in his Life-time by Covin to out his Creditors of their Debts, yet after his Death the Vendee shall be charged for them. 13 P. 4. 46.b.

4. If the Tenant in Furredon confesses the Action by Covin to make a third Person lose his Entry, Proclamation shall be made, and if the third Person comes and alleges the Covin, the Matter shall be examined, and the Judgment shall stay, and the Party shall be punished. Br. Forme- don, pl. 22. cites 7 H. 4. 19.
5. A Man was arrest'd in London, and after another brought Action against him in Bank, and had him arrested by Capias by Covin, by which they thereof in London; for by this he is a Prisoner to the Bench; and the Plaintiff in London prayed Proceeding, and that the Covin might be examined. Per Cur. we cannot examine the Covin yet, for the Capias is not returnable till Hill. But per Littleton, if he does not come at the Day, and be let to Mainprice, the Plaintiff in London may have a new Bill against him. Br. Privilege, pl. 41. cites 10 E. 4. 16.

6. A Man sued Corpus cum causa out of London, and it was found by Examination, that the Action by which he claimed Privilege was tried by Covin, for the Plaintiff in Bank disallowed his Suit against this Prisoner; for the Suit was discontinued by two Years, and now revived by the Plaintiff and the Attorney in Advantage of the Prisoner, where another Suit was thereof taken of late Time against the Prisoner, by which, upon the Examination of the Matter, and Attorney, and the Plaintiff, in this Court, for their Fidelity, were committed to the Fleet, and were found, and the Prisoner remanded to London. Br. Privilege, pl. 43. cites 16 E. 4. 5.

7. A Man had a Grant of the next Presentation; The Church voided, A. B. presented; The Grantee brought Nunc Impedit and recovered, and had Writ to the Bishop, who returned that the Grantee of A. B. had refused, and another is in, by which the Plaintiff had Seire Facias to execute the Judgment though there be the two Avoidances; for be shall recover upon the first Avoidance, and the Act of the Defendant shall not prejudice the Plaintiff; for then by Covin the Grant never should take Effect; Per Frowike Ch. J. Br. Seire Facias, pl. 141. cites 21 H. 7. 8.

8. A simple Man drawn to make Leaves, and to enter into Bonds was relieved. Toth. 268. cites Cuddington v. Hutton, in 3 Jac. fol. 905.

9. A Man relieved against his own Death, the fame being gotten by Threats and Practice, though the same be vised in an Infant, and the Purchaser to become bound in Recognizance to affure it when &c. Toth. 268. cites Maneright v. Roberts, 10 Jac.


11. Judgment was had in a Suit. Fa. against the Wife upon a former Judgment, and after two Nihilis returned a Motion was made to quall it, because before the Suit. Fa. brought, she was married, and this Writ was brought against her as sole, by the Contrivance of the Husband and the Plaintiff, to oppress her and lay her in Prison; and it was shewn, that the Plaintiff knew that she was married, and that she could have no Relief either by Writ of Error or Audita Querela, because the Husband would release it. The Court said, they might set aside the Judgment for this Misdemeanor of the Plaintiff. Vent. 208. Pauch. 24 Car. 2. B. R. the Lady Prettyman's Cafe.

(D) Pleadings.

1. ENRI in the Poft; the Term for Years by the Statute of Gloucester prayed to be received by Default of the Voucheer, and said, that the Recovery was by Covin between the Demandant and the Tenant who leased to him &c. to make him lose his Term, and traverse the Diff
Counsellor.

1. The fees to Counsellors are not in nature of wages, or pay, or that which we call salary, or hire, which are duties certain and grow due by contract for labour or service, but what is given him is honorarium, not merces, being a gift which gives honour as well to the taker as the giver; nor is it certain or contracted; for no price or rate can be set upon counsel which is invaluable and inestimable, so as it is more or less according to the circumstances, namely, the ability of the client, the worthiness of the counsel, the weightiness of the cause, and the custom of the country. It is a gift of such a nature, that the able client may not neglect to give it, without ingratitude, for it is but a gratuity, or taking of thankfulnes; yet the worthy counsel may not demand it without doing wrong to his reputation, according to that moral rule, multa honetitas accepit pontuit quae tamen peti non polluit. Pref. to Dav. Rep. 22, 23.

2. 5 Eliz. cap. 14. 8. 15. Counsellor not punishable for pleading, or showing a false deed in evidence, to the forging whereof he was not party nor privy.

3. The counsel of the party's cause not to be examined in the same cause. Toth. 110. cites 11 Eliz. Lee v. Markham.


5. Daniel Hill having put in for his client a long insufficient demurrer to a bill exhibited against his client, in which lepoosed demurrer were many matters of fact, and other things frivolous and vain, the Lord Chancellor Egerton awarded 51. Coits against the party, and ordered, that neither bill, answer, demurrer, nor any other plea should from

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Counsellor.

(A) Considered; how; and in what cases favoured or not.

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Ibid. cites 6 Car. Thimblethorpe v. Thimblethorpe, S. P.
from thenceforth be receiv'd under the Hand of the said Hill. Cary's
Rep. 38. cites 27 April. 1 Jac. Hill's Case.
6. A Counsellor in Law retained, has a Privilege to inform any
Thing, which is informed by his Client, and to give it in Evi-
dence, it being pertinent to the Matter in Question, and not to examine
whether it be true or false; but it is at the Peril of him that inform-
ning him; for a Counsellor is at his Peril to give in Evidence that which his
Client informs him, being pertinent to the Matter in Question, other-
wise his wife Aftion upon the Case lies against him by his Client. Per Popham.
Brook v. Montague.
7. But Matter not pertinent to the Issue or the Matter in Question, he
need not to deliver; for he is to discern in his Diferetion what is
to deliver, and what not; and at the Peril of his Client and
in Case of Brook v. Montague.
8. But if he gives in Evidence any Thing not material to the Issue which
is Scandalous; he ought to aver it to be true, otherwise he is puni-
table; For it shall be intended as spoken maliciously and without Caufe;
which is a good ground for an Aftion. Cro. J. 9. pl. 18. Mich. 3
Jac. B. R. in Case of Brook v. Montague.
9. So if a Counsellor objects Matter against a Witness which is Slander-
ers; It there be Caufe to difcredit his Testimony, and it be pertinent to B. R. Wood
the Matter in Question; it is justifiable what he delivers by Informa-

Man Bishop Sanderson, to the Pleader viz. Counsellor, in his Affe's Sermon at Lincoln, being the
5th Sermon at Magniftratum pag. 164. is in it. Not to think because he has the Libery of the Court,
and perhaps the Favour of the Judges, and that therefore his Tongue is his own, and he may
speak his Pleasure to the Prejudice of the Adversary's Peron or Caufe; and not to feek premature-
ly to win the Name of a good Lawyer, by wrestling and preventing good Laws; or the Opinion of the
court Counsellor, by giving the word and the threew'd Counsellor, and not to count it, as Protagoros
did, the Glory of his Profession, by ability of Wit, and volubility of Tongue to make the worse
Caufe the better; but like a good Man, as well as a good Orator, to fee the Power of his Tongue to
shame Wit and Impudence; and protect Innocency, to truth Opprreffors and favour the Afficted, to
advance Justice and Equity, and to help them to Right that fauffer Wrong, and to let it be as a ruled
Cafe to him in all his Pleadings, not to speak in any Caufe to wrest Judgment.

10. Counsellor may take Fees of his Client, but he may not lay out
Money for him, and if he does, Hobert Ch. J. doubted what Remedy
11. Counsellor brought a Bill for Fees, due to him from the Defen-
dant being a Solicitor, and was to account with him at the end of
every Term; the Defendant demurs. Denmurer was allowed and the
12. A Lawyer who was of Counsell may be examined upon Oath as a
Witness to the Matter of Agreement, not to the Validity of an Assurance, or
13. If a Counsellor says to his Client that such a Contrat is Simony, and
the Client says he will make it, Simony or not Simony; and therupon the
Counsellor makes this Simoniacal Contrat, it is no Offence in him.
14. A Counsellor was examined as a Witness to prove the Death of a
Peron, yet he is not bound to answer to other Things which may di-
clude the Secrets of his Client's Caufe. Per Roll. Ch. J. Stt. 449.
15. Coffs were tax'd for Scandal in a Bill in Chancery at 100 l. but tho'
the Scandal was very great, yet my Ld. Chan. and the Judges reduc'd
it to 50l. and the Counsell whose Hand was let to it, to pay the
16. Bill.
16. Bill by Executors of a Counsellor for a Sum in gross for Atttice and Paens of their Tellaror in several Causes, wherein Defendant was concerned, Defendant demurred because if he should answer the Bill it would draw him under a Penal Law, it being against the Court of all Courts of Justice for any Counsellor at Law to make such Contract as in the Bill is suggested for his Fees in a grov's Sum to be paid upon the Event of any Cause. Therefore this is a Bill of such a Nature as ought not to have any Countenance in a Court of Equity; Demurrer allowed. Fin. R. 75. Hill. 25 Car. 2. Penrice v. Parker.

Ordered that he be not Examined on any Matter in which he was of Counsel either by indiflerent Choice of both Parties, or with either of them, by reason of any Annuity or Fee. Cary's Rep. 145. In Case of Dennis v. Codrington.—It is against the Duty of a Counsellor to discover the Evidence, which he who retains him, acquaints him with; Admitted by Hale Ch. J. Vent. 197. Paish. 24 Car. 2. B. R.

19. The Bill was to discover an ancient Bill of Entail, supposed to be in the Defendant's Hands, and that he had perused it, and that in Discover he had acknowledged such Deed and other like Charges. The Defendant says by Plea that he was a Counsellor with A. B. That on a Reference between the Parties, it was agreed that nothing that passed there should be made use of on either Side, or be disclosed. Chan. Cases 277. Trin. 28 Car. 2. Bulltrode v. Lechmore.

20. A Counsellor may be a Witness if he voluntarily agreed to depose the Truth, but he is not compellable to go to do (though it has been held otherwise formerly); by three Judges contra Holt Resolv'd. Cumb. 457, 458. Hill. 10 W. 3. B. R. Matthews v. Temple.

21. In the Case where Mr. M..... formerly an Attorney of the Court, (now Counsellor at Law) was accused of such Practice in his Profession; The Court said, though be be now a Counsel, yet perhaps that will not discharge him from being an Attorney still; and then we may get his Demands taxed as such. And does any Body think, but that a Counsellor at Law is a kind of a Minifter of Justice, and Right, and as such, punishable for Misbehaviour in his Profession? And Holt Ch. J. said to him will you have the Point tried whether a Counsellor at Law may commit an Extortion? 6 Mod. 137. Paish. 3 Ann. B. R. Anon.

22. One Mr. Dean, who was a Barrister at Law, having made a Bill as a Solicitor, a Motion was made to tax it, which was granted, but the Court said that if he inferred upon having his Bill paid, they would hereafter treat him as a Solicitor; And Mr. Justice T. Powys said, that fo it was ruled in Chancery by my Lord Chancellor Harcourt, in the Case of one Mr. Allton, and if Gentleman would not take Fees after the usual Manner they ought not to recover them by any Action at Law. Hill. 12 Ann. B. R.

23. Notwithstanding Counsellors are not Officers of any Court, nor invested with any judicial Office, but barely Practife as Counsellors; yet inasmuch as they have a special Privilege to præfac the Law, and their Misbehaviour tends to bring a Disgrace upon the Law itself; it seems clear that they are punishable for any foul Practife as other Minifters of Justice are. 2 Hawk. Pl. C. 151. Cap. 22. S. 30.

24. It is certain, that no Counsellor or Attorney can justify the using any deceitful Practife, in Maintenance of a Client's Cafe, and that they are liable to be severely punished, for all Misdemeanors of this Kind, not only by the Common Law, but also by Statute; For it is enacted by 11 Jam. 1. cap. 28. That if any Serjeant, Pleader or other, do any Manner
Counterfeits.

Manner of Difceit or Cullusion in the King's Court or confent unto it, in Diffceit of the Court, or to beguile the Court or the Party, and thereof be attained, he shall be imprifoned for a Year and a Day, and from thenceforth shall not be heard to plead in that Court for any Man. And if he be no Pleeuder, he shall be imprifoned in like Manner by the Space of a Year and a Day at the leaft. And if the Trepafes require greater Punishment, it shall be at the King's Pleasure. In the Con- struction of this Statute the following Points have been holden. 1st. That Counfellors &c, who are not sworn, are as much within the Meaning of it as Serjeants &c, who are sworn. 2dly, That all Fraud and Falfhood tending to impose upon or abufe the Justice of the King's Courts are within the Purview of it. Hawk. Pl. C. 254. cap. 83. S. 28, 29, 30.

For more of Counsellor in General, See other Proper Titles.

(A) Counterfeits.

1. 33 H. E Nafs that obtaining Money by any falso Token or Counterfeit. 3 Inf. 122. 8. cap. 1. Letters, and being convicted thereof by Witnesses or Con- feffion before the Lord Chancellor, Justices of Affaire, Justices of the Peace, or by any Action in any Court of Record, shall be punifhed at Discretion, the Pains of Death only excepted.

this Offence, the Offender cannot be fined, but Corporal Punifhment only inflicted. But where T. was indicted upon this Statute, becaufe he by a falso Note in the Name of J. D. obtain'd into his Hands a Wedge of Silver of 200 l. Value, of which he was found Guilty, and had Judgment to stand on the Pillory, and alfo to pay a Fine to the King of 500 l. and to be imprifon'd during the King's Pleasure; and to be bound with Sureties for his good Behaviour. Cro. C. 594. pl. 10. Mich. 15 Car. B. R. Terry's Case.

2. An Eflate that is to be devolved on a Condition of Payment of 100 l. cannot be devolved by a Team Payment of part and real Payment of Part, but there must be a real Payment of the whole. Cro. E. 383. pl. 4. Patch. 37 Eliz. B. R. Goodale v. Watts.

3. A Clothier of G. made Clothes which were dearer and more ven- Cro. J. 471. dible than the Clothes of any other, and he put a special Mark upon them; another Clothier counterfeits the said Mark and puts it on his fught by的衣服s which were not fo good, but yet sells them as dear as the S. C. other. Action on the Case lies against him; Doderidge J. says it cited per was adjudi'd 23 Eliz. in C. B. but lays, not whether the Action lay Doderidge for the Clothier or the Vendee, but it seems it is for the Vendee. 2 Rol. J. as brought by the Clothier. Plish.

If an Information lies for counterfeiting a Letter fending for a Person in another's Name to Brentford to come to him, when no Mifchief is done or intended? Court divided. * Show. 20. pl. 13. Mich. 32 Car. 2. B. R. the King v. Emeron.

For more of Counterfeits in General, See other Proper Titles.

6 G
(A) What is or amounts to a Countermand; And of what it may be.

1. If A. gives me 20 l. to dispose for his Soul after his Death, A. shall not have Debt nor Account, for this amount to a Gift as it seems; Per Needham Br. Done &c. pl. 52. cites 8 E. 4. 5.


3. There is a Diversity where such Gifts is made to a Stranger to deliver over of his mere Will and Pleasure, As a New Year's Gift &c. or on a Consideration or former Duty, or in Satisfaction of another Thing. D. 49. pl. 9, 10, 11. Patches 33 H. 8. in the Case of Lyte v. Penny.

But if it be
Selected to C. which is intended in Satisfaction of a Debt it is not Countermandable; Agreed. Arg. Cro. J. 687. pl. 1. Trin. 22 Jac. B. R. Harris v. Bevoirs.—2 Roll R. 440. S. C.

5. A. purchased 5 Marks per Annum in the Name of B. and C. with this Trust that A. might enjoy it during his Life, and after it should be to the exceeding of a School in the Town where the said A. was born and buried, as the Feoffees declared in their Answer; And in his Life-time, after the Purchase, he repeated his Intent of converting the same to the Use of the School, and devised the same to J. S. which Justice Warburton presently decreed for him, saying his Will was his Declaration. But in his Words there was but a Meaning only express (me contradictory) for if J. C. make a Feoffment to the Use over according to articles annexed, he cannot alter the same by a latter Will, contra it is to be to the Use of his Will. Cary's Rep. 40. 41. cites 16 June, 1 Jac. Littleton's Cafe.

6. A. being indebted to B. in rool. bails rool. C. to B. to pay B. yet before Payment A. may countermand it. For A. himself may have paid it afterwards. D. 49. a. Marg. pl. 10. cites Mich. 4 Jac. in Sacc. Turberville v. Porter.

7. If I pay to you, Build for me such a House and I will give you 10 l. And before you have provided Materials, or have been at any Charge, I will revoke my Promise, and countermand my present Agreement, it is not good; For Meum est Promittere, & non Dimittere; Per Croke J. 2 Roll R. 39. in Case of Winter v. Poweracres.

S. P. per Doderidge J. but per Haughton J. contra but Haughton said, it may be considered in Damages. —— So where it was to take a Journey to London and help to find a Will, and before any thing provided for the Journey of the Defendant, it was accorded and agreed between Plaintiff and Defendant, that Plaintiff should be discharged of his Journey, and Defendant of Payment, Judgment was for the Plaintiff; but it seems, if the Matter had been well pleaded it would have been adjudged for the Defendant. See Cro. J. 620 (bis) pl. 10 Mich. 18 Jac. & R. Treffwaller v. Keyne.

2. But
Countermand.

8. But where it is by way of Contract it is not countermandable. 2 Roll R. 39. Trin. 16 Jac. B. R. per Doderidge and Crooke Justices, in Cae of Winter v. Fowearces.

9. Defendant promised the Plaintiff, that if Plaintiff would procure a Feme imprisoned to be delivered out, he would repay him all such Monies as he should disburse therein. Defendant pleaded, that before the Plaintiff had paid any Money for her Delivery, and before the Plaintiff had done any thing relating to it, he revoked his Promise, and countermanded the Plaintiff, that he should do nothing as to her Delivery. Adjudged by 3 Justices that he could not countermand it. 2 Roll Rep. 39. Trin. 16 Jac. B. R. Winter v. Fowearces.

10. The Law respects Matters of Profit and Interest largely, but of Pleasure, Skill, Ease, Truth, Authority, and Limitation, strictly; and therefore these may be countermanded, but to cannot the other. See Fin. 8. B. Wing. Max. 376. to 381. &c.

11. A Feme sole interfeffed a Man within the View, and directed him to Vent. 186. enter without other Livery. They intermarried before any Entry made by him, and then he enters; Adjudged that the Entry was good after Marriage, and not countermanded by the Marriage. 2 Lev. 34. Hill 23 & 24. condigly. Car. 2. B. R. Parsons v. Pierce. But says, that perhaps it might be. — Mod. otherwife had the husband a Stranger. 91. pl. 59.


12. A Man gives a Warrant of Attorney to confefs a Judgment, and dies before the Judgment is confessed; this is a Countermand. Vent. 310. in a Note. Patch. 29 Car. 2. B. R.

13. A possessed of an Office for two Lives executes a Deed, appointing, that after his Death one R. H. then in his Office should be Deputy, and directs several Annuities to be paid out of the Office. Afterwards A. by a subsequent Deed made different Appointments of the Profits of the Office. A. kept both Deeds in his own Custody during his Life; and in Support of the first Deed it was inquired, that it was an absolute Disposition of the Profits of the Office without any Power of Revocation, and ought to stand, and that though both Deeds were all along in his Custody, yet so (generally) Voluntary Settlements are, and yet the first should prevail. But Ld. Chancellor held, that the first Deed was only an Authority, and therefore clearly countermandable by the second, and decreed the first Deed to be delivered up. Wms's Rep. 101. Mich. 1797. Young v. Court.


For more of Countermand in General, See Marriage (H) Powers. And other Proper Titles.

Court
(A) Office of the Court.

[Or what the Court may adjudge without being found by Jury, pl. 1, 2.]

1. What shall be said a reasonable Time, shall be adjuged by the Discretion of the Justices before whom the Cause depends. Co. Lit. 36. b.


2. What shall be said a reasonable Fine, Custom, or Service, shall be adjuged by the Discretion of the Justices before whom the Cause depends, upon the true State of the Case depending before them; for Want of a Term in such Cases appertaining to the Consequence of the Law, and therefore to be decided by the Justices. Co. Lit. 36. b. 59. b.

- Resolved that the Jury upon Confession or Proof of the annual Value of the Land. 4 Rep. 27. b pl. 16. Mich. 42 & 43 Eliiz. B. R. Hubbard v. Hammond — S. C. cited by Hide J. Mod. 159. — Where a Fine for Admittance to a Copyhold is payable at the Will of the Lord, and he imposes a Fine, the Jury is to try whether it be reasonable or not; Per Car. Crew. E. tit. pl. 3. Mich. 50 & 57 Eliiz. B. R. Jackson v. Hodgesian. — See Tit. Trial (P) pl. 5 and the Notes there.

3. If the Jury find a special Verdict, that A. mutuo dedi 500 l. to B. for which B. intouched A. of certain Lands, upon Condition, that if he paid to him 600 l. at a certain Day three Years after, it should be lawful for him to re-enter, and to leave it to the Court, whether this be Usury or not; though it appears here to the Court that more than 10 l. for 100 l. is referred, having regard to the Profits which the Freehold is to have by the Confinement, which are found to a certain Value, per because the Jury hath not found it to be Usury, the Court shall not adjudge it to be Usury, for there ought to be an Usurious and corrupt Contract, of which the Court cannot have Confinement without the finding of the Jury. 110 Mich. 15 Inc. W. R. between Web and Worfield adjudged in a libel of Error upon a Judgment in Banco, where it was also adjudged.

Bridgen. 110 S. C. and Judgment in C.O. confirmed by B. R. — Cro. J. tit. 508 pl. 25. Mich. 16 Jac. B. R. in Case of Roberts v. Ternine, on an usurious Contract, the Verdict found the Agreement prior &c but did not find that Corrupt Agrement fault. It was objected, that it ought to have been found expressly to make it an offence within the Statute; for non assumpsit; for there is a Difference between an Information, which ought to be precisely alleged, and a special Verdict, whereas all the Circumstances are found, which being apparent to the Court to be Usurious, and cannot by Intendment have any other Construction, it is sufficient, and here it is apparent that the Money was lent for Interest, and is more than the Statute permits, and therefore being Usury apparent, the Court shall judge it accordingly, and either as adjudged in Case of Liggett & Truett, that if the corrupt Agreement be not expressed in the Verdict, and the Matter is apparent to the Court to be Usury, the Jury need not think it was corruptly, for Regula locutai; but otherwise it is if it be so implied, wherefore it was adjudged for the Plaintiff.

4 20
4. If the Jury find special Matter, [as] Perjury and Circumstances, that a Feoffment was made by Fraud, yet the Court cannot pronounce it to be fraudulent without the finding of the Jury that there was Fraud, because that was Matter of Fact, and but Evidences of Fraud. Co. 1o. Chancellor of Oxford, * 57. b. 3.

Car. 2. B. R. Smith v. Wheeler. — 12. Mod. 38. S. C. cited, and S. P. cited in S. C. — S. C. cited Bridgn. 112. and says, that it was so agreed in the Cafe of Petter v. Littleton, in C.B. for the taking of an Ox; The Defendant pleaded Not Guilty, and the Jury found, that Thomas Tyrer held certain Lands of John Littleton by Rent and Heriot, and in the 42 of Eliz. did inform John Tyrer his Son and Heir, that made a Lease to Thomas Tyrer for forty Years, if he should so long live, to the Intent that Joyce, whom he intended to marry, should not have her Dower during his Life. Thomas died, and the Jury found, that the Defendant took it for a Heriot, and they found the Statute of fraudulent Conveyances &c. and it was adjudged, that forasmuch as the Feoffment was not found by the Jury to be fraudulent, yet the Court could not adjudge it to be fraudulent, although the Jury had found Circumstances and Inducements to prove the Fraud. — Brownl. 36. Trin. v. Littleton, S. C. held accordingly, per tert. Cur. for the Judges have nothing to do with Matter of Fact. — 2 Brownl. 187. Trin. 10 Jac. C. B. Tyre v. Littleton, S. C. adjudged for the Plaintiff, by S. C. cited per Cur. 10 Rep. 59. a.


5. If a Jury finds, that J. S. with his own Money, procured Lands, to be settled upon himself and B. his Son, being of the Age of 5 Years, and finds other Badges of Fraud, and after becomes Bankrupt, but it is not found that this was done by Fraud, or in Tract in himself, the Court shall not intend it, and therefore the Sale of those Lands shall not be lawful. Trin. 15 Car. B. R. between Crisp and Priest, per Curiam agreed upon a special Deed.


6. Where an Infant is Plaintiff in Affiz, the Court Ex Officio ought to inquire of the Circumstances at large, Per Hank, which was not contradicted. Br. Affiz, pl. 59. cites 12 H. 4. 19. 20. — But fee contrary for the Defendant. 24 Affiz. 51. Ibid.

7. In Affiz, they were at Issue upon two Deeds pleaded with Warranty, and found for the Plaintiff, and the Defeas by without Force and Arms, and so fee that is the Office of the Court to inquire of it, though it be not put in Issue; But in Trespass, if the Issue shall be found for the Plaintiff, it shall be intended to be with Force and Arms, though it shall not be required or preferred. Br. Affiz, pl. 67. cites 7 H. 6. 40.

8. Upon a Commission out of Chancery an Inquisition was return'd in by D. intending to the Escheator upon the Statute of Fugitives 13 Eliz. which found that Ld. P. being seized in Fee of divers Mannors &c. covenanted to find a Tenant of a Ring of 5s. Value, and that Ld. P. always after, till his Flight beyond Sea, took the Profits, and that his Flight was without Licence, and that he did not return according to the Proclamation made. But no Covin was expressly not found. The Barons at first doubted, but afterwards thought that the Privy was put to the special Matter found by the Jury was sufficient to inform the Court of the Flight till Covin apparent, and therefore they awarded a seilure of the Land.


voind on Tender of 10s. &c. D. went beyond Sea with Licence of the King, but on Midsummer there, a Privy Seal was delivered to him, commanding him to return on Pain of Forfeiture of all his Lands. Upon a Commission to investigate what Lands &c. D. or any other to his Use had, the Jury found this special Matter, but found not any Fraud expressly, whereupon the King exhibited his Bill in the Exchequer against the Bargains &c. who truly deliver'd all this special Matter. The Court decreed for the King. And Warrenford's Cafe D 193. and 267. [another Cafe] were cited

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but add, that the principal Case differs from them in two material Circumstances which alter the Law in the Cases; 1st. That this is in a Court of Equity by English Bill, where the Judges are to adjudge upon the Fraud only, and there they were in a Court of Law, and the Fraud was matter of Fact, which ought to be expressly found by the Jury as appears by the Bookz. 2dly. In that Case the Jury found expressly that the Conversion was not by Fraud to deceive the King of his Wardship, but only to deceive the Creditor &c., whereas in the principal Case there is no such Negative, and therefore differs much. Lane 42. 48. Pach. 7 Jac. in the Exchequer. The King v. the Earl of Nottingham, alias, Dudley’s Case.

9. In Trover and Conversion of Plate and Jewels &c. if the Defendant pleads Not Guilty, now it is good Evidence Prima Facie to prove Conversion that the Plaintiff required the Defendant to deliver them and he refused, and consequently it shall be presumed that he has converted them to his own Use, but yet this is only Evidence; and if it be found by special Verdict in such Case that the Plaintiff requested them of the Defendant and he refused, this is not such Matter whereupon the Court may adjudge any Conversion; Per Coke Ch. J. to Rep. 36. b. 57. a. Trin. 11 Jac. Obiter.

Be Trepass. pl. 235. c. 21. B. 4. 27.
And the Case as cited in Mod. seems to be misprinted)

Cro. J. 204. pl. 6.
Hill. 5 Jac. B. R. Steeden v. Harley S. P. admitted as to the Reasonableness of the Time being to be determined by the Court.

(R) Of what Things the Court shall take Considens

ex Officio.

1. In an Action upon the Case upon a Receipt, if the Plaintiff declares, that A. was indebted to him by Obligation in 20l. and that he paid a Writ against him directed to the Sheriff of Cornwall to take A. &c. and that the Sheriff thereupon, 1 Oct. 6 Car. arrested him upon Launcelton in Comitatu Cornub. and after the Defendant apud Westminster rescued him out of the Custody of the Sheriff bringing him A. towards Westminster the said 1 Oct. 6 Car. Upon Not Guilty pleaded, if a Verdict and Judgment be given against the Plaintiff [Defendant] and he brings a Writ of Error, and alights it for Error, that (*) it was impossible he could be arrested at Launcelton, and the same Day be released at Westminster, avering, That Launcelton is distant from Westminster 200 Miles at least; and thereupon in nullo est erratum is pleaded, by which it is acknowledged, that Launcelton is so many Miles distant from Westminster, yet the Court will not intend it to be impossible for him to be released at Westminster the same Day. P. 9. Car. between Kendall and Kendall, adjudged in Camera Scaccarii in a Writ of Error upon a Judgment given in Banco Regis.

14 B. 3. 12.
Pottenham’s Case.—Cro. J. 68. in pl 3. Psch 3 Jac B. R. the S. P. per
and D. 306. Pottenham’s Cas.—Cro. J. 68. in pl 5. Psch 3 Jac B. R. the S. P. per
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and D. 306. Pottenham’s Cas.—Cro. J. 68. in pl 3. Psch 3 Jac B. R. the S. P. per
3. But otherwise it is of Inferior Courts. Co. 2. Lane 17. 2 But the
R. 3. 9. b.


The King's Courts cannot judicially take Notice of the Privileges of the Cancye Ports, which extend only to certain particular Towns, 2 Inf. 557. But otherwise it is of a Judgement given in C. B. in a Pracice of Lands that lie in any of the County Palatines of Chester, Lancaster and Durham, for they are excepted from the Jurisdiction of the King's Courts, and within them are Jura Regalia, and plenary Jurisdiction, and so known to the King's Courts; for they take Notice of all the Counties in England, because they be immediate to them for direction of Writs and therefore who'the Tenant doth admit the Jurisdiction of the Court in those Cases, the Judgment against him for any of such Lands is void. And thus are the Doubts in some Books in this and other like Cases fully resolv'd.

4. If a Lease be pleaded to be made by the King under the Excheq. S. C. cited per Car. quer Scal, though this is not good by the Common Law, but by the Custom of the Court of Exchequer, yet it is not necessary to plead or abet the Custom of a Court; for the Customs and Courts of every of the King's Courts are as a Law, and the Common Law takes Notice of them without pleading. Co. 2 Lane 16.

b. adjudged.

6. Hill. 13 Car. B. R.

5. A Man convicted in Presows brought Attaint, and it appeared to the Court that he had not made Fine, by which the Court ex Officio sent him to Prisow. Br. Office del &c. pl. 13. cites 16 Aff. 4.

6. Affixe was taken and the Justices thought that there was Error in the taking of it, by which they would not render Judgment. Br. Office del &c. pl. 23. cites 16 Aff. 6. and says fi. 4 H. 6. 23. 35 H. 6. 24.

7. A Man indicted of Felony without any Counsel learned in Law, shewed Charter of Pardon disaagreeing from the Indictment and from his Name, and the Court perceiving that the King would pardon him remanded him to Ward, to purchase a better Charter &c. Br. Office del &c. pl. 25. cites 26. Aff. 46.

8. Vicar General of the Bishop who has his Power in his absence is no Officer immediate to the Court of Bank, nor the Court will not award Writ to the Bishop to him in Quare Impedit before that it be so certify'd, per Thorp, quere who shall Certify it and how. Br. Office & Off. pl. 13. cites 38 E. 3. 12.


J udges shall be bound to

take Notice of a County. Mar. 125. in pl. 203.

10. As if Sheriff serves Process in the Franciski. this is good, Quod Nota. ibid.

11. In Quare Impedit if clear Title to the King be confes'd by the Parties in Pleas pending between them we ought to award * Writ to the * or Proc. Bishop for the King, tho' he be not Party. Per Hank and Hill. But guiltve pl. Culpeper Contra. ibid. Br. Prerogative pl. 16. cites 11 H. 4. 17. 106 cites

12. In Affixe the Court of Office ought to make the Affixe to enquire of S P. the Difference was with Force, by reason of the King's Pleas. Br. Office del &c. pl. 11. cites 11 H. 4. 17.

13. The

14. It was agreed that if the Party Defendant will admit an ill Writ or ill Court or the like, yet if the Court perceives it, the Court shall not suffer it, and this seems to be reason; for Amicus Curiae may inform the Court of Error. Br. Error pl. 49. cites 11 H. 445.

15. In Quare Impedit between two Parsons if it appears to the Court that the King has Title by Mortmain or otherwife, there may be a writ to the Bishop for the King who is no Party to the Suit; per Hill and Hank. Brooke says Quare legem inde. Br. Office del &c. pl. 29. cites 11 H. 471.

16. It was said that the Court ex Officio is bound to abate the Writ, if it appears to them to be a thing Apparent in the Writ that it is not good, as for false Latin, or for want of Form notwithstanding that the Demandant make Default, and the Matter was inamiss as it was Rex Hiberniae, where it should be Dominus Hiberniae. Br. Brief pl. 216. cites 4 H. 6. 16.

17. The Court ex Officio ought to reverse the Judgment if they see Error, though it be not assign'd by the Party. Br. Error pl. 9. cites 9 H. 6. 46, per Cheyney.

18. Quate jus was returned and the Jurors were demanded and appeared, and the Court of Office made Proclamation if any would inform the King or his Serjeants &c. and none came by which the Justices demanded two of the Jurors to try the Polls, and the Justices said that they should inquire if this Juror, who was demanded, had any Thing within the Hundred, or if he be within the Diocese of the Abbot, or if he be favourable, and so it was done of another, who were found indifferent, &c. by which the Court discharge'd the first two, and the other two try'd the Remainder of the Pannel, and the Court said to them that they should inquire if those, who shall be Sworn, have sufficient Freehold within the County, and if they are within the Diocese of the Abbot or favourable, and after full Inquest &c. were commanded to inquire of the Collusion, who found no Collusion, by which the Abbot recover'd, and Brown demanded the Value of the Land per Ann. (to the intent the King should have the Finesses in the Mean time) who said to 40s. &c. Br. Office del &c. pl. 28. cites 20 H. 6. 38.

19. Note that it was not deny'd, but that where an Abbot or such like has a peculiar or exempt Jurisdiction, or Lord of a Franchise has Returna Brevia or the like, the Court will not take Conscience thereof, but shall Write to the Sheriff or Bishop and not to the other, quod nota; for the other is not his Officer immediate to the Court. Br. Office and Off. pl. 2. cites 35 H. 6. 42.

20. Affize of an Office, and made his Title that he ought to take for the Adjournement of every Enjoin 44. and the Court found by Examination of the Clerks that he ought not to have so much, by which they awarded that he should not make such Title; for they may have Notice of every
ry Fee there; by which afterwards the Plaintiff amended his Title. Br. Office del &c. pl. 26. cites 8 E. 4. 22.

21. In Trypoff s of taking his Beasts, the Defendant said that a Stranger held of him, &c. who left to the Plaintiff &c. and for the Rent &c. be estray'd, the Plaintiff said Nothing in Arrear, and found for him; and by the Opinion of all the Justices because the Statute is in the Negative, Sicutius, the Lord shall not therefore be punished &c. Now of his Confession it appears that the Defendant is Lord in which Case this Writ nor Action does not lie, though the Defendant has admitted it, yet the Court shall abate it ex Officio; For otherwise the Defendant shall be fined, which is contrary to the Statute. Br. Office del &c. pl. 29. cites 10 E. 4. 7.

22. In Ward, the Plaintiff sues'd that the Ancestor of the Infant dy'd in his Homage; the Defendant sues'd a Gift in Tail to the Ancestor of the Infant, alleged to be dy'd seized in Fee; and it was debated if he shall traverke the Dying feiled in his Homage or not; and at the End of the Term the Defendant would have amended his Bar, and the Court would not suffer it; and Wavifor who was with another Defendant would have changed his Paper, [Plea] and the Court would not suffer it. Br. Office del &c. pl. 30. cites 2 R. 3. 13.

23. Debt upon an Obligation, the Defendant said the Plaintiff is Outland'd, and pray'd thereof judgment for the King, Brian said this cannot be for the King has not Action thereof pending; But if the King brings Deline of the Obligation and this Matter be confes'd, they may give judgment. Br. Prerogative pl. 107. cites 4 H. 7. 17.

24. Of a general Pardon by Aë of Parliament, the Justices ought to take Notice and to allow the Pardon though the Felon pleads Not Guilty, because it is a general Aë, quod nota. Br. Parliament, pl. 1. cites S. C. 26 H. 8. 7.

25. Though the Court shall take Notice of the Custom of Gavelkind Raym. 60. in Kent without pleading, yet of a special Custom to devise &c. or that S. C. &c. the Lands are held in Savage, or that the Feme shall have the Moot for S. P. her Dower, they ought not to take Cognizance without special Pleading, they being Particular Customs; But for the Custom of Gavelkind it suffices to shew that it is in Kent and of the Nature of Gavelkind without pleading the Custom; For the Court take Notice what the Custom of Gavelkind is. Cro. C. 562. cites it as agreed in C. B. per toct. Cur. Mich. 41 & 42 Eliz. in Cafe of Lauder v. Brooks.

26. If on Demurrer on a Matter in Law though the Parties will join Issue on some one Point, upon which, if it flood alone, Judgment should be given for the one Party; Yet if upon the whole Record matter in Law appears why Judgment should be given against the said Party, the Court must judge to; For it is the Office of the Court to judge the Law upon the whole Record, and the Convent of the Parties cannot prejudice their Opinions, nor quire them of their Office in that Point. And therefore though Montague in Cafe of Dice v. Dunningham, Pl. C. 69. a. flaggers a little in that Point upon the Book of 34 H. 6. yet in the Conclusion he resolves that the Court must Ex officio judge upon the whole Record. Hob. 56. in Cafe of Foster v. Jackson.

27. If a Judgment be given in London and this comes into B. R. we ought to take Notice of the Custom of London, because in the Court there the Custom need not be alleg'd, and therefore in we in B. R. do not take Notice of it we may reverle the Judgment, where there is not any Caufe; But if a Custom be in another Place we ought not to take any Notice thereof, without its being alleg'd; Per Doderidge J. and agreed by Coke Ch. J. Roll Rep. 106. pl. 47. Mich. 12 Jac. B. R.

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28. The
The Court is not bound to take Notice of the New Style, but of the old English Style, (21 Car. B. R.) For the Old is that whereby all Accounts in the Common Law are guided, and not by the New which is Foreign, and goes to Days before the English Style or Account; The old Style is called the Gregorian; the former was made in the Time of Julius Caesar the Emperor, the latter in the Time of Pope Gregory the 13th. 2 L. P. R. 235.

This Court of B. R. is not bound to take Notice of Orders made, and of Things which are done at the Assizes, although it be by a Judge of this Court; because he Acts not there as a Judge of this Court; Mich. 24 Car. B. R. For the Judges of Assizes &c. do Act by special Commissions, and not as Judges of the Common Law of any of the Courts of Welfminster; but the Manner is, upon an Order made at the Assizes, to get it drawn up by the Clerk of the Assizes, and to move the Court the next Term to have it made a Rule of Court; and when that is done both Parties shall be bound by it. 2 L. P. R. 238.

This Court is not bound, ex Officio, to take Notice of private Orders made at the Council-Table: By Rolle Chief Justice. For they are Matters but of particular Concernment, and not Matters of Law or publick Bills, whereas, as judges, they are to take Notice. 2 L. P. R. 240.

This Court is to take Notice of a General Statute, viz. such an one as concerns the Publick; for that is become a general Law that every Person is bound to take Notice of. But not of a particular Statute which concerns some particular Part of the Kingdom, or particular Persons only, in their private Interest; For these publick Statutes are proved by shewing the printed Statute Book. But a particular Statute must be proved by an exemplification or Copy examined by the Record it self, and must be set forth particularly in all Declarations and Pleadings. But upon a general Act the Plaintiff may say, that the Defendant did such a Thing, contra formam Statutum hujusmodi caufa edit & provis. 2 L. P. R. 241, 242.

The Court will take Notice Judicially what Day of the Month Term begins, and that the Cause of Action accru’d after the Declaration delivered, which was generally as of Easter Term, and such Declaration refers to the first of the Term, if there be no special Memorandum. 22 Mod. 647. Hill. 13 W. 3. Thompson v. Southwell.

It is a Privilege due to the Clerks of C. B. not to be sued in any other Court; except for Treason or Felony, than in C. B. without their Consent; and per Holt Ch. J. this Privileges is due to them of Common Right, of which B. R. will take Notice, but that otherwise perhaps it might be of the Clerks of the Exchequer. 2 Lord Raym. Rep. 869. Pash. 2 Ann. B. R. Ogle v. Norcliffe.

B. R. will, upon a Writ of Error, take Judicial Notice of all Private Customs in Private Places, for they below are as much bound to proceed upon their Customs, as the Judges here are upon the Common Law. Per Holt Ch. J. 11 Mod. 68. pl. 2. Hill. 4 Ann. B. R. Anon.
(C) Of what things the Court ought to take Constance, without Averment thereof.

1. If a Man be indicted, that he killed a Serjeant of London in the Execution of the King's Process, 18th Day of November between the Hours of 5 and 6, though in truth, this Time being in November, it is part of the Night, yet the Court is not bound, or Ought, to take notice thereof, no more than in the Case of Burglary, without those Words, in Note eisdatum, or notante. Ca. 6. Mackalley 66. b.

2. In an Indictment of Burglary, the Court is not bound to take Notice that it was done in the Night, (though the Time alleged ought to be in the Night,) without those Words, in note eisdatum, or notante. Ca. 9. Mackalley 66. h.

3. If upon a pleading it appears to the Court, that a Proclamation of a Fine levied upon the Statute of the 4 H. 7. was made Termine Trinitatis 7 Junii, sec. though this 7th Day of June was Dies Dominicus, and so not Dies Indictus, yet the Court will not take notice that it was Dies Dominicus, without an express Averment thereof. D. 2. Cl. 182. 52. 55. Fisb and Broket. Com. 205. the same Case.

4. If upon the pleading of a Fine it appears to the Court, that one of the Proclamations was made Termine Pathe 31 Junii; when there is not, nor never was to many Days in this Month, the Court will take notice of this without any Averment; For it is impossible. D. 2. 182. 52. 55. Fisb and Broket. Com. 265.

5. If upon a pleading a Fine is made, that one of the Proclamations was made the 25 Junii Termine Pathe, where all men was told the June was out of the Term, yet the Court shall not take notice thereof, without Averment, as by Averment, that the Fact [Term] of Eater commenced the same Near the 1 Ball, tohcute nturing Hau. D. 2. Cl. 182. 52. Com. 266. h. Fisb and Broket averred there.

that that Day was after the End of the Term, quoad the Writ; and say that so it was done in the Cafe of a Capit, by which the Marshall here was freed of a Debt. Sid. 396 pl. 11 Mich. 18 Car. 2. B. R. Sterlings Cafe.——2 Keb. 91. pl. 9. S. C.—Sid. 398 pl. 13. the same Term in Cafe of Champion v. Skipwith, the Court doubted if they ought to take Notice of the Day of the Month of the Beginning and End of the Terms of Trim. and Easter which were Moveable.

6. In an Action upon the Cafe, if the Plaintiff declares, that in Confideration of 201, the Defendant assumed to deliver to the Plaintiff 20 Cumbos trecie, which he had not delivered, though it is not averred by an Anglicie what Combs is, yet the Court ought to take notice thereof, it being the Phrase of the Country of Norfolk and Suffolk, and other Places, and there well known. [*] Vizh. 11. Average, and Petit Lodinaise Exception. Ja. B. R. between Cock and Thorowgood, per Curiam my Reports. 11 Ja.

was taken, because the Plaintiff did not expressly aver in his Declaration what the Words meant; because they are Termine incogniti; but per Doderidge and Jones, it is according to the Covenant and good. Palm 598. Pach. 21 Jac. B. R. In Cafe of Contable v. Clumber. Words are to be taken according to the Intent of the Parties, and this Intention and Construction of Words shall be taken according to the Vulgar and usual Sense, Phraze, and manner of Speech of these Words, and of that Place where the Words are spoken at in the Cafe of *Alga* Maris and *Man-favor* instead of *Pertworc*
If an Action is brought for Words of Slander, according to the Phrase of the Country where they are spoken; though the Court do not know what they signify, yet an Action lies without an Averment of their Signification. For the Judges themselves ought to take Notice of English Words spoke in any Country. Roll tit. Actions for Words (L. b.) pl. 1. cites it as adjudi'd Mich. 14 Jac. 4.

Br. Error, pl. 154, cites S. C. — So if it be Cori tena juit die Mercurii, 32 S. C. Mart., 2. C. where Monday was the third Day and not Wednesday, this is Error, of which the Court is to take Notice. 1 H. 7. 12. b. adjudi'd.

9. In a Writ of Error upon an Indictment of Trespass, supposing the Trespass to be done Die Jovis, prox. post Dies Pentecostes, it it be alleged for Error that Dies Pentecostes is every Day of the Week, so that it is uncertain whether he intends Dies Jovis in the same Week, or next Week, yet the Court ought to take Command of the Feast, solici't, that Pentecost diecurt a Pente, quod est quintu, & Coite, quod est Decem, & hoc est quinquages Decem Dies post Jovis, and this Day is Dies Dominicus, the first Day of Pentecost, and so overruled the Error without more Proof. 7 H. 6. 39. adjudi'd. Comm. 122. b.

In Account, if the Plaintiff declares, that the Defendant was his Bailiff &c. in such a Day in such a Year &c. till the Feast of St. Michael &c. though in the Declaration it is not St. Michael the Archangel, or St. Michael in Spona Cumba, yet the Court shall intend it to be St. Michael the Archangel, because this is the most famous St. Michael, and therefore the Declaration is certain enough, 20 H. 6. 23. adjudi'd.
Court.

12. In a Writ of Error to reverse an Outlawry, if it appears that the Exigent was held at the Utas of the Holy Trinity, and the Exigent was held at the 14th of July, though the Truth of the Utas, P. and S. of Trinity was the 10th of July, and so to the Return of the Writ be made—fore the fictitious County was held, yet the Court shall not take Con- quenance thereof without Averment. 21 H. 6. 13. an Averment (31.)


13. If a Man pleads a Thing to be done at such a Feast, or be fore such a Feast, this is well enough without Averment of the Month when this Feat was. 15 H. 7. 2 b. admitted 20 L. 6. 23. S. P. does not exactly appear. — Br. Count, pl. 15. cites S. C. but S. P. does not fully appear.

14. If in Trespass the Defendant justifies for an Averment in the Sheriff's Turn, which by the Statute of the 31 C. 3. [cap. 15.] is to be held within a Menem poit Feitan Pachze & Michaelis, and the De- fendant says the Plaintiff was aamerced at a Court held the 18th of April in Menem Pachze, and does not say within a Menem poit Pef- tum Pachze, and therefore adjudged not to be a good Plea; for that though it appears by the Almanack that the 18th of April was within Menem after the Feast of Easter, yet the Court is not bound to take Notice thereof without an Averment thereof, not to im- pact an Alamanak for it; but (§) it was laid by Justice Jones, that they are bound to take Notice of immovable Feasts, and not of moveable Feasts, as this is Mich. 8 Car. B. K. between Grif- fin and Bedle adjudged upon Demur. Intreat Phil. 5 Rot. 43.

Feasts; and Judgment for the Plaintiff.

18. If a Woman brings an Appeal upon the Death of her Brother, and 15 H. 9. the Defendant admits it without Challenge or Exception, yet the Court ought to abate the Appeal. 2 L. 162. per Wray's. cites B. 7. per Wray. See if she brings Appeal of the Death of her Father; per Curt. Palm. 311. Mich. 20 Jac. B. K.

16. The Court ex Officio abated a Writ against an Hoslfer, because Br. Office he was not named a common Hoslfer in the Declaration. Br. Office de- scribes such, pl. 12. cites 11 H. 4. 45.


17. The Court ex Officio is not bound to take Concluse of the Error in it to an Writ of Error, but the Party shall assign it. See 24 E. 3. 34. if the Action Party assigns Errors, though they are not Errors, the Court Ex Officio shall see if there are any other which by the Parties are not touch'd &c. and also to see the Record, if there is any Matter to affirm &c. Quod Nota, in bar by Deed, and does not shew the Deed, and the other plead in Bar, and does not except thereunto, but they were at issue, this is Error; for the Court Ex Officio ought to have adjudged it ill. Gouldib. 106. 175. in pl. 11. per Rhodes J. says fo is the Book of 22 H. 6. or 28 H. 6 and that he can shew the Case.

6 R. 38. Where
18. Where an Indictment is insufficient, or Excerpt awarded where it does not lie, there the Justices upon Information shall award Superfederas Ex Officio. Br. Office del &c. p. 8. cites 5 E 4. 7.
19. In a Foremost of a Manor the Tenant pleaded Joynancy by Fine with 7 S. The Defendant averred the Tenant sole Tenant as the Writ supposed, and found for the Defendant. It was assigned for Error, that where, upon Joynancy pleaded by Fine, the Writ ought to abate without any Averment by the Defendant against it, the Averment has been received against the Law &c. Though the Tenant hath admitted and accepted this Averment, viz. sole Tenant, as the Writ supposes, yet Wray held, that the Court should abate the Writ without Exception of the Party. 2 Le 161, 162. p. 196. 21 Eliz. B. R. Hughson v. Webb.

Wilde J. held, that the Court is bound to take Notice of the Beginning of Terms; but by Twifden J. the Court cannot take Notice of the Days of Terms, or at least is in their Discretion, and cited the Principal Case of Bishop v. Harcourt. 3 Keb. 597. p. 98. Mich. 26 Car. 2. B. R. in Case of Alderton v. Miller.

20. Though in Judgment of Law every Judgment relates to the first Day of the Term, yet where the Plaintiff in his Declaration expressly sets forth an Award in Easter Term in & super 20 Maii, that the Defendant imposuer should suitcease sicch Suit &c. and that the Defendant after the 20 Maii prosecuted the Suit to Judgment, though it appears to all in one Term, yet the Defendant should have demurred to it, because it is specially laid down in Time the one to be after the other, and having taken Issue upon the Point of the Action, viz. Non Assumptis, the other Matter alleged in the Declaration is only collateral and Inducement, and now the Court cannot judiciously take Notice of it without referring to the other Record, viz. the Record of the Judgment, which they ought not to do, because the Plaintiff has precisely alleged it to be after 20 May in Time. Yelv. 35. Pach. 1 Jac. B. R. Hayys v. Wright.

21. After suit to deliver an Indenture ante finem Termi Sanctae Trin. succa proxima sequent'. The Promise was 5 Junii. The Plaintiff alleged, that Trinity Term incept 7 Die Junii, & finit 26 Junii. Anderson held, that the Ejffion Day is the first Day of the Term, which was 5 Junii, and then the Indenture was not to be delivered till Trinity Term was a Twelvemonth; but the 3 other Justices contra, for the Plaintiff has expressly alleged that the Term began the 9th of June, and the Defendant had not denied it, and the Court Ex Officio are not to search the Rolls of the Court, and although in Law the Ejsign Day is the first Day of the Term, yet in common Speech, that is the first Day of the Term when the Court sits; and Anderson, against his own Opinion, gave Judgment for the Plaintiff. Cro. E. 210. p. 6. Mich. 32 & 33 Eliz. B. R. Bilhop v. Harcourt.

22. Though in Judgment of Law every Judgment relates to the first Day of the Term, yet where the Plaintiff in his Declaration expressly sets forth an Award in Easter Term in & super 20 Maii, that the Defendant imposuer should suitcease sicch Suit &c. and that the Defendant after the 20 Maii prosecuted the Suit to Judgment, though it appears to all in one Term, yet the Defendant should have demurred to it, because it is specially laid down in Time the one to be after the other, and having taken Issue upon the Point of the Action, viz. Non Assumptis, the other Matter alleged in the Declaration is only collateral and Inducement, and now the Court cannot judiciously take Notice of it without referring to the other Record, viz. the Record of the Judgment, which they ought not to do, because the Plaintiff has precisely alleged it to be after 20 May in Time. Yelv. 35. Pach. 1 Jac. B. R. Hayys v. Wright.

23. If Tenant brings Trespa's Vi & Armis against his Lord, the Court ought to abate the Writ Ex Officio; But when it is abatable by collateral Matter of Faî De-bors, of which they cannot take Notice as Judges,
24. In Allmistple the Plaintiff declared, that Defendant being inducted Jenk. 330, to him in 151. in Consideration the Plaintiff would give him Time for Pay-ment thereof until the first Day of Easter Term, promised to pay &c. It was aligned for Error, because it was not known when Easter Term began; for the Judge Ex Officio ought to take Notice of Easter Term, and other Terms. Affirmed in Error.

25. Writ of Inquiry of Damages was awarded returnable Die Lune post quindecim. Hillarii primo Caroll, and the Sheriff returned the Inquiry taken before him 27 Die Januarii, which was after the Day of the Return of the Writ, and so without Authority; but forasmuch as it was not signed upon the Record, although in Truth it were so, the Court would not take Conformity thereof; and it may be that Die Lune post quindecim Hillarii was the 28 or 29 Day of January, and then the Inquiry is well taken, and so it shall be intended; and if not, the Court shall not take Notice thereof unless it had been aligned; whereupon the Judgment was affirmed. Cro. C. 53. pl. 11. Mich. 2 Car. in Cam. Stack, Morris v. Fletcher.

26. The Court is bound ex Officio to take Notice of all Matters which do appear upon the Record depending before them, but of Matters debars, viz. To search the Almanack for Days, and to compute Times mentioned in the Record, they are not bound ex Officio to do it. 2 P. R. 234. cites 21 Car. B. R. 14 Car. B. R.

27. Submission to an Award was in a deed it be made before Easter next ensuing. In Debt on the Bond the Defendant pleaded that Nullum facerant Arbitrium ante Fustum Pasche. Plaintiff replied, that before Easter viz. 15th of April following the Arbitrators awarded, &c. After Trial Exception was taken to the Verdict, because it did not find that the Award was made before Easter, and the Court cannot take Notice ex Officio, that the 15th of April was before Easter; but it was answer'd, that the Replication alleged it to be before Easter viz. 15th of April, and that the Defendant in his Rejoinder had omitted the Words (ante Fustum Pasche) so that the Time was not in Issue. And upon this Reason Mr. Hales told the Reporter that the Court rested for that Point; For he held that the Court otherwife could not take Notice of the Time Ex officio, tho' Mr. Welton said, that the Opinion of ROLL was, that they might if they pleased. All. 85. 87. Mich. 24 Car. B. R. KINAFFON v. Jones.

28. The Court is not obliged to take Notice of the Day of the Sid. 300. Month, upon which the moveable Terms is. Lev. 196. Mich. 19 Car. pl. 6. S. C. and S. P. but when the Day of the Month is alleged in the Record the Court may take Notice of it, and the Day of the Return shall be tried by Almanacks; Arg. Quod futurum concepsum per Curiatum.
(D) In what Cases the Court ought to take Notice of the Ecclesiastical Law.

If Administration he granted to B. of the Goods of A. during pl. 16. Da. venport v. the Age of 16 [* 17] the Court ought to take Notice of the Ecclesiastical Law, that the Administration is void, and determined. Mich. 14 Cat. B. R. between Danport and Vincent, per Jones, 5 Rep. 29. a. Hill. 40


2. The Judges of the Common Law shall take Conscience what is the Law of the Church or of the Admiralty &c. and not to take it as the Bishop pleads it, nor to write to Certify it, per Moyle and Priftot, and yet the Laws are different; For they Judge that where a Man and a Woman make a Contract of Matrimony, that immediately the Man may take the Goods of the Woman, contra by our Law; and that he who is born and begot before the Eupouals is Mother, if the Father and Mother intermarry afterwards, contra to our Law, and yet if they certify such Mulier our Law shall take it as a good Certificate, there Cavaterus and shall aid it by special Pleading &c. Br. Quare Impedit. pl. 12. cites 33 H. 6. 12. 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

3. A Parson and a Vicar were at Issue for Tithes, and did not take Advantage of the Jurisdiction, yet when the Court perceived it they defined the Matter ex Officio; For it is a Spiritual Cause. Br. Office del &c. pl. 17. cites 22 E. 4. 23.

4. The Court ought to take Notice of, and give Credit and Faith to the Proceedings and Sentences in the Spiritual Court, and to think that their Proceedings are consonant to the Law of Holy Church; For Ciiilict in suo arte petito est credendum; tho' what they do there be against the Reaon of our Law. 4 Rep. 29. a. pl. 18. Mich. 27 & 28 Eliz. the first Resolution in Bunting's Cafe.

When a Bishop resuffles a Clerk presented to him, he ought to assign the Cause in certain, because tho' the King's Court cannot properly determine Schisms Hereof, yet the original Cause of Suit being Matter whereof the King's Court hath Cognizance, the Cafe may be alleged that the Court may confult with Divines, or if the Party be dead, direct a Jury to try it. 5 Rep. 57. b. 58. a. Hill. 32 Eliz. B. R. in Specot's Cafe.
(E) What Things the Court may do. [Refuse to give Judgment. In what Cases.]

1. If upon Examination the Court finds, that the Tenant in Br. Judg. a Formeron hath confessed the Action of the Demandant, where the Demandant had before brought such Writ against another, See Tit. where the Plaintiff was put without Day by Nonage, so that there appears an apparent Deceit; the Court may refuse to give Judgment (E 2) thereupon. 39 Ed. 3. 35.

In what Cases the Court may vacate a Judgment, See Tit. Pacat per totum.

(F) What Things shall be incident to a Court.

1. If the King grants a Court by Letters-Patents to a Corporation of 2 Towns, to hold Pleas, &c. in this Case, though there is not any Clause in the Patent to make a Bailiff or Serjeant to execute the Proceeds of the Court, and to return Juries, &c. yet it is incident to their Grant to do it, for otherwise they cannot hold a Court. Dict. 14 Car. 2. R. in Metcalf and Worsley's Case, per Curiam agreed.

2. But upon such Grant of a Court, if there be not any Clause in the Patent to make a Bailiff to execute Writs of Enquiry of Damages, or if a Judgment is given by which a Writ of Enquiry of Damages is to be granted, this ought to be returnable in Court, and there the Enquiry ought to be made, for the Bailiff cannot execute it, inasmuch as he cannot execute it without giving an Oath to the Jury and Witnesses, which the Letters do not give him Power to do; for this is not necessarily implied in the Grant of the Court, inasmuch as it may be done in Court. Dict. 14 Car. 2. R. between Metcalf and Worsley, per Curiam, in a Writ of Error out of an inferior Court, and the first Judgment reversed accordingly.

3. When a new Court is erected it is necessary that the Authority and Jurisdiction of the Court should be declared; For such a new Court can have no other Jurisdiction than is expressed in the Erection; For a new Court cannot prescribe. 4 Inst. 200. 212.

4. It is incident to every Court created by Letters-Patents or Act of Parliament and other Courts of Record, to imprison for any Misde- meanor done in Contempt or disturbance of the Court, but where there is only a Power granted as to impose Fines and Amercements, that ought to be pursued. But in case where such a Power of imprisoning is given implicitly by the Law, a Person cannot be committed to Prison without Bail or Mainprise until he shall be delivered by the Parties who committed him. 8 Rep. 119. b. Hil. 7 Jac. in Bouham's Case.

6 L

At
(G) At what Time the Court ought to be held.

1. If the King grants a Court to be held die Jovis every Week, it may be held in one Week, and be thence adjourned for two Weeks after, leaving a Week main. Dub. 4 Inc. B. R. between Coa and Clerk.

2. But it would be otherwise, if the Words in the Patent should be, Et non alterius, vel alio modo. Civ. 4 Inc. B. R. between Coa and Clerk.


4. If a Leet hath been held at a certain Day, and this is changed, and held at another Day, this is void. 33 Ed. 6. 7.

5. But if a Court-Baron hath been held at a certain Day, this may be held at another Day. 33 Ed. 6. 7.

* This is in Affirmance of the Common Sense in the Common Law and Custom of the Realm. 2 Inft. 70. The Word (County) is taken in the Common Sense for the County Court. 2 Inft. 70.

† This is altered by the Statute of 2 Ed. 6 (Cap. 25) whereby it is provided that no County shall be longer deferred, but one Month from Court to Court, and to the said Court shall be kept every Month and no otherwise; and there is to be accounted 28 Days to the legal Month in this Court, and not according to the Month in the Calendar. 2 Inft. 71.

But now by the Statute 2 Ed. 5. Stat. 1. cap. 15. it is enacted that every Sheriff shall make his Tourn once in the Month after Easter, and the other Time in the Month after St. Michael, and at their Baral time otherwise, they shall * lose their Tourn for the Time.

Lord Coke says, that this Statute of 1 Ed. 5. explains this Part of the Statute of 9 Ed. 3. Cap. 36. and that the Words shall lose their Tourn for the Time is as much as to say at the Court to holden for that Time shall be utterly void, and the Sheriff shall lose the Profits thereof. 2 Inft. 71.

This Clause extends to the Enquiry of Felonies, common Nuances, and other Misdemeanors, the View of Frankpledges and to all Things inquirable in the Tourn. Now by this Clause it is provided that the Article of the Tourn concerning the View of Frankpledge, being hereunder in particular Sense, shall be dealt with by the Sheriff in his Tourn but once in the Year, viz. at the Tourn held after Easter and so it has been formerly expounded; and therefore it was well refolved in 24 H. 8. that this Clause of the Statute of Magna Charta, is to be understood of the Tourn of the Tourn, and not of other Leets, and so without Question is the Law houden at this Day, that he that claims a Leet by Charter, must hold it at the same Days which are contained in the Charter, and he that claims it by Prescriptron may claim to hold it once or twice every Year, at any such Days as shall upon reasonable Warning be appointed, if the Usage hath been so, so that it has been kept at uncertain Times, or else it ought to be kept at such certain Days and Times, as by Prescriptron hath

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Court.

9. A Leet cannot be held at any other Time, but only within a Month after Easter and Michaelmas, unless that it is by Patent or special Preseption. 2 Saund. 291. Hill. 22 & 23 Car. 2. at the End of Dickinson's Cafe, says, Vide Stat. Magna Charta, cap. 35. 31 E. 2. cap. 15. Tir. Leete 33.

10. One enters a Plaint in a habe Court to pass in the Nature of a Mo. 69. pl. Writ of Entry in the Pst, and had Summons against the Party until such a Day, at which Time, and after Sun-set, the Steward came and held the Court, and the Summons was return'd serv'd, and the Party made Default, and Judgment given; the Question was, if the Judgment was at S. C in good. Dyer, Welch, and Benlowes held the Judgment good, altho' the Court was held at Night; and Dyer said, that if it were erroneously, he could have no Remedy by Writ of false Judgment nor other- * S. P. per wife, but only by Petition to the Lord, and he ought in such Cafe to do right according to Conscience, for he hath Power as a pl. 2. Hill. Chancellor within his own Court, Owen. 63. Mich. 6 Eliz. R. Anon.

11. A Man may presebe to hold a Leet after, and * at other Times 2 Le. 28, than are mentioned in the Statute of Magna Charta. Cap. 11. [35] For 20. pl. 21. It is in the Affirmative; Per all the Justices. Cro. E. 125. pl. 4. Hill. v. Patridge's Cafe. The Queen 31 Eliz. B. R. Patridge's Cafe. S. C & S. P. held by all the Justices — S. P. as to a Leet by Preseption, per Car. cites 20 H. 7. 22. & 18 H. 6. 11. but where a Leet is by Grant it was held a good Exception, that the Defendant did not show that the Court was at a Mo. after Easter, but only said that it was held the 25 Apr. Cro. E. 245. pl. 5. Mich. 53 & 54 Eliz. B. R. Porter v. Gray. — Ibid. 360. pl. 17. Patch, 54 Eliz. B. R. the S. C. but a D.P. — Per Brian; by Magna Charta cap. 35. Leet shall be held but only once in a Year, vit. Mich only. But by Anno 25. H. 8 this is intended of the Leet of the Tourn of the Sheriff, and not of other Leets. Br. Leet. pl. 22. cites 8 H. 7. 1. — Roll Rep. 201. pl. 2. Arg. cites S. P. [4] that the Reporter there seems of Opinion that a Leet is within a Statute; but Coke Ch. I. said, that if this should be so, it would overthrow all the Leets in England, and that the said Statute is of Tourn, but a Leet may be held by Preseption at any Time of the Year; And Dodridge seemed to be of the same Opinion. Thr. 13. Jac. II R.

The Difference is between a Leet by Grant or by Preseption: In the first it must be shown to be held within the Time limited by the Statute, but in the Leet it is otherwise. Cro. E. 245. Porter v. Gray. — But where in an indictment it was laid to be held at F. the Sixteenth Day of September, (without saying within a Mo. after Easter or Michaelmas) yet it was held good. 11 Mod. 227. Queen v. Jennings. — and cites the Cafe of the King v. King. * The one may presebe to hold a Court Leet at other Times than mention'd in Magna Charta; but
12. It was assign'd for Error to reverse an Outlawry, that a County Court was held 23 Feb. and that the next County Court was held 23 March following; so that there were not 28 Days between those two County Courts, and this was held erroneous; But Tanfield said, that this ought to be assign'd as an Error in fact; For it might be Leap-Year, and then it is good, and that Matter illusory. Cro. J. 167. pl. 7. Trin. B. R. 7. Then Leech's Case.

(H) In what Places the Court may be held.

1. A Court Baron ought to be held upon some Part of the Manor, for if it be held out of the Manor it is void. Co. Lit. 58.
2. But if the Lord, being seised of two or three Manors, hath usually Time out of Mind, held Court Barons at one of the Manors for all the Manors; then by the Custom such Courts are well held, though they be not held within the several Manors. Co. Lit. 58.
3. A customary Copyhold Court cannot be held out of the Manor. Co. 4 between Makexch and Later, 26. resolved. Co. 4. 27. between Clifton and Molines resolved, that the Steward cannot make Grants and Admittances at any Court held out of the Manor.
4. Leet may be held at any Place within the Hundred; Contra of Court Baron; Per Brian. Br. Leet pl. 23. cites 8 H. 7. 1.
5. Leet may be held in any Place within the Precinct where the Lord shall please. Br. Court Baron pl. 8. cites 8. H. 7. 3. Per Brian.

(I) What shall be said of Courts of Record.

The Court of Admiralty is not an Court of Record, and therefore no Recognizance can be taken there. Tr. 8 Jac. S. b. said to be adjudged.
Error. pl. 177. per Brooke, who says it seems so; because it is held by the Civil Law.—— 13 Rep. 55. S. P. and for the same Reason and cites Br. Error. pl. 77. accordingly (but it is misprinted for 277)——4 Init. 155. Cap. 22. S. P.——Noy. 24. per Warburton S. P.

2. The English Court of Chancery proceeding upon a Subpoena, and by way of Decree, is no Court of Record. 37 H. 6. 14. b. per Priorit.

3. The County Court is no Court of Record. Co. Litt. 2 Init. 380. S. P.—4. 117. b.

Cap. 54. and 266. Cap. 55. S. P.—And though a Plea be held therein by a Justices (the King's Writ) yet it is no Court of Record; For of a Judgment therein a Writ of false Judgment lies, and not a Writ of Error. 2 Init. 140. ——6 Rep. 11. b. S. P. in Jentleman's Cave. ——Co. Litt 117. b.
Court.

4. The Hundred Court is no Court of Record. Co. Litt, 2 Inft 143.

5. A Court Baron is no Court of Record. Co. Litt, 2 Inft 143.

6. The Leets and Towns are Courts of Record, and have Authority to That is, the


which are for the publick Weale, and for keeping the Peace, these are Courts of Record, and consecu-

ently for keeping the Peace the Sheriff is Judge of Record and may take Recognition for the keeping

the Peace Ex Officio; But yet all the Pleas holden before him in the County are not of Record, nor Pleas

held before him in the County by Writ of Juries are not taken as Matters of Record; For these Pleas

are holden before him by reason of the Courts, which he has by reason of his Office, as the County

Courts and Hundred &c. F. N. B. 82.

7. Wherever there is a Jurisdiction erected with Power to Fine and Where

imprison that is a Court of Record, and what is there done is mat-

ter of Record. 1 Salk. 200. pl. 1. Trin. 12 W. 3. B. R. Green-

velt v. Burwell
to certify, and fine, and imprison either of these 2 make it a Court of Record. 12 Mod. 378. per

Holt Ch. I who delivered the Judgment of the Court, in Case of Grenville v. College of Physicians.

S. C.—Carrth. 494 S. C. & S. P. by Holt Ch. J.

(I. 2) What shall be done in Cases where the Court is divided.

1. In B. R. and C. B. and the Exchequer, or in the Exchequer

Chamber where all the Justices are assembled, if the Justices

are equally divided no Judgment shall be given. 12 Rep. 117. in Sir

Stephen Proctor’s Cafe.

2. And so it is in the Court of Parliament. 12 Rep. 117. in Sir

Stephen Proctor’s Cafe.

3. It is the Ufage of C. B. when the Judges are of 3 Opinions, to

give the Rule according to the Opinion of the 2 which agree. 2


4. In a Motion in Arrest of Judgment if the Court had been divided

Ed. Raym. on the first Motion, the Plaintiff might have entered his Judgment, but Rep. 486.

where there is a former Rule to stay Judgment, this Rule must stand 493. S. C.

or be discharged, and discharged it can’t be because the Court is equal.

but because after the

former Mo-

tion it can-

not be entered without Continuances, there must be a Rule for Judgment which cannot now be had, the

Court being divided.——12 Mod. 62. 267. S. C. & S. P. that here was an Advisare vult Indefinitely, and

to Judgment cannot be entered without Continuances, and while the Court is divided it continues an

Advisare vult. If the Rule had been Temporary and expired the Matter had been at large.——6

Mod. Trin 203. 7 Ann. B. R. Walmesly v. Kuffel S. P. and cites S. C.—But if it had been when

Demissor or Special Verdict, then it would be adjoined to the Exchequer Chamber.——3 Mod. 153. Hill.


5. At Nisi prius Plaintiff had a Verdict, and on a Motion for a new

Trial the Court were divided in Opinion; And no Rule being made, Plaintiff was at Liberty to sign final Judgment. Barnes’s Notes in


6 M

(K.) The
Of the Office of Marshal and Jurisdiction of the Court of Marshal.

1. R.D. Partl. 22 Ed. 3. numero 4. Fifteenths granted upon divers Conditions to be entered in the Rolls of Parliament, next among others, that there be no Mareschalley in England, except the Mareschalley of the King, and of the Guardian of England, when the King shall be out of England.

2. * D. 4. numero 79. the Commons pray against the Court of the Constable and Marshal; but no Affent thereto, vide supra. numero 99. for holding Pleas of Matters triable by the Judges according to the Common Law; but no Affent thereby.

3. 8 Rich. 2. cap. 5. Pleas which touch the Common Law, and ought to be discussed by the Common Law, shall not be drawn or held before the Constable and Marshal.

4. 13 R. 2. cap. 2. To the Constable it appertaineth to have Cognizance of Contrails touching Deeds of Arms and War * out of the Realm, and also of Things that touch War within the Realm, which cannot be determined nor discussed by the Common Law, with other Usages and Customs to the same Matters pertaining, which other Constables heretofore have duly and reasonably used in their Times, and that every Plaintiff shall declare plainly his Matter in his Petition before that any Man be set for to answer thereunto. And if any will complain that any Plea be commenced before the Constable and Marshal, that might be tried by the Common Law of the Land, the same Plaintiff shall have a Privy Seal of the King without Difficulty, directed to the said Constable and Marshal, to succeed in that Plea until it be discussed by the King's Council, if that Matter ought of Right to pertain to that Court, or otherwise be tried by the Common Law of the Realm of England, and also that they suffer no in the mean time.

They proceed according to the Customs and Usages of that Court, and in Cases omitted according to the Civil Law, Secundum Legem Armorum; and therefore upon Additions before the Constable and Marshal for the Time being, no Land is forfeited or Condemned of Blood brought 4 Inst. 125. cap. 17.

Consideration upon the Statute 1 H. 4. cap. 14. was had, how the Word Appeals shall be intended before the Constable and Marshal. And 22 Eliz. Bough'ts Caf't, Petition was made to the Queen by the Heir to make a Constable and Marshal, but the said 22. Admitting that the King grants a Commission of the Office of a Constable and Marshal, whether the King may have any Remedy before them by Indictment, or Information by the Attorney General? Hut 3. Anon. [But it is there left a Quer.]—See pl. 9.

6. At the Request of the Commons the King granted, that one Bennet William, who was imprisoned to answer before the Constable and Marshal of England, should be tried according to the Common Laws of the Realm, notwithstanding any Commission to the contrary; and thereupon a Writ was accord
accordingly directed to the Justices of the King's Bench, as may appear.

Prynne's Abr. of Cotton's Records, 429. 5 H. 4. pl. 39.

7. If two Englishmen do go into a foreign Kingdom, and fight there, and the one murders the other, Lex Terrae extends not hereunto, but this Offence shall be heard and determined before the Constable and Marshal, and such Proceedings shall be there by attaching of the Body, and Pl. C. 65, otherwise, as the Law and Custom of the Court have been allowed by Mich. 25 & 26 Eliz., Dowlie's Case.

8. Appeal of Treson lies not at Common Law, but it lies before the Constable and Marshal, and there it shall be determined by the Civil Law. Br. Treffaps, pl. 197. cites 37 H. 6. 2, 3.

9. If a Subject of the King be killed by another of his Subjects out of England, in any foreign Country, the Wife, or be that is Heir of the Dead, may have an Appeal for this Murder or Homicide before the Constable and the Marshal, whose Sentence is upon Testimony of Witnesses or Combat. And accordingly, where a Subject of the King was slain in Scotland by order of the King's Subjects, the Wife of the Dead had her Appeal therefore before the Marshal and Constable. And so it was resolved in the Reign of Q. Eliz. in Case of Sir Francis Drake, who struck off the Head of D. in Partibus Transmanitios that his Brother and Heir might have an Appeal, fed Regina noliit constituisse Conflagarius Anglicæ & idem dormivit Appellum. Co. Litt. 74. a.

10. Matters done out of the Realm of England, concerning War, Combat, or Deeds of Arms, shall be tried and determined before the Constable and Marshal of England, before whom the Trial is by Witnesses, or by Combat, and their Proceeding is according to the Civil Law, and not by the Oath of 12 Men. Co. Litt. 261. a.

11. The Court of the Constable and Marshal have Consiunce of Contrafls, of Deeds of Arms, and of War out of the Realm, and also of Things touching War within the Realm, which may not be determined or dilicited by the Common Law, and also all Appeals of Offences done out of the Realm, and they proceed according to the Civil Law. Co. Litt. 391. b.

12. If A. gives B. a mortal Wound in a foreign Country, and B. comes into England and dies, this cannot be tried by the Common Law, because the Stroke was given there, whence no Wifne can come, but the same shall be heard and determined before the Constable and Marshal. 3 Inft. 48, cap. 7.

13. If a Man be slain upon the High Sea, and dies of the same Stroke upon the Land, this cannot be enquired of by the Common Law, because no Wifne can come from the Place where the Stroke was given, (though it were within the Sea pertaining to the Realm of England, and within the Liece of the King) because it is not within any of the Countries of the Realm; neither can the Admiral hear or determine this Murder, because though the Stroke was within his Jurisdiction, yet the Death was Infra Corpus Comitatus, whereof he cannot enquire; neither is it within the Statute 23 H. 8, because the Murder was committed on the Sea, but by the said Act of 13 R. 2. the Constable and Marshal may hear and determine the same: 3 Inft. 49, cap. 7.

14. The Judges of this Court are the Lord High Constable of England, and the Earl Marshal of England, and this Court is the Fountain of the Marshal Law; and the Earl Marshal is both one of the Judges and to see Execution done. 4 Inft. 123. cap. 17.

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Court.

15. This Court of Chivalry was anciently holden in the King's Hall. 4 Inft. 123. cap. 17.

16. Neither the Statute 26 H. 8. cap. 13. nor that of 35 H. 8. cap. 2. nor the Statute of 5 E. 6. cap. 11. do take away the Jurisdiction of the Constable and Marshal where one accuses another of High Treason done out of the Realm, for of such an Accusation of one against another of any High Treason done out of the Realm, the Constable and Marshal should have Conscience thereof, because High Treason is not triable by a Jury according to the Course of the Common Laws of the Realm in that Cause for want of Proof. 4 Inft. 124. cap. 17.

For more as to the Court of Chivalry before the Constable and Marshal, see 4 Inft. 123. to 130. and Prym's Animadversions &c. on 4 Inft. 59 to 74 &c.

(K. 2) The Court of Honour.

Sid. 53. 1. In a Cause where the Earl Marshal was a Lunatick, it was held, that a Court of Honour, touching Arms and Honour, may be held before the Earl Marshal only, or Commissioners deputed to exercise that Office; but Matters relating to Life and Member must be kept before the Constable and Marshal. 1 Lev. 230. Hill. 19 & 20 Car. 2. B. R. Parker's Cafe.

2. The Court of Honour cannot commit for Painting of Arms, because that is a Trade, which a Peron educated in it, may lawfully use; but though they may do for ordinary Uses, yet, unless they are Herald-Painters, they cannot do it for great Solemnities or Funerals without Licence, much less may they order the Ceremonies of Funerals without Licence, but this ought to be directed by the Herald. As for all Noblemen by Garter King of Arms, for all Gentlemen on this Side Trent by Clarenceux, and beyond Trent by Norroy; Resolved. Lev. 230. Hill. 19 & 20 Car. 2. Parker's Cafe.

3. A Libel was in the Court of Honour, setting forth, that there are three Kings at Arms, Garter, Clarenceux, and Norroy, and six Heralds, skilful in Delcents, Pedigrees, and Arms, to whose Offices it belongs to marshal Funerals &c. and that the Defendant had encroached upon their respective Offices, by Painting Arms, Marbling Funerals &c. The Defendant for a Prohibition signified the Statute of Magna Carta, that no Man shall be dispossessed of his Liberties, or free Customs, but by Judgment of his Peers &c. It was inquired against the Prohibition, that a Court of Honour is an ancient Court by Prescription, and that.
that being a Court of great Antiquity, they have endeavoured to extend the same Jurisdiction, but have been restrained by several Acts of Parliament, and that the Statute 13 R. 2. cap. 2. declares the Earl Marshal's Authority, and gives Remedy if abused, but not by way of Prohibition by the Courts of Law, but by a Privy Seal from the King, directed to the Earl Marshal, not to proceed; Sed per Cur. if what is set forth in the Libel is true, it is a Wrong done to the People of the Realm, for which they might have an Action, but here is no Manner of Complaint of any Thing done against the Rules of Honour, therefore a Prohibition was granted, because this Matter cannot be otherwise determined. 4 Mod. 123. Trin. 4 W. & M. in B. R. Ruffell's Case.

4. Concerning the Constitution of the Court of Honour, no doubt it was formerly held before the Constable and Marshal, and so all along till 13 H. 8. when the then Constable was attainted of Treason, and its being held before the Marshal alone is no ancetre than the Court of the Conclave of York, which obtained by Encroachment only; For first it was but a Commission of Oyer and Terminer, yet it after drew in a Banishment of other Matter, and all by the great Power of the President of the North, Per Holt. And he said, He never knew what of Jurisdiction a Court of Honour has as to Matters arising within England, for the Statute of 13 R. 2. gives them Authority only of Matters arising out of the Realm, and Feats of Arms within the Realm, by which they would have meant Coats of Arms and Escutcheons. And he said, The Ministers of that Court understood this Matter of Arms well, and gave Coats of Arms, and kept Pedigrees of Families, and if they find People that assume Arms, to whom Arms do not belong, or at least those they assume not to them, their way is to Pritty them up, but by what Justice or Law he could not tell. It cannot imprison, for it is no Court of Record. He said, It were to be wished the Parliament would give them Jurisdiction of Words tending to disparage Men of Honour, and such as generally provoke Gentlemen to fight. And per Cur. They have no Pretence to hold Plea of Words. 7 Mod. 127. Hill. 1 Ann. B. R. per Holt Ch. Jf; in Case of Chambers v. Jennings.

5. The Court of Honour has not Jurisdiction of Words tending to the Breach of the Peace. 7 Mod. 125. 128. Hill. 1 Ann. B. R. Chambers v. Jennings.

Words in the Court of Honour, a Prohibition was granted. 2 Salk. 353 pl. 18. S. C.

The Court of Admiralty.

1. Horne's Mirror de Justices 2. b. Among the Constitutions of King Alfred, one is, That the Sovereignty of all the Land to the Middle of the Sea about the Land belongs to the King in Right of his Crown.

2. Saller Selden told me, there was a Record in Court Law, 34. 11. 35. C. 1. that it was agreed by all the Princes of the Christian World,
World, that the Narrow Sea, and the Sea which is about England, belongs to, and is within the Jurisdiction of the King of England.


7. 2 H. 4. Rot. Parl. Numero 9. the Commons pray against the Court of the Admiralty for holding Plea of Matters triable before Justices, according to the Common Law. But no assent to this.

8. 4 H. 4. Numero 47. In a Petition by the Commons against the Admiral, among other Things, it is prayed, that the Admirals use their Laws only by the Law of Oleron, and the ancient Laws of the Sea, and by the Law of England, and not by Custom, or by other Manner. Hide the Answer.

9. 4 H. 4. numero 63. another Petition, that the Admiral hold his Courts upon the Sea, or upon the Sea Coasts, and not within a Franchise or Vill; and that Suits commenced be determined before Adjournment to another Place. But no assent to this.

(A) Of what Things they may hold Plea, in respect of the Place where they arise.

1. 2 H. 5. cap. 16. [6] It is enacted, That the Conservator of the True and Safe Conducts by the King assigned, shall have Power to enquire of Offences done against the True and Safe Conduct of the King upon the high Seas, out of the Body of Counties, and out of the Franchise of the Cinque Ports, as the Admirals of the Kings of England before this Time reasonably after the old Customs, and late upon the main Sea used, have done or used; and to make Protests, Judgment, Execution etc.

* Hob. 38. pl. 103. S. C.
† Hob. 79. pl. 104.
the S. C.

2. The Court of Admiralty cannot hold Plea of any Contract made upon the Land beyond Sea, but only of Things done upon the Sea. Pobert's Reports 107. between the * Spanish Ambassador and Sir Richard Bingley a Prohibition granted; and 109. between † Palmer and Pope a Prohibition granted.

3. [But] If a Contract be made upon the Sea, but it is afterwards sealed upon Land, the Court of Admiralty cannot hold Plea thereof. Pobert's Reports between Palmer and Pope.

* Hob. 79 pl.
† pl. 104 and thid. 212. pl. 279. S. C. and S. P. resolv'd and a Prohibition granted; But if it had been a Writing only without Seal, it had made no Change as to the Jurisdiction; If the Contract was at Land that the Brach was at Sea, yet because these two must concur to make the Case of Suit, which is in essence, the Party shall be forced to sue in the King's Courts, because that and the Common Law must prevail against other Courts and Laws, and cited 48 R. 3. 2. 10 H. 7. F. N. B. 118.
Court of Admiralty.

4. 27 H. 8. cap. 4. Piracies, Murders, and Robberies, done upon the Sea or in any Haven, River, or Creek, where the Admiral pretends to have Jurisdiction, shall be inquired into and tried &c. in such Shires and Places of the Realm as shall be limited by the King's Commission, as if it were only to be done at Land and such Commissioners under the great Seal shall be directed to the Admiral, his Lieutenant, or Deputy, and three or four other sufficient At Perfons as the Lord Chancellor shall name, to hear and determine such Offences, according to the Course of the Common Law us'd for Felony done in H. 8. 4. and 28 H. 8. S. 15. it.

may be tried and determined before the King's Commissioners in any County of England, according to the Course of the Common Law; yet the Killing of one who dies at Land of a Wound received at Sea, is neither determinable at Common Law nor by force of either of the Statutes; but it seems, that it may be tried by the Contable and Marshal, or before Commissioners appointed, in pursuance of the Statute of 33 H. S. 23 H. 8. 4. and 28 H. S. 15, it.

5. 28 H. 8. cap. 15. S. 1. All Treasons, Felonies, Robberies, Murders, This Statute and Confederacies, committed upon the Sea, or in any Haven, River, or Creek, or Place where the Admirals pretend to have Power or Jurisdiction, shall be inquired into, and determined, in such Shires and Places of this to be intended, as shall be limited by the King's Commissioner &c. after the common Law, Course of Law us'd for Treasons, Felonies, Robberies, Murders, and Confederacies of the same committed upon Land within this Realm, be done Super altum Mare. For if it be committed in a Creek or Place where the Admiral has not Jurisdiction, the Commissioners have nothing to do with it; Per Coke and Fother. Ow. 123, Mich. 7 Jac. in Cafe of Leigh v. Burley. A Pirate upon his Arraignment before Commissioners of Over and Terminer, flood muzze and would not directly answer. Saunders Ch. B. and Brown and Dyer J. being ask'd their Opinion, held, that he should have the Pain of Fort and Dure; And this by the good and reasonable Intendment of the Statute of 28 H. S. cap. 15, and Judgment was given accordingly.

6. A Commision tyled out of Chancery according to the Statute of 28 H. S. 15. to the Admiral and others, to inquire hear and determine all Treasons, Felonies &c. done within the Jurisdiction of the Admiralty, and they tyled out a Precept against Lacy, for having given a mortal Stroke to J. S. upon Scarborough Sands, (being a certain Place in which the Sea has Flux and Reflux,) of which Stroke J. S. died at Scarborough, whereupon L. was arrested and imprifoned, and arraign-
ed thereof before the Commissioners, all which L. pleaded to a Sa. ta. on a Recognizance, entered into by him to appear before the Justices of Assize at York, which he was prevented doing by his being 2 taken into Custody. The Attorney General demurred to the Plea, and one Cause alleged was, that L. did not allege that the Coroner who inquired Super Vifum Corporis were Coroners of the Admiralty or of the County; but this was held not Material; because the Commissioners may proceed without any View of the Body by any Coroner. Mo. 121. pl. 265. Pach. 25 Eliz. in the Exchequer, Lacy’s Cafe.

1. When the Sea flows and is ad Plenitudinem, the Admiral shall have Jurisdiction of every Thing done upon the Water between the High Water-Mark and the Low Water-Mark, by the ordinary and natural Course of the Sea; and so it was adjudg’d in Lacy’s Cafe, that the Felony done upon the ad Plenitudinem Maris between the High Water-Mark and the Low Water-Mark by the ordinary and natural Course of the Sea, the Admiral shall have Jurisdiction; and so between the High Water-Mark and the Low Water-Mark the Common Law and the Admiralty have Dextrae et Sinistrae inter se communis. 5 Rep. 107. a. Pach. 43 Eliz. B. R. in Sir Hen. Constable’s Cafe.

9. Cook said, that the Admiral should have no Jurisdiction where a Man may fe from one Side to the other; but the Coroner of the County shall inquire of Felonies committed there; which was held to be good by all other Justices; and he gave this Difference, that where the Place was ever’d over with Salt Water out of any County or Town, there est Altum Mare; but where it is within any County, there it is not Altum Mare, but the Trial shall be per Vicinum of the Town. Owen. 122, 123. Mich. 7. Jac. Leigh v. Burley.

10. Great Question was, if a Man committed Piracy upon the Sea, and one knowing thereof, receiveth and conteareth the Defendant within the Body of the County; if the Admiral and other the Commissioners, by Force of 28 H. 8. cap. 16. may proceed by Indictment and Conviction against the Receiver and Abettor, inasmuch as the Offence of the Accusatory hath the beginning within the Body of the County. And it was resolved by them, that such a Receiver and Abettor by the Common Law could not be Indicted or Convicted, because the Common Law cannot take Conunance of the original Offence, because that is done out of the Jurisdiction of the Common Law; and by Consequence, where the Common Law cannot punish the Principal, the same shall
shall not punish any one as accessory to such a Principal. 13 Rep. 53. 21. Tit. 7 Jac. The Case of the Admiralty.

11. Where a Man may see that which is done of one Port and the other of the Water &c. in that Place the County may have Cognizance, and it may be tried by a Jury; which proves also, that that which may be tried by the Common Law, doth not belong to the Admiral's Jurisdiction. 12 Rep. 80. Hill. 8 Jac. cites 8 E 2. Corone 399, and says, that Stanton's Pleas of the Crown, lib. 1. fol. 51. citing this Book, says thus, viz. So this proves that by the Common Law before the Statute &c. the Admiral shall not have Jurisdiction upon the high Sea, which proves that the Admiral by the Common Law hath Jurisdiction upon the High Sea, and consequently that his Jurisdiction was by the Common Law, and then it is fo ancient, that the Commencement cannot be known; so that Ld. Coke says, he concludes that, that his Authority did not begin in the Reign of Ed. 3. as Lambert, upon uncertain Conjectures supposed; for if the Jurisdiction had then begun and been instituted, it would have appeared upon Record. 12 Rep. 80. Hill. 8 Jac. Anon.

12. The Admiralty of England can hold no Plea of any Contraff, but such as arises upon the Sea; No, tho' it rises upon any Continent, Port or Haven in the World out of the King's Dominions; for their Jurisdiction is limited by the Statutes to the Seas only; for the Admiral is for the Sea, and the Court for Maritime Causes, and therefore if any Stranger or other will seek Justice at the Hands of the King of England, for Wrongs done him out of his Dominions, he must seek it in those Courts that have Jurisdiction over the Cape. Now, if the Cape rise at Land or in a Port (for no Port is Part of the Sea, but of the Continent) then he cannot sue in the Admiralty, but in the Courts of Common Law, which have unlimited Power in Causes Maritimo, and then it must be so laid, that it may give Jurisdiction. Resolv'd clearly by the whole Court. Hob. 79. pl. 193. D'acuna v. Jolliff and Bingley.

13. A Suit was in the Admiralty for taking Goods circa Cape de Fer, Super Aluma Mare. A Prohibition was moved for, because it was in the Port of Guinea when they were at Anchor, and every Port is within the Body of the Land, and not upon the High Sea. Coke Ch. J. said, that peradventure the Ports there are not as the Havens are here. Doderidge said, that there is not any Port there, but there are Roads, but they are not within the Body of the Land but in the Sea, and they may be at Anchor in the Sea, and therefore a Prohibition was denied; But Coke said, that if it had been within the Body of the Land the Admiral ought not not to hold Plea of it. Roll. Rep. 250. Mich. 13 Jac. B. R. Willet v. Newport.

14. A Libel was against B. for a Ship lying at Anchor at Lime. Mo. 801. houfe. The Libel was in Nature of a Detinue at Common Law, and 1215. Anon. but because this was infra Corpus Com' and not within the Admiral's Jurisdiction, a Prohibition was granted. Cro. J. 514. pl. 27. Mich. Prohibition grant'd. 16 Jac. B. R. Violet v. Blague.

49. Violet v. Blake. S C and Prohibition granted; For by Doderidge Lyne Houtz, Hall &c. are within the Points of the Land, and out of the Jurisdiction of the Admiralty, and cited a Case in the Time of E 1. Anovny 192. and 46 E 3. where Trefpas was brought for the taking a Ship at Hull, and the Mayor of Hull demanded Couriance of the Plea and had it, and that the Book of 8 E 3. Corone 399 was denied by the Judges to be Law.

15. Plaintiff may sue in the Admiralty Court on a Contraff if he will suppose it to be made in Virginia, but it he supposes it to be made in England, he may sue here; But if Part of the Contraff be made here and Part over the Sea in Virginia, or upon the Sea, the Common Law only shall have Jurisdiction; Per Jones J. who said that these are the true Differences. 2 Roll Rep. 402. 452 Hill 22 Jac. in Capp's Case.
16. "Tis usual in the Libel, to alledge some Contract to be made for a super altum Mare; but if the Form be not true a Prohibition shall be granted. And Doderidge said, it is a Ship lies at Anchor, and wants Victuals, and sends to Land to 7. s. to bring Victuals, and then the Contract is made in the Ship, this is a Contract upon the Sea and therefore it shall be tried in the Admiralty, but contrary, if the Contract is made wholly at Land, and the Victuals afterwards sent to the Ship. Latch. 11. Hill. 1 Car. Godfrey's Case.

17. A Contract was made at Land, with several Seamen, to bring a Ship from a Port in England to London, for a certain Sum of Money to be paid to them. Upon a Libel in the Admiralty for this Money, it was suggested for a Prohibition, that the Contract was made at Land, with some diverse Jointly for a Sum in Gros, and so could not be within the ordinary Rule of Mariners Wages to be fixed for in that Court, because there they may all join, and not be put to the inconvenience of it suiting severally as at Law, but as this Contract is, they are to Sue jointly at Common Law; but the Prohibition was denied for this must be taken as Mariners Wages, and therefore the Admiralty have Jurisdiction, though the Contract was at Land; besides, this Prohibition being prayed after Sentence, "tis Discretionary in the Court, to grant it or not. 1 Vent. 343. Mich. 31 Car. 2. B. R. Anon.

And North Ch. I said that such was the Opinion of Hale Ch. J. in his Time on a Conference had between them at the Debate of the Court of C. B. after the time that North was Chief Justice of this Court; and the next Day was a like Case, and like Rule made between Middleton and Scolly.

Ibid, adds a Note that it was said by one of the Admiralty that the Suit be against some of the Owners, the Court there is not to charge them with the whole, but only according to their proportional Shares.

19. Libel by two of the Mariners, viz. Purser and Boatman against two of the Owners of the Ship, for their Wages. It was suggested for a Prohibition, that the Contract was made at Land; and said, that though Suits had been permitted for Mariners Wages, yet that was when they all joined in the Suit to avoid the putting them to sue severally as they must do at Law; but here the Suit was by 2 only, and against 2, and therefore they ought not to have the PRIVILEGE OF common Seamen, especially since the Contract with the Owners is joint, and two only are sued whereby they will be charged with the whole. But a Prohibition was not granted, for though the Plaintiffs were Purser and Boatman, &c. yet they are Mariners still, and may sue in the Admiralty for Wages, and the proper Remedy is there; but if they do not proceed according to their Law, the Remedy lies here. 2 Vent. 181. Trin. 2 W. & M. in C. B. Allefon v. March.

20. A Prohibition shall not go to the Admiralty for Mariners Wages, though the Contract was made at Land; and the Court held that for the Convenience of Seamen the Admiralty has always been allow'd to hold Plea thereof but with this Limitation that if there is any special Agreement, by which the Mariners are to receive their Wages, in any other manner than usual; or if the Agreement be under Seal, so as to be more than a parol Agreement, in such a Case a Prohibition shall be granted, and so it was granted in this Case. 1 Salk. 34. pl. 1. Patch. 5. W. & M. in B. R. Opie v. Child, & al.

21. 
21. 11 & 12, W. 3, cap. 7. All Piracy's, Felonies and Robberies committed upon the Sea, or in any Haven, River, Creek or Place, where the Admirals have Power or Jurisdiction, may be inquired of, heard and determined, in any place at Sea, or upon Land, in any of his Majesty's Dominions, Ports or Factories, to be appointed by the Kings Commission under the Great Seal, or the Seal of the Admiralty, directed to any of the Admirals, Vice-Admirals, Rear-Admirals, Judges and Vice-Admiralty's or Commanders of any of his Majesty's Ships of War, and also to any such Persons as his Majesty shall appoint; which Commissioners shall have Power, by Warrant under the Hand and Seal of them, or any of them, to commit to Custody any Person against whom Information of Piracy, Robbery or Felony upon the Sea, shall be given upon Oath, and to call a Court of Admiralty on Shipboard, or upon Land, as Occasion shall require; which Court shall consist of 7 Persons at least.—2. If so many of the Persons cannot conveniently be Assembled, any of 3 of them (whereof the President or Chief of some English Factory, or the Governor, Lieutenant Governor, or Member of his Majesty's Councils in any of the Plantations, or Commander of one of his Majesty's Ships, is to be one) shall have Power to call any other Persons on Shipboard, or upon the Land, to make up the Number of 7.—3. Provided that no Persons but known Merchants, Factors or Planters, or Captains, Lieutenants, or Warrant-Officers, in any of his Majesty's Ships of War, or Captains, Masters or Mates of some English Ship, shall be able of Sitting and Voting in the said Court.

22. If the Subjects in equity with the Crown of England, be Sailors on Board an English Prize with other English, and then a Robbery is committed by them, and afterwards are taken, it is Felony without controversy in the English, but not in the Strangers; For they cannot be tried by Virtue of the Commission upon the Statute, for it was no Piracy in them, but the Depredation of an Enemy, for which they shall receive a Trial by Martial Law, and Judgment accordingly. Molloy 60, cap. 4. S. 10.

23. If one steals Goods in one County, and brings them into another, the Party may be indicted in either County; But if one commits Piracy at Sea, and brings the Goods into a County in England, yet he cannot be indicted upon the Statute, for that the Original taking was not Felony, whereof the Common Law took Cognizance. Molloy 70, cap. 4. S. 30.

(B.) Of what Things they may hold Plea.

1. If a Man makes an Agreement with another, super altum mare, to carry Goods to Parts beyond the Sea, and after this Agreement is put in Writing, and sealed in a Place beyond the Seas upon the Land, the Court of Admiralty shall not hold Plea upon this Agreement, for by the putting of this into a Deep, the Agreement is taken away, and the Jurisdiction changed thereby. Hobart's Reports 287. C. 268. between Palmer and Cope.

2. But if it had been otherwise, if the Agreement had been put into Writing without Sealing thereof. Hobart's Reports 287. S.C. & S.P.

3. If an Agreement be made upon Land to carry some Goods beyond Sea, and after the Goods by Negligence are damaged with Salt upon the High Seas, yet the Court of Admiralty cannot hold Plea of this; For though the Breach was upon the Sea, yet there ought to be another Act also to concure to make a Suit, still the Contract, which Suit is entire, and therefore the Common Law shall prevail. Hobart's Reports 287. C. 268. between Palmer and Rep.
Court of Admiralty.


2. Nothing shall be said Wreck, but such Goods only as are cast or left upon the Land by the Sea, or Navigatio ad terram appellator. 5 Rep. 166 a. — it shall not be tried in the Admiralty Court but before the King's Justices at the Common Law; because the Wreck is ever cast upon the Land. 2 Ind. 165.

7. Cretzer queens v. Tockley Defendant. The Case was entered, Mich. 2. Cat Regis B. Rot. 421.

3. Special Actions brought upon the Statutes of the 13 R. 2, cap. 15 & 2 H. 4, cap. 4, for prosecuting of a Suit in the Admiralty, where they had no Jurisdiction to hold Plea; and it one who prosecutes there as Attorney for another, (as the Case was) shall be an Offender against the said Statutes; and where the Statutes give an Action by way of Writ, and an Action is brought here (as the Case was) by way of Bill, if this be good or not, (was the Question.)

9. Upon this Action brought, and special Verdict found, two Points were made.

10. First Point upon the Jurisdiction of the Admiralty though the Contract be beyond Sea, because it is to be performed in London, the Freight being to be paid in London, if the Admiralty here ought to have Jurisdiction?

11. Second, If he that prosecutes only as an Attorney there, shall be punished within the Statutes for this Offence?
Court of Admiralty.

For the Plaintiff's Ship from going to the East Indies, and paid all the Fees of the Proceeding, and thereupon the Ship was liable. After Judgment for the Plaintiff in C. B. Error was brought in B. R. where all the Matters argued in C. B. were argued again several Times in B. R. And it, That all this being done on the Behalf of the Company, the Action ought to have been brought against the Company, and not against the Defendants their Servants. But this was over-ruled by both Courts; For it, this is not like the Case in Gauld, 85, where one Case in the Admiralty for another by Warrant of Attorney of his Agent; for here it is not found that they have any Warrant of Attorney, and they may do it of their own Heads. But 2dly, if it was by Warrant of Attorney of the Company, yet this will not excuse the Matter; because a Warrant of Attorney, though of the King himself will not excuse the doing an Illegal Act; For though the Commanders are Trefpassors, so are the Persons also, who do the Act. 4 Mod. 176. to 183. S. C.

12. If a Man of Frizeland selle an Englishman in Frizeland before the Governor there, and there recovers against him a certain Sum; upon which the Englishman not having sufficient to satisfy it, comes into England, upon which the Governor lends his Letters martial into England, and omnes Magistratas infra Regnum Anglie rogantes, to make Execution of the said Judgment. The Judge of the Admiralty may execute this Judgment by Imprisonment of the Party, and he shall not be delivered by the Common Law; for this is by the Law of Navigation, that the Justice of one Nation shall be aiding to the Justice of another Nation, and for one to execute the Judgment of the other, and the Law of England takes notice of this Law, and the Judge of the Admiralty is the proper Magistrate for this Purpose; so he only hath the Execution of the Civil Law within the Realm. Pitch 3 Jac. 2, B. R. Wine's Case, resolved upon a Habeas Corpus, and remanded.

On a Libel in the Admiralty there it was suggested for a Prohibition, that the Contract was made upon the Land, to which it was answered, that though it was so made, yet upon the Suit in the Admiralty of Spain Sentence was given, and the Suit here it only to have Execution of the Sentence here, and in such Case no Prohibition lies; and to this the Court inclined; But then it was said, that the Sentence in the principal Case here in Roll was not peremptory and final to pay any Thing for Non-performance, but was Interlocutory only, that he shall receive and bring the Goods according to the Agreement, but here the Suit is for Damages for not receiving and carrying, for which Action on the Case lies; Whereupon it was ruled, that the Plaintiff declare upon the Suggestion, for that upon the Pleading the Matter may come judicially in Question —— Sid. 418. pl. 1. S. C. that this was on a Sentence in the Alcalde, which is the Admiralty at Malaga, and a Prohibition was granted for the same Reason, and also, for that the Alcalde is not an Admiralty here; And on another Motion afterwards for a Confrontation, the same was not granted for the same Reasons. —— Vent. 12. S. C. and because the Sentence was not complete, but only an Award that the Merchandizes should be received; A Prohibition was granted.

Upon a Judgment given in the Court of Admiralty they may set out an Execution thereof in foreign Parts, as in France &c. Per Dr. Steward, who at the Desire of the Court of C. B. delivered his Opinion there. Godb. 260. pl. 539. Mich. 10 Jac. in the Cafe of Greenway v. Barker.

13. If a Merchant of Holland brings Trefpass against J. S., for a Ship laden with Merchandizes, & quia non liquet que bona fuerint in Navi praedicta, quando de paribus Hollandiae versus Regnum iidem iter fuam cepit, Mandatum eit Comiti Hollandiae, quod per probos & Legales Homines & Mercatores Terræ sae, ubi praedictus querns in Mari posuit inquirat diligenter quae Mercionia carrucata fuerint & Inquisitionem aperire & fideler remander Domino Regi. 22 Ch. 1. Liber Parliamentorum 65. b.

14. Libel before the Mayor of Hull as Admirall there against an Administrator for 5l. for Smith's Work done for the Inhabitats, in sending a Ship for him, and said, that he arrested the Ship within the Admiralty of England's Jurisdiction. The Defendant pleaded fully administrat. A Prohibition was prayed. 11. Because it is not shown that the Ship was arrested within the Jurisdiction of the Mayor of Hull. 2dly. Because Action on the Cafe lies at Common Law for this Debt. 3dly. Because the Plea of fully administrat is triable only at Common Law; and for these Reasons a Prohibition was granted. Litt. Rep. 166. Mich. 4 Car. C. B. Atton's Cafe.

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Court of Admiralty.

Keb. 682. 15. On a Motion for a Prohibition to a Suit in the Admiralty for Mariner's Wages, it was agreed, that if a Ship does not return but perishes by Tempest, Enemies, Fire &c. the Mariners lose their Wages, for otherwise they would not endeavour nor hazard their Lives to preserve the Ship. Sid. 179. pl. 14. Hill. 15 & 16 Car. 2. B. R. Anon.

was founded on a Specialty made on Land, and the Custom of Merchants is, that unless the Ship comes home no Wages is payable to them, and consequently not to their Executors or Administrators; and this Plea was disallow'd in the Admiralty, and so it is negatived, the Court granted a Prohibition notwithstanding Sentence and Appeal, it being contrary to a Verdict at Law and not had on due Proof, but contrary to the Plea pleaded.

A Prohibition shall not go to the Admiralty to stay a Suit there for Mariner's Wages, though the Contract were upon the Land. First, it is more convenient for them to sue there, because they may all join. Again according to their Law, if the Ship perish by the Mariner's Default, they are to lose their Wages; therefore in this special Case the Suit shall be suffered to proceed there. Vent. 146. Trin. 23. Car. 2. B. R. Anon.

16. A part Owner of a Ship sued the other Owners for his Share of the Freight of the Ship which had finished a Voyage; but the other Owners did not her out, and the Plaintiff would not join with the rest on setting her out, or in the Charge thereof; whereupon the other Owners complained thereupon in the Admiralty, and by Order there the other Owners gave Security that if the Ship perished in the Voyage, to make good to the Plaintiff his Share; and if she returned to restore his Share or to that Effect; And in such Case by the Law-Marine and Court of the Admiralty, the Plaintiff was to have no Share of the Freight. It was referred to Sir Lionel Jenkins to certify the Court of the Admiralty who certified accordingly; And that it was so in all Places, and otherwise there could be no Navigation; whereupon now the 13th of July the Plaintiff was dimit. 2 Chan. Cafes. 36 Trin. 32 Car. 2. Anon.


Carr. 166. S. C. and a Prohibition granted on amending the Suggestion by adding a Refusal of the Plea.

Show. 179 adds a Note, that their Course is not to receive a Plea without bringing the Sails into Court, viz. into the Custody of the Officer; and then they will admit a Claim and Contell of Property.

17. The major Part of the part Owners of a Ship agreed to send her a Voyage but the others disagreeing, the major Part according to the common Usage fuggeted this in the Admiralty Court, and then (as usual) they order certain Persons to apprise the Ship, and then the major Part enter into a Recognizance jointly and severally to the others in a Sum proportionable to their Shares against all Adventures, afterwards B. one of the disagreeing Partners took out a Sci. fa. against K. upon the Recognizance, and Sentence was had against him in the Admiralty Court. K. mov'd for a Prohibition, for that the Admiralty had no Jurisdiction in this Case, and all was done Coram non Judge; And the whole Court held that the Admiralty had no Consequence of this Matter, and therefore a Prohibition was granted. Carr. 26. Paefh. 1 W. & M. in B. R. Knight v. Berry.

18. In Case of Mariner's Wages the Admiralty has Jurisdiction. They may sell the Ship and the Sails and Tackle are part of it, and remain part when they are on Shore, and they may proceed against them; But if Property be pleaded they must and will allow it, if it be pleaded otherwise a Prohibition will be granted; Per Holt Ch. J. whereupon the Suggestion was allowed, and an offer alleged of a Plea claiming Property, and that the Plea was refuted, and then a Prohibition was granted. Show. 177. 179. Mich. 2 W. & M. Edmonston v. Walker.

19. The Mate sued the Master for his Wages in the Admiralty, and Mr. Raymond moved for a Prohibition, because the Master himself could not sue there, and the Mate was not in Nature of a Mariner, but was to succeed the Master if he died in the Voyage. Denied per Holt Ch. J. for the Master contracts with the Owners, but the Mate contracts with
Court of Admiralty.

with the Matter for his Wages as the rest of the Mariners do. 1 Salk Matter, but
otherwise in
Cafe of Maa-

iners, and the Mate being a mean between both it was doubted, but the Court inclined to consider
him as a Mariner, because he is hired by the Mate as other Mariners are; but the Mate is put in
the Owners. And after upon Conference with G. B. where a like Cafe was under Consideration, it was
ruled that no Prohibition should go. — Lord Raym. Rep. 652. S. C. ruled accord-
ingly.

26. By the Course of the Admiralty they decree, that where there are
several Owners of a Ship, and some are for freeing and some against
it, that the Majority shall prevail, giving the others Caution for their re-
spective Parts against all Risques, which was done in the present Cafe, and
the Ship being lott, they libel'd for the Caution and had a Sen-
tence; And upon a Motion for a Prohibition, suggesting, that this Caution
was given at Land, and that all Matters of Property are to be or-
der'd by the Common Law; The Court seem'd strong that they had
such a Power, and consequently have Jurisdiction over the Caution as
Incident, yet it being a Matter of Consequence and never yet de-
termed they granted a Prohibition, and directed them to declare upon
their Suggestion. 6 Mod. 162. Patch. 3 Ann. B. R. More v. Row-
botham.

(B. 2) Court of Admiralty. Of what they may
hold Plea in respect of the Things. Incidents and
Consequences.

2. O N E Butler, and others, upon the Sea near the Coast of Suffolk,
rub'd the Queen's Subjects, and brought the Goods into Norfolk
where they were apprehended. At the Norfolk Assizes Wray Ch. J.
and Periam J. were of Opinion, that because the Common Law did not
take Notice of the original Offence, (viz.) of the Piracy, therefore the
bringing those Goods to the Land which they had taken by Piracy on
the Sea, did not make the same punishable at the Common Law, and
thereupon they were committed to the Vice-Admiral of those Counties.

3. Goods were taken by Pirates as the Likel's supposed, and condemn'd in Vent. 173.
Scotland; but it appeared that they were Contra-band Goods, going to the
Dutch in the War between the Dutch and English, and taken by a
Scotch Man of War. The Goods were afterwards brought into England
and sold, and a Suit was for them in the Admiralty Hereafter the Sale
upon the
The Stat. 13 R.
Court of Admiralty.

The Court agreed that this is not within the Statue [13 R. 2. or H. 4.] for the original Cause being of Piracy belonged to the Admiralty, and the Condensation in the Admiralty of Scotland alters not the Case as to the Jurisdiction of the Court, but was pleadable in the Admiralty in England. But neither this nor the Sale at Land will alter the Jurisdiction, the original Matter being Piracy, which all comes in Question again, and the Sale at Land is a Matter consequential on the Piracy, and depending on it. 2 Lev. 23. Trin. 23 Car. 2. B. R. Ridley v. Egglesfield.

4. Libel was for a Ship taken by Pirates and carried to Tunis, and there sold. A Prohibition was prayed, for that the Ship was sold at Land, and so that Court had no Jurisdiction. Per Cur. in regard it was taken by Pirates it is originally within the Admiral's Jurisdiction, and it continues, notwithstanding the Sale afterwards at Land; otherwise where a Ship is taken by Enemies, for that alters the Property. But because no Motion was made in the Libel that the Ship was taken after action Mere, and though there was very much contained therein to imply it, yet the Court held that to be absolutely necessary to support their Jurisdiction. 1 Vent. 308. Patch. 29 Car. 2. B. R. Ridley v. Egglesfield.

5. Wherever they have not original Jurisdiction of the Cause, though there arises a Question in it that is proper for their Conscience, yet that alters not, nor takes away the Power of the Common Law; But if they have Jurisdiction of the Original, though a Question arises proper for the Common Law, yet they shall try that; and after Sentence, if it appear that the Matter contained in the Libel is triable at Law, we will grant a Prohibition; Per Holt Ch. J. Comb. 462, 463. Mich. 9 W. 3. B. R. in Cafe of Tremoulin v. Sands.

6. W. built a Ship and launch'd her, and after upon a Treaty with B. for the Ship, but before any Bill of Sale executed, B. hired O. and other Seamen to launch and rig the Ship, and to go a Voyage proposed with him, and funds them aboard, and W. permitted them to come aboard, and there they continued 4 Months fitting the Ship out to Sea, but some Difference arising between W. and B., the Treaty broke off, and the Seamen were dismissed, who libell'd against the Ship for their Wages. The Defendant sugggested for a Prohibition, that the Work was done Infra Corpus Com' &c. and that the Ship did not proceed in her Voyage, but the Prohibition was denied; for W. the Builder, by permitting the Seamen to be put on board, confents to the Charge upon the Ship, and by his own Act makes it liable to the Wages; and there is no Reason to consider the Builder; for when he trusts the Contractor so far as to let the Seamen go aboard, there is no Reason to help him. 2 Ld. Raym. Rep. 1044. Mich. 3 Ann. Wells v. Osman.
1. If the Owner of a Ship visualits it, and furnishes it to Sea with Letters * The Cause of Repriifal, and the Master and Mariners, when they are at Sea, commit Piracy upon a Friend of the King, without the Notice of the Ship in or Affent of the Owner, yet by this the Owner shall lose his Ship by the Time of Queen's Solicitors, and our Law ought to take Notice thereof. Trim. Eliz. for- mith it that he had known it to be so allowed. * Hill, 13 Jac. B. R. 21 to Sea, with Letters of Marque to take the Goods of the Spaniards, the Queen's Enemies. The Mariners and Soldiers, without his Di- rections, took a French Ship and the Goods in it, the Frenchmen being in Peace with the Queen. The Point was, the Owner of the Ship should answer for those Goods? It was said by Popham Ch. J. that the Master sends his Servant to do an unlawful Act, here, the taking of the Goods of the Queen's Enemies, there, although he mistakes and takes the Goods of the Queen's Friends, the Master shall not answer for the Goods. Queere, for that the Civil Law is, that the Master shall an- swer in all publick Cases. Mo. 776 pl. 175. 1 Jac. Waltham v. Malpas.

2. If the Master of the Ship pawns the Ship super altum Mare, (Sicilic Hypothecandus) for Tackling and Visuals, without the Affent of the Owner, yet this shall not allow the Owner by the Admiral Law to take Notice thereof. Tr. 12 Jac. B. between Bernard and Bridgman, per Curniam, Hobart's Reports 17. the same Case; but it was there resolved, that it had been otherwise if the Master had pawned it for his own Debts. Hob. 11. 12 pl. 23. Bridgman's Cafe, S.C. for this is allowed for the Necessity, and our Law ought to take — Mo. 918. pl. 1590. S.C. resolved accordingly. — See Tit. Hypothecation (A) pl. 1. — 2 Slid. 161. Trin. 1599. Watton v. Warner, upon a Charter-Party between the Master and another concerning Freight, a Lintel was exhibited in the Admirality, but it was refuted for a Prohibition, that though the Ship should be liable for Things bought by the Master necessary for the Ship, as Ropes, Sails &c. yet it should not be liable for Things collateral, as a Covenant for Ladings. Newdigate J. said, that by the Rules of the Admirality they may attach not only the Ship, but the Perfon also, as it had been lately agreed; but that to do so in the principal Case would be per- nicious, if the Master, who is not Owner, but receives Wages of him, shall make the Owner liable to his Charges upon the Ship, and therefore ordered a Suggestion to be put in that the other might plead or demur. — See Tit. Hypothecation.

3. If an Infant, being a Master of a Ship at St. Christopher's be-Malloy, lib. yond Sea, by Contract with another, undertakes to carry certain Goods S. 13: cap. 2. from St. Christopher's to England, and there to deliver them, but does S.C. not afterwards deliver them according to the Agreement, but waifes and confumes them, he may be sued in the Court of Admirtality, though he be an Infant, for this Suit is but in Nature of Detinue, or Trover and Conversion at the Common Law. Bliss. 12 Car. B. R. between Farnes and Smith, per Curniam, a Prohibition denied for the Cause aforesaid. 4. If a Man commits Piracy upon the Subjects of another King, Hob. 78 pl. who is in League with us, and brings the Goods into England, and Cro. E. tells them here in a Marketer over, though by the Admiral Law this 1689. pl. 20. Sale shall not bind, but that the Owner may re-take them, yet by Tit. 41. the Sale shall not bind, but that the Owner may re-take them, yet by Tit. 41. Sir. Anon. The C. B. Sale shall not bind, but that the Owner may re-take them, yet by Tit. 41. seas taken in Richard Bingley's Cafe, per Curniam, and there laid per Marburton, that this was the Case of the Hrechmans of Barnstaple ruled. 

Matter of the Ship, who was not present at the taking. All the Court resolved, that a Suit in the Adm}

(C) Admiral Law.
miralty well lies; for when the Goods are tortiously taken on the Sea by Piracy, it gains not any Property in them against the Owner; and being sold in a Market over, does not alter the Property against the Owner; and the Owner having them in his Possession is sufficient; For though the Admiralty have authority to make out a Things upon the Land, yet when the original Cause arises on the Sea, and false Matters happen on the Land depending on the original Cause, those Matters, though done upon the Land, shall be tried in the Admiral's Court; and this Sale, though made in a Market over, being void because it was made to the Owner of the Ship, and Party to the Charge thereof, and for be intended Party to the Tort, a Confinement was awarded. —— 2 Sound. 250. Mich. 22 Car 2 in Cape of Rodney v. Egglefield, the Court denied the Cape of Bingley in Hob. 78; and said, that where a Spoliation upon the Sea is the original Foundation of the Suit in the Admiralty, the Admiralty shall proceed to try and determine it notwithstanding any other Claim Property by Sale made upon the Land after such Spoliation supposed to be made. —— Vent. 308. Pack. 2 Car. 2. B R. Anon S. P. of a Ship taken by Pirates and sold at Tunis held accordingly, but that otherwise it is where a Ship is taken * by Enemies, for that alters the Property, and that so was the Opinion of Ed. Hale in Egglefield's Case, contrary to Lt. Hobart in the Spanish Ambassador's Case, 73 and cited Cre. E 685. But afterwards it was obverted upon the Label, that no Mention was made that the Ship was taken Su-peraltum Mare, and though very much was contained therein to imply it, yet the Court held it to be absolutely necessary to support their Jurisdiction.

* 2 Brown 11 Mich 8 Jac. B. R. Welton's Case, S. P. and a Prohibition granted, and cites; E. 4 14. —— Fitzh. Barre, pl. 90. cites S. C. that in such Case the Captor shall have the Ship, and not the King, nor the Admiral, nor the Party whose Property it was before, because he came not first, and claimed it.

5. The Civil Law is, that if two Ships meet at Sea together, although they do not go forth as Confrorts, and the one Ship in the Presence of the other takes a Ship with Goods in it, the other Ship shall have the Moity, or one half of the Ship and Goods taken; for although it did not take the Ship, yet the Presence thereof there at the Time of the taking was a Terror to the other Ship which was taken, fine quo, the other Ship could not be safely taken. 2 Le. 182. pl. 224. 32 Eliz. C. B. Somers v. Buckley.

6. The King of England being in Amity with the King of Spain, and the Hollanders &c. and there being an Enemy between those of Holland the Spaniards, one of Holland, upon the High Seas, in Aproto Prevto took the Goods of a Subject of Spain, and brought them into England infra Corpus Comitatus, and for that the Goods were in Solo Amici, the Spaniard libell'd for them in the Admiral Court; But it was resolved per. cor. Car. B. R. upon Conference that the Spaniard had lost the Property of the Goods for ever, and had no Remedy for them in England; for he that will sue for Goods robbed at Sea, ought by Law to prove two Things, 1st. That the Sovereign of the Plaintiff was, at the Time of the Taking, in Amity with the King of England, 2dhly, That he that took the Goods was, at the Time of the Taking, in Amity with the Sovereign of him whose Goods were taken; for every Enemy may lawfully take of another, and therefore the Spaniard could not be guilty of any Deprivation or Robbery, but of a lawful Taking; and it was resolved further, that the Goods taken being within this Realm infra Comitatus in solo Amici, if the Spaniard sue for them Civiliiter in the Court of Admiralty, that a Prohibition should be granted, and that it should be determined by the Laws and Statutes of England, and not by the Civil Law. 4 Inf. 154. cap. 26. cites Trin. 2 Jac.

7. An English Ship is taken by an Enemy, and is afterwards retaken again by an Englishman; the Owner of the Ship cannot sue for it in the Admiralty, because the Ship was gained by Battle of an Enemy, and neither the King, nor the Admiral, nor the Parties to whom the Property was before shall have that. 2 Brownl. 11. Mich. 8 Jac. Welton's Cafe.

8. If any Injury, Robbery, Felony, or other Offence be done upon the High Seas, Lex Terrae extends not to it, therefore the Admiral has Confinement thereof, and may proceed, according to the Marine Law, by Imprisonment of the Body, and other Proceedings, as have been allowed by the Laws of the Realm. 2 Inf. 51.

9. If
Court of Admiralty.

9. If a Ship be taken by Letters of Marv, and be not brought before Pre-
fect of that King by whose Subjects it was taken, it is no lawful Prize,
and the Property not altered, and therefore a Sale made thereof is
void. Agreed per Cur. abscine Reeve J. Mar. 110, 111. pl. 188.

Trin. 17 Car.

10. Though a Ship coming from a foreign Kingdom be in a Cafe of inev-
itable Danger, and the Tackle damaged and broken, and no Probabili-
ty of saving any Part of it, partly in respect of the Tempest, and part-
ly in respect of the Barbarity of the Inhabitants, who carry away every
thing cast upon the Shore, yet in such Case the Master without the Ow-
ers cannot sell the Ship; Per LD. Ch. B. Hale, after several Arguments
before him. Sid. 453. pl. 20. Patch. 22 Car. 2. Tremellen v. Tre-
filian.

11. If a Master or Ship-Carpenter runs away he loses his Wages due;
Per Twifden, which Hale granted. Mod. 93. pl. 2. Patch. 24 Car.
2. B. R. Anon.

12. Sentences in Courts of Admiralty ought to bind Generally accord-
ing to firs Gentius; per Cur. Skin. 59. Mich. 34 Car. 2. B. R,
in Cafe of Hughes and Cornelius.

S. C. and per Cur. It is but agreeable with the Law of Nations, that we should take Notice and
approve of the Laws of the Countries in such Particulars; and if you are aggrieved you must apply to
the King and Council as being a Matter of Government, and he will recommend it to his Lime
Ambassador if he sees Cause; and if not remedied, he may grant Letters of Marv and Reprizal; and
this Case was refus'd by all the Court upon solemn Debate. This being at an English Ship taken
by the French, and as a Dutch Ship in Time of War between the Dutch and French; and Judg-
ment for the Defendants, who had had a Sentence for the Ship and Goods in the Admiralty Court in
France. —— S. C. cited Show. 143.

13. Piracy committed by the Subjects of the French King, or of any other
Prince or Republick, in anuity with the Crown of England upon the
British Seas, are Punishable properly by the Crown of England only,
for the Kings of the same have ilud Regimen & Dominium exclusive
of the Kings of France, and all other Princes and States whatsoever.
Molloy 60, 61. cap 4. S. 11.

14. Prize or No Prize, is a Matter not triable at Common Law, but
altogether appropriated to the Jurisdiction of the Admiralty. Comb.

15. The Defendant was in Execution in the Prison of the Admir-
alty, upon a Sentence given against him in that Court, and an Hab.
Corpo. refused to remove him from thence, to answer an Action in B. R.
and upon the Return it was mov'd, that he might be committed to
the Marshal. For he was not chargeable in the Admiralty Prison,
and there ought not to be a Failure of Justice. But Holt Ch. J. said,
that this was new; that tho' the Admiralty Proceedings were by the
Civil Law, yet they were supported by the Custom of the Realm,
and this Court must not elude their Process; besides, there was no
Action depending in B. R. And the Defendant was remanded. 1 Salk.

(D) How they may proceed there.
Court of Admiralty.

B. Greenway take his Body; for every Court hath his several Courts of Proceed- ing, and this is the Stage there. Mich. 10 Jac. 2. dict.

2. So in the said Case, if the Defendant found Fide-jurores, and the Sentences paid for the Plaintiff, the Bodies of the Fide-jurores, by the Law of the Admiralty, may be taken in Execution; for this is the Stage there. Dill. 10 Jac. between Legiere and Greenway Plaintiff, and Baker Defendant, and Prohibition denied.

3. 15 R. 2. cap. 3. S. 1. Item, at the great and grievous Complaint of all the Commons made to our Lord the King in this present Parliament, for that the Admirals and their Deputies do intrude to these divers Jurisdictions, Franchises, and many other Privileges pertaining to our Lord the King, and to other Lords, Cities and Boroughs, besides those they were wont or ought to have of Right, to the great Oppression and Improvement of all the Commons of the Lord, and hinderance and loss of the King's Profits, and of many other Lords, Cities and Boroughs through the Realm, and therefore cannot take any such Recognizance as a Court of Record may do; and for taking Recognizances against the Laws of the Realm, we find that Prohibitions have been granted, as by Lord Gower, in Parliament Dec. 1532. 2. 2. of our Lord Holt Ch. 1, the Court of Admiralty may take Stipulation for Bail, and proceed on them; and it was constantly allowed, tho' 4 Inf. 153 is of another Opinion. 2 Id. Raym. 1286. Pach. 6 Ann.

Trespasses of taking five Cows and twenty Sheep, Yet veran paid, such a Day and Year, the Defendant affirmed by an Affidavit in the Court of Admiralty before W. T. Steward of R. Earl of H against the Plaintiff, of Trespa- sons, in the Year 1538, and had Citation to cite the Plaintiff to appear before the Steward such a Day, directed to the Defendant to serve the Citation; and at the Day the new Plaintiff made Default, and he by the Ufe of the Court he shall be amended for such Default by Direction of the Steward to be attended of a Power to hold Plea, and not of a Power to award Execution, viz. de Jurisdictiones re vendit Placet, Not de Jurisdictiones executi; For notwithstanding the said Statutes, the Judge of the Admiralty may do Execution within the Body of the County. —— S. C. cited 15 Rep. 52. pl. 21. Trin. fac. in the Civil of the Admiralty, and resolved there the Plaintiff of R. 2 and H. 4, are to be attended of a Power to hold Plea, and not of a Power to award Execution, viz. de Jurisdictiones re vendit Placet, Not de Jurisdictiones executi; For notwithstanding the said Statutes, the Judge of the Admiralty may do Execution within the Body of the County. —— S. C. cited Cro. E. 684. per Car. in pl. 20. —— S. C. cited 2 Brown. 26. Trin. 9 fac. in Cafe of the Admiralty Court.

* Where it is provided by this Statute that the Admirals Court shall have Jurisdiction or Command of Wreck of the Sea, yet he shall have Command of Floraem Jefam & Lagan; For Wreck of Sea there be the Goods are call by Sea upon the Land, and no Intra Corpus Consistorius, whereof the Common Law takes Command; but the other three are all upon the Sea, and therefore of them the Admirals have Jurisdiction; —— Per Car. 5 Rep. 100. b in Sir Jefam Conbrilie's Cafe cited Beat. Lr. fol. 132. —— S. P. admitted as to Floraem, Jefam & Lagan. Raym. 96. Hill. 17 Jac. 2 & 3.
5. S. 3. Nevertbells, of the death of a Man, and of a Man done in great Ships, being and bowing in the main Stream of great Rivers, only beneath the Bridge of the same Rivers nigh to the Sea, and in nother Places of the same Rivers, the Admiral shall have Cognizancie, and also to arrest Ships in the great Flotes for the great Voyages of the King and of the Realm, facing always to the King all manner of Forfutures and Profits thereof coming.

of this Statute mislook Bridges for Points, that is to fly, the Land's End.——Cay's Abridgment, Tit. Admiralty calls it Ports.

6. S. 4. And he shall have also Jurisdiccion upon the said Flotes, during the said Voyages only, facing always to the Lords, Cities, and Boroughs, their Liberties and Franchises.

7. 13 R. 2. cap. 5. S. 1. Item, soresmuch as a good and common Clamour and Complaint hath been oftimes made before this Time, and yet is, for that the Admirals and their Deputies hold their Session within divers Places of this Realm, as well within Franchises as without, accruing to them greater Authority than belongeth to their Office, in prejudice of our Lord the King, and the Common Law of the Realm, and in diminishing of divers Franchises, and in defacing and impoverishing of the common People,

8. S. 2. It is accorded and assented, that the Admirals and their Depu-
ties shall not meddle from henceforth of any Thing done within the Realm, but only of a Thing done upon the Sea, as it hath been used in the Time of the Noble Prince King Edward, Grandfather of our Lord the King that now is.

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of anything within the Body of the County as all Havens are, and therefore Havens are not within the Admiralty, but all the Land upon which the Sea Water flows and refrains is within the Jurisdic-
tion of the Admirals. No. 122. in pl. 265. Pach. 25 Eliz.——All Rivers and Havens are within the County. 4 Inf. 157, &c. cap. 22.——All the Ports and Havens within England are Infra Corpus Comitatus; Per Coke Ch. J. and vouch'd 23 H. 6. and 30 H. 6. Holland's Cafe, who was Earl of Exeter and Admiral of England, and because he held Plea in the Court of Admi-
ralty of a Thing done Infra Portum de Hull, Damages were recover'd against him of 1000l. Godb. 261.

It is part of the Sea where one may see what is done of the one Port of the Water and of the other: As to see from one Land to the other. 4 Inf. 140. cap. 22 cites 8 & 12 Tit. Corone. 399.

9. 8 Eliz. cap. 5. Every Judgment and Sentence definitive given, in any Civil and Marine Caufe, upon Appeal to the Queen in the Court of Chancery, by Commissioners or Delegates nominated by her Majesty, shall be final.

If an erro-
nous Sentence be given in the Admiralty no Writ of Error lies, but an Appeal before the Delegates, as appears by the Statute 3 Eliz. cap. 5; 4 Inf. 137, cap. 22.

10. The Proceedings in the Court of the Admiralty are according to the Course of the Civil Law, and therefore the Court is not of Record, and by Consequence cannot assise any Fine in such Cafe, as Judges of a Court of Record may do. 12 Rep. 104. Hill. 2 Jac. Tomlinson v. Philips.

11. E. was committed on an Inditement of Piracy, and S. affixed him with Ropes, and other Engines, to make his Escape, whereupon the Judge of the Admiralty committed S. to the Marshalsea. Upon a Habeas Corpus out of B. R. and the Caufe returned as before, the whole Court held, that though all the Fact done by S. was upon the Land, and within the Body of the County, yet because it depends on the Piracy committed by E. with which the temporal Judges have nothing to do, it was remanded; For he is Quasi an Accursory to the first Piracy, and Piracy (E) determinable by the Admiral; As if Sentence is given in the Admiralty for a Marine Caufe, the Execution of this Sentence, either by the Body, or
Court of Admiralty.


12. Though the Court of Admiralty is not a Court of Record, because they proceed according to the Civil Law, according to Br. Error, pl. 77. [177.] yet by Custom of the Court they may enove the Defendant for his Default at their Discretion. 13 Rep. 53. Trin. 7 Jac. in the Cafe of the Admiralty.


S. C. cited
Raym. 58.
Perch. 14.
Car. 2. B. R. advertised; and per Warburton it is not a Court of Record. Noy 24.
in Cafe of Record v. Jebion.
Evans, where a Prohibition was prayed to the Court of Admiralty, for that the Plaintiff here did file upon a Recognizance there taken by way of Stipulation by one that was but Surety in the Nature of Bail, and that Court not being a Court of Record, they cannot take any Recognizance; but after Long Debate resolved, in Favour of Trade, such a Stipulation is good, and shall bind the Sureties.


* Keb. 552. pl. 62. Pance v. Evans, S. C. and the Court said, that as this Cafe is, should we grant a Prohibition, we should overthrow the whole Court.

Stry. 149.
15. A Man was taken by a Warrant issued out of the Admiralty, and
Mich. 1662.
off the Messenger's Hands, for which the Petitioner, who made the Refcous, was arrested for a Contempt to the Court, in a Suit depending there between him and another. Roll Ch. J. said, that if the Caufe was Maritime the Admiralty might examine a Contempt in that Caufe, but they cannot proceed criminally against the Refcous of him that did the Contempt, and ordered Caufe to be shewn why a Prohibition should not go. Stry. 171. Mich. 1649. Anon.

But the Parties afterwards put into their Suggestion, that the originał Caufe, on which the Proces was grounded, was a Matter wherein the Court of Admiralty had no Cognizance; and therefore a Prohibition was granted; for then the Refcous could be no Contempt. Ibid.

16. The Court of Admiralty may punish such as refil the Proces of that Court, and may fine and imprison for a Contempt to it acted in the Face of it, though they are no Court of Record; But if they should proceed to give the Party Damages, a Prohibition would be granted. Stry. 50. 174. Mich. 20 Car. 2. B. R. Sparks v. Martin.

17. When a Prouinciate Decree, as they call it, or Primum Decretum, is made, (which is a Decree of the Poffeffion of the Ship) and the Ship is so fiefed, it is the Caufe of the Admiralty, upon Security given, to suffer her to be hired out; Sic dictum fuit. Vent. 174. Mich. 23 Car. 2. B. R. in Cafe of Radly v. Egglesfield.

18. But upon such Decree an Appeal being to the Delegates, and Ld. Plunge being informed that no Appeal lay to them upon it, because it was only an interlocutory Decree, upon hearing Counsel he superseded the Com- mission. Vent. 174. in Cafe of Radley v. Egglesfield.

Pope, Sent- ence was given for the King of Spain to have the Goods; but the Court did not determine the Inter- est and Right of them, upon which Sentence the Defendant laid to the Ld. Chancellor for an Ap- peal; but it was alleged, that it did not lie, the Sentence being only of the Possession, and not of the Right or Interest, and thereupon Ld. Chancellor doubting heard Counsel, and at length he went into his
Per Holt Ch. 1, an Obligation taken in the Admiralty to appear and sue there, is liable in that Court, for it is a Stipulation in Nature of Bail at Common Law; but where there were 13 Part-owners of a Ship, and one of them refused to let her go to Sea, whereupon a Stipulation was taken for the Share of the Party refusing, and afterwards the Ship went her Voyage, and this Stipulation being put in Suit in the Court, a Prohibition was granted, because the Building the Ship and the Charter-party were at Land. 3 Salk. 23. Pac. 1 W. 3. King v. Perry.

The Defendant gave Bail upon the Stipulation in the Nature of a Recognizance, by which he bound himself and his Heirs to abide the Judgment of the Court of Admiralty, but died before the Sentence, and yet the Court proceeded against the Bail. It was insisted among other Things for a Prohibition, that if the Defendant had been in Gaol, and died within the Walls of the Prison, the Suit must have abated, and there was no Reason why, by the Defendant's being in Custody of his Bail, the Suit should be in a better Condition; and that whereas the Security given was only, that the Defendant should abide their Judgment, and the Admiralty now have extended it to the Defendant's Executor. On the other Side it was said, that Bail in the Admiralty are sued as Principals, and that this is the Court of the Court, because the Plaintiff and Defendant being Seafaring-Men, are subject to more Casualties than others. The Cade was adjourned and compound. 1 Salk. 33. Pacch. 13 W. 3. B. R. Betts v. Hancock.


2. The Court of Admiralty granted Process against the Freight of a Ship, in Nature of a foreign Attachment, for Non-appearance; this is wrong, and a Prohibition was granted, though there was no Libel; but the Court of Admiralty may proceed against the Ship for Non-appearance, though not against the Freight. Mich. 8 Ann. B. R. Bricket & al’ v. Plearle.

(E) [Court of Admiralty.]

Of what Things, in respect of the Place where it arises, they may hold Plea.


B. R. between Colffion and Baptif Manna resolved, where the Bill was made good, apud dock; The Zante, which is in Italy. Mich. 7 Ja. B. * Leigh's Cade, per Cur. Cade was,
Court of Admiralty.


that B. was Master of a Ship, and gave Money to C. to buy Sailor's Cloaths for him, and C. bought such Cloaths for B. of L in St. Catherine's Parry, near the Tower in London whereby L delivered the Cloaths to B. in his Ship then in the Thames, adjoining to St. Catherine's, and the Money not being paid, L sued B. in the Admiralty Court, and a Prohibition was awarded, because the Contract was made upon the Land, & Infra Corpus Comitatus, and therefore the Admiral can have no Jurisdiction; for the Statute of 15 & 16 R. 2, and 2 H. 4, cap. 17, are, that the Admiral shall not have Constance but only of Things done Super Altem Mare, and cites 5 Rep. 107. and 50 it was resolved by the Justices. — 2 Brownl. 37. Cradock's Cafe, S. C. and a Prohibition granted accordingly, and for the same Reason.

2 Built. 322. 3. [And therefore] they cannot hold Plea of a Suit by the King of Spain, for cutting down of Braid Wood in Braxilia, because it is upon the Land. Hill. 12 Ja. B. R. between the King of Spain and Pointer reolved, and a Prohibition granted, and it was after tried at Common Law in a Croker and Conversion.

Ow. 122. 4. They cannot hold Plea of a Thing done upon the Land in England. Dick. 7 Ja. B. Leigh's Cafe, per Curiam.

and a Prohibition was granted —— 2 Brownl. 37. Cradock's Cafe S. C. accordingly.

* Ow. 122. 4. Leigh v. Burke S. C. accordingly.

** Brownl. 37. Cradock's Cafe S. C. accordingly, and says that the Mayor of London has Jurisdiction upon the Thames as far as Wapping, and if a Murder be committed upon the Thames, it shall not be tried by the Admiral. —— Le. 168. pl. 149. Pech. 32 Eiz. B. R. Sir Julius Caesar's Cafe S. P. 2 Roll Rep. 215. Mich. 51 Jac. B. R. Anon. S. P. 37. Mo 89. pl. 1235. Mich. 16 Jac. B. R. Anon. all the Court agreed that Limehouse is within the Body of the County, and not within the Jurisdiction of the Admiral. —— The Admiral has no Jurisdiction of Things done at Ratcliffe nor upon the Thames; Ibid. Doderidge cited 5 & 6. Pitch. Coroner. 299. —— He said in the Admiralty, because the Ship called the S. being upon the Thames at Redriff at Anchor, was there broke by the Ship called the Aires by the Negligence of the Officers thereof; and a Prohibition was awarded, because the Thames is infra Corpus Comitatus, and not within the Jurisdiction of the Admiralty. No. 916. pl. 1502. 1 Jac. Dor- rivton's Cafe.

6. They cannot hold Plea for the taking of certain Goods floating super Mare, & ejet super littora Maris; for though they may hold Plea de Flotiam, yet they cannot hold Plea of Wreck; and this is Wreck when it is thrown upon the Land. Tr. 5 Ja. B. a Prohibition granted accordingly, and a Consultation denied.

7. They cannot hold Plea of a Contract made in Portu Middelburgh, because this is not upon the Sea. Hill. 8 Ja. B. Vaynbo's Cafe, per Curiam prer Warrington. Coke laid, that there is a Proceedent in 25 P. 6. and 36 P. 6, where there was a Ship riding in a Port, and a Contract was there made, and a Suit for it in the Court of Admiralty; and that an Action was brought at Common Law, and 13000 l. Damages recovered, the Duke of Exeter then being Admiral.

A suit was in the Admiralty for taking of Goods Circa Cape de Vert super Altem Mare. It was mov- ed for a Prohibition because it was in the Port of Genney when they were at Anchor there, and every Port is within the Body.
Court of Admiralty.

Body of the Land and not upon the Salt Sea; Coke Ch. 1. said that peradventure the Ports there are not as the Havens are with us; and Dodderidge said that there is not any Port but there are Roads, but they are not within the Body of the Land but are in the Sea, and they might be at Anchor in the Sea, and therefore a Prohibition was denied; but Coke said that if this had been within the Body of the Land, the Admiral ought not to hold Plea of it. Roll Rep. 250 pl. 18. Mich. 13 Jac. B. R. Wilt.-Iets v. Newport.

8. If Pirates take Goods upon the Sea from a Subject of Spain, and bring them within a Port of Ireland, and there sell them to J. S. no Suit for these Goods can be against J. S. in the Court of Admiralty; for that J. S. came to them by purchase within the Body of the County. Mich. 13 (*) Tac. B. between Don Diego the Ambassadour, and Sir Richard Bingley, resolved, and a Prohibition granted; For the Owner of the Goods may have an Action of Trover for the Goods at Common Law.

9. If a Subject of the King of Spain commits certain Offences in Spain, for which his Goods are confiscate, and after comes into Eng. and brings with him some of the Goods, and sells them to J. S., a Subject of this Realm, and after the Ambassador of Spain sue in the Admiralty Court upon this matter, and there attaches the Goods in the Hands of J. S. a Prohibition lies; for the property of the Goods shall not be questioned in any Court, but at Common Law. Hobart’s Reports, Cafe 267. Don Alphonso and Cohea.

10. If a Contract be made upon the Sea, yet if it be not for a Marine Cause, the Suit upon this Contract or Obligation shall be at Common Law, and not in the Admiralty Court; For if a Man makes an Obligation for the security of a Debt growing before upon the Land, or if he make a promise to pay it, this cannot be sued in the Court of Admiralty, but at Common Law. Hobart’s Reports, 17. Bridgman’s Cafe.

been ruled accordingly, in C. B. Patch. 15 Jac. and the Court was of the same Opinion.

11. If a Contract be made upon the Sea for the bringing over certain Sugars, and after this Agreement is put in Writing upon the Land, and after the Sugars in bringing over are spoiled upon the Sea, yet the Suit for this does not lie in the Admiralty Court, S. C & S. P. because, the putting the Agreement in Writing upon the Land, See changes the Jurisdiction as to this, and then when the Contract is upon the Land, though the Breach be upon the Sea, yet the Common Law shall have the Jurisdiction, and not the Admiralty Court. Hobart’s Reports, between Palmer and Pope, Cafe 268. (B.) pl. 1. S. C & S. P.

---- If part of the Matter be done upon the Sea and Part in a County, the Common Law shall have all the Jurisdiction. 12 Rep. 79. Hill. 8 Jac. by the Reporter.

12. If a Contract be made upon the Sea, and the Cause of the suit Hob. 213. Maritime, and a Suit is had upon this in the Admiralty Court, it seems it is sufficient to allege it to be made within the Jurisdiction of J. S. Hobart the Court, without saying it was made Super Altim Mare; for this may be alleged of the other Part to have a Prohibition, if it was not made Super Altim Mare. Contra Hobart’s Reports, Cafe 269.

lay the cause of Suit Super Altim Mare, which argues that this is a necessary Point; For the Jurisdiction there growth not from the cause of Titles and Testament in the Spiritual Court, but from the Place. And therefore he was of Opinion, that if a Contract were made in Truth at Sea, and a Suit upon that in the Admiral’s Court, and there the Contract is laid generally, without saying Super al
13. If a Man contracts with me in London, in consideration of 100l. to transport certain Commodities into Turkey, if he does not perform it, I cannot sue him in the Court of Admiralty, because the Contract was here, and nothing done upon the Sea. P. 13. For

14. If the Owner of the Ship sends it to the Indies to merchandise, and upon the High Seas the Mariners and the rest in the Ship commit Piracy, when the Ship after returns here upon the Thames, the Admiral seizes the Ship and all in her as Enea Pirataeum, claiming them by grant of the King, for by the Law of the Sea the Owner in such Case shall lose the Ship; and after the seizure the Owner of the Ship takes the Sails and Tackling out of the Ship, for which the Admiral fines in the Admiralty Court, a Prohibition shall be granted, because if it be forfeited he may have an Action at the Common Law for the taking and not there, they being taken under Corpus Communis. H. 13. for

15. If a Contract be made in London for Things lye upon the Sea Coasts, and there is a suit for this in the Court of Admiralty, a Prohibition lies. P. 7 for

16. If a Charter-party be made in England, to do certain Things in several Places upon the Sea, tho' no Act is to be done in England, (* but all upon the Sea, yet no suit can be in the Admiralty Court, for the Non-performance of the Agreement; For the Contract is the Original, without which no Cause of suit can be, and this Contract is out of their Jurisdiction, and where part is triable by the Common Law, and part by the Admiralty Law, the Common shall be preferred. Mich. 22. for

17. If a Man takes a Mast floating upon the Sea, and draws it upon the Shore, where J. S. takes it, claiming there Admiralty Jurisdiction, an Action does not lie against him for this in the Court of Admiralty, but at Common Law, because the Court was done upon the Land. Mich. 10 for
Court of Admiralty.

Admiralty: For there is no need of Condemnation thereof is there is of Prices: Per rot. Car 2 Mod. 294. Hill 129 & 130 Car. 2. C. B. The Lady Wintham's Case. — [The Original is, shall (not) be brought which seems misprinted.]

18. But if a May takes a Thing upon the Sea, and brings it to a Land, and carries it away, the Suit for this shall be in the Admiralty Court, for this is a continued Act. Bish. 10 Car. 3. Mayor of Harwich's Case, per Curiam.

when a taking is partly on the Sea and partly in a River, the Common Law shall have Jurisdiction.

19. If a Shipwright sued in the Admiralty Court for the making of a Ship for Navigation upon the Sea, a Prohibition does not lie. Per Curiam agreed. 399 Car. B. R. between Tasker and Gate, per Curiam agreed.

20. But if a Suit be in the Admiralty Court for making a Lighter for the Carriage of Mud, or the like, within the Body of the County upon the Thames, and not for Navigation, a Prohibition lies. Per Curiam agreed. P. 9 Car. B. R. between Tasker and Gate, per Curiam agreed.

21. If the Suit be in the Admiralty Court upon a Charter-party for *4. Inft. 124. Demurrage, or for *Mariner's Wages, but not for any Penalty within the Charter, but only for the Wages contracted for, or for Demurrage, according to the Contract, no Prohibition lies. P. 9 Car. B. R. if a Mariner makes a Covenant to serve in a Ship upon the Sea, yet if the Wages be not paid, it shall be sued for in this Court by the Common Law, and not by the Law of Mariner's. —— Raym. 3. Hill 12 Car. 2. B. R. in the C. C. of Woodward v. Bonithan, Arg. Inflated, that of Mariners Wages the Admiralty shall have the Conscience of it; and so it was agreed by all the Justices, Hill 8 Car. 1. 1. C. R. and of this Opinion was Malen J. But Forrest Ch. J. and Twidten J. held a Prohibition would well lie, for the Statute of 15 R. 2. exp. 5. was made at the great Complaint of the Commons, and should therefore be construed most beneficially for the good of the Subject; and when the Ordinances and Orders in the Time of the late Troubles were made, the Confuence and generally received Opinions were, that for Mariners Wages &c. the Parties could not sue in the Admiralty, and for that reason pretended Orders were made on 12 April, 1649 cap. 11. and another 25 April, 1649. cap. 21. to enable the Admiralty to hold Pleas of such Things; and as to that Case of 3 Car. 1. they said, that that had not only been denied by several other Judges as well as by themselves at this Time, but had been denounced even by several of those Judges who are said to have subscribed to it, for which reason a Prohibition was granted.

22. If A. a Merchant in London, writes to his Factor in France to buy Wines for him there, and to send them to him in London, and to charge him for the Payment thereof with Bills of Exchange to be paid in London, and the Factor does accordingly, and after A. hath received the Wines in London, and accepted the Bills in London, he dies before the Day of Payment of the Money by the Bills, and after the Bills for Non-payment are protested in London, and after sent into France, where the Factor is compelled to pay them, in this Case no Suit can be upon this Matter against the Executor of A. in the Court of Admiralty, for that this Contract had its Original in London, since he, the writing the Letter, and the Acceptance of the Goods and Bills of Exchange in London makes the Contract complete, and therefore this Contract is to be tried at Common Law. Hill. 14 Car. B. R. between Haywood and Anne Davies, a Prohibition granted per Curiam, and upon Complaint thereto to the King by some of the Admiralty Court, a Fetting and Conference, and
and Debate thereof was at Serjeant's Inn between Sir Henry Martyn and the Judges of the King's Bench, where Counsel was held for Anne Dabyes, and Dr. Zouch for the other Side; and the Court inclined clearly that the Prohibition lies, but ordered, that the Prohibition should not issue, if in the Admiralty they would deliver Anne Dabyes upon Bail for her Appearance the next Term; but if they would not deliver her, then the Prohibition should issue.

23. The Court of Admiralty hath no Cognizance of Things done beyond Sea, and this appears plainly by the Statute of 13 R. 2. cap. 5. the Words of which Statute are, that the Admirals and their Deputies shall not meddle from henceforth of any thing done within the Realm, but only of a Thing done upon the Sea, cites 19 H. 6. fol. 7. for Things transitory done beyond the Seas, are either triable in the King's Courts, or the Party grievéd may have his remedy before the Judges where the Fact was done beyond Seas. Resolved in C.B. 12 Rep. 103, 104. Hill. 2 Jac. Temlifon v. Philips.

24. C. bought divers Things within the Body of the County which concerned the furnishing of a Ship, as Cordage, Paint and Shot, and the Party of whom they were bought sued C. for the Money in the Admiralty Court, and Prohibition was granted; for the Statute of R. 2. is, that the Admiral shall not meddle with Things done within the Realm, but only of Things done upon the Sea, and that no Contract made upon the Land shall be held there. 2 Brownl. 37. Mich. 7 Jac. Cradock's Cafe.

25 Libel in the Admiralty upon a Contract made at Marseilles in France; Fleming Ch. J. denied to grant a Prohibition; For though the Admiralty Court has nothing to do with this Matter, yet since this Court cannot hold Plea of it, (the Contract being made in France) no Prohibition lies. But Yelverton and Williams J. e contra, that the Admiral has no Jurisdiction, and that the Contract may be laid to be made at Marseilles in Kent or Norfolk, or any other County, and so triable here. 2 Brownl. 11. Mich. 8 Jac. B. R. Anon.

26. The Plaintiff was in Execution upon a Judgment obtained in the Admiralty against him upon a Contract made on Land in New-England, and this appearing upon a Bill exhibited against the now Defendant, upon the Statute 2 H. 4. cap. 11. for suing in the Admiralty upon a Contract made on Land, which the Court held to be Coram non Judice, and he was discharged. Cro. Car. 603. pl. 8. Hill. 16 Car. B. R. Ball v. Tielawny.

27. Wild moved for a Prohibition to the Court of Admiralty to fly a Trial there in a Gower and Conversion, in which they proceeded upon a Pretence that the Goods were taken upon the High Sea, and that by the late Act they have Exclusive Power in all such Cases which is not so. Glynn Ch. J. said, it was resolvd in Crecrner and Colmbe's Cafe, and so adjudged that they have no such Power; therefore take a Prohibition Nii &c. Sty. 470. Mich. 1655. Lepool v. Tryan.

28. A Dutch Ship being wreck'd by Tempest in a Creek of the Sea Infra Corpus Comitatuts of Dorset. The Sailors, upon Pretence that the Goods in the Ship were Bona peritura, procured a Commission of Sale out of the Admiralty
Court of Admiralty.

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Admiralty Court; whereupon the true Owners, to prevent such Sale, brought a Sequestration; and upon producing the Libel to the Court, a Prohibition was prayed and granted, because the Cause of Action did arise Intra Corpus Comitatus, and so the Admiralty cannot hold Plea thereof, and the Sale of the Goods is good as they are bona fide. 2 Sid. 81. Trin. 1653. B. R. Calliver v. Brand.

30. In a Prohibition the Case was, the Defendant was Master of a Ship, in which S. the Plaintiff was Owner, and the Ship was taken by Pirates upon the Sea, and to redeem himself and the Ship he contrived with the Pirates to pay 50l. and passed his Person for it. The Pirate carried him to the Isle of Scilly, and there he borrowed the 50l. which he gave Bond, and paid the Pirate; and being discharged, he libelled in the Admiralty for the 50l. At his Return he sued in the Admiralty for the 50l. and had a Sentence for it. The Owner moved for a Prohibition, but it was denied, because the original Cause arose on the Sea, and all which followed was but accessory and consequent to that Cause, and therefore well determinable in the Court of Admiralty.


31. Suit in the Admiralty for a Ship, as Flotsam, left near an Harbour in Norfolk. It was agreed that Flotsam should be tried in the Admiralty, but because the Suggestion was, that the Dereliction was Intra Corpus Comitatus, a Prohibition was granted; for they may take it into Limit, upon the Suggestion, and if it be found to be out of the County a Con- S. C. the Court agreed, that Flotsam properly belongs to the Admiral, and that they may try it whether it be or no; but this Suggestion being of a Dereliction within the Body of the County, it ought to be tried by Jury, and the Decision in the Admiralty will allow a good Plea in Trover for it; And by Windham, Flotsam is that which is totally derelict, and not that which is avoided in the Sea for Fear of Danger, to which the Owner has still an Eye, and only goes out to pray for Help, which Twifden agreed, but this is triable by the Admiral; and the Claim of Property by the Party must be in the Admiralty within the Year and Day. Keeling conceived, that Flotsam within the County is of the Admiral's Jurisdiction divided with the Common Law, but here an Owner appears within the Record within the Year and Day, and therefore they ought here to demur or take Issue on the Suggestion. No Prohibition was awarded but only as to the Fact in Corpore Comitatus.

32. A Libel was against a Ship and the Master, and also against the former Owner, and the now Owner, for Sails and other Necessaries found for the Ship in 1681. The Plaintiff (the now Owner) for a Prohibition justified the Statue R. 2. and that the Materials, Work done, and Contract made, and every Thing contained in the Libel, were done at Land, and not Super Alteri Mare, and that after the Time specified in the Libel, the Plaintiff bought the Ship, cum omn. Apparatus, for a considerable Sum of Money, at Land. It was argued, that though the Sails were for the Ship, and done about it, yet they were not absolutely necessary, nor was it in a Voyage, so that the Libel is not for any supposed Hypothecation by the Master in a Time and Cafe of urgent Necessity; besides, the Buying was upon Land with all her Furniture, and the Defendant has his Action at Law upon his Contract, and for his Wares sold; and a Prohibition was granted as to the Ship and the present Owner &c. 2 Show. 339. pl. 347. Hill. 35 & 36 Car. 2. B. R. Hoare v. Clement.

32. The Master had hypothecated a Ship for Necessaries, being upon the Sea in Straits of Weather. It was suggested for a Prohibition, that the Agreement was made, and the Money lent, upon the Land, viz. in the Port of London. But by Holt Ch. J. this must necessarily be so; for if a Man be in Distress upon the Sea, and compelled to go into Port, he must receive the Money there or not at all; and if his Ship be impair'd by Tempest, so that he is forced to borrow Money to prevent her
Court of Admiralty.

her being lost, and pledges his Ship for Security, since the Cause of the Pledging arises upon the Sea, the Suit may well be in the Admiralty Court; but because there was a Precedent where a Prohibition was granted, the Court granted one Now, and ordered the Plaintiff to declare upon it; for the Law seemed clear to them as aforesaid. Ld. Raym. Rep. 152. Hill. 8 & 9 W. 3. Benzen v. Jeffries.

(E. 2) Punishment of suing in the Admiralty in Cases out of their Jurisdiction.

An affair was brought upon this Statute for suing in the Admiralty upon an Hypothecation, and it was held to be out of the Statute in the Time of my Ld Hale, cited by Holt Ch. J. Ld. Raym. Rep. 152. Hill. 8 & 9 W. 3, in Case of Benzen v. Jeffries.

1. 2 H. 4. cap. 11. If any Person shall be prosecuted in the Admiral’s Court, contrary to the 13 R. 2. cap. 5. he shall have an Action the Cause against the Prosecutor, and recover double damages, and the Prosecutor shall forfeit 10 l. to the King.

Bendix. 64. pl 11. b. c. but P. does not appear.
S. C. cited Avg. 4 Mod. 155. 181. in Case of Sands v. Child.

2. In Writ on the Case founded on the Statute of 2 R. 2. or 15 R. 2. or 2 H. 4. against such as hold Pleas before the Admiral of Contrasts made on the Land &c. the Plaintiff ought to say in his Writ, Contra Formam Statutum pradix. otherwise it is not good, and it ought to be brought in the County where the Plea was held before the Admiral, and not in the County where the Contract was suppos’d to be made. Bendix. 57. pl. 92. Patch & Trin. 4 & 5 P. & M. Malthender’s Case.


4. A. and B. sued C. and D. in the Admiralty for a Cause arising at Land. A. died. The King and C. one of the Plaintiffs brought an Action against B. one of the Prosecutors, without seeing the Death of A. The Judgment was, that the Party, sued recoverit Damnum & quod Defendens Pecunia 10 l. erga Regem per Status pradix incurrit &c capiatur & quod Dominus Rex recuperet verius Defendens 10 l. &c. & Delend capiatur. D. 159. b. pl. 38. cites 1 Eliz. Swanton v. Willer.

5. An Action on the Case was brought for suing in the Admiralty Court, in a Cause where they had no Jurisdiction, (viz.) for a Thing done on the Land, and not on the High Sea. Brownl. 4. Mich. 11 Jac. Row v. Alport.

6. Case &c. on the Statute, 2 H. 4. cap. 11. for suing in the Admiralty for a Matter done at Land, wherein the Plaintiff set forth, that he was attached in that Court, pro Defalcatione of his Own infra fluxum & refluxum Maris, when in Truth, if any Thing was done, it was done in such a Place which was infra Corpus Comitatus, and that he was attached to appear before one Compton, Deputy-president or Judge of the Court &c. After a Verdict for the Plaintiff, and a Writ of Error brought, it was aligned for Error, that the Declaration was ill, because the Plaintiff had set forth, that if any Thing was done, it was infra Corpus Comitatus &c which is not a direct Affirmation, that it was done infra Corpus Comitatus; But per Haughton if nothing was done at Land, yet a Suit in the Admiralty, supposing a Thing to be done at Sea where in Truth
no such Thing was done is punishable by this Statute; Quod sit cons
cellum per Cur. Then it was objected that the Plaintiff let forth that he
was attached to appear before one Crompton, Lieutenant or Pre-
dent to the Admiral Court, and did not allege that it was before the
Admiral or his Deputy, as the Statute directeth. But the Court held it well
enough; for it is alleged that he was attach'd to appear Coram Crompton
Deputat' Presidente, seu ejus locum tenente, and after says, that he
Comparuit coram Crompton Deputat' Presidente, seu judge of the
ing v. Yate.

7. An Action doth lie by the Statute against the Court of Admiralty for
holding a Plea of a Matter which is not within their Jurisdiction. (Mich.
22. Car. 1.) B. R. and justly; for every Jurisdiction ought to be kept
within its own Bounds; and if any one be injured by transgressing
therein, the Common Law will relieve the Party injured thereby, and
cause Satisfaction to be made for this Injury. L. P. R. 17.

4. c. 11. which gives the Party grieved double Damages, and 10 l. to pl. 3. C.
the King; and that he was Owner of a Ship lying in the Thames infra
Corpus Com. laden with divers Goods, wherein he had a 5th Part to
delivering his own Share; that the Ship was ready to sail, and that the Defendant the Opinion
caused a Proceeding to be made in the Admiralty against the Ship, and of the Court,
the Ship to be arrested and paid guillque he gave Security not to go to the
Mederas, or East Indies, whereby he was laid 3 Months, and left his not any
Voyage ad damnum 3000 l. On Non Culp. Jury found that the East Difficulty
India Company by Charter had the sole Trade to the East Indies and in the Cafe
Mederas, and that the Plaintiff was going thither; And Sir J. C
one of the Defendants was Governor of the Company, and procured an
Order of Council to the King's Advocate General to proceed in this Manner all of Opi-
&c. and that the Defendants sued this Proceeds out of the Court of Ad-
miralty; and if pro Quer. Jury find 1500 l. Damage, and 51 l. Costs,
which were doubled in the Judgment according to the Statute. Judg-
ment ought to be af-
ment for the Plaintiff in C. B. and now in Error brought it was agreed insted; For
that though there was but one Aet, but one Olene, yet every se-
veral Person injured might have an Action and recover Damages, and
upon every Conviction the Defendant would forfeit 10 l. to the King.
Though there be a Proceeds only and no Suit, nor no Plaintiff and De-
against the
fendant, yet this is a Prosecution within the Meaning of the Statute, Peron, yet
for it is an usual proceeding there, and of the fame Mischief; That C.
being there
was a Procurer within the Statue though no Suit was in his Name, Goods ac-
be he promoted and maintained it; and if he did it of his own accord
Head, then it is properly his own Action; if as Agent to the Company,
and by their Command then that Command being to do an unlawful
Aet was void; But they held a mere Attorney would not be a Profe-
cutor within the Statue. Judgment affirmed. 1 Salk. 31, 32. pl. 2. Suit in the

Court of Admiralty.

Statute. And though the Defendant is not a Party in Court, yet if he be the Person that moves the
Suit and is the Caufe of such Charge and Trouble, an Action lies against him. 4 Mod. 179.

(E. 3)

1. SIR J. C. Judge of the Admiralty exhibited a Bill in that Court against the Defendant N. who was an Officer of the Lord Mayor, for condemning Coals at a Wharf in the Parish of St. Dunstan's in the East upon the River Thames; Wray and Gawdy Justices said, that if it be Extortion there is no Remedy for it in the Admiralty, but in the King's Court; And per Gawdy it shall be redres'sd here by a Quo Warranto. Le. 106. pl. 144. Fash. 30 Eliz. B. R. Sir Julius Caesar's Case.

2. In a Case where A. and A. were equally entitled by the Civil Law to a Prize-Ship, A. as the actual Cap'tor, and B. as being present, and B. sued in the Admiralty for his Moiety. A. for a Prohibition affirmed that after their arrival in England they agreed inter ie that A. should have 4 Parts of the said Ship and Goods, and that B. should have the other 5 Parts of the said Ship and Goods. A. said that be pleaded this Matter in the Admiralty, and they would not allow the Plea, whereupon a Prohibition was granted; but it afterwards was moved by B. that the Court of Admiralty would allow the Plea and try it there, whereupon a conditional Consulfation was granted; the Court allow that Plea and try it there; And it was said, that if the Court should not allow the Plea it would be a Contempt of this Court and a Prohibition should be granted. 2 Le. 192. pl. 224. 52 Eliz. C. B. Somerav. Buckley.

3. A Suit was in the Admiralty Court for setting a Ship in a Wharf to the Damage of the Plaintiff; so that none could come to the Ship which is laid within the Bill to be within the Ward of St. Mary-Hill: And a Prohibition was granted; Upon a Suggestion, that it was good for the ordering of Ships. A Consulfation was granted, but afterwards upon good Advice and opening the Matter, a Supersedas to the Consultation was granted et quod Prohibito et; For the Wrong and Fact is laid to be within a County and Ward; And for that it does not belong to the Admiral; And for civil Contracts or Trepas's done upon the River Thames or any other River, that is proper to the Common Law, triable in that County, which is next to the Bank, and that side of the River where the Fact was done, but in criminal Matters upon any River, that is given to the Admiral by the Statute 25 H. 8. cap. 15. Noy. 149. Goodwin v. Tompkins.

4. The Master of an Hainborough Vessel freighted her at Brazil, and became bound in the Custom Houses there to unload the Merchandizes according to the Manner there used at St. Michael's to the Intent to satisfy the King's Customs. The Ship was drove by Whelps on the Coast of England, so that she could not touch at St. Michael's. The Spanish Ambassdor supposing the Goods were forfeited to the King of Spain for not paying Customs paid in the Admiralty here, and the Court gave Sentence, that the King of Spain should have the Possession of the Goods, but did not determine the Interest and Right of them. Whereupon the Owner sued to the Lord Chancellor for an Appeal, which was opposed by the Judge of the Admiralty, and it was argued by Civilians on both Sides, but Ld. Chancellor fetch'd a Civil Law Book out of his Closet in which was a Text precise that an Appeal lies as well where the Sentence is of the Possession as where it is upon the Interest and Right. Mo. 814. pl. 1102. Mich. 8 Jac. Spanish Ambassdor v. Plage.

5. In all Cases where the Defendant admits the Jurisdiction of the Admiralty Court by pleading there, a Prohibition shall not be granted, unless it appears by the Libel that the Act was done out of their Jurisdiction; And that
that though Sentence was given, yet if that appears within the Libel a
Prohibition shall be granted; Agreed. 2 Brownl. 30. Mich. 9 Jac. C. B.
in Caff of Jennings v. Audley.

6. A Suit was in the Admiralty on a Charter Party made beyond Sea on
the Land, a Prohibition was granted, because not made on the Main
Sea. But if the Defendant admits the Jurisdiction of the Court, and
suffers Sentence, then B. R. will not on a bare Surmise grant a Prohibition
after Admittance of the Party himself, unless it appears in the Libel, that
that the Act was not made within the Jurisdiction of the Sea; and the
Court agreed to this Difference. 2 Brownl. 34. Mich. 1611. 9 Jac. C.
B. obiter.

7. A Libel was brought by several Mariners against J. the Master of a
Ship, and Judgment being given against J. be suggested for a Prohibition
that the Contract was made at L. in England, but a Prohibition was de-
nied, because he had not sued his Prohibition in due Time, viz. be-
fore a Judgment in the Admiralty Court, but if they sue here they must
bring their Actions several, because they cannot join here in an Action, and
therefore it is good Difference in the Court to deny a Prohibition.

be paid, a Prohibition was denied; For this must be taken as Mariner's Wages, and therefore they
have a Prohibition; Besides the Party comes after Sentence, and therefore it is in the Court's Dif-
ference to grant a Prohibition or not. Vent. 543. Mich. 31 Car. 2. B. R. Anon.— A Prohibition shall
not go to the Admiralty to stay a Suit here for Mariner's Wages, though the Contract were upon the
Land. For, 16. It is more Convenient for them to sue here, because they may all join; And accord-
ing to their Law, if the Ship perished by the Mariner's Default, they are to lose their Wages, there-
fore in this special Case the Court shall be suffer'd to proceed there. Vent. 726. Trin. 25. Car. 2. B. R.
Anon.— 5 Mod. 244. Arg. cites Win. 8. but says the Reason of denying Prohibitions for Mar-
iners Wages seems to be because they proceed in the Admiralty not upon any Contract at Land, but
upon the Merits of the Service at Sea and allow or deduct the Wages according to the good or bad
Performance of the Services in the Voyage. And Ibid. 245. S. P. admitted by the Counsel of the
other Side; but says, that the principal Reason of suing in the Admiralty for Mariner's Wages is,
because the Ship is liable as well as the Master who may be poor and not able to pay the Seamen.
Mich. 4 Jac. 2. B. R. Anon.

8. A Dunkirkker took a Frenchman's Ship at Sea, and before it was
brought Infra Praefidio of the King of Spain, it was driven by contrary
Winds to Weymouth in England, and there the Ship and Goods were sold;
the Frenchman libell'd in the Admiralty Court pro interesse suo against the Vendee, suggesting that the Ship &c. was taken by Piracy, and not by Letters of Mar as was pretended, and pray'd a Prohibi-
tion. Bankes Ch. J. and Folier J. conceiv'd that a Prohibition should go; but Crawley J. e contra. But all agreed; (Reeve J. abstent) that if a Ship be taken by Piracy, or if by Letters of Mar, and be not brought Infra Praefidio of the King by whole Subject it was taken, it is
not lawful Prize, and the Property nor alter'd, and therefore the

9. There was a Suit in the Admiralty for the Profits of the Beaconage of a Rock in the Sea, near
in Cornwall, and upon a motion for a
Prohibition it was denied, for the Profits of Beaconage belong to the
Admiral, and by Consequence the Suit the, for these Profits may be within
the Court of the Admiralty, tho' the Beacon itself may be the Inherit-
ance of any private Person, and inimicable in the King's Courts.

10. We being at War with Denmark, one M. a Scots Privatier, took of a Keb 16. Danish Ship as Prize, which was condemned as a Prize in Scotland, and pl. 44 and
afterwards was bought by T. at Land, whereupon S. libell'd in the Ad-
miralty here against J. and M. and pray'd that M. took the Ship, and
that he was not a Danish Ship but a Ship of London and that he was load-
ed with his Goods. T. moved for a Prohibition because he claiming Pro-
Defendant

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When a person has purchased property which he acquired on the Land, the Admiralty had no Jurisdiction, especially as this goes in Nullity of the Proceedings in Scotland, where the Court of Admiralty there has as great Jurisdiction as the Admiralty here; But per Car. since the question is Prize or No Prize no Prize shall go. Sid. 320. pl. 12. Hill. 18 & 19 Car. 2. B. R. Thompson v. Smith.

11. Libel was in the Admiralty against 2 for Mariners' Wages, and there was Sentence and Execution against one of them, and be paid the Money, and now they both would for a Prohibition upon a Suggestion that the Contract was made at Land; it was denied as to him who had paid the Money, because at that Rate one may have Prohibition seven Years after Sentence which is not reasonable, but granted as to the other. Sid. 331. pl. 14. Pach. 19 Car. 2. B. R. Walker v. Adams.

12. A Ship was taken at Sea as Prize, and being brought near the Shore was stranded, but the Foreigners from whom it was taken libelled in the Admiralty Court, upon suggestion that it was not Prize. After several Debates the Court held that no Prohibition should go, because the taking was the Cause of this Suit, which was within the Jurisdiction of the Admiralty. Sid. 367. pl. 3. Trin. 20 Car. 2. B. R. Turner & al. v. Smith.

13. M. was Captain of a private Man of War, in which B. had an Interest, and M. took a Merchant Ship beyond the Line, laden with divers Merchandizes, B. sued M. in the Court of Admiralty to have an Account, M. pleaded there the Statute of 21 Jac. 1. of Limitations, the Cause of Action being of more than 7 Years standing before the Suit commenced as appeared by the Libel. And now M. suggested that the Court of Admiralty would not receive that Plea, and therefore prayed a Prohibition. And the Court held that the Plea ought to have been received, for that the said Statute was pleadable there; and if it were not received, that the rejecting it was a good Cause to have a Prohibition, as likewise if they receive it, and do not give Sentence thereupon, as the Common Law requires. But a Prohibition lies not before retrial, because the original Matter is examinable there. Hard. 352. pl. 8 Mich. 20 Car. 2. in Scaccario. Berkeley v. Morrice.

14. A Prohibition is prayed to the Admiralty in Suit by the Master and Mariners for Wages, which the Court denied, albeit the Mariners were retained by the Master, unless it be by Charter Party of Affreightment, nor has it ever been granted, and the Rule for Prohibition was discharged. 2 Keb. 779. pl. 6. Trin. 23 Car. 2. B. R. The King v. Pike.

15. An English Ship was taken by French Men of War under Colour of a Dutchman, and carried into France and there Condemned by their Court of Admiralty as a Dutch Prize; afterwards an English Merchant bought this Ship of the Frenchmen, and brought her into England, where the right Owner brought an Action of Trespass for the Ship against the Purchaser; and all this Matter being found specially, the Defendant had Judgment, because
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because the Ship being legally condemned as Dutch Prize, this Court will give Credit to the Sentence of the Court of Admiralty in France; and take it to be according to Right, and will not examine their proceedings; for it would be very inconvenient if one Kingdom should by peculiar Laws correct the Judgments and Proceedings of the Courts of another Kingdom. This was a Case cited by the Court of Carth. 32.

Dutch. The Court would not suffer it to be argued, but ordered Judgment to be entered for the Plaintiff; for they said that Sentences in Courts of Admiralty ought to bind generally according to Jus Gentium. And if the Merchant in this Case had received Wrong he ought to apply to the Admiralty and Council, this being a Matter of Government, and that the King if he saw Cause would send to his Ambassador Liger in France who would take Care that Right should be done, and that if Right be not done, then the King would grant Letters of Marque and Reprifal.——Raym. 475. S. C. adjudged accordingly.——S. C. cited Arg. Show. 143.——S. C. cited Com. 121.

16. If a Man is taken on suspicion of Piracy, and a Bill is preferred against him, and the Jury find Ignoramus; If the Court of Admiralty will not discharge him, the Court of King's Bench will grant a Habeas Corpus, and if there be good Cause, discharge him or at least take Bail for him. But if the Court fulfills that the Party is guilty, perhaps they may remand him; And therefore in all Cases, where the Admiralty legally have an Original, or a Concurrent Jurisdiction, the Courts above will be well informed before they will meddle. Molloy 70. cap. 4. S. 31.

17. No Prohibition shall be granted where a Libel is not brought into Court; Per Cur. Comb. 136. Trin. 1 W. & M. in B. R. in Case of Corlet v. Hufely.

18. Libel in the Admiralty against the Master and Ship which lay in the River Thames, for needlessly running over another Ship, the Defendant there mov'd for a Prohibition. The Plaintiff informed the Court that the Defendant would not appear so that he could have no Action at Law; And thereupon the Court refus'd to grant a Prohibition, unless the Defendant would appear and give Bail. 2 Salk. 548. pl. 3. Trin. 4 W. & M. in B. R. Wharton v. Pitts.

19. The Ship was libelled against in the Admiralty, for that the Master being taken by a French Privateer, had ransomed the Ship for 300 l. and had paid for the Payment of it, and was carried Prisoner to Dunkirk, and the Money was not paid &c. and Sentence was given in the Admiralty against the Ship; And upon Motion for a Prohibition it was denied by Holt Ch. J. then alone in Court, because the taking and pledge being upon the High Seas, the Ship by the Laws of the Admiralty shall answer for the Redemption of the Master by his own Contrat. Ex relations M'ri Place. Lord Raym. Rep. 22. Mich. 6 W. & M. Wilton v. Bird.

20. One B. by Letters of Marque &c. from the African Company, took a French Ship near Gambia, which he carried into Africa, and the Admiralty there condemned her as Prize, afterwards B. sold the Ship at Land, S. C and B. applied the Money to his own Use, and then coming into England was sued in the Admiralty here for an Account. After Sentence given against him, he Appealed, and mov'd for a Prohibition, but denied; For the Suit here is but on Execution of the first Sentence, by which the Ship was adjudg'd the King's Prize, and the Admiralty having Jurisdiction, their Sentence did bind the Property; and cannot be gain'd till revers'd by Appeal. 1 Salk. 32. pl. 3. Trin. 9 W. 3. B. R. Broom's Cafe.

Per for Holt Ch. J. the Taking being at Sea, that gives the Admiralty a Jurisdiction and the Subsequent Condemnation is to be coupled with it ——4 Mod. 740. S. C. and it was further intoll'd for a Prohibition, that the Property being once vested in the King by the Condemnation of the Ship as Prize, there can be full in the Admiralty here afterwards; For if after such Condemnation the Goods are converted, the King must bring an Action of Tresover; and that this is a plain Action of Tresover upon the Face
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21. A Libel in the Admiralty was for the Capture of a Ship generally without shewing that it was upon the High Sea, but the subsequent Proceedings did shew it. After Sentence in the Admiralty a Prohibition was mov'd for, but the Court was divided. Comb. 462. Mich. 9 W. 3. B. R. Tremoulin v. Sands. Rep. 271.

Shemoulin v. Sands S. C. accordingly, and so on Prohibition was granted — 12 Mod. 143. Tremoulin v. Sands C. according to the Court divided and a Rule for Prohibition was discharged.

22. B. R. will not prohibit all the Mariners or any one of them to sue in the Admiralty for their Wages. For per Cur. there is no Difference where one libels, and where many do. For the Reason why B. R. permits Mariners to libel there for their Wages, is not only because they are Privileg'd to join in Suit there, whereas they ought to fear at Common Law, because they Contracts are sever'd; but also by the Maritime Law, Mariners have Security in the Ship for their Wages, and it is a kind of an implied Hypothecation to them; and therefore B. R. allows Mariners to sue in the Admiralty for their Wages, because the basic Ship there for Security. Lord Raym. Rep. 398. Mich. 10 W. 3. in Case of Hook v. Moreton.

23. On a Question whether a Mate of a Ship might libel in the Admiralty for Mariners Wages, it seemed to the Court that a Mate is but a Mariner and therefore might libel there. Lord Raym. Rep. 397, 398. Mich. 10 W. 3. Hook v. Moreton.

24. Prohibition nisi Causa was granted to Court of Admiralty for Libelling there for Seamen's Wages, it appearing on the Libel that the Service was all in the River Thames. 12 Mod. 220. Mich. 10 W. 3. Bidolph and Bruce.


26. Tho' a Master of a Ship cannot sue in the Admiralty for his Wages, yet possibly if the Master dies in the Voyage and another Man takes upon him the Charge of the Ship upon the Sea, such Case might be different, as in the Case of * Groconfi u. Louthley, where it was held lately in this Court, that if a Ship was hypothecated and Money borrow'd upon her at Amsterdam upon the Voyage, he that lent the Money may sue in the Admiralty for it, and this Court granted a Confection. But in another Case, where Money was borrow'd upon the Ship before the Voyage B. R. granted a Prohibition, and the Parties acquiesced under it. Per Holt Ch. 1. Ld. Raym. Rep. 577, 578. Trin. 12 W. 3. in Case of Clay v. Snegtave.

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Ann. in Case of Jufelin v. Ballam —— S. C. cited Arg. and by Holt Ch. J. 2 Lt. Raym. Rep. 683; Trin. 2 Ann. by the name of Coifart v. Lowlesley —— 6 Mod. 79. S. C. cited by Holt Ch. J. as the Case of Constwicke v. Lowlesley; 1 W. & M. argued and refused by all the Judges. And Powell J. added, That tho' in that Case the Libel laid the Contract to have been after Alum Mare, yet the Court took Notice of it as done at Rotterdam: but being in the Voyage, and occasioned by a Storm at Sea, it was held well enough within their Jurisdiction, and that the Hypothecation of Ships is absolutely necessary for the preservation of Navigation: for the Masters have nothing else to get Credit with, and they are the only Court can give them Remedy; If a Ship in Harbour here in England be Hypothecated, they shall not sue for it there; Master can't at any Time sell, but he may hypothecate in Voyage for Necessaries; But the Libel being against the Ship and Party, the Court said, they would send a Prohibition as to him unless justifed, it is necessary to make him Party towards the Condemnation of the Ship; and so it was done. Comb. 144. Corlet v. Hufley; Trin. 1 W. & M. in B. R. the S. C. and a Consutation awarded by the whole Court; and Dalben J. said, he wondered that this could be made a Question, since it was admitted that the Money was for the Use of the Ship, but if the Master had employed the Money to his own Use, a Prohibition should have gone.

27. Executor of the Master of a Ship libell'd in the Admiralty Lt. Raym. Court for Wages owing to the Textractor by the Owner; but a Prohib. was granted. 1 Salk. 33. pl. 4. Trin. 12 W. 3. B. R. Clay v. Sudgrave.

518. S. C. says in this Case it happen'd, that the Owner was beyond Sea, and the Counsel for the Administrator insisted that no Prohibition might go, unless some sufficient Person would appear and put in their in an Action to be brought against him; because otherwise this Debt might be lost, and the Court thought it reasonable so to do. But afterwards a Rule was made for a Prohibition absolutely without any Condition. —— Lt. Raym. Rep. 578. S. P. moved by Northey, who said, that this had often been done; And Holt Ch. J. confess'd, that the Court had sometimes interposed and procured Bail to be given out, but then it was by Consent, and in Case of the Proprietor himsels; But in regard that in this Case the Plaintiff was a Purchaser without Notice, there was no Reason; and a Prohibition was granted.

28. A Ship put into Boston in New England, and there the Master 6 Mod. 79. took up Necessaries and gave a Bill of Sale by Way of Hypothecation for the S. C. and S. Payment of the Money; and now upon a Suit against the Ship, and the Owners, a Prohibition was granted as to them, because the and the Court held, that the Consent of the Master cannot make the Owners Libel being personally subjed to a Suit; but as to the Suit against the Ship and Hypothecation was denied, because the Master can have no Credit abroad, but the Party, upon a Hypothecation of the Ship, and it is not reasonable to hinder the Court from Admiralty from giving a Remedy where we can give none ourselves. 1 Salk. 35. pl. 9. Trin. 2 Ann. B. R. Johnson v. Shippen.

ten it is necessary to make him a Party towards the Condemnation of the Ship; and so it was done. —— 11 Mod. 50. S. C. accordingly. —— 2 Lt. Raym. 982. S. C. accordingly.

29. The Master took Process out of the Admiralty, against the S. C. Raym. Owners, to arrest the Goods landed at Bristol in causa Salvagii. Before Appearance it was moved for a Prohibition on Affidavits of the Master before Libel, whereby it appear'd that the Goods landed were arrested S. C. accord. in causa Salvagii. But per Cur. Tho' the Goods are now arrested at Bristol, and a Land, yet the Salvage, which was the Cause of the Arrest, might be at Sea, which will appear by the Libel, and therefore a Prohibition was denied. 6 Mod. 11. Trin. 4 Ann. B. R. Trench v. Watfon.

30. It was moved for a Prohibition to a Suit in the Admiralty for Scaumus Wages on a Suggestion that the Contrib. was made by Deed at Land. But upon reading the Suggestion it appear'd to be General, that S.
that the Contract was made at Land. The Suggestion was amended and made Per Scriptum. But the Court held it insufficient; for it might be by Writing and yet not by Deed, and if so it is only a Parol Contract, and the agreement was urged to be Special, yet the Court held, that did not draw it from the Admiralty's Jurisdiction; and the Motion was denied. 2 Ld. Raym. Rep. 1206. Mich. 4 Ann. Benns v. Parre.

31. A Motion was made for a Prohibition to the Court of Admiralty in a Suit there by Seamen for their Wages upon a Suggestion that the Court refused to allow the Defendants Allegation that the Place, upon the arrival at which the Plaintiffs intitled themselves, was not a Port of Delivery; and that they refused to receive the Allegation, unless the Defendant would bring the Money demanded into Court. But the Ch. J. and Powell held, that the Admiralty Court were the Judges of that Matter; and that if they did not do the Defendant right, his only Remedy was by Appeal; but it was no Ground for a Prohibition. The Suit here was for Wages upon the arrival of the Ship at Guinea. 2 Ld. Raym. Rep. 1247. Pach. 5 Ann. Brown v. Benn & al.

32. A Prohibition does not lie to the Admiralty Court before Sentence, tho' otherwife it is as to the Spiritual Court. Holt's Rep. 49. pl. 5. Pach. 5 Ann. Brown's Case.

33. The Defendant and other Seamen libelled in the Admiralty Court for their Wages, and set forth in their Libel, that they went to such a Place, or Coast in the East Indies, and that the Plaintiffs had not paid them their Wages &c. Sir James Montague moved for a Prohibition, for that Court will not by their Way of Proceeding, receive out Answer but upon Oath; by which Means we shall be forced to discover that we traded to the East Indies, and so incur a Penalty inflicted by Act of Parliament which is general, prohibiting all the Subjects of England to trade or Traffick there, except they have a Licence, or are of the East-India Company. Besides, these Mariners have a Contract under Hand and Seal for their Wages, on which they may sue at Law. But the Prohibition was denied; for it is reasonable and just, whether their going thereto was lawful or not, that you should pay them their Wages; there is no unlawful Act figured, and if there be a Contract under Hand and Seal for their Wages, yet the Admiralty may have Jurisdiction thereof as Incidental; but if they judge contrary to our Law, we will prohibit them. But they on the other Side deny the Contract to be as you have alleged. Holt's Rep. 45. pl. 6. Mich. 5 Ann. Gawn v. Grantree.

34. A Prohibition was pray'd, because there was a Suit for Wages and for Expenses in Travelling by Seamen, quoad the Travelling Expenses which were due to them in going by Land from one Ship to another, but belonging to the same Master, Sed non allocatur; for shall the Seamen be turn'd on Shore &c. and to Travel from one Place to another without having their Charges or Wages born &c? Per Powys junior Eyre, and Powys junior. Hill. 12. Ann. Reg. B. R. ex Motione Mr. Whitacre.

35. A Prohibition was pray'd by the Owners of a Ship to stay a Suit in the Admiralty by the Mafter and Seamen against the Freight of a Ship, because the Suit ought to have been against the Ship or the Owners of it, not against the Freight as here. Sed non allocatur, for the Seamen may join, and by their Law they may lay hold of the Ship, and if by their Law they can lay hold of the Freight too, why should be prohibited
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prohibit them? Besides was there ever a Prohibition granted at the Suit of a 3d Person, as here you pray it, but a Prohibition only as to the Matter? Mich. 12 Ann. B. R. Nechanham v. Foliamb. & al.

36. A Master of a Ship sued in the Admiralty for his Wages and laid the Contract to be made infra Fluxum & Refluxum Maris infra Jurisdictionem Curiae Admiralitatis; but a Prohibition was denied to be given, because it was after Sentence. 2 Ld. Raym. Rep. 1452. Mich. 13 Geo. Barber v. Wharton.

(E. 4) Admiralty. Pleadings.

1. Brought Account for Goods against P. in C. B. and thereupon P. sued T. in the Court of the Admiralty, supposing the Goods to have been received in foreign Parts beyond the Seas: and the said T. being committed for refusing to answer upon his Oath to some Interrogatories there propound to him, brought his Habes Corpus, which was return'd thus, Ego William Pope Marecallus supreme Curiae Admiralitatis Angliae Dom. Juflicie ferenifi. Regina notitce in brevi huic Schedule annex. specificat. Certifi, quod infra vocat. T. ante advent. itius brevis capt. fuit & Cultodeis mee committ. ex eo quod dictus T. vinculo Sacramenti coram Judice Admiralitatis Angliae attritus ad respondendi, quibusdam Articulis contra eum in dicta Cur. dat. &c. sub Pena quinque Librarum, &c. contumaciter examen fium fubire recufavit, idcirco, &c. and it was return'd by the Court of Common Pleas; That the Return abovemention'd was insufficient as being too general, because it is not specified for what Cause or Matter T. was examined, so as it might appear that the Interrogatories were of such Things, as were within their Jurisdiction, and that the Party ought by Law to answer upon his Oath, for otherwise he might very well refute. 12. Rep. 103, 104. Hill. 2 Jac. Tomlinson v. Philips.

2. A Libel in the Admiralty laid a Contract about Malaga infra Jurisdictionem Curiae Maritimam, and a Prohibition was granted, because it appear'd that cordingly, the Contract was made in the Island of Malaga, and then the adding Jurisdictionem Maritimam is void. Hob. 213 in pl. 270. cites Mich. 9 Jac. Audley v. Jennings.

3. In an Action upon the Case for suing in the Court of Admiralty, for a Thing done in Corpore Comitatus the Court was Quad per Statutum 13 R. 2. inter alia, it was enacted, that the Jurisdiction of the Admiralty shall extend only to Things done, Super altum Mare; and it does not recite the whole Statute; nor that it was in Parliament; Yet adjudged (Quod in good and affirmed in Error; For it cannot be a Statute unless it be made in Parliament; And No-body is bound to recite any more of a Record than what is sufficient to induce the Action; As in Deed upon a Judgment is sufficient to recite only the Judgment. Jenk. 323. pl. 34. be no Error, and to likewise as to this. cites Flemming v. Yates. the Count being (Inter alia enanditam esse,) and Judgment affirmed. —— Roll Rep. 203. pl. 5. and 210. pl. 51. S.C. but P. does not appear.

4. Trepasso for breaking a Ship and carrying away her Sails. The De. Godh. 583. fendant justified by a Warrant from the Admiralty to arrest the Ship and to keep her life, by Virtue whereof he cutted and carried away the Sails, which is the same Trepasso. It was objected, that the breaking the Sails not ob- serve S. P.
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Ship was not answered, neither was there any Warrant to carry away the Sails; but per Cur. the Plea is good; because the Entry into the Ship by Virtue of the Warrant is in Law a Breaking it, as Cluflan fugit &c. and that he might carry away the Sails; for this is the Manner of their Proceeding, and grounded on Reason, because he could not keep her safely, if the Sails are not carried away. Latch. 188. Mich. 2 Car. Creamer v. Tookley.

5. H. brings an Action of False Imprisonment against G. The Defendant pleads a special Jusfification, that he took and imprisoned the Plaintiff by Virtue of a CommiSSion granted out of the Court of the Admiralty, to examining the taking away of certain Goods which were wreck'd by the Sea. The Plaintiff demurred, because the Defendant has not set forth the Customs of the Admiral Court, that the first Process thereof is a Capias, and so it appears not whether he have proceeded right or not. 2dly, It does not appear that the Matter for which the Commission was granted is Maritime, and other Matter they ought not to meddle withal. The Rule of Court was to shew Cause why Judgment should not be given against the Defendant upon this Plea. Sty. 64. Mich. 23 Car. Hall v. Gunnet.

6. A Libel for a Ship taken by Pirates, and sold at Tunis, but made no Mention that the Ship was taken Super Alton Mare; and though there was contained therein very much to imply it, yet the Court held that to be absolutely necessary to support their Jurisdiction. Vent. 308. Patch. 29 Car. 2. B. R. Anon.

7. Trespass for taking a Ship &c. The Defendant pleads, that he was Captain of a Man of War, and that he took her on the High Seas as a Prize, and carried her to and there prostituted her, and condemned her in the Admiralty as a Prize &c. Upon Demurrer Holt Ch. J. held, that he was Captain was well enough; he need not shew his Commission; but it does not appear how this Ship came to be a Prize, nor that there was any Cause to seize her as such, nor that there was any War; The subsequent going to the Admiralty cannot justify the first illegal Caption. Besides, it is not known whose Court of Admiralty it was, nor before what Judge. Judgment pro Quo by the whole Court. N. B. This was an Interloper seized by the East India Company, and carried to the Indies, and there condemned by the Company's Admiral &c. Holt's Rep. 47. pl. 1. Patch. i W. & M. Beake v. Tyrrell.

For more of the Court of Admiralty, See 4 Inflt. 134. Cap. 22. and Prynn's Animadversions, Amendments of, and additional Records to 4 Inflt. 75. to 134.

Cinque Ports.

(E. 5) The Jurisdiction of the Cinque Ports.

He that is the Constable, or the Lieutenant, or Keeper of the Castles, Gates, or Wickets, of any Port is to keep the same; and to keep the Habitants of the Ports to plaster all their houses, and otherwise than as they ought, according to Law.
Court [of Cinque Ports.]

Warden of the Cinque Ports. The Cinque Ports are, Hastings, Dover, Hants, Romney, and Sandwich, whereunto Wychelsea and Rye (as most of Note) and other Towns be joined. 2 Inst. 556.

The Conable of Dover, and Lord Warden, has two jurisdictions, viz. The Authority of an Admiral, and to hold Plea by Bill concerning the Grant of the Castle &c., according to the Course of the Common Law, and of this Jurisdiction doth our Statute speak. 2 Inst. 559, 557.

2. A brought Debt in London by Writ in C. B. against the Gaoler of the Cinque Ports, because he had J. N. who was condemned to the Plaintiff, in Execution, and suffered him to escape in London. The Defendant pleaded Nulli tii Record. The Justices write to the Conable of Dover, and be over to the Barons of the Cinque Ports. Br. Cinque Ports &c. pl. 26. cites 30 H. 6 6. And Brooke says, Et sic vide that the Justices of C. B. may write to the Conable of Dover for a Record of the Cinque Ports.

3. Recovery in Bank of Lands in the Cinque Ports is good as it is in Ancient Demesne, or of Lands where Conunance of Pleas is; and yet in other Actions of the same Land again at another Time, the Tenant may plead that it is in the Cinque Ports in the one Cause, and the Lord may demand Conunance in the other Cause, and to the Nature of the Land by this Recovery is not changed. So it seems of Recovery in Bank of Land in London. Br. Cinque Ports, pl. 24. cites 36 H. 6 33.

4. It was said, that the Cinque Ports are not by Grant of the King, nor by Precepti an, but by an Act in an ancient Parliament. Quere. Br. Cinque Ports, pl. 23. cites 12 E. 4, 11, 12.

5. In Treptows it was said Arguendo, that Recovery in C. B. of Land which lies in Chester, Durham and Lancaster, \
suit; Contra in the Cinque Ports; Quere & itude diversitatem. Br. Cinque Ports, pl. 24 cites 9 H. 7, 12.

6. The Conable of Dover, who is Warden of the Cinque Ports, shall not hold Plea of a Thing which arises in the County out of the Cinque Ports. Br. Jurisdiction, pl. 59. cites F. N. B.

7. The Conable of Dover, who is Warden of the Cinque Ports, cannot hold Plea of a Thing which doth belong to be determined in the Country, if it be not of a Thing concerning the keeping of the Castle of Dover; and if it does, the Party shall have a Writ directed unto him to suit, and upon the same an Alias, and a Pluries, and an Attachment. F. N. B. 240. (B)

8. If the Conable holds Plea of any Thing of which he ought not for to hold Plea, the Party shall have his Action upon the Statutes, although he does not sue forth any Writ before directed to the Conable. F. N. B. 240 (C)

9. The Defendant was committed because he would not answer, the Land lying in the Cinque Ports. Toth. 215. cites 40 Eliz. Langham v. Beachampe.

10. Appeal of Murder was brought in B. R. of a Murder done upon Yelv. 12, the Plaintiff's Brother at S. in the County of K. It was objected that it did not lie, because S. was within the Cinque Ports where the King's judg'd ill; Writ does not run, and that the Cinque Ports nor any Part of them are for within the County of Kent. All the Justices delivered their Opinions the Cinque Ports severally that the Plea was not good for the Matter; because this Action of Appeal is higher than an Action Real or Personal, and in Liberties, some Sort concerns the Queen; And in such Cales as concern the Queen yet the Plea is no Plea to say that it is within the Cinque Ports, As in a Quare fion of the Impediment. Cro. E. 910, 911. Mich. 44 & 45 Eliz. B. R. Crisp v. Verrall.

Benefit of the Inhabitants and not to their Prejudice. A 2d Reason was, because the Defendant having done the Murder within the Cinque Ports and flying out of the Cinque Ports, if the Pleading here should be good, there would be a Failure of Justice: For those of the Cinque Ports cannot try him, because he is not there. Popham said, if the Defendant had shown that at the Time of the Murder
11. Of such Things whereof the Constable of Dover and Lord Warden hath Jurisdiction, he is the immediate Officer to the Court, and as it has been laid, Writs shall be directed to him as in all real Actions &c. for Land within the Cinque Ports. 2 Inst. 557.

12. They of the Cinque Ports have great Liberties and Privileges, in respect of their necessary Attendance in the Ports for the Defence and Safety of the Realm. 2 Inst. 557.

13. If a Process be brought against one for Land within the Cinque Ports and he appears and pleads to it, and Judgment be given against him in C. B. this Judgment shall bind him for ever; for the Land is not exempted out of the County, and the Tenant may waive the Benefit of his Privilege. 2 Inst. 557.

14. The Cinque Ports are not exempted out of the County for divers Causes. 16. The Constable of Dover has no general Jurisdiction within the Cinque Ports, but it is limited; For Example, if a Man be murdered in any of the Cinque Ports the Wife shall have an Appeal against the Murderer directed to the Sheriff of the County, and he shall execute the Writs within the Cinque Ports; for the Constable hath no Jurisdiction to hold Plea thereof as it was resolved Trin. 42 Eliz. in an Appeal brought by Wace v. Baynes, for the Murder of her Husband at F. in the County of K. 2 Inst. 557.

15. And so it is if he be in Cuffodia Marecelli, the Appeal may be brought by Bill against him for Murder in any of the Cinque Ports. 2 Inst. 557.

16. Also if the Constable of Dover hold Plea of a Foreign Plea, contrary to the Purport of this Statute, an Action upon the Statute doth lie against him, and the Writ may be directed to the Sheriff of the County, and he may serve it within the Cinque Ports. 2 Inst. 557.

17. Prohibition was mov'd for to the Court of Dover, for that they hold Plea there by Plain, in Nature of a Writ of Partition between Tenants in Common, but they having proceeded to Judgment and Execution, all the Court held it too late for a Prohibition, inasmuch as there is no Perfon to be prohibited, and Possessions never were remov'd or disturbed by Prohibitions. Sid. 105. pl. 24. Mich. 15 Car. 2. B. R. Hall v. Norwood.

18. They may hold Plea of Franktenement in the Cinque Ports; for otherwise there will be a Failure of Justice. Per Keeling J. Sid. 166. in pl. 24. Mich. 15 Car. 2. B. R.
Court [of Cinque Ports.]

19. The great use of their Chancery there is to be relieved against Errors in Proceedings at Law, the which Errors they use to induce the Bill; And the Reason of this is, because the Writ of Error of those Judgments lies only at Sheppy, the which Place it if it be admitted to be known, yet the Lord Admiral has not held Court there for a long Time. Sid. 355. in pl. 6. Hill. 19 & 20 Car. 2. B. R. at the End of the Case of Ting v. Merriwether in a Note there, says, sic dictum fuit. And Twifden J. said, that Writ of Error or Certiorari lies to the Court of Sheppy, though not from that Court to the Inferior Courts there, and that to the Books which speak of Error to the Cinque Ports are to be understood, Quod Nota.

20. A Certiorari was sent to W. for a Record that they had made, whereby they had taxed the Foreign; and they return that they had made Taxes for the Foreign for the Preservation of the Corporation, and to raise Ammunition to provide against Invasion of Foreigners; and proved that W. was one of the Cinque Ports, ubi breve Domini Regis non currit. Per Hale Ch. 1. you ought to sit forth that there was some Jurisdiction to which the Party might Appeal if he were injured, otherwise the Corporation will be Party and Judges and all, and they will tax the Lands of the Foreign to what Value they please. Freem. Rep. 99. pl. 111. Pauch. 1673. Anon.

21. Upon an Appeal from a Sentence in the Admiralty of the Cinque Ports, the Lord Warden granted a Commission of Delegates, and upon a Demurrer to a Bill for that the Plaintiff did not set forth that the Lord Warden had Authority to grant such Commission, the Court made no Order as to that Matter, but could not relieve the Plaintiff, because the Appeal was not within 15 Days after the Sentence. Fin. R. 437. Mich. 31 Car. 2. Denew v. Stock.

(E. 6) In what Cases the Writ of the King runs thereto. And of Returns thereto.

1. Certificate upon a Statute Merchant the Sheriff return'd Quod non eft inventus &c. Thorp pray'd Writ to the Constable of Dover and to the Wardens of the Cinque Ports, in such as the Lands are there, and the Sheriff may make Execution there, and for this Cause the Writ was granted him. Br. Cinque Ports, pl. 6. cites 21 E. 3. 49.

2. Debt by H. and H. against T. as Her; who pleaded nothing by Defences. The Plaintiff replied Affes at such a Place within the Cinque Ports. And so it was found by a Jury of the County adjoining, and Judgment given of the Moetey of his Lands, as well those by Defect as by Purchase; And a Writ awarded to the Constable of Dover, to extend the Lands within the Cinque Ports. But it was said, that first the Plaintiff ought to have a Certiorari to send the Record into the Chancery, and from thence by Mistreus to the Constable of Dover. 3 Le. 5. pl. 7. 3 & 4 Ph. & M. Heck v. Tirrell.

3. A Contract was made between A. and B. in London, afterwards A. left the City and dwelt within the Cinque Ports; and being afterwards implicated upon this Contract be claimed his Privilege of the Cinque Ports, and cited 12 E. 4. that those of the Cinque Ports shall not be had elsewhere than within the Cinque Ports. Suit J. said, that this was true for any Matter arising within their Jurisdiction; But where a Man gives a Bond of 100l. or 1000l. and then goes and dwells in the Cinque Ports, perhaps the Obligee might lose his Debt; And adjudge'd he shall not
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not have his Privilege. Godb. 90. pl. 102. Mich. 29 Eliz. B. R. Anon.

1. If a Stranger does Trespass &c. in the Cinque Ports &c. the Suit shall be by Writ, let the Trespas be dispendable. 2 H. 8. 557.

2. The Privilege extends to certain particular Towns whereof the King's Courts cannot judicially take Notice. 2 H. 8. 557.

3. B. being imprisoned by the Lord Warden of the 5 Ports, a Habeeas Corpus was awarded to the Warden, who refusing to obey it, then an alias Habeeas Corpus was with a Penalty, the Warden pretending that the King's Writ did not run there. Resolved by all the Judges that the King's Writ did run there, and especially this Writ which is a Prerogative Writ, which concerns the King's Justice to be administered to his Subjects; for the King ought to have an Account why any of his Subjects is imprisoned, and no Answer can satisfy it, but to return the Cause portion habeas corpus, wherefore the Court all held that another Habeas Corpus should be awarded under a great Penalty returnable at another Day. Cro. J. 543. pl. 3. Mich. 17 Jac. B. R. Bourn's Cafe.

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6. The imprisonment of the Lord Warden of the 5 Ports, a Habeeas Corpus was awarded to the Warden, who refusing to obey it, then an alias Habeeas Corpus was with a Penalty, the Warden pretending that the King's Writ did not run there. Resolved by all the Judges that the King's Writ did run there, and especially this Writ which is a Prerogative Writ, which concerns the King's Justice to be administered to his Subjects; for the King ought to have an Account why any of his Subjects is imprisoned, and no Answer can satisfy it, but to return the Cause portion habeas corpus, wherefore the Court all held that another Habeas Corpus should be awarded under a great Penalty returnable at another Day. Cro. J. 543. pl. 3. Mich. 17 Jac. B. R. Bourn's Cafe.

7. Certioraries to remove an Indictment taken in the Cinque Ports should be immediately directed to the Justices before whom the Indictment was taken, because they hold Plea of it as Justice of Peace, by Virtue of their Commissions, and not by their ancient Charters or Presecription. Cro. C 253. 254. at the End of pl. 3. cites Mich. 8 Car. Anon.

8. Prohibition was moved for to the Cinque Ports, for that they held Plea there, partly by the Chancery, and partly the Admiralty, in the same Cause, (viz.) an Admiralty Proceed upon a Chancery Bill; it was agreed that they have those distinct Courts there, but it was denied that they may so confoundedly hold Plea. 21st. It was objected, that the Defendant had appeared, and so had owned the Jurisdiction, and the Cause was ready for Sentence; but per Cur. since a Prohibition lies to the Cinque Ports, this Court shall not be ousted of Jurisdiction by any owning of the Party. Sid. 355. pl. 6. Hill. 19 & 20 Car. 2. B. R. Ting v. Merriwether.

9. A Quo Minus lies in the Cinque Ports as well as within a County Palatine, or in Wales, and rather in the Cinque Ports than in a County Palatine, because a County Palatine has Jurisdiction within itself, and it is usual to grant Prohibitions into County Palatines; and so it was done in Terni to the County Palatine of L. upon a Suit commenced here by Quo Minus, and afterwards a Bill preferred there to stay it; and so it would be if a Suit were commenced in the Admiralty, there against Law a Prohibition would lie, and the King's Debtor has the same Privilege that the King has, to sue for his Debt where he will; it would else be very inconvenient, if a private Jurisdiction might do what they would, and there would be no remedy elsewhere. Hard. 475. Hill. 19 & 20 Car. 2. in Scacc. Sir John Williams v. Litter.

10. An
10. An Habeas Corpus ad faciendum & recipiendum will not lie to the Cinque Ports, but an Habeas Corpus ad faciendum & subjiciendum lies, and such was returned this Term. Sid. 431. pl. 21. Mich. 21 Car. 2. B. R. Anon.

11. The Defendant was in Execution at Dover for 100l. recovered against him at the Court of D. The Plaintiff brings a Quid Minus against him in the Exchequer for a Debt of 100l. and finds out an Habeas Corpus to the Contable of D. to bring the Body of the Defendant. The Contable upon the Return set forth the Privilege of D. being a Cinque Port Town, but that Return was disfallowed of, because there is no Place privileged in this kind, but that the King may send his Writ to have an Account of his Subjects, though he be privileged, as to Actions between Party and Party. It was prayed by Sir Edward Thurland, the Duke of York's Attorney, that the Prisoner might be remanded, because those Debts which were recovered against him at D. might otherwise be lost. But it was denied by the Court; for when he is committed here he is charged as well with the Judgment that he was in Execution for at D. as for those that are recovered here, and if the Warden discharges them before the Satisfaction of those Debts, he is liable to an Action. Freem. Rep. 12. pl. 10. Trin. 1671. Alder v. Puifey.

12. If a Man be outlawed, his Lands, within the Liberties of the Cinque Ports, may be seized into the King's Hands, and may also be extended upon Judgments; per Windham. Freem. Rep. 12. pl. 10. Trin. 1671. Alder v. Puifey.


14. Certiorari to the Mayor, Jurats and Commonalty of Winchelsea, to remove an Order by them made, who return, that Time out of Mind there have been in Kent 5 ancient Towns, (viz.) Haltings, Sandwich, Dover, Runney, and Hithe, always called the Cinque Ports; and in Sufleux 2 ancient Towns, called Rye and Winchelsea, which are Members of the said Cinque Ports; that the said Town of Winchelsea hath been Time out of Mind incorporated by the Name of Mayor, Jurats, and Commonality of Winchelsea; that all the said Cinque Ports, with their Members, have been, Time out of Mind, Places for ordering the Preservation of Shipping, and that by reason of their Situation &c. have always, and ought to keep Beacons and Watch-Houses &c. for the better Maintenance thereof; that the Town of W. in their common Hall, used to make Taxes and Rates on every Occupier &c. of House or Land within their Town or Liberty, which said Privileges were confirmed by Magna Charta; that 1 May 32 Car. 2. they made a Tax of 6d. per Pound for maintaining the said Beacons and Watch-Houses &c. The Objection was, that this Order did not set forth that the Beacons and Watch-Houses were in Decay, or out of Repair, and fo the Rate unnecessary; but resolved to be well enough; for it might be dangerous to stay till the Beacons were in Decay, for then there would be none till repaired, which would be dangerous for the Place, and it is to be presumed, that the Inhabitants would not charge themselves unnecessarily, and they do all concur in the Taxation; and fo the Order was confirmed. Raym. 448. Pach. 33 Car. 2. B. R. Winchelsea Town's Cafe.
(E. 7) Pleadings. And of Errors in Judgments there.

1. A C C O U N T against one as Bailiff of his Manor, and Receiver of his Money in the Vill of P. and counted as Bailiff in P. and Receiver in the Cattle of P. where 9. is one of the Cinque Ports, and the Cattle is Guildable, and there per Belk. clearly no Writ of the King lies in the Cinque Ports upon this of Franktenement, or not, but shall be pleaded there by Bill. Parle said, P. was lately in the Hands of the King, and the Plaintiff has it in Farm of the King, so by the Unity of Possession the said P. is not now of the Cinque Ports; and after by Award the Defendant was compelled to answer to this Part that was Guildable, and to the other Part he took nothing by his Writ, and that the Franchise is not extinct by the Seilin of the King, and especially where it comes to the King as Echecetor as Parcel of the Honour of England; Quod Nota; that he who pleads to the Jurisdiction by the Cinque Ports shall conclude, Judgment if the Court will take Conscience. Br. Cinque Ports, pl. 3. cites 49 E. 3. 24.

2. Tredpats in D. The Defendant said, that D. is within the Cinque Ports where the Writ of the King does not run; Judgment of the Writ; and to see that he did not say, Judgment if the Court will take Conscience, and admitted. Br. Cinque Ports, pl. 4. cites 50 E. 3. 5.

3. Dictione of Charters; Rolf defended Tort and Force and no more, and said, that the Land comprised in the Charters is within the Cinque Ports; Judgment if the Court will take Conscience. Martin said, You ought to say, that the Place where he made the Baitment, and where the Writ is brought, is within the Cinque Ports, where the Writ of the King does not run; and after Rolf made full Defence and imparl'd. Br. Cinque Ports, pl. 7. cites 7 H. 6. 22.


5. If Erroneous Judgment be given in the Cinque Ports, this shall be reversed by Writ of Error directed Custodi quinque Portuum. Brooke makes a Quære if it shall not be to the Constable of Dover, that he shall Write to the Cinque Ports to certify the Record, and so to reverse it. Br. Cinque Ports pl. 25. cites Lib. Dividionum Curiarum.

6. An Erroneous Judgment given in Cinque Ports shall be examined before the Warden of the Cinque Ports at Shepway in Kent, and if the Mayor and Jurats there have given an Erroneous Judgment, they shall be fined. Jenk. 71. pl. 34.

7. The Mayor and Jurats of the several Cinque Ports, have Power to hold Pleas &c. and upon their Judgment no Writ of Error out of the Chancellor does he returnable in B. R. nor Writ of false Judgment returnable into C. B. but by the Franchise and the Court of the Cinque Ports, such an Erroneous Judgment shall be by Bill in the nature of a Writ of Error, examined coram Domino Custode &c. Gardiano quinque Portuum apud Curiam de Shipway. And if the Judgment be Erroneous it shall be reversed by the Warden of the Cinque Ports, and the Mayor and Jurats shall be fined, and the Mayor removed from his Place, and yet the Court is a Court of Record. But 29 E. 1. extends only to Courts holden before the Constable in that Act mentioned, and not to the Court holden before the Mayor and Jurats. 2 Inst. 557, 558.

8. There
8. There was great Contention whether a Writ of Error to reverse a Judgment in any Vill of the Cinque Ports, would lie in B. R. or a Writ of False Judgment in C. B. but there being no such Writ in the Register nor any Precedent in any Court found, Lord C. Bromley by the Opinion of the Chief Justices of both Benches denied to grant one. And it was said that by the Custom and Usage of the Cinque Ports, such False Judgment shall be examined before the Lord Warden of the Cinque Ports, at the Court at Sea-way, and if it be false it shall be revok'd; And that the Mayor and Jurats who gave the Judgment shall be fine, and the Mayor deposed from his Office. D. 376 a. pl. 23. Pauch. 23 Eliz. Anon.

at tit. Cinque Ports, Br. Cinque Ports, pl. 25, cites the same Book, but says Quere, if it shall not be to the Consistable of Dover that he shall write to the Cinque Ports to certify the Record and so to reverse it.

9. Fijtement of Lands in A. the Defendant pleaded that A. prediff Ubi Tenementa jacent, lay within the Cinque Ports; the Plaintiff replied that it es within the County of Sussex, abique loco that A. is within the Cinque Ports; It was said that the Traverie was not good, for that Part of A. (as the Truth was) lay within the Cinque Ports. The Court held the Replication and Traverie both good, for by the Defendants Plea it shall be intended that all A. is within the Cinque Ports, and the ubi Tenementa jacent are idle Words, and it was on the Defendants part to have shewed, that part of A. lay within and part without the Cinque Ports, which because he has not shewed it, the Plaintiff has advantage, by Traverling that A. is not within the Cinque Ports. Cro. J. 692. D. 5. Mich. 22 Jac. B. R. Aulten v. Royden.

Win. 113. Aulten v. Beadle S. C. refold'd. Tenementa jacent, lay within the Cinque Ports; the Plaintiff replied that it es within the County of Sussex, abique loco that A. is within the Cinque Ports.

10. Trepass; the Defendant pleaded that it was committed within the Liberty of the Cinque Ports, and leeth forth the Privilege of the Cinque Ports. The Plaintiff demurs, because he does not say that he was an Inhabitant there; and Judgment against the Defendant, for if this Plea should be admitted to be good, then Trepasses committed within the Cinque Ports by one that lived out, or would presently absent himself, would be unpunishable; and the Reason of the Privilege of the Cinque Ports is, that the Inhabitants there, who are to defend the Port-Towns should not be drawn away; which does not extend to Strangers. Freem. Rep. 12, 13. pl. 11. Trim. 1671. C. B. Thomson v. Fokes.


(F.) Courts of the Forest.

Justice Seat.

In what Places it may be held.

1. A Justice Seat may be summoned to be held within the Forest, and after the Ch. J. in Eyre upon his coming there at the time appointed (*) may adjourn it to any Place within the County, though it be out of the Forest. Trim. 11 Cat. 3 R. betwten
tween the King and Balth Brook and Master George Myne, adjudged upon demurrer, where the Case was, that a Sc.i. la. was brought against them to shew Cau/e why Erection should not be granted against them, for several Fines adjudged against them at the Justice-Seat for the Forest of Dean, which was summoned within the Forest, and from thence adjourned to the Castle of Gloucester, and there held, and they there indicted and fined; and the Defendants pleaded that the said Castle of Gloucester, where it was held, was not of the Forest; and upon this the Attorney-General demurred. But after the Defendants submitted themselves to the King, and therefore would nut any further defend: but upon Over of the Record the Court inclined, that it was well held at Gloucester, and therefore gave Judgment for the King and Attorney; and the Court said, there were many Precedents accordingly.

1. If a Petition be endorsed, that the Chancery shall send a Verdict returned there B. R. where the Justices shall do Right, the Verdict it fell ought to be sent, and not a Tenor only. * 22 C. 3. 5. 38 C. 3. B. R. Rot. 16. It is shewed to the Parliament, that a Baron was held of a Baron of a common Person, that after the Baron was forfeited to the King, and he granted it to another to hold of himself per Seruitum militare, ubi per legem debere esset, Tenendum de capitaliis Dominii feudalis, &c. Et petit, that the said Charter be amended in the said Clause; upon which was a Plea in Chancery, and found by Ecclesiar, &c. per Juratam here to be true. Et quia Judicium super dextrae prædito, & Ecretum Judicis pertinent ad Officium Cancellarii facienda, idem mutatis in Cancellariam, & datis est dies ulterius, &c.

2. If a Record be once come into B. R. this can never be remanded. 22 C. 3. 6. b. * 29 Mart. 43. per Shadr. * 40 Mart. 29. 19 Mart. 4.

* Br. Record. pl. 44. cites S. C. & P. by Shard; and Brooke says, Quod Noto, whether it be by Writ or Error or otherwise as it seems, quod non negotiur.

† Br. Record pl. 46 cites S. C. & S. P. and therefore in Case of Writ of Error of Fines the Tenor only shall be removed; and not the Fine it self; For in Case of a Fine if the Judgment shall be affirmed there is no Draughtsman in B. R. to ingraft the Fine. — Ibid. pl. 79 cites. Mr. N. N., that in B. R. are divers Precedents that in Writ of Error on a Fine, the Record it self shall be certified so that no more Proclamations shall be made, and if they are reversed this makes an End of the whole, but if they are affirmed then the Record shall be sent into C. B. by Mitigamus to be proclaimed.
ed and ingrossed, Quod Nona; For if the Transcript only be remov'd they may proceed in C. B. notwithstanding; Quod Nona. — When a Record comes into B. R. it shall never be remov'd but in the same Term in which it is found; and if it be remov'd in one B. R. it can never be sent down, or remov'd either in the Term it is found or in any other, and that is plain by the Act of 6 H. 8. cap. 6. which enables this Court to do it in that Chancery of Felony, which otherwise they could not have done; Per Holt Ch. J. 1 Salk. 522. pl. 12. Trin. 3 Ann. B. R. in Chancery of Farlekerly v. Baido. — 6 Mod. 177, 178. S. C. & S. P. accordingly.

3. If it be found by Inquisition in Chancery, that a Copyhold was granted to J. S. in Fee in Trust for J. D. who was an Alien Amy, for which the Copyhold was feised into the King's Hands: upon which Charge of the Inquisition, J. S. comes and traverses the S. C. re-Trust, and pray's to be restored to the Possession, and if he is joined in Chancery upon the Trust, and thereupon the Record is delivered over by the hands of the Commissioners of the Great Seal to B. R., to be tried, and there a Verdict is found for the King, and after moved in Arreit of Judgment that there is not any Caufe for the King's Gold for the same. If the King, because the whole Record is virtually in the King's Chests here, and they should be bound for the King's Bench is not only to try the Issue, but ought to give the same up to the Judgment upon the Record, which the Chancery ought to have given, for the Verdict, so that Judgment should be given there; though it was obviou's, that the Record reman'd in Marcus the Chancery, as this Record transmitted mentions; but because this Record shall never be reman'd in Chancery, but Judgment is to be given here, the Court here shall give Judgment according to the Law upon the Record here, according to the Case upon the Record made, between the King and the Party; and therefore the Judgment ought here to be given against the King, and that J. S. shall be remov'd to his Possession. P. 24 Car. 2 R. between the King and Holland, adjudged; Inquit. Tr. 21 Car. Rot. 20.

Chancery could proceed upon the Inquisition, now that the same was sent hither upon the Travers, but that the Judgment in B. R. would utterly subvert the Inquisition; and Judgment was given in the Manus Domini Reip. amovendor. — Sty. 26. C. argued fed admiratur. Ibid. 46. S. C. argued fed admiratur. Ibid. 75. 76. S. C. the Court ordered Caufe to be shewn the Tuesday following why the Party should not be remov'd to his Lands. Ibid 84. S. C. a Motion was for an Acquiesc. Manum to the Chancery, that the Party might have his Land out of the King's hand; But the Court said that the Judgment is to be given here, if there be Caufe for the King, and if not then against him, and you ought not to go to the Chancery, and that all they can say is that the King shall not have Judgment. Ibid. 90. S. C. & S. P. and that the Chancery cannot do any thing in the Caufe; For they have Nothing before them, and Reformation ordered Nich Caufe. Ibid. 94. S. C. & S. P. accordingly by Roll and Bacon. Sed Cur. adfirt. vult.

4. Of a thing which touches the King mediate or immediately, they shall receive Appeal in B. R. by Bill, by which Appeal of a Cap settle was there Profecured, and well, quod Nona. Br. Bille. pl. 18. cites 17. 5th.

5. Seire facias upon Recognizance in Chancery brought in Chancery, the Defendant pleaded a Releif, the Plaintiff denied it and so to Issue. And the Record end all the Aitton, and Proceed was sent into B. R. to try and there the Plaintiff was Non-suited and brought a new Seire facias there, and well; for there was the Record after the fending it out of Chancery, and not in Chancery, and conte of the Chancery had sent only the tenor of the Record. Note a Diversity; and so Note that the Chancery shall try nothing by Jury, but the King's Bench, and it is said elsewhere that the Chancery shall make the Venire facias and shall award it to the Sheriff

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returnable into B. R. Seflicit coram nobis ubriuenque tunc fuerimus in Anglia, for all is the King’s. Br. Jurisdiction, pl. 48. cites 24 E. 3. 45.

6. Note, it was agreed that in B. R. the Record is Placita Coram Rege apud talem locum, and therefore when a Man pleads a Record of this Court, he shall shew where the King’s Bench then was, because the Day is palled, so that it is certainly known, but the Proceeds there is Ubriuenque tunc fuerimus in Anglia. Br. Pleadings, pl. 10. cites 34 H. 6. 27.

7. If an Indictment of Forccble Entry be removed into B. R. the Justices of B. R. shall award Restitution, and yet the Statute of 8 H. 6. cap. 9. speaks only of Justices of Peace, but the Reason is because they have sovereign and supreme Authority in such Cases; Per Cur. 9 Rep. 118. b. cites 7 E. 4. 18. a. and 4 H. 7. 18. and says, that according to this Resolution the Justices of B. R. write, according to the said Act, to the Justices of Gaol Delivery in the City of London, before whom the Principal was who certify the Record &c.

8. Murderer was committed to the Fleet by the Justices of B. R. because the Marshal had married the Sister of the Officer, and it was said, that they might have committed him to Newgate. Per Cap. the Fleet is not for Felony nor Treason. But per Fairfax, such a President was in the Time of June. And the same Law where the Marshal is appeal’d of Felony. And the Fleet is for the Chancery, Common Pleas, Exchequer, and to those Courts the Warden is Officer, and to the Star Chamber, and to the Palace; and per Cap. he may be committed to any Sheriff of England, because all those are Officers immediately to this Court, quare inde of the Sheriff of another County where the Offence was not done. But it seems that if the Justices by their Discretion command it, it ought to be obey’d. But per Fairfax, the Sheriff of Middlesex is not Officer to this Court, but of Things done within the same County, and the same seems to be of other Sheriffs. Br. Imprisonment, pl. 20. cites 21 E. 4. 71.

9. If the Justices of B. R. perceive, that any Indictment is to be removed into that Court by Practice, or for Delay, the Court may refuse to receive the same before it is certified of Record, and remand the same for Justice to be done. 4 Inft. 74. cap. 7.

10. A Scire Facias was fined in Chancery upon a Recognizance, where the Parties were at Issue whereupon all the Record was removed into B. R. where after Trial Judgment was affirmed by the Ven. Fac. and the Parties would re-plead. And by Coke Ch. J it only a Tenor of the Record had been removed into B. R. the Repleader might be in Chancery, but in this Case the whole Record is removed thither, and when this Court is possess’d of a Record, it shall never be remanded into Chancery; For the Chancery is the younger Brother, and the Books are, that a Writ of Error lies here on a Judgment in Chancery, and therefore it seems that the Repleader ought not to be here, and ruled accordingly. Roll. Rep. 287. pl. 5. Hill. 13 Jac. B. R. Brittol (Bp.) v. Proctor.

11. Where Error is brought upon a Judgment given in Ireland, the Record remains in Ireland, and B. R. has only the Transcriptio; but otherwise it is upon Error brought in B. R. of a Judgment in C. B. For there the Record itself is sent into C. B. and they write Transmittitur in the Margin; Per Doderidge J. 2 Roll. Rep. 274. Hill. 20 Jac. B. R. in Leonard’s Cafe.

12. An Indictment of High Treason found in B. R. may be sent down into the Country to be tried there by Nisi Prius at the next Assizes; Per Dolben and Raymond J. (Abseute the Ch. J.) and that 5r is 4 Inft. 73. and the Statute of 14 H. 6. cap. 1. gives Power to the Judges of Nisi
Nisi Prius, to give Judgment and Award Execution in Cases of Felony and Muder, which cannot be but where such Offences are tried by Nisi Prius; For Quaetenus Judges of Nisi Prius, they cannot give Judgment in Cases not legally coming before them; as for Felony and Muder, Indictments removed to B. R. concerning these Offences may be sent down to be determined by Virtue of 6 H. 8. cap. 6. but that Statute extends not to Tresou. Raym. 357. Pach. 32 Car. 2. B. R.

Sir Miles Stapleton’s Case.

13. It was moved for a peremptory Mandamus after a Verdict in C. B. in an Action on the Case for a Sable Return to a Mandamus, to inroll a Chapel upon the Act for Liberty of Conscience; to which it was returned, that this was a conferred Chapel of Ease for the Necessary Use of the Inhabitants of such a Parish; but Holt Ch. J. said, that they could not take Notice here of a Verdict in C. B. and the Verdict ought to be, as he thought, here in B. R. and therefore he did grant the Motion. Skin. 670. pl. 8. Mich. 8 W. 3. B. R. the King v. Green.

(H) The Court of King’s Bench. In General.

1. HILL. 2 Hen. 5. 23. R. Rot. 65. Pracation that none should carry Arms within the Court exceptis Domino vet Sllicie secundum coram utrinque Gradum et Statuum, iolum Gladium.

2. Hen. 3. Fice in Person with the Justices in Banco Regis, at the Arraignment of Peter de Riballus. Specd. 521. personally for there. Co. Litt. 71. b.

3. At another Time the same King came there in Person at the Arraignment of Hubert Earl of Kent. Specd. 524.

4. HILL. 19 Ed. 3. 23. R. Rot. 35: The King granted the Custody of the Seal to seal Writs de B. R. to Matthew Conaccein for 16 Years, in satisfactionem decem millia librarum domino Regi pra manibus folutarum; and a Seal delivered to the Chief Justice by the Chancellor to seal the said Writs, who delivered one Part to the Deputy of Harebell, and reserved the other Part to himself.

5. Otto de Holland was brought to the Bar coram Regis assidueniibus Cancellarius, Chelmerino, Conitus Arundelius et Huntingdon, & aliis & Judiciariae de Banco. His Offence was, That he fulfilled the Count de Ewe, Marshal of France, to go armed to Calice against the Command of the King, the said Count being a Prisoner of the King, and committed to the Custody of the said Otto, and Otto non potuit dedere, stat committitae Barchallus.

6. 23 Ed. 1. 8. 3. cap. 5. The Justices of his Bench must follow the King.

7. In Ed. 1. time the Style of the King’s Bench was Coram Regis & Convito, and the Writ de Ideota Examiningo, commands the Ideota to be brought Coram Nobis & Convito nostro et capi Writs; and anctently Bills were to directed in Chancery, but since have been altered. Per Hale Ch. J. Vent. 158. Mich. 23 Car. 2. B. R. at the End of the Case of Friher v. Petten.


(1) The
(I) The General Jurisdiction of the Court

of B. R.

There is no precedent of a Writ of Redemptions for a Constable, nor of a Survey for the Hundred, in the Court of King's Bench. If A. be elected Constable in a Leet, and before he is sworn the Justices of Peace at a Sessions discharge him, because he is a Member of the Body, and elect and swear B. to be Constable there; A Writ in this Case may be granted out of the King's Bench to the Justices to discharge B. and to swear A, because the proper place to elect a Constable is the Leet, and this was no Cause to discharge his Election.hill. 10 Car. B. R. Heron's Cafe, who was elected in the Leet of the Bishop of Winton in Waltham Wodebeck in Comitatuu Southampton per Curium, such a Writ granted. 6 Car. B. R. Regis. Annull'd Cafe in Comitatuu Dorset'; like Writ also granted.

2. If A. a Constable of a Hundred serves in the Office for one Year, and at the End of the Year, the Court-Leet for the Hundred, according to Custom (*), swear B. to be Constable, and the Steward and Jury refuse to swear B, but continue A. for another Year; A Writ may be awarded out B. R. directed to the Steward to swear B. and if there be good Cause to refuse him, this may be returned to the Court. P. 14 Car. B. R. to be done in the Cafe of one Braine, the Constable of the Hundred of Kennham in Comitatuu Somerset.

If a Man by the Custom of a Town is to serve in the Office of Titchingham for one Year in his turn by the Custom of the Town, and he serves in the Office for two Years, and after the Honorate there continue him for a third Year; A Writ may be awarded out of this Court to discharge him, and to elect another. 6th. 15 Car. B. R. Bradwell's Cafe, per Curiam, such Writ granted to the Town of Perton in Comitatuu Devonia.

B. R. is Eyre and more than Eyre, for if Commission of Eyre sit in one County, and the King's Bench comes there, the Eyre shall cease. Br. Jurisdiction, pl. 66. cites 27 Aff. 1.

5. If Writ of Error be filed upon Formeden, and Judgment given in it the Plea shall be held on in B. R. notwithstanding the Statute good Com.
Courtof King's Bench.

Communia Placita non sequantur Curiam nostrum &c. Br. Jurisdiction
pl 78 cites 21 E. 4. 81.

6. Justices of the King's Bench, during the Time that they sit in the
County, may Command the Justices of the Peace that they do not Arrest
C. But it they pro-
ceed before such Command comes, then well.

7. Note that the Justices of B. R. are Justices of Oyer and Terminer
of Felony Treasons &c. by the Common Law, and Custum of the Realm
as was agreed, Hill. 3. M. 1. in the Cale of Ben. Smith upon the Sta-
ture of 2 E. 6. c. 24. of Felony in one County, and Accessory in an-

8. Albeit when the Term begins, all Commissioners of Oyer and Terminer
in the County, where the King's Bench sit, be suspended during the Term,
yet if an Indictment be found before such Commissioners before the
Term, there may be a special Commission made to Commissioners in the same
County, sitting the King's Bench in that County, to hear and determine the
same during the Term; For the King's Bench hath no Power to proceed
thereupon, till the Indictment be before them. And it is the better, if
the special Commission bear Telle after the beginning of the Term. Note
a Diversify between general Commisions of Oyer and Terminer, and
such a special Commissio; And the Court of King's Bench may be ad-
joined, and in the mean Time the Commissioners may sit there. 3 Init. 27.
cap. 2.

9. This Court hath not only Jurisdiction to correct Errors in Judicial
Proceeding, but other Errors and Misdemeanors extrajudicial tending to
the Breach of the Peace, or Oppression of the Subjects, or raising of Passion,
Controversy, Debate or any other Manner of Misgovernment; so that no
Wrong or Injury either Publick or Private, can be done, but that this
shall be reform'd or punish'd in one Court or other by du: Courte of
Law. 4 Init. 71. cap. 7.

10. As if any Person be committed to Prison, this Court upon Motion
ought to grant an Habeeas Corpus, and upon return of the Cause to Justice,
and relieve the Party wronged. And this may be done though the Party
grieu'd hath no Privilege in this Court. 4 Init. 71. cap. 7.

11. It granteth Prohibitions to Courts Temporal and Ecclesiastical, to
keep them within their proper Jurisdiction. 4 Init. 71. cap. 7.

12. Also this Court may Bail any Person for any Offence whatsoever.
4 Init. 71. cap. 7.

13. And if a Freeman in City, Burgh, or Town Corporate be dis-
franchised unjustly, albeit he hath no Privilege in this Court, yet this
Court may relieve the Party, as it appeareth in James Baggs's Cafe, &c
in similius. 4 Init. 71. cap. 7.

bind the Court of B. R. because the Pleas there are Coma in Rege, 45. pl 9,
per Coke Ch. J. 11 Rep. 64. b. Mich. 12 Jac. in Dr. Poffler's Cafe, and
Per Keeling: and you cannot
ouf the Ju-
risdiction of
this Court
without particular Words. And Twiften I fald, that he had known it ruled in 23 Car. 1. that the
Statute of 15 Eliz. cap 9 where it is fald, that there fhall be no Superfeofas &c. hath no Reference to
this Court but only to the Chancery.

15. So when a Statute creates a new Law and affigns certain Justices to
execute it, though the Justices of B. R. are not expressly authoriz'd by
the Act, yet they may execute it as the Statute 8 H. 6. cap. 9. gives Power
to Justices of Peace to make Reftitution, and therefore Justices of Oyer
7 B

and
Court of King's Bench.

and Termner Goal Delivery &c. shall not make Restitution, and to resolv'd as has been said, yet if the Indictment be remov'd into B. R. Coram Rege, they shall award Restitution; Per Coke Ch. J. 11 Rep. 65. a. cites is as resolv'd on Argument, 4 H. 7. 18. b.


17. And commanded a Sheriff by Pel to take a Prisoner, and then directed him (being Sheriff of Middlesex) to go to the Recorder of London (who was then present in Court) for a Warrant. Sid. 146. Trin. 15 Car. 2. B. R. the King v. Mandell.

18. King's Bench may Bail for High Treason, but it is a special Favour, and not done without the Consent of the Attorney General. And they may likewise Bail for Murder, but it is seldom done, and not without a special Reason; and it is not a sufficient Reason that it was found Manslaughter before the Coroner, for it may be afterwards found Murder; per Cur. Camb. 111. Pach. 1 W. & M. in B. R. Anon.

(K) [King's Bench.]

How, and in what Manner the Court may proceed.

In an Appeal of Murder or other offence, if the Plaintiff appeal him in Custodia Marechall, and the Defendant is arraigned, and pleads the same Term, and the same Term also is tried; this may be well done, without any Bill filed, but only upon the Declaration.

43 El. Brayne's Case adjudged. Hill. 14 Car. B. R. * Pigot's, per Curtin agreed.

2. So if the Defendant is arraigned, and pleads the same Term, but is not tried till another Term, yet this may be well done upon a Declaration without any Bill filed. Hill. 14 Car. B. R. between Pigot and Pigot, per Curtin adjudged, this being moved in Arrest of Judgment after the Defendant was found guilty at the Bar of petit treason for killing her Husband, and he adjudged thereupon to be burnt. Interdict, Trin. 14 Car. R. 65. and said to be the Practice of the Court.

3. But in an Appeal, if the Defendant be arraigned in another Term, then the Defendant appears, there ought to be a Bill filed; in the said Case of Pigot said to be the Court.

Arg. if they had not pleaded the same Term, or if they had pleaded any other Pleas than Not Guilty, so as there had been an Adjournment to another Term, then the Declaration ought to be filed, and of that Opinion was all the Court, and Hoddelfon the Secretary said, that so was the usual Course. — 3 S. C. and S. P, accordingly, and cited the Case of Watts v. Bains —— S. C. cited 2 Roll Rep. 458.

See 2 Inst. 235, 256. 3 E. 1. cap. 46. Enacts that it is also provided and commanded by the King, that the Justices of B. R. at Wesminster, from henceforth shall decide all Pleas determinable at one Day before any Matter be adjourned, or Plea commenced the Day following, saving that their Assize shall be entered, judged and allowed; yet by Reason thereof, it was no premise to admit himself at the Day to him limited.

151. The Affire was brought in B. R. in Suffolk, and pending the Affire the Affire the...
try the Issue, for *that which comes into B. R. shall not go out; Quod
not denied, but that by
the Affifie is discontinued. * S. P. ibid. pl. 69. cites 29 Aff. 43; per Shadr.

6. Nuisance was found by Commission, and was certified by Writ in B. R.
and Precept made against the Tenants, returnable Sabbath pott 15
Trin. which was out of the Term. Skip. said we cannot make Præciss
out of the County where the Bank fits unless by Writ, and give Day in the
Term and to the County, and Thorp conceiwill, and laid, that they
may receive Indictments after the Term, and make Process sitting the
Bench, (and so fee that the King's Bench may fit out of Term) and so it
was done, and he put to answer to it which was in this County, viz.
Middlesex, and after they pleaded to Issue, and Verdict was taken
in St. Clement's Church out of the Place, and well, and they may take
Verdict by Candle-Light, and if they are to remove they may carry
the Jury with them in Courts if they cannot agree, and so may the Ju-

7. At the Commencement when the King's Bench fits in Pairs, they
shall make Proclamation that no Fair nor Market be held in the County
so long as they fit, nor that any Court Baron be held during their Session,
unless in Writ of Right, nor in County held, unless of Exigents, and shall
make Proclamation of the Affifie of Bread, Ale, Wine, and all other Victuals,
and per Shadr. he who sells Wine contrary to the Affifie of Law shall
forefeit the Tunnel. Br. Jurisdiction, pl. 67. cites 27 Aff. 22.

8. When the King's Bench comes into a County, the Affifie shall be ad-
joined there, and this seems to be the Reason, because no Justices of
Affifie are in the County where the King's Bench sits. Br. Jurisdiction,
pl. 68.

9. Note, that a Precedent was shown and read in Court, Trin. 2 H.
4 Rot. 2. one M. L. that was indicted in the County of Surrey before the
Justices of Peace, because that be feloniously sold the House of J. S. and
feloniously sold 18 d. Upon not Guilty pleaded, the Jury found a special
Verdict, that the said M. L. and one J. D. and J. N. de Cognitio de fua
were Common Players at Dice, and that they used to play with false Dice, and
Cozen the King's Liege People at play; and that they entered into the House
of the said J. S. and defied him to play with them at Dice, and with false
Dice they won of him 12 d. ob. And if this be Felony, they pray'd
the Difcretion of the Court. And this Indictinent and Verdict was re-
mov'd into the King's Bench, and thereupon Judgment was entered,
that although this was not an Offence for which he should lose Life or
Member, yet because it was found that he was a Common Cozenor of the
King's People, it was ordered that he should be set upon the Pillory there se-
veral Days in the Strand, and three several Days in Southwark, Where the
Offence was committed. Note, that Noy shew'd this President to the
Court, and presently the Roll was view'd and read; And Montague
commanded a Copy to be taken thereof, as a good President for the Ju-
Cafe.

9. Bill of Presumunire was brought against J. N. in B. R. for the King,
and he pleaded to the Bill, because the Statute is, that such Suit shall be
by Bill before the King and his Council by Presumunire, which Bill before
the King and his Council is intended before him and his Lords, and not before
him
him in his Bench, and Praemunire is intended by Writ original, and not by Bill in B. R. by which the Plaintiff made Bill of Praemunire against him in Custody of the Marshal, and then he was compell'd to answer. Br. Praemunire, pl. 1. cites 27 H. 6. 5. But in Anno 22 H. 8. it was common that several Clerks were compell'd to answer to Bills of Praemunire in B. R. who were not in Custody of the Marshal, Quod Nota.

10. M. and others were indicted for Felony in the High Way in C. B. for Robbery of one E. K. with Gaggs, and the Indictment and the Body were removed into B. R. and there arraigned, and pleaded Not Guilty, and tried; but afterwards a Writ was sent into the Body into the Country with Nisi Prius, to try him in the County of B. Br. Corone pl. 230 (231) cites 5 Mar. Mannington's Cafe; And says, that this is the common Course, to remove the Body, and the Record out of B. R. into the Country again.

12. If a Man be indicted for Treason or Felony in the County where the King's Bench doth sit, the Venire Faciass for returning of the Jury need not have 15 Days between the Filing and the Return; nay, the Entry may be Idem immediate venit into Jurata &c. But if the Indictment be taken in any other County, and removed into the King's Bench, there ought to be 15 Days between the Filing of the Venire Faciass and the Return. 2 Init.

13. The Justices of B. R. are the Sovereign Justices of Goal-Delivery, and of Oyer and Terminer; Resolved. 9 Rep. 118 b. Trin. 10 Jac. in Ld. Sanchar's Cafe.

14. One offered himself to be Bail in an Action upon the Cafe before Justice Whitlock, and affirmed upon his Oath he was a Subsidy Man, and affirmed 4 l. in the Subsidy-Book; But afterwards, upon further Examination, he confessed he was not a Subsidy-Man, and also confessed, he had been Bail in other Actions, and had sworn he was a Subsidy-Man, where-as now he confessed he was not. He was by the Judgment of the Court committed to Prison, and to stand upon the Pillory, with a Paper mentioning his Caufe, viz. for False Bail. Cro. C. 146. pl. 25. Mich. 4 Car. Royfon's Cafe.

15. S. having forged the Hand of the Chief Justice to several Bails, and being brought into Court, and examined, confessed the same. A Record was instantly made of the Confession, and Judgment given to stand in the Pillory several Times, and to appear at the Bar with a Paper in his Hat shewing his Offence; and this without any Information, but only on the Record of his Confession. Lev. 155. Hill. 16 & 17 Car. 2. B. R. Sherwood's Cafe.
Court of King’s Bench.

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(L) The King’s Bench Jurisdiction.

Of what Actions they may hold Plea originally.

1. An Action which is a Common Plea does not lie in Banco Regis. 17 Ed. 3. 50. b. Fitzh. Quarbimbravit, p. 1. cites S. C.

2. As a Quare Impedit does not lie in the King’s Bench, because it is a Common Plea. 17 Ed. 3. 50. b. may hold Plea by Writ out of the Chancery of all Trespasses done Vi & Armis, of Replevin, of * Quare Impedit &c.
* Ib., cites Trin. 19 B. 3, Coram Regis Rot. 56. Linc.

3. So a Quare Incumbivit does not lie in the King’s Bench, be; Fitzh. Quare Incumbivit, pl. 1, cites S. C.

4. An Action upon the Statute of Winchester of Robbery does * See (N) not lie by Original in Banco Regis. Bich. 37 Eliz. B. R. bet. * Halber and Morj, admitted, because it is a Common Plea. 11. pl. 28. but Patch. 15 Car. B. R. between Sir John Campon and the S. C. but Hundred of Woking, in the County of Surrey, admitted, and a Trial and Verdict thereupon at Bar, and Judgment accordingly, but no Exception taken to it.

C. c. seems to be S. C but S. P. does not appear.

5. An Action of Debt lies in Banco Regis against a Sheriff or Gaol. This Court er in Cuthodia Marechalli for an Escape, upon the Statute of Wielmin-ster 2. and R. 2. though the Statutes limit the Action to be brought by Writ of Debt, which is by Original, for this is within the Equity Debt, De-

of the Statutes. Bich. 7 Car. B. R. between Brightwa(e and Taylor, tine, Co-

and other, Sheriffs of Bristol, adjudged by a Writ of Error in Cam. Seace, where this Error was assigned, and there laid, that there were there were many Precedents accordingly.

Ejection, Firms, and the like, against any that is in Cuthodia Marechalli, or any Officer, Minifter, or Clerk of the Court; and the Reason hereof is, for if they should be sued in any other Court, they should have the Privilege of this Court; and left there should be a Failure of Justice, (which is so much ashorred in Law) they shall be impleaded here by Bill, though these Actions be Common Pleas, and are not restrained by the said Act of Magna Charta, ubi supra. Likewise the Officers, Mi-

nifiers, and Clerks of this Court, privileged by Law in respect of their necessary Attendance in Court, may impleaded others by Bill in the Actions aforesaid. 4 Inf. 71, 72.

6. A Bill in Nature of a Pramunire lies in Banco Regis in Custo- Via Marechalli 22. upon the Statute of Ed. 3. cap. 4, though the Statute be, That he shall have Day containing the Space of two 

Months by Garnishment, which implies, that it should be by Original. 2 R. 3. 17. b.

7. An Action upon the Statute of 2 H. 4. cap. 11, lies by Bill in Gra. C. Banco Regis, for suing in the Court of Admiralty against the Sta-

tutes of 13 R. 2. and the laid 2 H. 4. though the Statute of 2 H. 4. Ball v. Tre-

kays, That he shall lie by Writ Super Calami. Tr. 17 Car. B. R. it was objected, 7 C. between
Court of King's Bench.

that the Suit was by Bill, and not by original Writ, as the Statute appoints; but in regard it was returned that he was in Caithness, and that he could not otherwise have his remedy, it was held to be well enough.

8. An Action by a common Informer upon the Statute of 7 Ed. 6, cap. 5. for selling Wines in his House against the Statute, by which he forfeited to the King for every time, may be brought in Banco Regis by Bill of Debt, though by the Statute of 18 Eliz. cap. 5. it is enacted, That no Person shall be permitted or received to sue against any Person or Persons, upon any penal Statute, but by way of Information, or Original Action, and not otherwise; for by the Statute of the 7 Ed. 6. cap. 5. the Penalty may be recovered by Action of Debt, Bill, Plaintiff, or Information, in any of the King's Courts of Record; and it was not the Statute of the Statute to oust the Court of King's Bench of Jurisdiction against the Statute of 7 Ed. 6. but this extends only to Plaints in Inferior Courts, and removed afterwards, and the Words of the Statute of 18 Eliz. are not by Original Writ, but by Original Action, and this Bill of Debt is an Original Action within the Words. Cr. 163. between Hall and Pierce de Chater adjudged per Curiam, this Matter being moved in Arreot of Judgment. Intraut 9. 163. Rot. 90. and it was said there were many precedents accordingly.

Cro. E. 76. pl. 40. W. v. Clerk S.C. adjudged for the Defendant, and it cannot be helped by the Statute 15 Eliz. for Jefuile; for this is not Matter of Form, but Sub- 

9. If a Mayor or Sheriff, after an Arreot, refuses sufficient Bill, against the Statute of 23 H. 6. of Sheriffs, by which the Penalty of 40 l. is given, one Suits to the King, and the other Suits to the Party that will sue; In this Case no Action of Debt lies by Bill in Banco Regis, because the Statute of the 18 Eliz. is, That no Person shall be permitted to sue upon any penal Statute, but by way of Information or original Action, and not otherwise. But note, it is not limited by the Statute of 23 H. 6. how the Penalty shall be recovered, but generally he shall forfeit 40 l. of which the King shall have one Suits, and he that will sue, the other Suits. Co. 3. Institutes 194. and Co. 6. 19. b. Gregory's Cases, where it is cited. H. 29 & 30 Eliz. coron, Rege, between Wifdon & Clerk adjudged. Mo. 247. 390. Udeifon v. the Mayor of Nurningham, S.C. adjudged accordingly. S. C. cited by the Name of Woodfon v. Clerk as adjudged. Mo. 412. pl. 595.

10. Bill of Conspiracy was maintained in B. R. because the Plaintiff was indicted of Trepsals; Quod Nota, as well as if it had been of Felony; for he was thereof acquitted. Br. Bille, pl. 17. cites 3 All. 13.

11. Affile of Mordancefior was brought in B. R. and no Exception was taken but that it may well be brought, and Affile of Novel Diffidens may well be brought there. Br. Jurisdiction, pl. 121. cites 30 All. 25.

12. Debt brought in B. R. for 165. Costs of Suit given in an inferior Court upon a Nonjust upon the Statute of 23 H. 8. It was moved, that no Action did lie, against the Statute of Gloucefier, which is that no Action shall be brought here for any Sum under 40 l. But since the Costs are given by a latter Statute, it was held clearly that they are recoverable by Action of Debt in B. R. and Judgment for the Plaintiff. Cro. E. 90. pl. 11. Patch. 30 Eliz. B. R. Harward v. Furborne.
(M.) Of what Actions they may hold Plea for a collateral Respect.

1. If a Man recovers in a Quare Impedit in Banco, and after this is removed in Banco Regis by Writ of Error, a Quare incombrativit does not lie there, though this does not lie without a Judgment, because this is a new Original, and a Common Plea in itself.

2. An Action de valore Maritagiij by the Lord lies against the Cro. C. 102, Heir in Custodia Marefchalli. Mitch. 14 Car. B. R. between Artru. S. C. dell and Saunders, adjudged upon a Demurrer to a Declaration, but this was not moved; but Sir. Hadderton said to me, That he had divers Precedents accordingly, that it lies in Banco Regis. Intratur, H. 13 Car. Roll. 1266. Cafe, and it was mov’d for the Defendant, that the Declaration was ill, it being in an Action on the Cafe, whereas it ought to be in Valore Maritagiij, and the Court doubted of this Point because there is a special original Writ De Valore Maritagiij.

3. If a Man sues a Latitat out of B. R. to the Intent to declare in such Cafe against the Defendant, after Arrest in Custodia Marefchalli, in an Action of Debt, and the Sheriff arrests him and suffers him to Escape, an Action lies against the Sheriff, shewing this special Matter, and he shall recover his Damages, having Regard to the loss of his Debt. Cr. 14 in. B. R.

Marefchalli, and declares against him in Custodia &c. but it is so in any other Court. Cro. C. 330. in pl. 14. Mich. 9 Car. B. R.

4. If after an Arrest upon a Latitat the Defendant tenders Amends after the Arrest, for an involuntary Trespass, according to the Statute 21 Jac. c. 16, this is not good, upon an Averment that the Latitat was fued out to the Intent to declare in Custodia Marefchalli for this pl. 11. S. C. Trespass, for otherwise a Man shall be declared of his Costs by such Tender. Cr. 8 Car. B. R. between Watts and Baker, adjudged upon Demurrer.

Tender after an original Writ comes too late, so it is after an Arrest upon a Latitat; For the Tender by the Statute is intended to be immediately after the Trespass, and before any Suits commenced.

5. In an Action of Trespass brought here against the Defendant in Cafe; So where these Marefchalli, in the Declaration the Trespass was laid to be done in Bkilled W. in Cornwall, the Defendant pleads in abatement of this Action, and sets forth the Charter of E. 1. granted unto the Stannery Court, whereby enabling and this was the Stannery Workers to plead there, and there to be implicated in the Murder. D. nery Court, and therefore prays the Benefit, and the Privilege of this to have the Trial there; against this it was urged, that the Court here is to hold Plea of this, notwithstanding their Charter; for this Court may hold Plea of Debt, Deftime and Covenant, notwithstanding Marefchalli,
560 Court [of Common Pleas.]

the Chancery was pleased, that he ought to be tried before the Con-
fiscable of

Deer, but this was not allowed; he was found Guilty and


Carb. 128. S. C. ad-
pd’d accordingly — 5
Salk. 559. pl. 1. S. C.
— 2 Infr. 311. S. P.

ing the Statute of Magna Charta, cap. 11. Communia placita non

sowantur Curiam notram &c. being there in Custodia Marechal-

li, the Plaintiff may here declare against him in what Manner he will,

and his coming in here is not inquirable. But the Court agreed, that

if one be here in Custodia Marechalli, he is not to be fetch’d away,

and if he should not answer here being in Custodia Marechalli, none

could have Remedy against him, and therefore he was ordered to

answer. 2 Bult. 122, 123. Trin. 11 Jac. Parke v. Lock.

6. Trespass saue & armis clausum seque, which the Plaintiff laid
to his Damage of 20l. the Defendant demurred for that B. R. both not
Cognizance either at Common Law, or by the Statute of Gloucester,

to hold Plea in an Action where the Damages are laid to be under 40 s. led
per Cur. Trespass saue & Armis will lie here, let the Damages be
what they will; and Judgment for the Plaintiff. 3 Mod. 275. Hill.

1 W. & M. in B. R. Lambert v. Thuriton.

For more of the Court’s Bench, See Crome. Jurisdiction of

Courts 67, b. to 82.—4 Infr. 70 to 78. cap. 7.—Prynn’s Ani-

madv. on 4 Infr. 47.—2 Hawk. Pl. C. 6. cap. 3.

(N) In what Actions they may hold Plea by Privi-

lege, for a collateral Respect. In respect of the De-

fendant.

* Cro. C. 1. A

An Action upon the Statute of Winchester, of Robbery against the

Inhabitants of an Hundred, lies by Bill in B. R. though it is

supplied by the Bill, that they are in Custodia Marechalli, &c. for

the Inhabitants of an Hundred may be imprisoned, and it may be

intended that they all were imprisoned. P. 7 Car. B. R. between

* Halier and the Inhabitants of the Hundred of Benevis, alias Bankwef,

in Comitatii Verbs Defendants, adjudged upon a special Perder

by Admittance, this not being moved. Contra.

37 El. 3. R. between * Sadler and Morse, adjudged.

Gouldb. 148. pl. 69. Hill. 45 Eliz. it was said to have been adjudg’d in B. R. that an Ac-

tion upon this Statute against the Inhabitants of an Hundred will never lie by Bill, but ought to be

sued by Writ, because the Action is brought against Inhabitants, which are a Multitude, and conse-

quently cannot be in Custodia Marechalli, as another private Person may be.

(N. 2) The Court of Common Pleas.

* Before * 1. Magna Charta. E

Naeths that the Common Pleas shall not follow

9 H. 3. cap. 11. our Court, but shall be held in some Place

certain.

R. by Bond, all original Writs returnable in the same Bench, and because the Court was held in Co-

ram Regis, and followed the King’s Court, and removable at the King’s Will, the Returns were

Ubiqueque fuerimus &c whereupon many Discontinuances ensued, and great Troubles of Juror,

Charges of Parties, and Delay of Justice; for these Causes this Statute was made. 2 Infr. 21, 22.

† Here it is to be understood, a Division of Pleas for Placita are divided in Placita Coronae, &

Communs Placita; Placita Coronae are otherwise, and aptly called Criminalia or Mortalities, & Placita

Communs
Court [of Common Pleas.]

Commotions are aptly called Civils; Placita Coronae are divided into High Treason, Misprision of Treason, Petit Treason, Felony &c. and to their Accesseries so called, because they come contra Coronam & Dignitatem; and of these the Court of C.B. cannot hold Plea. 2 Inst. 22.

Divers special Cases are out of this Statute, 18. The King may file any Action for any Common Plea in B. R. for this general Act does not extend to the King. 2dly. If any Man be in Cootidia Marechalli or B. R. any other may have an Action of Debt, Covenant, or the like personal Action by B. R. because he is in Cootidia Marechalli ought to have the Privilege of that Court, and this Act takes not away the Privilege of any Court, because if he should be tried in any other Court, he should not, in respect of his Privilege, answer there, and so it is of any Officers, or Ministers of that Court; The like Law is of the Court of Chancery, and Exchequer. 3dly. Any Action that is Quare Vi et Armis where the King is to have a Fine, may be purchased out of the Chancery, returnable into B. R. as Ejectio Firmis, Trespass Vi & Armis, Forcible Entry and the like. 4thly. And a Replevin may be removed into B. R. because the King is to have a Fine, and so it is in an Affine brought in the County where B. R. is. 5thly. Albeit originally B. R. be restrained by this Act to hold Plea of any Real Action &c. yet by a Mean they may. As it a Writ in a Real Action be by Judgment taken in the Court of C. B. if this Judgment in a Writ of Error be reversed in B. R. and the Writ adjudged good, they shall proceed upon that Writ in B. R. as the Judges of the Court of C. B. should have done, which they do in default of others for Necessity, lead any Party that has Right should be without Remedy, or that there should be a failure of Justice, and therefore Matters are always so to be expounded, that there should be no Failure of Justice, but rather than that should fail out, that Writ (by Contraction) should be excepted out of the Statute, whether the Statute be in the Negative or Affirmative. 6thly. In a Redditiom or the like. 2 Inst. 23.

2. In Trespass of Filling in his Piscary in D. to the Damage of 40s. the others said, that he fillid in S. in his several Soil, Abique hoc, that he is guilty of Filling in D. and the others e contra, and found for the Plaintiff to the Damage of 8d. Perfunco said, the Statute is, that the King's Court shall not hold Plea under 40s. but of 40s. or above. Per Patton, this is true, as to the Surnise of the Plaintiff in his Declaration. But it he declares of 40s. or more in Debt, Trespass &c. and it is found the Damages 12d. or the Debt 12d. or such like, yet the Plaintiff shall recover, and fo it was adjudged, that and the Plaintiff should be amerced pro falso Clamore, and yet contra if the Plaintiff had counted of a Sum under 40s. note the Diversity. Br. Jurisdiction pl. 40. cites 17 H. 6. 8.

3. Justices of C. B. may hold Plea by Writ of Election in London upon Recovery and Execution in the Cinque Ports, and may write to the Constable of England, and to the Constable of Dover, and to the Judges of the Admiralty, and to the Bishop in case of Bigamy, Bastardy, Prostitution &c. and that they themselves cannot hold Plea thereof. And may write to the County Palatine upon Vouchyer, and may write to the Prince, and to the Justices of Wales, quod nota. Br. Judges. pl. 30. cites 30 H. 6. 6.


5. In Trespass the Sheriff return'd upon Capias, that before the coming Br. Report of this Writ the Defendant was taken and detain'd by Warrant of the Peaceador, pl. 88. in pais upon Rents and forcible Entries, and for forfeiture of the Peace and by cites S. C. the Justices of both Benches, if the Plaintiff counts, he shall be by Mainpris after Answer made, and remitted to the Sheriff to answer there of the Rents and Peace; For C. B. cannot meddle with thole, but of the Peace in the County, and so he was remitted before the Sheriff in Pais. Br. Retorn de Brincia. pl. 83. cites 2 H. 7. 2.

6. Note by the Statute of Gloucester cap. 3. A Man shall not have Trespass in Bank if he does not make Oath that the Goods taken were worth 40s. at the least, which is also recited in a Cale of Trespass, which was removed by a Recordare out of a base Court where the Damages were not 40s. and therefore ill, per Fitzherbert and the beat Opinion; and by the Serjeants, Procedendo shall be awarded quod non negatur, and it seems that the Common Law is, that a Man shall not have Debt, 7 D.
Deutine, Cevocant nor such lik e in Bence, unless it be of 40 s. or more.


8. It is manifest that this Court began not after the making of this Act, as some have thought; for in the next Chapter, and divers others of this very great Charter, mention is made De Justiciaritis nostris de Banco, which all Men know to be the Justices of the Court of Common Pleas commonly called the Common Bench or the Bench, and Docket, & Stud. faith that is a Court created by Custom. 2 Inst. 22. 23.

9. It appears by our Books, that the Court of Common Pleas was in the Reign of H. 1. that there was a Court of Common Pleas in Ann. 1 H. 3. which was before this Act, Martinus de Patterhall was by Letters Patents constituted Chief Justice of the Court of C. B. in the First Year of H. 3. 2 Inst. 23.

10. It was resolved by all the Judges in the Exchequer Chamber, that all the Courts viz. B. R. C. B. the Exchequer and the Chancery, are the King's Courts, and have been Time out of Memory, so that a Man cannot know which is the most Ancient. 2 Inst. 23.

11. A Defendant having made an Affidavit in C. B. afterwards being summoned confess'd it to be false, whereupon the Court recorded his Confession and ordered him into Custody, and to stand in the Pillory for Perjury; And notwithstanding what was urged by his Counsel, as to the Jurisdiction of C. B. he was put in the Pillory the last Day of the Term. 8 Mod. 179. Trin. 9 Geo. 1. The King v. Thorowgood.

12. This Court's Authority is founded on Original Writs issuing out of Chancery, which are the King's Mandates, for them to proceed to determine such and such Causes; For it was a Miscon by the Normans, that there should be no Proceedings in C. B. without the King's Writ; and therefore a Writ always issued to warrant this Court's Proceedings, and those issued out of Chancery, because when the Courts were but one, the Chancellor had the Seal; Therefore when they were divided he sealed all Original Writs by this Method, and the Seal was a Check on the other Courts to know what Cause was there, and likewise that the Fines for having Justice in the King's Court should be anwier'd in Court, before there were any Proceedings and therefore Fleta says Dum tamen warrantum * per Breve Regis habuerint Cognoscoendi, nam fine Warranto Jurisdictionem non habent neque Coeritionem. Gilb. Hil. of C. B. 2.

Court of Exchequer.

(N. 3) Pleadings. As to Matters done in B. R. or C. B. or other Courts.

1. B. R. and Chancery are Courts removable, and therefore it ought to be pleaded where they are held. Arg. Mo. 176. pl. 310. and vouch'd 27 H. 6. 10. b. where in Writ of Maintenance in B. R. he did not swear where the Bench was, and therefore ill ; For the Writs out of this Bench are &c. Ubicunque iurarius in Anglia; And in 5 E. 4. 3. b. the last Cafe of the Year the Divinity is taken between the C. B. and B. R. on a Bill exibited in C. B. which did not swear where the Bench was, and yet awarded good; For the Statute of Magna Charta is that it shall be held in certo loco; And for this Point he vouch'd 34 H. 6. and 36 H. 6.

2. In Trever the Defendant said that he recover'd against the Plaintiff, Nov. 56. a Debt of 20l. in B. R. and had a Fi. fa. to the Sheriff of Y. who at W. S. C. ad- in the County of Y. seized the Goods and deliver'd them to him in Satisfaction; of his Execution. But it was ruled to be ill because he did not swear where B. R. was at the time of the Recovery, it being a Court removable as 5 E. 4. 8. is. Cro. E. 504. pl. 28. Mich. 38 & 39 Eliz. B. R. Thompson v. Clerke.

(O) Court of Exchequer.

1. Rotul. Parliamenti, * 2 D. 4. Numero 112. the Com-* Pryme con's Petition against Writs, called Quia datum et nobis in reliqui, setting out of the Exchequer, without any Inquest found or other Record, but no Return thereto, Vide such Petition against this Writ † 4 D. 4. Numero 78. Similar ‡ 3 D. 5. Numero 46.

which the Answer was, "The occasion'd Use shall continue." But there are not so many Numbers as 112. † Ibid. 422. No. 78. ‡ Ibid. 548. No. 46.

2. The Court of Exchequer, which as Gervaisius Tilburienfs de Necels Sane. Obf. (a pure Author) reports, was here from the very Conquest, and instituted according to the Pattern of that in Normandy, and was establisht by Rolle, as Reviſe faith, Notes on Grand Cnt. 10. 8. The Authority of this Court was so great, that no Man might contradi all the great Baronies of England, and all such Estates as held in Capite were transferred there, but many Laws and Rights were dif- used, and many Doubts determin'd, which frequently arose from incident Questions; For the excellent Knowledge of the Exchequer consists not in Accounts only, but in multiplicity of Judgments. And Common-Plaen were usually held in this Court until the 28. of Ed. the 1st. it was Enacted, that no Common-Plae should be henceforth held in the Exchequer, contrary to the form of the Great Charter. In this Court sat the Capital Juflicia, the Chancellor, Treasurer, and as many of the most different, greatest and knowing Men, (real Barons) whe- ther of the Clergy or Laity as the King pleas'd to direct. The Busines of the

See Pryme's Anianad-verfions 32. 33.
the Court was not only Accounts and what belon'd to them, but to
decree right, determine doubtful Matters, which arose upon incident
Questions, to hold Common Pleas as before, and to judge what chiefly
concern'd all Capite Lands, and the great Baronies of England.
Brady's Preface to the Norman History. 165, 161.
3. Information upon the statute of 8 El. 4, cap. 2. for giving Licences;
The Question was, if the Action lies in the Exchequer? The Barons
said this is a superior Court though not nam'd in the Statute, and that
the Suit may be here, for there are no restrictive Words in the Statute,
and this Court hath Power to hold Plea of any Thing which doth con-
cern the Queen, if not refrain'd; 2 Adornat. Cro. E. 326. pl. 3.

4. On a Mandamus to restore Dr. Patrick to the Mastership of Queen's
College in Cambridge. The Court were divided, whereupon it was considered
whether it being a Case of the Crown Side it might be adjourn'd into the
Exchequer Chamber, and it seem'd to some that it might, but it was not.
Lev. 65. Patch 14. Car. 2. B. R. Queen's College Case, alias Dr. Par-

5. In the Exchequer there are these 7 Courts. 1st. The Court of
Pleas.
2dly. The Courts of Accounts.
3dly. The Court of Receipt.
* Excepting in 2 Cases, no Case in
Law, can be show'd to be adjourn'd into the Exchequer Chamber, before Argument by the Judges,
in the same Court, where the Cause is hanging, and these 2 were The Case of the Pollnai, Cal-
vins Case, 7 Rep. fol. 1, and the Case of Suttons Hospital, 10. Rep. fol. 23; and no others before
Argument here, and difference in Opinion by the Judges, or Agreement by the Judges upon their differ-
ing in Opinion, to adjourn the same thither, or by Writ of Error, the Case Ch. 2 who did those Rules
are to be follow'd, for the adjournment of Cases of Difficulty into the Exchequer Chamber, 1. This
ought to proceed ex nuncio parte, but not of the Party concern'd. 2. This ought to be after Argument,
but not before and upon difference in their Opinions, or by Writ of Error. 3. When the Case is
adjourn'd thither, if a Judge dies, the matter, for this, is not to stay, but to proceed; And if one of
the Judges have there argued, and afterwards one of the other Judges dies, the Matter is not to stay,
till another Judge be made, but the same is to proceed, and a new Judge being made he is not then to

5thly. The Court of Exchequer Chamber for Errors in the Court of
Exchequr. 31 Eliz. 3, cap. 8, and 31 Eliz. cap. 1.
6thly. A Court in the Exchequer Chamber for Errors in the King's
And 7thly. This Court of Equity in the Exchequer Chamber. 4
Inf. 119.
6. King Charles the 2d having taken up Sums of Money of the
Petitioners, (Bankers) granted to them and their Heirs, Servant Au-
nuities chargeable upon the Hereditary Revenue, of Excheque given to the
King by 12 Car. 2, cap. 24. The Barons held, that the Remedy by
Petition to the Barons was a proper Remedy, and judgment was giv-
en for the Petitioners by the Opinion of 3, but Letchmere B. held
that the King could not alien or charge this Revenue, and that for
several Reasons there mentioned. Freem. Rep. 331. pl. 413. Hill.
1691, in Scacc. upon the Petition of Hornbee & al.}
[P) Court of Exchequer.

What Persons shall have the Privilege of Suit.

1. The King's Farmer may sue one that detains from him Part of his Farm, and relieved the same, and the Pollitioons that he hath from the King, out of which the Farm is to be paid, by which he cannot pay his Farm to the King. 38 Eliz. 20. adjudged.

2. Thomas Younge Justice sued Bill in the Exchequer against the Clerk S. C. cited of the Hanaper upon his Account, and the Defendant cast Supersteadeas of B. Brown, to have Bill against his Debtor, and this is for the King's Advantage, King's Quod citius solvit Regi; and if Accountant be sued in C. B. they shall sued in B. R. and a Baron shall Superstedeas to suit ; and if be sued in B. R. there is a privilege, the Exchequer shall have the Record that he is Accountant &c. and he shall be dismissed, and shall be sued in the Exchequer. Br. Jurif. 4 citals 9 E. 4, 3.

Accountants to the King, and that the Defendant was one, and prayed the Privilege of the Court of Exchequer, and that the Suit might be stayed. The Court demanded of the Secondary, what the Court was in such Case, whether to grant it upon such bare Averment of the Baron, or that it ought to be pleaded and prayed by the Party? Upon his informing the Court that it had been usually allowed, and in such Pleas or Prayer, it was granted accordingly. But Williams J. was strongly against it, and said, that there are many books wherein it was adjudged in Point, that it ought to be upon the Party's Pleas and Prayer, and that without this the Court cannot certainly know whether he be the same Party for whom the Privilege is prayed. 2 Blunt 36. Mich. 10 Jac. Anon.

3. If an Accountant in the Exchequer be implicated in C. B. the Exchequer may send a Supersteadeas to them to suit. Br. Supersteadeas, pl. 28 eliz. 9 E. 4, 57. if sued by the Exchequer shall have the Record of Account &c. For they cannot make Supersteadeas to the King; for there the Pleas are held coram Rege, and not coram Justiciarius ; and he shall be dismissed. Ibid.

One who was Receiver General of the Revenues of the Crown in the Counties of W. and L. &c. being sued in C. B. brought a Writ of Privilege out of the Exchequer, but it was not allowed. D. 528 pl. 9. Mich. 15 & 16 Eliz. Hunt's Cafe.

4. By the Statute of Articuli super Chartas cap. 4, it is provided, That the Common Pleas shall be held in the Exchequer, unless where either the Privilege of suing Plaintiff or the Defendant is privileged. 5 Rep. 62. a. Mich. 32 & 33 par. in the Exchequer extends to the Debtor of the King's Debtor. 4 Inf. 112. cap. 11.

5. The Plaintiff being an Accountant in the Court of Exchequer, by Bill there prayed to be relieved against a Bond put in Suit by Defendant in the Petty-Bag, by reason of his Privilege as Ulteri of the Chancery. The Defendant pleaded his Privilege as an Officer of the Court.
Court of Chancery. The Court agreed, that when both Parties are privileged, his Privilege shall take Place who first attains it; and that in this Case the Suit in Equity to be relieved against the Penalty of the Bond is first attach'd here, and it is not the same Suit with that at Common Law, but distinct from it. And it was further said, that if both Parties are privileged Persons, and the Attendance of the one is more requisite than of the other, (as in the principal Case it is, the Plaintiff here being an Accountant in this Court, and entered into his Account, as by his Bill is alleged, which cannot be compleated by Deputy or Attorney) in such Case his Privilege shall be allowed who has most Cause of Privilege; &c adjourn it. But at another Day the Plea was over-rulled, and an Injunction granted till Answer. Hard. 117. pl. 2. Trin. 1658. Baker v. Lenthall.

6. The Plaintiff, as Debtor to the King, and Treasurer of the Navy, exhibited his Bill in the Exchequer. The Defendant pleaded his Privilege, as one of the six Clerks in Chancery, under the Great Seal. Hale Ch. B. and the Court held, that a general Privilege, as Debtor, will not hold against a special Privilege, but against a general Privilege it will. But a Privilege as Accountant will hold against a special Privilege in another Court, as Officer of the Court, or otherwise, though it be not alleged that he has enter'd upon his Account; and in this Case the Plaintiff, being Treasurer to the Navy, is Equito an Accountant. Hard. 316. Mich. 14 Car. 2. in the Exchequer, Sir Geo. Carteret v. Sir John Maffam.

7. There are three Sorts of Privileges in the Exchequer, 1st. As Debtor, 2dly, As Accountant. 3dly, As Officer of the Court. Against the first of these, any Man who hath a special Privilege in another Court, as an Officer of the Court, or an Attorney, shall have his Privilege, because the Privilege of a Man as Debtor is only a general Privilege; But if an Accountant begin his Suit here, no Privilege shall be allowed elsewhere, because he has a special Privilege, by reason of his Attendance, to pass his Account, in which the King hath a particular Concern; the same holds in an Officer of the Court; if he commences a Suit here, no Privilege in another Court shall prevail against him, because his Attendance here is requisite, and his Privilege here is attach'd first by commencing his Suit; But where the Accountant has finished his Account, and reduced it to a Certainty, so that it is become a Debt, then he hath only a Privilege as a general Debtor has; So a Servant to an Officer, or Minister of the Court, has no Privilege against a privileged Person elsewhere; Per Car. Hard. 365. Palch. 16 Car. 2. in the Exchequer, Clapham v. Sir J. Lenthall.

(Q.) [Court of Exchequer.] Of what Things they shall have the Privilege of Suit.

1. If the King's Farmer sues in the Exchequer against a Person for detaining of Tithes, Parcel of the Possessions to him leased in Farm by the King, though the Right of Tithes comes in Debate between them, yet the Court shall not be ousted of Jurisdiction. 38 Am. 20. adjudged. * By Reports sae Quid Mirum.

* This seems to intend his Book of the Book of Affids, where are the Words of Quid Mirum.

2. If
Court of Exchequer.

2. If J. S. be Parson improper of D. and B. Vicar there, and the King Patron of the Vicarage, and there is a Debate between the S. C. accordingly. Anon but Parson and Vicar for Tithes, the Suit in these Tithes ought to be in the Exchequer. Hill 8 Ja. Scaccario, per Curiam.

3. 10 E. 1. Rotulo Claudarum Membrana 2 in Dorso Breve Thesaurus & Varonisbus Scaccarii, quod non teneant Communia Placita, nisi tangan Regem, vel Ministros Scaccarii, Statuum modum de Scaccario alter dictum Statuum de Rotland in Magna Charta, 2 Part. Fol. 66. nisi specialiter contingat nos vel Ministros nostros.

4. 13 Ch. 1. Rotulo Claudarum Membrana 7 de debitis Regis in Scaccario articulatissimis.

5. Among the Ordinances of the 5 E. 2. 22 there is such Ordinance, that no Plea be in the Exchequer but such as touch the King, and his Ministers of the said Place, and their Servants, who for the most Part inhabit with them in the Place where the Exchequer is held, and if any other be suffer'd to be there, the Impleaded be aided by Parliament.

6. If a Copy holder of the King's Manor be sued in the Ecclesiastical Lane 59, Court for Tithes, upon a Suggestion in Scaccario, that he prefcribes Anon. S. C. to pay a certain Modus Secundum, he shall have a Prohibition there, and this Modus shall be tried there. Trin. 7 Ja. Scaccario, adjudged.

7. If a Man be amerced in the King's Leet, and upon Proceeds out Lane 55, of the Exchequer the Bailiff disfains him for the Ameacement, and Trin. 7 Ja. he brings Trepass, he ought to bring this Action of Trepass in the Office of Pleas of the Exchequer, for the Bailiff levied it as an Officer of this Court. Patch. 8 Ja. in Camera Scaccario, per Curiam.

8. If an erroneous Judgment be given in a Formedon in a Copyhold Lane 98, Court in the Country where the King is Lord, the Party against whom the Judgment is given may sue by Bill or Petition to the King, in the Exchequer Chamber, in the Nature of a Writ of Falsce Judgment, for the Reversal of this Judgment; and as in the Court of a common Person the proper Suit for Redress thereof is to the Lord by Petition, so it is here to the King, and the Exchequer Chamber is the more proper to sue to the King by Petition than the Chancery, because it concerns the King's Manor. Hill 8 Ja. Scaccario, Edward's Café.

9. An Action of false Imprisonment or other Action, may be brought against the Under-Sheriff in the Exchequer, though the Sheriff be the Officer of the Court, for the Court takes Notice of the Under-Sheriff also. Hill. 7 Ja. Scaccario, between Doyley and Trenchfield. Hold that the Sheriff should not have Judg.

ment, for that the Sheriff is no such Person as ought to be privileged here, and therefore the Plaintiff should have his Remedy elsewhere, and he said, that such a Case had been revers'd in the Exchequer Chamber; For the Under Sheriff is but an Attorney for a Party privileged, that is, for the Sheriff; But all the Clerks of the Court and the other Barons were against him in that, and also all the Presidents.——2 Bailiff So. B. R. S. C. but S. P. does not appear.——Brown 226 S. C. but S. P. does not appear.——Crom. J. 525. pl. 1. Trin. 11 Ja. B. R. S. C. but S. P. does not appear.

10. Statute of Rutland 10 E. 1. touching Recovery of the King's Whether Debts, wills and ordains that no Plea shall be holden or plead'd in the Exchequer, except it does specially concern us and our Ministers of the Exchequer.

the 4th for the better ordering this Court has been very much doubted. See Pl. C. 268 S. 294 a 4th.
Court of Exchequer.

4 Inf. 112. cap. 11. where it is said to be an Ordinance only. But 2 Inf. 511. upon that Statute of Articuli super Chartas 28 E. 1. cap. 4. Lord Coke says, that this was a Statute the Title and Stile of the Act is Statum Novum de Secaccario, alter dictum, Statutum de Roteland. In Libro rubro it is called Statutum de Roteland, and there is a Writ in the Register under the Title of Brevia de Statutis, Rex Thebaiarius, &c. But when Hibernus Salutem, cum sequum Legem Contrectum nem Reguli nimiru Comitum &c. Placita comxubs ad Sacarius predeicit placatar non debent nisi Placitas illa nos vel aliquem Sinllorinm noltrum ejusdem Secccarii specialiter tangent &c which Writ rectifieth the Words of the Statute of Roteland, and in the Margin of the Writ is quoted Statutum de Roteland, so as without Question this Act was made by Authority of Parliament and all whatsoever Pleas were held in the Exchequer, in the Reign of H. 2 when Glanville wrote, yet now by two Acts of Parliament their Jurisdiction is limited and settled; and therefore reject a late Opinion contrary to such Authority, and never read nor heard of before. 2 Inf. 511. — But Prynn’s Amaydision 55, 56, 57 gives many Reasons to prove that the Statute held the Statute of Rutland is no Statute.

11. Articuli super Chartas cap. 4. made 28 E. 1. enables that no common Pleas be henceforth held in the Exchequer against the Form of the great Charter.

12. After the Death of any Dector of the King Proceed, shall issue out against the Executors the Heir and Heirens all together at one Time by the Course of the Exchequer. Savil. 52, 53. per Fanthaw Remembrancer in pl. 111. Pach. 25 Eliz. Anon.

13. There shall be no Suit or Proceedings according to the Order of the Exchequer Chamber in Cases of Confidence upon any Penal Statute. 3 Le. 204. pl. 259. Trin. 30 Eliz. in the Exchequer. Anon.

14. if. &c holds Lands of the King by Fealty and yearly Rent, and makes a Lease thereof to A. B. pretends that if. &c left the same to him by a former Lease; Albeit there is a Rent illowing out of these Lands to the King, yet neither A. nor B. can sue in this Court by any Privilege in respect of the Rent, for that the King can have no prejudice or Benefit thereby; for whether A. or B. doth prevail, yet must the Rent be paid; and it this were a good Caufe of Privilege, all the Lands in England holden of the King by Rent &c. might be brought into this Court. 4 Inf. 118. cap. 13.

15. But if Black Acre be extended to the King for Debt of A. as the Land of A. and the King leafeth the same to B. for Years, reserving a Rent; C. pretends that A. had nothing in the Land, but that he was fadis’d thereof &c. this Caff is within the Privilege of this Court, for if C. prevail the King logeth his Rent. 4 Inf. 118, 119. cap. 13.

16. The King makes a Lease to A. of Black Acre for Years reserving a Rent; and A. is paidis’d of a Term for Years in White Acre, the King may distrain in White Acre for his Rent, yet A. hath no Privilege for White Acre, to bring it within the Jurisdiction of this Court. 4 Inf. 119. cap. 13.

17. Upon a crofs Bill against a Person to disfavor what Sort of Tythes in particular be clausus to be due to him; for that the Parson in his Bill one while demanded one Manner of Tything, and another while another, the Court held that it such a crofs Bill the Plaintiff need not entite
(Q. 2.) Disputes between the Courts of Exchequer and other Courts.


2. The Plaintiff sued in Chancery, to be reliev'd for a Leafe of 1000 Years of certain Lands, and depending the suit in Chancery, the Defendant, by Quo minus out of the Exchequer, being Tenant of the other Lands to the Queen, brought an Ejectment against the under Tenants of the Plaintiff; therefore an Injunction to stay the suit of Quo minus, if 

7 F

Causa
Court of Exchequer.


3. No Exchequer Man has Privilege againſt a Subpena. Toth. 216. cites 3 Car. Tuke v Clerk.

4. An Officer of the Cifton Hous being served with a Subpena to answer a Bill, he refused and procured an Injunction out of the Exchequer to stay the Suit; But it was ordered that the Plaintiff should and might proceed in the Suit, notwithstanding such Injunction, and the Party was committed for serving the fame, the Court taking it to be a great Derogation to their Authority. N. Ch. R. 19. 8 Car. in Cafe of Veddall & al. v. Harvey, cites it as an Order read by Order of the Court as made Lord C. Ellefmere.

5. A Caufe had been heard in the Exchequer where 2 several Trials had been directed, viz. Will or no Will, and a Verdict was for the Plaintiff in both; And yet the Chief Baron dismissed the Bill there but without Prejudice in Law or Equity. It was argued that those Words (without Prejudice in Law or Equity) must be understood not to hinder the Plaintiff from seeking Relief in any other Court of Law or Equity. And the Court conceived accordingly and ordered that Plaintiff who had brought an Original Bill in Chancery for the same Matters, and to examine Witnesses in order thereto in Perpetuam rei Memoriam, might examine any Witnesses not examined in the Exchequer, and as to Matters examined into there, he might examine the same Witnesses De bene efe, and how far thofe De bene efe should be used the Court would consider. Chan. Cafes 155. Hill. 21 & 22 Car. 2. Anon.

6. A Bill was exhibited in Chancery, concerning Tithes and Bounds of a Parish, which proceed to Anwser and Repliation. Then he exhibited another Bill in the Exchequer, and there Witnesses were examined and now proceed again in Chancery, and replies. The Defendant pleaded the Proceedings and Examination in the Exchequer, and ruled good as to Examination of the same Matters, which, being examined to there, were not examined in Chancery. Chan. Cafes 233. Trin. 26 Car. 2. The King v. Brownlow.

7. Mortgagor exhibits a Bill to redeem in the Exchequer, the Defendant therehall be at Liberty to exhibit a Bill to Foreclose in Chancery, and the pendency of a former Suit is no Plead, though it was intimated that this was only in Nature of a Crofs Bill to that in the Exchequer, which the now Plaintiff might have exhibited there, and then one account of the Profits would have vered all, and it was vexatious in the Plaintiff to bring the fame matter in Ilue in another Court at the fame time; And if the Deputy Remembrancer in the Exchequer should take the Account one way, and a Matter here should take it another, it would breed Confufion, and if this Court should be of an Opinion, that there ought to be no Redemption, and the Exchequer should Decree a Redemption, the Jurifdictions would clash; And therefore, to avoid their Inconveniences, Priority of Suit ought to give Jurifdiction to the Exchequer. Lord Keeper declared his Opinion to be, that in any Cafe if the Mortgagor exhibited a Bill to redeem in the Exchequer, that the Defendant there shall be at Liberty to exhibit a Bill to Foreclose in this Court; and over-ruled the Plead, and ordered the Defendant to pay Costs. Vern. 220. pl. 219. Hill 1683. Earl of Newbarg. v. Wren.

8. Affignors under a Commission of Bankruptcy bring a Bill for an Account against three Persons who had filed the Bankrupt's Fiduciary Trawm of 3 Extents, one for the King, and the other two were advanc'd in Adv. Bill dismissed.
(Q. 3) Pleadings of Privilege of the Court of Exchequer.

1. A Suit in Chancery was against several Defendants, one of the Defendants died, the Survivors pleaded the Privilege of the Exchequer. But because this Suit was Joint at first against the Deceased and others, and any Thing appearing he had no privilege in the Exchequer, so that the Court of Chancery being lawfully possisled of the Plea, his Death ought not to give any more Privilege to the other Defendants to draw the Cause from this Court than they should have had at they beginning, or while he liv’d; And therefore his Lordship did adjudged the Defendant’s Bill in this Court. 1 Chan. R. 69, 70. 9 Car. 1. Lake v. Philips.

For more of the Court of Exchequer, See Crompt. Jurisdictions of Courts, 105 to 112.—4 Init. 103. to 117. Cap. 11.—Prynn’s Animo diverisions on 4 Init. 52. to 59.

(R) Courts. Dutchy.

1. If Lands, Parcel of the Dutchy, lie within the County-Palatine, Hob. 77. i A suit in Equity for this may be in the Dutchy-Court. Mich. 13 Jac. B. Holt’s Case, per Warburton, to be the Common Practice; for the Jurisdiction is local.

2. But otherwise it is for Lands held of the Dutchy lying out of Hob. 77. the County-Palatine. Mich. 13 Jac. B. Holt’s Case, per Warburton, to be common Practice; for the Jurisdiction is local.

3. If a Man enters into an Obligation concerning Lands lying in the Hob. 77. County-Palatine, and he is sued upon this at Common Law, he can not sue in Equity in the Dutchy-Court, to be relieved against this Bond, for the Jurisdiction being local, it cannot be extended to this & S P, a Collateral Matter. Mich. 13 Jac. B. Holt’s Case, per Curiam. Prohibition was awarded because the Dutchy Court has no Jurisdiction in respect of the Person, as because the Perilous, who are alien, dwell within the County Palatine of Lancaster, nor upon the Land of the Subject anywhere, but upon the King’s own Lands and his own Revenue, and perhaps for Bonds and Assignances given for his Revenue of the Dutchy, Whereupon the Plaintiff, finding the Opinion of the Court, said he would forsake his Suit there without Write; And to the Court compounded the Cause. — S. C cited 2 Lev. 73.

4. In
Court of the Dutchy.] 4. In regard of the Land of the Dutchy of Lancaster, the King is but as a Common Person. 2 Roll. 393. Rege Inconcluso (L) pl. 4. cites 11 H. 4. 85. b.

5. The Defendants inform, that the Bill is exhibited for certain Lands, Perced of the Dutchy of Lancaster, and therefore ordered, that for so much it shall be dismissed. Cary's Rep. 139. cites 22 Eliz. Price v. Lloyd, Owen and Read.

6. The Dutchy Court has no Jurisdiction in respect of the Person, as because the Persons Suitors dwell within the Country Palatine. Hob. 77. pl. 101. Owen v. Holt.

7. So it has no Jurisdiction upon the Lands of the Subject anywhere, but only upon the King's own Lands, and his own Revenue, and perhaps on Bonds and Aliurances given for his Revenue of the Dutchy. Hob. 77. 73. Owen v. Holt.

8. Suit in the Dutchy Court brought by the Master of the Hospital of Wighton, to avoid a Lease made for 99 Years, the Plaintiff suggested for a Prohibition, that the Lands leased were not Parted of, nor within the Dutchy; but the Dutchy Court pretended a Jurisdiction, by Virtue of a Patent confirmed by the Statute 14 Eliz. the Words of which Patent were, That the Dutchy Court might make Ordinances for the Hospital, Quo Modo se gerentur, conversabatur & eligentur, and the Statute relates to this Patent; but the Court held, that this does not give them Power to hold Pleas of their Possessions, but only to make Ordinances for the Government of the Hospital, and not to determine the Right of their Possessions; and a Prohibition was granted per pet. Cur. Roll Rep. 43. Trim. 12 Jac. B. R. Sir Thomas Beaumont v. Hospital de Wigfonge.


11. The Question was, whether Dutchy Court of Welfminfer shall hold Pleas by English Bill of Lands of a County Palatine? Hale and Twifden held it inconvenient to examine their Power after so long Continuance and Practice, and so, and partly by Admission of the Parties, a Prohibition was denied. 2 Lev. 24. Mich. 23 Car. 2. B. R. Fisher v. Patten.


13. A Prohibition was prayed to the Chancellor of the Dutchy of Lancaster, to stay Proceedings in a Suit before him in the Chancery there, being a Scire Facias to repeal Letters Patents granted under the Dutchy Seal.
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Seal, and it was suggested, that the Chancery there was only a Court of Equity, and that they had not any Common Law Proceedings in it, as in the Case of the Petty Bag, and that the Sci. Fa. ought to have been returnable before the Justices of Lancaster, neither could the Chancellor there fend a Record to be tried at Law; But after several Arguments the Court denied the Prohibition, several Influences being given of Common Law Proceedings in that Court, and the Charter &c. creating such Power to that Court, as was exercised at Chester, and there Precedents of Scire Facias were shewn in Point. The Charter doth not tie up the Jurisdiction to be either before the Justices or the Chancellor &c. Hill 11 Ann. &c. and Trin. 12 Ann. B. R. the Queen v. Bailiffs and Bargettes of Leverpool.

14. Bill was brought in the Dutchy Court for Lands. The Defendant demurred, because the Plaintiff did not aver that the Lands were within the Dutchy, which is a circumscrib'd Jurisdiction, and the Demurrer held good. 9 Mod. 95. Pach. 10 Geo. Lord Coningsby’s Cafe.

For more of the Dutchy Court of Lancaster at Westminster, See Grompt. Jurisdiction of Courts, 134. to 137. and 4 Inf. 204. to 211. cap. 36.

(S) County Palatine.

To what Place the Jurisdiction shall extend.

Durham.


S. C. & S. P. and Doderidge I. said, that this appears by the Statute of Prerogative.


3. In this County Palatine there is a Court of Chancery, which is a mixed Court both of Law and Equity, as the Chancery at Westminster; herein it differeth from the rest, that if an erroneous Judgment be given either in the Chancery upon a Judgment there according to the Common Law, or before the Justices of the Bishop, a Writ of Error shall be brought before the Bishop himself, and if he gives an erroneous Judgment thereupon, a Writ of Error shall be sued returnable in the King’s Bench.

4. The Court of the County Palatine is an original Court, and reckoned in the Number of Superior Courts; Arg. Saund. 74. Pach. 19 Car. 2. in Case of Peacock v. Bell.

5. A Superfideaus was granted to an Habeeas Corpus, which suido to remove a Cause out of the City of Chester, which is a particular Jurisdiction.
(S. 2) County Palatine. Antiquity and Power.

1. Counties Palatine were derived from the Crown by Grant, as it appears, for in some Case Writ of the King runs there; As where a Man suesches here, and prays that the Vouches may be summoned in the County Palatine, Proceeds shall issue to the Lord of the Franchise to summon him. Br. Faux Recovery, pl. 15. cites 36 H. 6. 32.

2. Counties Palatine were certain Parcels of the Kingdom assigned to some particular Persons and their Successors, with Royal Power therein to execute all Laws established, in Nature of a Province helden of the Imperial Crown; and therefore the King's Writ paied not within this Precinct no more than in the Marches. These were occasioned from the Courage of the Inhabitants, that stoutly defended their Liberties against the usurping Power of those greater Kings, that endeavoured to have the Dominion over the whole Heptarchy, and not being easily overcome were admitted into Composition of Tributaries; And therefore are found very Ancient, for Alfred put one of his Judges to Death for pulling upon a Malefactor for an Offence done in a Place where the King's Writ paied not; And the same Author reciting another example of his Justice against another of his Judges for putting one to Death without Precedent, renders the King's reason, for that the King and his Commissioners ought to determine such Cases, excepting those Lords in whose Precinct the King's Writ paies not. Bacon of Government, 73. cap. 29.

3. Every Earl Palatine created by the King of England, is Lord of an entire County, and has therein Jura Regalia, which Jura Regalia consist of 2 principal Points, viz. in Royal Jurisdiction, and in Royal Segniory; By reason of his Royal Jurisdiction, he has all the High Courts and Officers of Justice which the King has; And by reason of his Royal Segniory, he has all the Royal Services and Royal Estates which the King has; And therefore this County is merely diff'nd and sever'd from the Crown, as is said in the Case of the Dutchy, Pl. C. 215. b. So that no Writ of the King runs thither, unless a Writ of Error, which being the Demnier Retort and Appeal is alone excepted out of all their Charters, and cites 15 Eliz. D. 321. and 315. and 34 H. 6. 42. Dav. Rep. 62. a. Trim. 9 Jac. in the Exchequer, in the County Palatine of Wexford's Case.
4. It is informed that the Parties dwell in the County Palatine of Lancaster, and the matter of the Bill is for a supposed Treasons in concert upon the Defendants Land, and confining his Great and Hay upon the same, which this Court doth not Uie to hold Plea of, therefore Ordered, if it be true, then the Cause is dismissed, and the Plaintiff to take his Remedy in the County Palatine of Lancaster. Cary's Rep. 80. cites 19 Eliz. Hamethfon v. Townall, Covell, Ridgman, and Baldwin.

5. County Palatine of Lancaster was erected in full Parliament in 50 E. 3. and was granted to his Son John for his Life, and Jura Regalia annexed to it. Per Treby Ch. J. 2. Lutw. 1235. cites 4 Init. 204.

6. Their Power was King-like, because they might Pardon Treasons, Felonies, Murders and Outlaws on them, they might have made Justices in Eyre of Affairs, Gaol Delivery and of the Peace; All Indictments and Processes for Treason and Felony were in their Names, but their Royalties were Abrogated by 27 H. 5. 24. Per Treby Ch. J. 2. Lutw. 1235. cites 4 Init. 224.

7. Before the Statute 27 H. 8. 24. the Bishop of Durham was as a King and might pardon all Matters, and had Jura Regalia, but that Statute took away part of it. Arg. 1 Bullit 160. Trin. 9 Jac in Case of Herne v. Lilburn.

8. Treasons, Felonies and Murders were pardoned by the Bishop, he hath his Judges, and they have their Fees from him, and in Writs of Trepass the Writ is of Trepass done contra pacem Episcopi, all this was fo before the 27 H. 8. 24. Arg. 1 Bullit. 160. in Case of Herne v. Lilburn.

9. A Certiorari to remove a Record from Durham was denied by B. R. and said they had denied this before, and though they had Power to do it, yet they would not in such a Cause out of them of their Jurisdiction. Per Coke Ch. J. 2. Bullit. 158. Mich. 11 Jac. Anon.


11. A County Palatine has Jura Regalia and therefore may prescribe to have bona & catala Felonum; Per Coke Ch. J. and Doderidge; &c. S. C. And so of Bona Felonum de se, per Coke. Roll Rep. 399. pl. 26. & S. P. and Trin. 14 Jac. B. R. The King v. The Bishop of Durham. Judgment for the Bishop.—So he shall have the Goods of such as fraud matur, and the Bishop shall have the Goods of Felon and Treasons, as Incidents to a County Palatine, and not be questioned for it in a Que Warranto to shew his Privileges. 2 Bullit 226, 227. Pschh. 12 Jac. Bees v. the Bishop of Durham.

12. The County Palatine of Durham is not of late standing like that of Lancaster, but is Immemorial, and a Custom there is of great Authority; Per Curiam. Mod. 173. Mich. 25 Car. 2. C. B. Anon.

13. The Style of the Justices in Durham is always Justices Itinerant, and there is no Great Sessions at all in the County Palatine, and therefore the Act of 5 Eliz. cap. 25. which gives the Tales de Circumstantibus in Wales, and the Counties Palatine must be understood of such Courts in the Counties Palatine as answer to the Grand Sessions in Wales. 12 Mod. 181. Hill 9 W. 3. Lamb v. Jennison.
(8. 3) It's Jurisdiction as to Person and Things.

1. IN Maintenance it agreed per Hank and Norton, that a County Palatine may hold Plea of Maintenance, notwithstanding that they had ancient Jurisdiction, and Action of Maintenance is given by Statute after time of Memory. Contra of Vill which had Conunance of Pleas before the Action given by Statute, Quere the Diversity. Br. Cinke. Pors. pl. 5 cites 14 H. 4. 20.


3. The Bishop of Durham by ancient Charter before the Time of E. has the Forfeitures for Treason, and all Felonies of his Tenants between the Rivers Tine and Tece in Northumberland. After Statute 26 H. 8. cap 13. for Forfeitures for Treason, A. makes a Gift in Tail of Land held there of the Bishop to B. B. commits' Treason, and is Attainted of it; the Bishop shall not have it; for such Forfeiture of intaided Land was not in esse, when the said Charter was granted, and the said Tenant in Tail is Tenant to the Donor and not to the Bishop. By all the Judges of England. The Statute 25 E. 3. of Treasons, does not take away the said Grant to the Bishop; it only declares what Offences are Treason. The Grant to the Bishop does not extend to Treasons enfeald after the Grant, nor to new Forfeitures given to the Crown after the Grant. Jenk. 237. pl. 16.

4. 5 Eliz. cap. 27. All Fines levied before the Justices of the County Palatine of Durham, authorized for that Purpose, of Tenements within the County which shall be read and proclaimed two Days in the Sessions, in presence of the Justices of Affairs at Durham, or one of them at the same Sessions that the same shall be ingrossed, and at two general Sessions next after, shall be of like Force as Fines levied with Proclamations, before the Justices of C. B. at Westminster.

5. Where it appeared by a Book heretofore presented to the Queen's Highness, under the Hands of Dyer Ch J. Welton J. and Harpara J. of C. B. and Carus J. of B. R. and remaining (by Force of her Majesty's Warrant) of Record in the Court of Chancery, touching the Jurisdiction of the County Palatine of C. that before H. 3. all Pleas of Lands and Tenements, and all other Causes and Contraels, and Matters residving and growing within the said County Palatine of C. are pleadable, and ought to be pleaded and heard, and Judicially determined within the said County Palatine of C. and not elsewhere out of the said County Palatine; and if any be heard, pleaded or Judicially determined out of the same County, then the same is void, and coram non Judice, (except it be in Cafe of Error, Foreign Plea, or Foreign Voucher) and also that no Inhabitant within the said County Palatine by the Law, Liberties and Usages of the same, be called or compelled by any Writ or Process to appear, or answer any Matter or Cause out of the said County Palatine for any the Causes aforesaid, (as by the said Book among other Things more at large appears) and where now of late the Plaintiff hath exhibited a Bill of Complaint in this Honourable Court, for concerning Lands and Tenements lying within the said County Palatine, and hath taken Process against the said Defendant in that behalf, who has thereupon appeared and by his Counsel made Requet to this Court, that for the Causes aforesaid the Matter here exhibited against him might be from henceforth dismis'd; wherefore forasmuch as W. S. has made Oath that the said Lands do lie within the said County Palatine,
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Palatine, and that the said Defendant is inhabiting and dwelling within the said County; therefore the said Cause is from henceforth dismissed, and remitted to the Chamberlain of C., and other her Majesty's Ministers there, according to the Tenor of the same Book. Cary's Rep. 85, 86, 19 Eliz. Miles v. Breaeton.


7. If the Defendants dwell out of the County Palatine, he who has Caufe to complain in Equity may also complain here in the Chancery. For in regard that Proceedings in Chancery do bind the Person only, if the Person be out of the Jurisdiction the Chamberlain of Chester cannot relieve the Party, and therefore Ne Cura Regis desideret in justitia exhibenda, the Suit shall be in the Chancery here, otherwise the Subject may have Right and no Remedy, which would be inconveniet. 12 Rep. 113. Hill. 11 Jac. Earl of Derby's Cafe.

8. Action of Debt brought to be tried in Durham, and the Record sent to the Chancellor of Durham, because the Bishop's See was empty, and before the Day given by the Judges, a Bishop was elected, and he just the Record and not the Chancellor. Brown 51. Trin. 15 Jac. Peron v. Middleton.

9. Jurisdiction of the County Palatine is allowable between Parties N. Ch. R. dwelling in the same County, and for * Lands there, and for Matter: 13 Car. II. Sherburn v. Houghton. Account of Profits by a Trustee of Infant's Lands, and of Monies received on Bonds, and for Writings &c. but without Costs. Chan. Cases 40. for Things transitory, they are within the County Palatine the Plaintiff may allege them to be done in any Place within England, and Defendant may not plead to the Jurisdiction of the Court, that they were done within the County Palatine. 12 Rep. 117. cites D. 13. El. 202, and says, it was relieved upon the Certificate of the Lord Dyer and other Justices in the Time of Q. Eliz.


Where the Defendant was in the County Palatine, and the Lands lay there also, and a Bill was brought for the same in Chancery, it was for that Reason dismissed. Toth. 144. cites 13 & 14 Eliz. Botesly v. Savil.

10. Ejection in B. R. of Lands in the County Palatine of Lancastor; upon Trial at the Assizes in Lancaster, the Judge caus'd the Petition to be mark'd, and to be mov'd in Court, whether it lies, the Defendant being in Caftody: Et adjournatur. Raym. 81. Mich. 15 Car. 2. B. R. Long v. Emott.

11. It has been the constant Practice Time out of Mind, that Witnecfs dwelling out of the County Palatine have been examined by Commission, filling out of the Court of Exchequer of Chester under the King's Seal of the said County Palatine, and executed where the Parties please, either in England or in Foreign Parts, for procuring their Examinations. Fin. R. 452. Trin. 32. Car. 2. Davis v. Davis.

12. It was pleaded that Chester is an ancient County Palatine Time Cary's Rep. out of Mind, and had Royal Franchises belonging to a County Pal. 85 Wil- latine, which had always been allow'd in Law. And that all Suit, Wil- loughby v. Brereton.

Concerning Lands, Contrary, Causes lying arising or growing within the said County Palatine, are determinable there, and not elsewhere, Treday, Error, Foreign Plea; and Foreign Voucher only excepted. And that the Court of Exchequer there hath been Time out of Mind a Chancery Court for the County Palatine, for the hearing and determining all Matters and Causes of Equity arising in the said County Palatine, subject to an Appeal of this Court, and that the now Plaintiff and De-
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fendant at the Time of exhibiting the said Bill in the Court of Exchequer in Chester, and for several Years before and after, were, and are Inhabitants in the said County Palatine, and that the Lands charged with the said 1500l. and all the Matters whereon the said Decree was grounded, did, and do lie, and are situated, and did arise within the said County Palatine. And that Time out of Mind it hath been the constant Practice of the said Court of Exchequer, that Witnesses dwelling out of the said County Palatine have been examined by Commission issuing out of the said Court of Exchequer under the King's Seal of the said County Palatine, and executed where the Parties please or desire, either in England or in Foreign Parts, for procuring their Examinations; and therefore demands the Judgment of this Court, if by the Justice thereof she is compellable to make answer to the said Bill. The Court allow'd the Plea, and dismissed the Bill with Costs. Fin. R. 452. Trin. 32 Cas. 2. Davis v. Davis.


Parington v. Tarbuck.

14. Bill of Lands within the County Palatine was brought in Chancery, and to encur the Court to Jurisdiction, suggested Prior Inconveniences to Parties living out of the Jurisdiction, but no Proof was of it, but it appearing that the Proceedings in the County Palatine were unjust, North K. said, he would retain the Cause and consider of it. Vern. 293. pl. 262. Hill. 1684. Hall v. Dowthwaite.

15. Debt on a Bond against the Defendant as Executor, and in the Margin of the Declaration the County was written thus; Chester, &c.; and the Plaintiff declared upon a Bond made by the Defendant's Testator, sealed and delivered apud Travin in Com. Pradell &c. The Defendant pleaded plane Administravit, and at a Trial the Plaintiff had a Partial Judgment; and now it was moved in arrest of Judgment, that all the Proceedings were Coram non Justice, because it appeared upon the Face of the Record, that the Bond was made at a Place within the Jurisdiction of the County Palatine of Chester, to that by the Plaintiff's own showing, this Court has no Jurisdiction of this Cause; Adjudged by the Court, that the Defendant had no Advantages which he might have if he had not pleaded in Chief, for he ought to have come in Time and pleaded to the Jurisdiction &c. But now he is foreclosed to say any Thing against it, having admitted the Jurisdiction by pleading in Chief. Carth. 11, 12. Mich. 3 Jac. 2. B. R. Jennings v. Hankyn.

16. The Jurisdiction of a County Palatine must be pleaded and demurr'd to the Declaration is not sufficient, and where a Defendant pleads to the Jurisdiction of B. R. viz. that the Cause of Action did arise within the County Palatine, it must be aver'd in such Plea, that either the Defendant dwells in the County Palatine, or that he hath Goods and Chattels there sufficient by which he may be attached; otherwise the Plea cannot be allow'd leas there to be a failure of Justice. Carth. 335. Trin. 7 W. 3. B. R. Davis v. Stringer.

17. County Palatine is a general Court for all the Subjects of that Palatinate, and not merely for the Causes arising within the Palatine; for if a Debtor goes from the Foreign into Palatine, his Objections go along with him as much as if he went from one Kingdom to another; and if it were otherwise a Palatinate Jurisdiction would be a Shelter and Asylum to Debtors; for no Process but the Supreme Prerogative Process runs there; and therefore it is duly determined, that the Cause of Action
(S. 4) Jurisdiction allow'd or ousted. In what Cases.


2. Affile in the County of Suffolk; the Tenant pleaded Release, bearing Date at Chester; and it was laid, that at this Day it shall be tried by the Statute of 9 E. 3. Br. Jurisdiction, pl. 104 cites 8 Aff. 27.

3. And by some, if a Man in Bank vouches in Chester, Proceeds shall issue here to warn him. Ibid.

4. And in Dover it was pleaded, that the Feme took Document of Land in Durham, and the Feme was compelled to answer. Ibid.

5. On a Foreign Voucher in Com. Chester of three, whereof two were to be summoned in Com. Chester, and the third in a foreign County, all shall be sent into C. B. and Proceeds made there as well to Chester as to the S. C. — Br. Voucher, ed.; Quod Nota. Br. Cinque Ports, and County Palatine, pl. 2. cites 49 E. 3. 9.

6. Debt, and charged upon Lease of a Benefice in Durham made for Years in Middlesex, and the Defendant demanded Judgment if the Court would take Conunance, because the Benefice is in a County Palatine of D. Ubi breve Regis non currit, and the Writ awarded good, by which the Defendant pleaded levied by Demifues at D. Skene said, all is in Tithes, and no Land in which a Man may distrain, Prit. And the other averred, that he had Land in Demifue Parcel of the Benefice; and the others e contra. And per Hill, Hank, and Thirm, it shall be tried by the County Palatine, and remanded here; For per Hank, Foreign Plea in Durham shall be try'd here, and remanded, and so we command the Record to be tried there, and after to be remanded here; And Thirm said, oftentimes we have sent to Lancaster to be try'd there, where a Thing is pleaded triable in the County Palatine. Br. Jurisdiction, pl. 25. cites 11 H. 4. 40.

7. Where an Estate is made, and is general, as well within Franchife as without, this shall bind County Palatine; Per Hody. Br. Cinque Ports, pl. 17 cites 19 H. 6. 1 & 2.

8. If a Man vouches Foreign in Chester to Warranty, or pleads Foreign Plea, the Parole shall be removed; Contra of Sokenes, who are impeached by Bill where the Franktenement is in the Lord, and this seems to be Copyholders. Br. Cinque Ports, pl. 1. cites 34 H. 6. 42.

9. If a Man be Surity that A. shall keep the Peace, and he breaks the Peace, and the other has Land in Durham, the King shall fend to the Bishop of Durham, or to his Chancellor, to make Execution. Br. Cinque Ports, pl. 14. cites 1 E. 4. 10. by all the Justices.

10. Outlawry in Durham or Chester shall not serve in Bank; Contra by Littleton J. of Outlawry in Lancaster, for this is by Parliament in the Time of E. 3. and the others are by Prescription. Br. Cinque Ports, pl. 15. cites 12 E. 4. 16.

11. Recovery

12. Issue in B. R. triable in County Palatine of Lancaster, shall be tried by them of Lancaster, and remanded to wrong. Per Brudnell and Tremadale J. For they said that this was Parcel of the Crown, and exempted afterwards. Br. Cinque Ports &c. pl. 19. cites 21 H. 7. 33.

13. If Error be in Chester, and returned here, we shall award Execution. Per Fineux Ch. J. Quod non negatur. Br. Cinque Ports, pl. 11. cites 21 H. 7. 33.

14. As to Execution upon a Statute Staple in the County Palatine Br. Cinque Ports, pl. 20. cites F. N. B. 132.

15. Chancery will in no wife retain a Suit of Lands which lie in the County Palatine of Chester. Toth. 181. cites 12 & 13 Eliz. fol. 399. Davenport v. Dean.

16. The Plaintiff exhibited his Bill as a privileged Man to Sir Francis Kenyon, Protonotary of this Court, for Lands lying in the County Palatine of Chester, and for that it appeareth by Letters Patents openly showed in Court, under her Majesty's Great Seal of England, that this Court by any Privilege should not hold Plea of any Lands lying within the said County Palatine, it is therefore ordered to be dismisse, if the Plaintiff shew not good Cause. Cary's Rep. 155. cites 21 Eliz. Lonley v. Green & al.

17. It is order'd that if the Plaintiffs do charge the Defendants by their Bill for the Issues and Profits of Lands, which do lie in the County of Lancaster merely by way of Account, then the Defendants shall not be compelled to answer; if the Defendants be charged in respect of their Promise, then they are to answer. Cary's Rep. 162. cites 21 Eliz. Winsfield v. Fleetwood & al.

18. The Sheriff of Durham was sued before the Council of York for an Escape, and because this concern'd his Office of Sheriff, and that he was an Officer of the Bishop of Durham, and to the Jurisdiction of the County Palatine impeach'd, a Prohibition was granted; and per Whitlock and Bridgman when Suits come into Chancery, which concern the County Palatine of Durham and Chester, the Lord Chancellor will dilimtt them. 2 Roll. Rep. 53. Mich 16 Jac. B. R. Selby's Case.

19. Mandamus to the Mayor of Wigan in Lancashire, to restore an Alderman of Wigan to his Place. The Mayor returned, that they were a Corporation in Lancashire, which is a County Palatine, and therefore were not compellable to answer in B. R. The Mayor for this Return was fined 100 Marks, and it was said, that the Bishop of Durham had been fined 1000, for such another Return. Sid. 92. pl. 14. Mich. 14 Car. 2. B. R. Wigan Mayor's Case.

20. A Suggestion for a Prohibition to the Chancery of Chester was, because a Bill was prefer'd there before the Earl of Derby, Lord Chamberlain there, in which he set forth, that all the Inhabitants of Cheshire have a Privilege not to be sued elsewhere, and that the Defendant in the Prohibition knowing it, had notwithstanding sued him in B. R. in Trover for a Cloak &c. to which he appear'd, and that the Plaintiff in the Action intended to proceed there against this Privilege; But it was answered, that admitting they have such Privilege, yet it appears by his own Bill that he has appear'd here and pleaded, and so it is now too late to claim his Privilege, but that here no Privilege is allowable to him; For though in Trover for Profit of Land, or other Action in which Reality of the Land may come in Question, yet in Action merely Personal there shall be no such Privilege. A Prohibition was awarded, and
and the Court said, that in Matters Tralitory it is in the Plaintiff's Election. Sid. 309. pl. 21. Mich. 18 Car. 2. B. R. Minshull v. Starkey.

21. If one be a Prisoner in B. R. against whom one has a Cause of Action arising within the County Palatine, so that his being a Prisoner here, hinders that Person from proceeding against him below; Sure the Causes arising within the County Palatine shall not hinder us from having Convance of it here, but that is where he his first in Custody of Marshal, for Cause, and another, or the same Party, has another Cause of Action arising within the County Palatine; And if the Truth were so, that the Defendant was in Custody of the Marshall before, for a Cause arising within our Jurisdiction, the Defendant instead of Demurring ought to have it in Support of our Jurisdiction, Per Holt Ch. J. 12 Mod. 535. Trin. 13 W. 3. Wilbraham v. Lowndes.

22. But any Plea of Privilege is good to a Declaration against one in Custody Marshally, if he was brought wrongfully there; Per Holt Ch. J. 12 Mod. 535.

23. Plaintiff had a Decree in the Equity Court of the County Palatine of Lancaster, and Defendant being now in the Guards and living out of the Jurisdiction, Plaintiff brought this Bill in Aid of a former Decree. Defendant by Answer demurred his knowing any Thing of the Decree, but admitted the Proceeding there, and Plaintiff now moved for Injunction. But per Lord Chancellor's Injunction was deny'd, and said, he never knew a Bill in this Court to aid Jurisdiction in an Inferior Court, and Plaintiff's Equity for Injunction must appear upon Proceedings here and upon Records of this Court, and it being mention'd that Plaintiff should have brought a Certiorari Bill, it was objected that Proceedings could not be removed out of County Palatine no more by a Certiorari Bill, than by Writ of Error at Law, in Cause of Action or Judgment there. MS. Rep. Trin. 1734. Duckingsfield v. Noteworthy.

(S. 5) Proceedings and Pleadings.

1. In Affife in the County of Suffolk the Tenant pleaded Release bearing Date in Chester. Here he said, to such Deed a Man need not answer where Action is sued upon such Deed nor by Defence as here. Br. Cinque Ports, pl. 19. cites 8 Alf. 27.

2. And by some, if a Man in this Court Vouches in Chester, Proceeds Jurif. shall go from hence to Chester; For all is the Power of the King. But in another, pl. fee now the Statute of 9 Eliz. 3. for such Foreign Trials. Br. Cinque Ports 104. cites pl. 19. cites 8 Alf. 27.

3. And Exchange for Land in Durham may be pleaded in Bank. And Jurif. the same per Shard of Land in Ireland, and the Party shall be compelled to answer to it. Br. Cinque Ports, pl. 19. cites 8 Alf. 27. 104. cites S. C.

4. Where a Thing pleaded is in Bank viable in County Palatine, the Record shall be sent there to be try'd, and after shall be sent back here; Per Hunk and Culpeper. Br. Trials, pl. 27. cites 11 H. 4.


6. Trespass in Lancaster, the Defendant pleaded Release made in a Foreign County, by which the Day prefixed to the Party's Day in Bank 15 I. 6. And this seems to be by Equity of the Statute of Foreign Voucher
Voucher to try it in Bank. And per Newton it may come into Chancery by Certiorari, and be sent into Bank by Mittimus at the Suit of the Party quod note; For County Palatine cannot try a Thing here. And a Man cannot Commence the Action elsewhere but in the County Palatine, but where Constance of Pleas is, such Foreign Plea goes to the Jurisdiction, and he shall commence this Action at the Common Law, and this is a Failure of Right. Br. Trials, pl. 45. cites 22 H. 6. 48.

7. By Voucher or Foreign Plea in Chester, the Parcel shall be removed. Br. Error, pl. 19. cites 34 H. 6. 42.

8. Parties were at issue upon a Thing triable in the County Palatine of Lancaster. Per Bradley, if a Man Vouches in Lancaster, the Justices write to them to try it, and remand it here, and if they give erroneous Judgment Writ of Error lies here. And where Judgment is given here, we write to them to make Execution there. But if false Judgment be given in Wales and Calke it cannot be reformed here; For those never were Parcel of the Crown, but the County Palatine was Parcel of the Crown, and after was exempted, and by the Statute it ought to be trie'd here. But the Writ is brought, and Termaleus concilir. Br. Trials, pl. 58. cites 11 H. 7. 33.

9. A Writ was directed to the Justice of Chester, or his Deputy, and this was to try a local Title. He who was then Justice &c. made a Return by the Name of John Bradburn, Chief Justice &c. Adjudged a good Return, because the Direction of this Writ implies the Superior, (in as much as it mentioned the Deputy) and the Statute of H. 8. cites him the High Justice, and High and Chief are all one, and this Court will not intend that there is any other Justice than he who returned this Writ. Sid. 64. Mich. 13 Car. 2. B. R. Barrows v. Huit.

10. Upon a Judgment in B. R. a Testament Fieri Facias issued to the Sheriff of Chester, who returned Fieri Facis, and that the Goods remained in his Hands for want of Buyers; thereupon a Vendition Expenes was awarded to him, of which he made no Return, nor gave Satisfaction to the Plaintiff, who thereupon moved for an Attachment. It was moved in the Sheriff's Behalf, that a Fieri Facias cannot issue out of this Court into a County Palatine; Sed non allocatur; and an Attachment was granted. Raym. 171. Mich. 20 Car. 2. Needham v. Bennett.

11. Judgment for forgery and publishing a Died at Chester, was set thither to be tried by Mittimus, and was accordingly tried; and it was objected, that the Mittimus was directed to the Justices of Assize at Chester, and not to the Chamberlain, as it ought; sed non allocatur; and said, that so it is in Writs of Prosces, they are directed to the Chamberlain, to command the Sheriff to execute them, but not to command the Judges to try the Cause; for all the Records to be tried are immediately sent to the Judges in all Counties Palatine, and not to the Chamberlain. 2 Lev. 111. Trin. 22 Car. 2. B. R. The King v. Newton.

12. In Error to reverse a Judgment in Durham in Ejfection, it was urged, that Per Cur. was omitted in the Judgment. But it was answered and resolved, that Idem Consideration of, without saying Per Cur. was good enough in the County Palatine Courts, which are look'd upon in that respect as the Courts of Westminster, and so Judgment was affirmed. 12 Mod. 181. Hill. 9 W. 3. Lamb v. Jenkins.
Court [of County Palatine.] 583

(S. 6) Error. Of Writs of Error to the County Palatine.

1. Error in the County Palatine shall be redress'd here in England, and per Newton, Error in Wales shall be redress'd before the J u d i c i a r i i Errants there; but if there be no such J u d i c i a r i i there, it shall be redress'd here in Curia Regis; Quære inde; For per Fortescue and others, it shall be redress'd in Parliament, viz. Error in Wales. Br. Error, pl. 74. cites 19 H. 6. 12.

2. Upon Error in Chester, Writ of Error of Common Form, as other Writ of Error is, shall be directed to the Justice of Chester, returnable in B. R. and they shall have Day in which three Counties may be held to reverse or affirm it, and if they will reverse it the Record shall not be sent into B. R. and if they will not reverse it the Record shall come into B. R. and if it be reversed there be shall left 100 l. Br. Error, pl. 19. cites 34 H. 6. 42.

3. Error in County Palatine shall be return'd here. Contra of Error in Calais or Wales; For those never were Parcel of the Crown. Contra of County Palatine; For it was Parcel, and after was exempt; and per Fineux Ch. J. Error in County Palatine shall be redress'd there by Commission, and not here. Br. Error, pl. 101. cites 21 H. 7. 33.

4. If Error be in Chester, and it is return'd here in B. R. we will grant Execution here; Per Fineux Ch. J. Quod non negatur. Br. Error, pl. 103. cites 21 H. 7. 33.

5. An erroneous Judgment is given at Chester; a Writ of Error is Jenk. 242 brought out of the Chancery at Westminster to reverse this Judgment, and shall be directed Camerario Causice, jus loci Locunt, tenentes, returnable in B. R. 3 Months after the Delivery of it; the Tenants there, called J u d i c i a r i i Terrarium, have a Month after the Delivery of the Writ of Error there, to consider of the Judgment, and to return it if they see Cause; if they do not reverse it, and the Judgment is found erroneous upon this Writ of Error in B. R. as aforesaid, they forfeit 100 l. to the King by the Custom, there to be levied upon them; this Affirmance or Reversal of the said Judgment extends only to Errors upon the Record, and not to Error in Ratio. If they disaffirm or affirm the Judgment, another Special Writ of Error may be brought upon this in the King's Bench, if the Party will. Often adjudged. Jenk. 71. pl. 34. cites Dy. 345.

6. Error on a Judgment in the County Palatine of Durham, wherein the Plaintiff declared, that the Defendant was indebted to him apud C u r r e n t Durham in 39 l. for divers Wares &c. to him sold and delivered. Exception was taken to the Declaration, because it was not said (Ibidem) sold and delivered, and so it does not appear to be within the Jurisdiction; for the Goods might be delivered in another Place out of the Jurisdiction of the said Court. But it was answered, that though this is Bell, S. C, a good Exception to a Declaration in inferior Courts, yet the County Palatine Court is an Original, and reckon'd among the Number of Superior Courts, As in the Statute 3 Jac. cap. 8. Executions in Number of Superior Courts, in certain Cases there specified, shall not be stay'd by Writ of Error without Security &c. and they never certify their Jurisdiction upon a Writ of Error, more than the Court of Common Pleas, because the Court here judically takes Notice of their Jurisdiction, and S. C. cited the Entry of their Judgments there, is like the Entry of the Judgments Lev. 269. in
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Court [of Ely.]

that Judgment was affirmed; but mentions it in another Case in the Royal Franchise of Ely.

in those Superior Courts, for it is Ideo Consideratum et generally, (without saying per Curiam) therefore this being a Superior Court, and the Rule is, that nothing shall be intended to be out of the Jurisdiction of Superior Courts, except what particularly appears to be so, whereupon the Judgment was affirmed. The Court at first were divided, Windham and Morton held the Declaration good, but Kelingie Ch. J. and Twifden contra: But afterwards Twifden said he had advised with the other Judges, who were all of Opinion, that the County Palatine was an Original Superior Court, and therefore the Declaration good; wherefore the Judgment was affirmed by Twifden, Windham, and Morton, Kelingie remaining in his former Opinion. Saund. 73.

Parch. 19 Car. 2. Peacock v. Bell.

7. It was moved to say the Return of a Writ of Error out of the Chancery, to reverse an Outlawry in the County Palatine of Chester, according to the Opinion of the Lord Coke, 4 Inft. 214. Sed non allocatur; because this old Usage is gone by the Statutes 32 H. 8. cap. 13. and 33 H. 8. cap. 13. before which last Statute there was no Outlawries in Chester, for Coroners are introduced there by that Statute, and they had no Chief Justice there till Queen Elizabeth's Time, for till then, there being but one, there could be no Chief. 2 Salk. 500. Trin. 12 W. 3. B. R. Wilbraham v. Poley.

For more of County Palatines, See Crompt. Jurisdiction, 127. to 142—4 Inft. 211. to 216. cap. 37. of the County Palatine of Chester. And Ibid. 216. to 220. cap. 38. of the County Palatine of Durham.—Prynn's Animadversions &c. on 4 Inft. 151, 152.

(S. 7) Ely.

Royal Franchise of Ely.

1. In Error of a Judgment in Ely Court, and assigned, that in the Stile of the Court it is not yet forth, whether it be held by Charter or Preceptum. 2dly. That the Judgment is Consideratum et, without saying Per Curiam. 3dly. The Writ of Inquiry is Per Sacramentum deoexem, without saying Provisorum &c et legium Hominem; but all these Exceptions were overruled, because it being a Royal Franchise, it is not as in Case of other Inferior Courts Lev. 208. Parch. 19 Car. 2. B. R. Pigge v. Gardiner.

2. Error of a Judgment in Ely Court in Affirmpt was assigned, that that it is not said, that the Goods for which the Action was brought were sold and delivered within the Jurisdiction of the Court; But Judgment was affirmed; because it is not as in the Case of other Inferior Courts. Lev. 208 in Case of Pigge v. Gardiner, cites it as Parch. 19 Car. 2. B. R. Peacock v. Bell.

3. Ely is not a County Palatine, but only a Royal Franchise, and therefore the Defendant cannot plead to the Jurisdiction of this Court, viz. that the Lands &c. or the Cause of Action are, or did arise in Ely, for that is only particular to a County Palatine, which Ely is not; for the Bishop of Ely can only demand Cognizance of Pleas, which is all the Franchise he hath as to this Purpose; and such are the Franchises of the Cinque Ports, which are the same with this of Ely, and it is usual for Appeals of Murder to be brought in this Court, when the Fact was committed
The Court of the Council of York, and the Marches.

1. They shall not hold Plea upon a penal Statute. *This Court, and all Jurisdictions belonging or exercised in the same, is taken away by the Statute* 1 W. & M.

M. Stat. 1. cap. 27. § 2. — See Tit. Marches of Wales (A)

2. They shall not hold Plea upon a Replevin, because none shall hold Plea of a Replevin without Writ, for the Sheriff could not without Writ before the Statute of Harlebridge, cap. 21. *Dickenson S. P. and a Prohibition.*

was granted —- 13 Rep. 31. pl. 11. Hill. 6 Jac. by Coke Ch. J. in the Case of Prohibitions. S. P.

3. The Council of York cannot hold Plea of a Plain in Nature of a Deinune vi & Armis, though Deinunes are expressly within their Jurisdiction, because this is in Nature of a Trespasion. *Dick 7 Jac. B. between Curtis and Coke, resolved, and a Prohibition granted.*

4. If a Man, having Bona Notabilia in several Dioceses, makes an Infant his Executor, and dies, and Administration durante minoro estatc is granted to B, in the Prerogative Court, and he is bound by Obligation to render a true Account; if B. be after compelled in the Court of Marches in Wales, to give Bond to render an Account there, a Prohibition lies, because they there have no Authority to question any Thing that belongs to the Court Christian, if it be not for Adultery. *Polish. 17 Jac. B. Drinkwater's Will.*

5. The Obligee cannot sue upon an Obligation *in English [by Eng. Mo 874. 11th Bill] before the Council of York, though it be within their Jurisdiction. and there cannot be such a Suit in Chancery, and by this the King would lose his Fine; Ergo. *Dick 10 Jac. B. per Curiam, between Guy and Sedgwick, and the Bishop of York.*

6. If the Council of York or Wales begin with a Sequestration, a Prohibition lies; for a Sequestration is not to be granted there till a Contempt. *Pill. 22 Jac. B. R. Vogbaine's Cafe, Prohibition granted to York.*

7. An Information cannot be preferred in the Marches of Wales, against any Man that is not within the Jurisdiction of the Court, to compel him to answer to it. *Pill. 11 Car. B. R. in one Fister's Cafe, per Curiam.*

8. If a Man sues in the Marches of Wales by English Bill in an Action upon the Cafe for 50 l. (as he may by the Instructions there) upon a Promis, and the Defendant pleads the Statute of Limitations.
and this is over-ruled, and thereupon the 50 l. is decreed against the
Defendant, without awarding any Commission in Nature of a Writ of
Inquiry of Damage, a Prohibition lies, for this is but an Action
upon the Case by English Bill. Mich. 14 Car. B. R. between
Hancock and Mercen, per Curiam, a Prohibition granted. Infra.-

As to the Court of the President and Council in the Dominion and
Principality of Wales, and the Marches of the same. See 4 Inft.
232. &c cap. 48.

As to the President and Council of York. See 4 Inft. 245. cap. 49. and
13 Rep. 30. &c.

(U.) Court Lect. What [it is, and other Matters
concerning it.]

* Br. Lect. 1. A Court Lect is the most ancient Court of the Land. * 7 P. 6.

First Lect. 2. The Sheriff's Turn is not any Court Lect. * 13 P. 5. 13. b. Cu-

First Lect. 3. If a Man hath a great Lect within his Seigniory, another cannot
pl. 1 cites & S. C. & S. P. have a small Lect within the Pursuit, [Precinct] of a Manor which is
become a Man shall

not be obliged to come to 2 Lects by Reason of his Refinance.—The Earl of N. had a Lect in T.
of all the Refinants in T. D. &c. and the Earl of D. had a Lect in every of these Villis &c. and at the
holding of the Grand Lect, every one of the Inferior Lects sent a Contable and four Men who protest in
the Grand Lect all Matters prejudicial in Lects of Things done within their respective Lects, and this
had been the Custom Time out of Mind. If the Contable and four Men of any of the Villis do not
attend, the Vill shall be annexed, but no more of the Inhabitants are obliged to attend. And in every
there ought to be made a formal Process, and not a general one as appears 8 (18) H. 6. 13. 13 E.
Swarb.

4. The Steward is Judge in this, and not the Suitors. Co. 6.

a that the

\( \text{ that the Steward is Judge in this, and not the Suitors. Co. 6. } \)

\( \text{ Judge in the Lect, and the Sheriff in the Town, cites 10 H. 6. 7. 7 H. 6. 12. 12 H. 7. 15. - Br. } \)

\( \text{ Lect pl. 14. cites 7 H. 6. 12. that the Steward is Judge in the Lect and may inflict a Fine, per Cur-
\)

\( \text{ tehere. And by Sutton, to Eras his Power extends he have equal Power with the Judges, to which } \)

\( \text{ Newton agreed. } \)

\( \text{ [Roll seems to be misprinted both as to the (Contra) and the Year. For in Year } \)

\( \text{ Book is no such Year, as (17) and Mich. 7 H. 6. 12. b. 13 a pl. 17 has the } S. P. \) as above.] \)

\( \text{ 8 Rep 32. b. Trin. 30 Eliz. C. B. in Grisley's Case, resolved, per rot. Car. that the Steward is } \)

\( \text{ Judge. } \)

5. If a Man be elected in a Court Lect to be a Constable within
the Jurisdiction of the Lect, and before he is sworn, the Judges of
Peace at their Sessions discharge him, because he is a Matter of Arts, at
for other Court, and elect and swear another to be Contable there;

Upon
Upon a Complaint of this to the Court of King's Bench, the Court of King's Bench may grant a Writ to discharge a Juit Man, and to swear to him that was elected at the Leet, because the Election of the Constable belongs properly to the Leet, without a reasonable Cause to the contrary. Hill. 10 Car. 2. R. Heron's Case, who was elected in the Leet of the Bishop of Winton, in Waltham Welbeck in Comitatru Southampton, and the Writ granted accordingly.

6. Cr. 6 Car. 2. R. Arundel's Case of Dorsetshire, a like Writ granted also.

7. The Leet was derived out of the Town of the Sheriff; Per Finaux.

Br. Leet, pl. 24, cites 2 H. 1. 15.
A Leet may be within a Hundred or belonging to an Hundred; It A Leet is
may be Parted of an Hundred. Arg. Cart. 177. cites 8 H. 7. 1. 12 H.
7. 15. 2 H. 4. 24.

9 Of ancient Time the Sheriff had two great Courts, viz. the
Tours, and the County Courts; afterwards for the sake of the People,
and especially for the Husbandman, that each of them might the better
follow their Business in their several Degrees, this Court here
spoken of, viz. Viz. of Frank-pledge, or Leet was by the King divided,
and derived from the Town, and granted to the Lords to have the view of
the Tenants and Realties within their Manor, &c. So as the Tenants,
and Realties, should have the same Justice, that they had before in the
Town, done unto them at their own Dower, without any Charge or Los of
Time, and for that Cause cause the Duty in many Leets to the Lord De
Certo Leta, towards the Charge of obtaining the Grant of the said Leet.
So, likewise, and for the same Reason, were Hundreds, and Hundred
Courts divided and derived from the County Courts, and this the King
might do, for the Town and Leets both are the King's Courts of Re-
cord; And as the King may grant a Man to have Power Tenere pacti-
tae within a certain Precinct, &c before certain Judges, and in a Man-
ner exempt it from the Jurisdiction of his higher Courts of Justice, it
might be do in case of the Town, and Hundred Courts, so as the
Courts and Judges may be changed, but the Laws and Customs,
whereby the Courts proceed, cannot be altered. And as the County
Court, and Hundred Court are of one Jurisdiction, so the Town and Leet
be also of one and the same Jurisdiction; for Derivative potestitas eit cju-
dem Jurisdictionis cum Primitiva. 2 Infr. 71.

10. Court Leet may be divided, As where the Manor of D. extends But See tit.
into A. B and C. by a grant of tenant Manuerum Suum de D. in B. Manor (G)
there being a Court Leet in D. the Grantee may keep a Court Leet in
of Morris v. Smith and Paget.

11. Every Leet is the King's Court tho' another has the Profit of a Leet is
Anon.

Once one of the greatest Courts the King had, which was Constituted by the Monarch of the Saxons,
but now is but the Shadow of it. Per Doderidge. J. Roll R. 71. pl. 16. Mich. 12 Jac. B. R.
in Case of Bullen v. Godfrey.

12. Two Leets can't be in one Place Inamful. Mo. 427. pl. 595.

Hill. 38 Eliz. Lord Norris v. Barret.

13. Agreed, that the Lord of the Manor and Leet is to provide Stocks Cro. E. 695.

as well as Tumbrel, and if he does not, he forfeits his Liberry for his pl. 11. Ste-
Negligence. Mo. 574. pl. 79. Trin. 40 Eliz. in Cafe of Strogs v. version v.

Stevenson.
Court Lect

C. held that Stevenfon — But See Cart. 29. that the Stocks are to be at the Charge of the Town, and it is a forfeiture of 5 l. if a Town has none. ought to be provided by the Lord of the Liberty and not by the Vill, unless there be a Prescription to the Contrary, which ought to be specially allèged; for they being for Execution of Justice within the Liberty, he ought to see it to be done.

14. The King has Power to make and create a Leet anew, where none was before. A Diffres is incident of Right, but in a Court Baron a Prescription must be laid to diuine. Brownl. 36. Anon.

S. P. Contra. 15. Private Leets as to this Purpose are within the Leet of the Hundred, to inquire of Things omitted by them to be inquired being publick Nunciances. Cro. J. 351. pl. 15. Mich. 17 Jac. B. R. Loader v. Samuell.

In such Case a Writ may be directed to the Sheriff to inquire thereof, and by the Book of 29 E. 3. this Writ is not taken away by the Statute 25 E. 3. 9. made the Year before, which was then fresh in the Judges Memory. 4 Inst. 261.

16. The Grand Leet is called Town, and is in Nature of the Sheriffs Turn which has Jurisdiction of all inferior Leets within it.


18. When a Hundred Leet is granted to a Subject it is a Franchise; Per Hale Ch. J. Freem. Rep. 349. in pl. 433. Mich. 1673.

19. In the Hundred of Norton Ferris there is an ancient Borough called Wincanton, which has a Leet, and there was also a Leet in the Hundred. Here tho' there be a Leet in the Hundred, which cannot be but by Prescription, yet there may be a subordinate Leet within it, and the Retants of this Leet may be exempt from their Attendance at the Leet of the Hundred, unless the Hundred by Prescription claim it. But Hale Ch. J. said, there is a difference between a Leet in an ancient Borough, (who in Eyre appear'd by four, and was always look'd upon distinct from the Hundred,) and between Leets in Upland Towns, where he that owes Suit to the Leet may owe none to the Hundred, but by Custom he may do so. But the choosing of Constables and other Officers for the Hundred out of the Leet of Wincanton, may be out of the Leet. 3 Keb. 197. pl. 44. and 230, 231. pl. 47. Mich. 25 Car. 2. B. R. The King v. King.

20. In a Prefentment in a Leet it is not necessary to shew Coment nor Quo Fas, the Court is held. 1 Salk. 203. The King v. Gilbert.

In all Leets they only say, Ad Car &c. ten't such a Day without shewing their Authority. But it had been a good Objection not to shew Authority if constant Practice had not been otherwise. 12 Mod. 4. S. C. Pulch. 5 W. & M.

(U. 2.) Who
Who must appear at it.


2. In Debt for an Amerciament in a Leet, the Cafe was, that the Abbots of A. was seized of the Hundred of H. in Berks, and of a Leet appertaining thereto by Seisin, to be held once a Year, within a Month of Easter. The Dilution was found and that the Towns of C. and N. with 24 others were within the Hundred and Leet, and that King Ed. 6. granted to one L. several Lands in N. Parcel of the Possessions of the Abbey and granted also omnes Cuius, Letas, &c. & Amerciamenta præmissis in N. pertinens' provenien', &c. and that the said L. and his Heirs, should have to talia & consimilia Cuius, Letas &c. Amerciamenta & Hereditamenta as the Abbot had infra the said Lands &c. and afterwards King E. 6. granted the Hundred and the Leet to one O. which by several insuecuntia came to the Lord Norris, the now Plaintiff, and that B. the Defendant claimed under L. and that he was an Inhabitant in N. and being summoned to be at the Leet, be made Defaults and was amerced to 40s. for which the Action was brought; adjudged, that L. had no Leet nor Amerciament by this Grant, neither was he discharg'd from the general Leet of the Hundred, because the Leet mentioned in this grant is restrained to the Land granted; for it is Præmissis in N. pertinens & provenien', and there was no such Leet there before the Grant; For the Leet which the Abbot had, and which came to the King upon the Dilution was appertaining to the Hundred and did not belong to the Lands granted to L. and as to the 2d Clause L. could not have the like Leet as the Abbot had, for when eadem may be had and the Party has Words to have eadem, he shall never have consimilia; For eadem remains in the King, and if the King has a Leet no Man can have a Leet in the same Place, because 2 Leets cannot be in one Place simul, and as for the Word Amerciamenta, it cannot properly be said Provenien' de Præmissis, because they do not issue out of Land but by reason of an Office in another Place where the Leet is held, and the Amerciamenta in the Grant to L. are restrained infra terras in the Grant, and the Abbot had no Leet infra the Lands granted to L. but infra that and other Lands entirely. Mo. 426. pl. 59. Hill. 28 Eliz. B. R. Lord Norris v. Barrett.

3. Ecclesiastical Persons are exempted by the Statute of Marlborough cap. 10. 52 H. 3. from appearing at the Sheriff's Tourns, and consequently at Leets which are derived out of the Tourns. And if they should be dilat'ed for any Amerciament &c. for not appearing in the Leet, they have a Writ upon the Statute by way of Privilege. Arg. 8 Mod. 297. Trin. 10 Geo. 1. in the Exchequer in Morgan's Cafe.

4. Persens exempted by the Common Law, are such as Infants under 12 and Women &c. per Cur. 8. Mod 300. Trin. 10 Geo. 1. in the Exchequer in Morgan's Cafe.
(X) The Jurisdiction [of the Leet.]

1. **Vide** the Statute of 13 Ed. 8, which speaks of what Things are a Leet hath Competence.

2. They have Power to hold Plea of all Treason and Felonies, besides the Death of a Man, and Rape of a Woman. *7 P. 6.

3. They have Power to enquire of Treason, as of the Forging of S. 1. & S. P. false Money. 9 P. 6. 44. b.

4. So they may enquire of High-Treason done to the King himself. 9 P. 6. 44. b. Where *10 P. 6. 7.

5. They have Power to enquire of Felony. 10 P. 6. 7.

6. A Man cannot be accused in a Leet for surcharging a Common, for that this concerns a private Interest, and not the Public; for this Court is for Royal Justices, and not for private Matters.

7. They may enquire of Common Nuisances done to the Common People. 9 P. 6. 45.
Court [Lect.] 591

therefore the Justices of B. R. would not arraign the Party on this Indictment, and the Lord was fined 42s.

8. They have Power to enquire of all Manner of Allraies and Affaults. 10 H. 6. 7. by Newton.—Br. Ley gager pl. 99, cites S. C. & S. P. accordingly, Quad fait conceuiment.
An Indictment of Affault and Battery found in a Lect without any Blood spilt is not good. D. 253.


10. If a Man, by Reason of a Tenure, ought to cleanse a Ditch. This Point was the high Street, and does not cleanse it, by which the Street is surrounded, so that the People cannot pass; he may be ordered in the Lect for it, and may be awarded to be * distrain- 4th Plea and no such Point at 29.

and to seems to be misprinted.
† A Diffre we is incident to a Court Lect of Common Right. Brownl. 36. Anon.—Amendment in a Court Lect for notwithstanding a ditch in a High-
crey, and good, and made the Party may be punished in the Lect, and also by the Statute. 18 Eliz. 1.

11. If one receives a poor Man to be his Tenant in a Town, who is chargeable to the Town, and this against a By-Law made by the Town, the Town having Power to make such By-Laws, this is punishable in the Lect. p. 8 Jia. In Camera Seacanris per Curiam.
to be S. C. by Custum such a By-Law is good; But by Snig and Altham clearly, the Steward cannot amerce one for such a Cause without an Order (or By-Law) with a Pain made before.

12. In Order with a Pain may be made by the Steward of a Lect A By Law in a Lect, that none shall receive such Tenants as shall be chargeable to the Parish. P. 8 Jia.

13. A Presentment was in a Lect, that f. N. had inclosed such certain Lands, which ought to be in Common for the Inhabitants of the Villa, is a void Presentment, though it is laid to be ad Nocentum In-
habitandum; For this is a Tort, but no Nuisance; Quod Noto per Judici-

14. A Lect has Power to amerce a Man for a Nuisance, and also to a-
ward that the Offender be distrain'd to amend it; Per Cur. Br. Lect. pl. 33. cites 29 E. 3. 28. and Finch. Avouwy, 265.

distrain the Beasts of the Offender in any Place within the Precinct of the Lect or Hundred. Quod Noto, Br.
15. Lord of a Hundred cannot by reason of the Hundred have Waif; For he cannot try it by Jury; For he cannot compel the Suttors to be sworn; Convict or a Leet, therefore Waif belongs to it, and the Day of the Leet is the King's, and the Lord is only his Minister for the Time. Br. Court and Belknap. Baron, pl. 2. cites 44 E. 3. 19.

16. The Bailiffs of St. Albans by Certiorari in Banco removed three Prisoners into B. R. whereof the one was indicted in another County, and therefore was sent to the Marshalsea, and the others were sent back, because Nothing was against them in Banco, nor were they indicted, and Leet may inquire of Felony, but if suspected Persons are taken and not indicted, they cannot deliver them, but they shall be delivered before Justices of Deliverance by Proclamation, and though the Leet may inquire of Felons, yet they cannot arraign them. Br. Corone, pl. 23. cites 9 H. 4. 19.


18. Indictment taken in a Leet is as well as in B. R. of Things touching the Jurisdiction of the Leet, and it may commit a Man to Prison, and affix a Fine, quod Concelleum fuit, quod nota. Br. Ley Gardner, pl. 99. cites 12. H. 6. 7.

19. Nota that Things given by Statute as Rape, Putting out Eyes, Cutting out of Tongues and the like, which are made Felony by Statute, those shall not be inquired in the Leet, nor any others but those which are Felony at the Common Law, and the others are void Prefentments; For Coram not Justice. Br. Prefentments in Courts, pl. 21. cites 22 E. & S. P. clearly by the Opinion of the whole Court. - - - Jerk. 121. pl. 45. and 13. P. 31. S. P. unless the Statute which creates the Offence, gives them Power. - - - Br. Indictmen, pl. 23. cites 6 H. 7. 4. S. P. - - - Br. Leet, pl. 22. cites S. C. & S. P. and that the Law is the fame of Labourers and Artificers.


21. It was adjudged, that Pound-Breach is not inquirable in a Leet, because it is not a common Nuissance. But Rhodes said, that excessive Tali is inquirable there. 4 Le. 12. pl. 46. Pafch. 27 Eliz. C. B. Sanderson's Cafe.


23. In Replevin the Defendant made Conuance as Bailiff to G. for that he had a Leet within his Manor of D. and that the Plaintiff was amerced at such a Court, for putting his Goese upon the Common there, and for that Amercement he diuired; But the Court held, that this was not an Article inquirable in a Leet, or punifiable there, and therefore the Plaintiff had Judgment. Cro. Eliz. 44. pl. 14. Mich. 37 & 38 Eliz. C. B. Wormleighon v. Burton.

24. If
24. If a Man be blind to go in a common Highway, or if a Ditch be
made atwain that Way so as he cannot go, it is presentable in this Court.
Co. Litt. 56. a.
25. In ancient Times the King's Courts, and especially the Leets, had
Power to inquire of, and punish Fornication and Adultery by the Name of
Letherwrite. 2 Inft. 488.
Par. 3. 2 Inf. 738.
27. Leet and Tourn cannot inquire of private Trespasses. Jenk. 138. As a private
Affault which is no
pl. 85.

28. A Raifer and Sower of Diccord amongst Neighbours is presentable Sec. 1
S. C. and the Notes there.

29. Debt was brought for 40 s. imposed on the Defendant at a Court
Leet of the Plaintiffs for a Contempt committed there; which was, that
he put on his Hat in the Court, and being admonished by the Steward
for so doing, he replied, viz. I do not Value what you do. It was
adjudg'd for the Plaintiff. Raym. 68. Hill. 14 & 15 Car. 2. B. R.
Bathurst v. Cox.

30. The Bailiff of Westminster had levied Money upon several Per-Rays. 154.
Anon. S. C. sons upon Prefentments in the Leet there for using Trades not having
 gays, that B. been Apprentices; And upon Complaint made of this against B. It was at
the Defen-gred, per Car. that the Statute 5 Eliz. does not give the Leet any such Bailiff
Power to proceed thereupon, and directed that those Aliens that shall use,
Trades not having been Apprentices shall be presented at the Sessions
or in B. R. Sid. 289. pl. 4. Trin. 18 Car. 2. B. R. Amy v. Ben-
et.

31. The Defendant was present at a Leet, for digging Coney-Bur. The Leet
snarls, and breaking the Soil in the Lord's Waste; It was mov'd to quash it,
can only a becaus it is not Ad Commune Noctumum. Kelleing Ch. I said, that
public Nu-
a Leet cannot aume for any Thing done to the Damage of the Lord
and the Prefentment was quash'd. Raym. 160. Hill. 18 & 19 Car. 2. a private
or for parti-
B. R. Ayre's Cafe.
cular Da-
mage to the Lord, which though it may be present for the Information of the Lord, yet the Court
cannot punish the Offender. 1 Sound. 153. Hill. 19 & 20 Car. 2. in Cafe of the King v. Dickens-
on.

32. By two Justices Court Leet may, by Custum, make By-Laws touch-2 Keb. 567.
ing Common though not originally; but per Tirrel J. Leets have to do pl. 22. S. C. Judges
adjudged se-
only with the Peace, and if a Leet may make a By-Law as to Com-
mons, then the Leet may make one By-Law and the Court Baron anot-
ther, and it cannot be known which is to be obey'd, and as to the
Cafes put on the other Side, they must be understood where a Court
Leet and Court Baron are held together. But per Wild and Archer
Justices against Tyrrel Judgment was given that the By-Law was good.
33. In Trespasses for breaking his Housé and taking away a Silver Cup, the Defendant justified for a Fine of £1. imposed by the Steward of the Leet for contemptuous Words spoken to the Steward in the Court Leet, Ipso tune judicialiter sedeste, (viz.) that the House in which the Court was held, was the House of the Mayor of Sudbury, and that John Skinner, who, then and there being Present, has more Right to be there than the
Steward, and if he was Mayor of Sudbury he could not suffer the Court to be held there. The Plaintiff replied, that the said House was the Town-Hall of that Borough, and that Skinner was then Mayor of the said Borough, and the Plaintiff a Free Burgesse thereof, and that he quietly & pacifely spoke the Words. Upon a Demurrer the Plaintiff had Judgment, per tot. Cur. For no such Fine ought to be imposed for the said Words 2 Jo. 229. Mich. 34 Car. 2. B. R. Berrington v. Brooks.


(Y) Collateral Authority of the Leet.

Br. Leet, 1. If a Man be riding there, where a Leet is, the Steward, for want
of others, may compel him to be sworn. 7 H. 6. 13.


Br. Leet, 2. If the Bailiff of the Court, or other Officer, will not make a
Panel to enquire &c. upon the Command of the Steward, or will not
perform his Duty, he may be fined. 7 H. 6. 12. b.


See pl. 2. and the Notes.

Br. Cutloms, 3. So he may be commanded to do it upon a Pain, and if he does
not do it, he shall lose the Pain. 7 H. 6. 12. b.

pl. 3. cites S. C. and
such a Coft. 44 b.

4. If the Petist make a false Presentment, and this is found false
by the grand Inquest, yet the Petist hall not be amerced. 9 H. 6.

See pl. 2. and the Notes.

Br. Cutloms, 5. If a Man be amerced in a Leet, he ought to be amerced to a certain Sum, as 10s. 20s. or other certain Sum, and ought not to be
amerced in general, and after amerced to a certain Sum; for the A-
mercement ought to be certain, and it ought alter to be amerced and
mitigated.

Hob. 159. pl. 166. 14.
Pulch. 14
Jac. S. C. ——
An Amerc.
mitigated by others. *Roberts Reports* 173. between *Wilton and Har-

1. dingban.

2. fence presented need not be affected, and Hob. 129. was denied by Holt Ch. J. Show. 62. Mich. 1 W. & M. in Case of Matthews v. Cary. — See tit. Amercement. (E) and (G)

6. A Steward in a Leet may assize a Fine on a Tisbingman who will not Present, and if the Lord brings Debt thereof the Defendant cannot wage his Law; because the Leet is a Court of Record. Br. Leet pl. 36. cites 10 H. 6. 7.

Br. Ley-

Gager pl. 90. cites S. C. accord-

ingly.

S. C. cited

and agreed per tot. Cur. 8 Rep. 38. b.

7. A Common Person who has a Leet may sell the Diff'res as the King may; For the Court is the King's though a Common Person has it. Br. Leet pl. 20. cites 3 H. 7. 4 by Fairfax J.

8. If any Contemp or Disturbance to the Court be committed in any Court of Record, the Judges may impose a reasonable Fine on the Offenders, and a Leet is a Court of Record, and the Steward is Judge there; and therefore may impose a reasonable Fine on any such Offenders for an Offence done to the Court before him. As if the Bailiff of a Leet refuseth to execute his Office the Steward shall impose a reasonable Fine upon him. Refolv'd per tot. Cur. 8 Rep. 38. b. Trin. 30 Eliz. C. B.

Grifley's Cafe.

9. If any misbehave himself in the Leet in any outrageous Manner, the Steward may commit him, per Popham Ch. J. Ow. 117. Patch. 37 Eliz. in Case of the Earle of Lincoln v. Filer.

10. The Defendant gave the Plaintiff's Steward the Lie openly in the Leet, for which the Steward set a Fine of 20 s. upon him. The Plaintiff brought Debt for the Fine; All the Justices agreed upon Debate Court held, between them, the Action was maintainable, because they are words that for of Contemp in a Court of Justice to a Judge, for which the Judge might Fine him. No. 470. pl. 470, Mich. 39 & 40 Eliz. Lin-

coln (Earl of.) v. Filer.

Prescription alleged to assize such Fines, or to have such an Action. Wherefore it was adjudged for the Plaintiff—Ow. 112. S. C. Gawdy at first held that the Action would not lie; But afterwards chang'd his Opinion, and the Plaintiff had Judgment to recover.

11. The Steward in the Leet may take Recognizances for keeping the Peace. 4 Init. 263, 264. cap. 54.

12. If a Juror sworn to inquire for the King be arrested, by which the King's Court is disturbed, and the Arrest made by an Officer of B. R. Upon Affidavit thereof B. R. will grant an Attachment, but denied it against such Arrest made by Officers of the Marches of Wales. But they advised to file an Information against the Officer, for this Disturbance to the Leet, Lat. 198. Trin. 3 Car. Anon.

(7. 2) Where
(Y. 2) Where the Court is not held, what is to be done.

1. The Portreeve of Yeovil in the County of Somerset was usually elected to continue in his Office for a Year, and at the End of the Year a new one to be chosen and sworn in the Leet by the Steward of Sir Edward Phillips, Lord of the Manor, which on some Dispute with Sir Edward was refused to be done, and thereupon Process was awarded out of B. R. commanding the Oath to be tendered to the Portreeve; For B. R. is the Supreme Court which ought to do Justice to all the King's Subjects. 2 Roll Rep. 82. Palch. 17 Jac. B. R. the Portreeve of Yeovill's Cafe.

(Y. 3) Presentments.
How they must be.

2. In every Presentment of a Nuisance in a Court Leet it must be mentioned to be Ad Nocumentum ligorium Domini Regis; and the averring in Action of Debt brought for the Pain assailed, that it was Ad Commune Nocumentum is not sufficient; For it must be in the Presentment which is the Charge, and the omitting it is a Fault incurable. Cro. J. 382. pl. 10. Mich. 13 Jac. B. R. in Cafe of Prat v. Scarn.

3. Juratores pro Domino Regi & Domino Manerii & Tenetibus presented the Defendant for erecting a Glass-House &c. ad magnam Nocumentum; it was quashed; For though it is good for the King and the Lord of the Manor Leets being granted to the Lords as derived out of the Torn, and as for Tenetibus, it is only Surplusage, yet this Presentment is ill, because it is not said Ad Commune Nocumentum. 1 Vent. 26. Parch. 21 Car. 2. B. R. Anon.

4. The Defendant was presented and fined in a Leet for refusing the Office of a Constable; It was moved to quash it, because it express'd the Court to be held infra annum Menem Santi Michaelis, viz. 12 November, which is above a Month after Michaelmas, and it is necessary to set down the precise Day, for it may be on a Sunday, and yet within a Month after Michaelmas, and for this Cause it was quashed. Vent. 197. Hill. 22 & 23 Car. 2. B. R. Dacon's Cafe.

(Y. 4)
(Y. 4) Pleadings in Leets, and Things done there.

Pleadings in General.

1. N O T A, that Pleadments in Leets, which touch Franck-tenement, or bind the Franchise, shall be traversable; but con-trary of other Pleadments in Leets. Br. Lect pl. 27. cites 45 E. 3. 8.

2. Travafs upon the Cafe, the Plaintiff preferred to have Lest in D. with all the Profits thereof, and that the Defendant had disturb’d the Steward of the Plaintiff to hold Lest there &c. and the Defendant said, that the Plaintiff had Lest there jenu in Anno, Sell. such a Day after Easter, and that the Defendant has Lest there jenu in Anno, that is to say, such a Day after Michaelmas, and that the Plaintiff gave Warning to the Defendant 15 Days before the Lest, and that his Bailiff should be with him if he would, and that he should have the Moneys of the Profits of the Lest of the Plaintiff, and if he held his Lest in other Manner, that the Defendant had used to disturb &c. and that the Plaintiff did not give Warning by 15 Days, by which he disturb’d him to hold the Lest, Proht el bene licuit. Per Prifot the Defendant ought to Traverfe Abique hoc, that he and his Predecessors ought to have the entire Profits Proht, and by him the Plaintiff may maintain, that he and his Predecessors have had Leet by reasonable Warning of three or four Days, Abique hoc, that it has been usual to Warn by 15 Days prout &c. by which Lacon said as above, Abique hoc, that the Plaintiff has had the en-tire Profits of the Leet, and Abique hoc, that he has used to hold the Leet without special Warning in the Manner as we allege. Choke said, the Warning is not alleg’d by us. Moyle said, therefore it seems that the second Traverfe is void, et adjornatur. Br. Tra-verfe per &c. pl. 158. cites 38 H. 6. 16.

3. If Plea be removed into B. R. of which they cannot hold Plea as Formada &c. yet there they shall hold Plea therein, as the Court where it ought to be bringhe should do, and shall make Process per Grand Cape & petit Cape, and otherwife, as the first Court ought to do. And if a Thing before Justices of Peace be removed before them. Per Fineux Ch. j. Br. Jurifdiction, pl. 46. cites 14 H. 7. 14.

4. A Pleadment in the Lect or Tourn, alter the Day of the Br. Travers Pleadment, binds the Party for ever, and is not traversable but in per &c. pl. Cases that touch ones Freehold, as that one ought to change the Highway S. C. cites ratione Tenuriae fio; therefore the Courfe is to remove such Pre-plements into the King’s Bench by a Certiorari, where he may Traverfe them. Finch’s Law 386. 8vo. cites 5 H. 7. 3. D. 12. b. pl.

5. A Release of all Demands does not discharge a Man of his Suit to a Lect by reason of his Residency, because a Lect is the King’s Court to 7 N which
which every liege Subject is to come and perform his Allegiance to him, And also because Suit of Court is inseparably incident to a Court Leet, which cannot be released. Brownl. 186. Trim. 4 Jac. in Cafe of Tutt v. Ingram.

6. In Pleading the holding a Court, it must say the Place where was Part of the Manor, or helden of it at least. Hob. 56. Trim. 13 Jac. in Cafe of Foiler v. Jackton.

7. Upon a Certiorari to remove a Presentment at a Leet for a Nuance; Exception was taken, that the Leet not being of Common Right, but taken out of the Tourn, and the Tourn is of Common Right, therefore because it is not shown how, or by what Right this Court was held, whether by Patent or Prescription, it is not good; but the Court said, the Precedents were all fo, and over ruled the Exception. 1 Salk. 200. pl. 2. The King against Gilbert.

8. In Debt for an Amercement in a Court for not doing Suit, an Exception was taken that the Court being uncertain when it will be held, (that is where the Lord may hold it when he pleases,) a particular and convenient Notice ought to be given, when and where the Court is to be held, and cited 32. or 22 F. 4. 27. b. 28. a. 3 Cro. 353, 555, 556. and that a general Notice in the Church is not Notice to incur a Forfeiture, unless a particular Custom for it. It was answered that, it is found that due Notice was given, and this the Judge of Affile is fuppofed upon the Evidence to direct the Jury. But Holt Ch. J. faid, we can’t Judge of the Notice, because you ought to have showed particularly, that he was summon’d to the Court at such Day and Place to be held. Per Powell, J. To take Advantage of a Forfeiture Notice should be Personal, unless a particular Custom to the contrary. In ancient Leets, personal Notice perhaps is not Necessary, but Notice in Church and Market may be well. But otherwise where it is not an ancient Leet. Adjournatur. 11 Mod. 76. Brook v. Hufller.

See more as to the Jurisdiction &c. of Court Leets Kitch 16. &c.—4 Inft. 261. cap. 54.—Prynn’s Animadv. on 4 Inft. 189, 180.—See Tit. Amereements.