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G. W. A. Piper
Solicitor L'edbury.

3/10/16

THE
ELEMENTS
OF THE COM-
MON LAWVES OF
ENGLAND,

Branched into a double Trade:

THE ONE
Containing a Collection of some princi-
pall Rules and Maximes of the Common
Law, with their Latitude and Extent.

*Explicated for the more facile Introduction of such as are
studiously addicted to that noble profession.*

THE OTHER
The Use of the Common Law, for preservation
of our Persons, Goods, and good Names.

According to the Lawes and Customes of this Land.

By the late Sir *Francis Bacon* Knight, Lo: Verulam,
and Viscount S. Alban.

Videre Utilitas.

LONDON,
Printed by the Assignes of *J. More* Esq. and are to be sold
by *Anne More*, and *Henry Hood*, in Saint Dunstons

ELEMENTS OF THE COM-

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PHYSICS

By J. B. SEEVER, M.D.,
Professor of Botany in the University of Pennsylvania

Philadelphia: J. B. Lippincott & Co., 1857.

THE AUTHOR

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By Sir FRANCIS BACON, then Solicitor
*generall to the late renowned Queene Eli-
zabeth, and since Lord Chancellor*
of ENGLAND.

Orbe parvo, sed non occiduo.

LONDON,
Printed by the Assignes of J. More Esq. and are to be sold
by *Anne More*, and *Henry Hood*, in S. Dunstons
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TO
HER SACRED
MAJESTIE.



Doe here most humbly present and dedicate to your Sacred Majesty a sheafe and cluster of fruit of the good and favourable season, which by the influence of your happy government we enjoy; for if it be true

that silent leges inter arma, it is also as true, that your Majesty is in a double respect the life of our laws: Once, because without your authority they are but litera mortua; and againe, because you are the life of our peace, without which lawes are put to silence: and as the vitall spirits doe not onely maintaine and move the body, but also contend to perfect and renewe, so your Sacred Majesty, who is anima legis, doth not onely give unto your lawes force and vigour, but also hath been carefull of their amendment and reforming; wherein your Majesties proceeding may bee compared, as in that
part.

The Epistle Dedicatory.

part of your government (for if your government bee considered in all the parts , it is incomparable) with the former doings of the most excellent Princes that ever have reigned , whose study altogether hath beene alwayes to adorne and honour times of peace, with the amendment of the policy of their lawes. Of this proceeding in Augustus Cæsar the testimony yet remains.

Pace data terris animum ad civilia vertit

Jura suum, legesq; tulit justissimus auctor.

Hence was collected the difference between gesta in armis and acta in toga, whereof he disputeth thus.

Ecquid est quod tam propriè dici potest actum ejus qui togatus in republica cum potestate imperioq; versatus sit, quam lex? quære acta Gracchi: leges Sempronii proferantur: quære Sillæ Cornelix: quid Cn. Pom. tertius consulatus, in quibus actis consistet? nempe, in legibus: à Cæsare ipso si quæreres quidnam egisset in urbe, & toga leges multas se responderet & præclaras tulisse.

The same desire long after did spring in the Emperour Justinian, being rightly called Ultimus Imperatorum Romanorum, who having peace in the heart of his Empire, and making his warres prosperously in the remote places of his Dominions by his Lieutenants, chose it for a monument and honour of his government, to revise the Romane lawes from infinite volumes, and much repugnancy, into one competent and uniforme corps of law; of which matter himselfe doth speake gloriously, and yet aptly, calling of it, proprium & sanctissimum templum justitiæ
confe-

The Epistle Dedicatory.

consecratum: a worke of great excellency, indeed, as may well appeare in that France, Italy, and Spaine, which have long since shaken off the yoke of the Roman Empire, doe yet neverthelesse continue to use the policy of that law: but more excellent had the worke beene, save that the more ignorant and obscure time undertooke to correct the more learned and flourishing time. To conclude with the domesticall example of one of your Majesties royall Ancestors; King Edward the first your Majesties famous progenitor, and the principall Law-giver of our nation, after hee had in his younger yeeres given himselfe satisfi- on in the glory of armes, by the enterprize of the holy land, and having inward peace (otherwise than for the invasions which himselfe made upon Wales and Scotland, parts farre distant from the Centre of the Realme) hee bent himselfe to endow his state with sundry notable and fundamentall lawes, upon which the government hath ever since principally rested: of this example, and others the like, two reasons may bee given; the one, because that Kings, which either by the moderation of their natures, or the maturity of their yeeres and judgement do temper their magnanimity with justice, do wisely consider and conceive of the exploits of ambitious warres, as actions rather great than good, and so distasted with that course of winning honour, they convert their mindes rather to doe somewhat for the better uniting of humane society, than for the dissolving or disturbing of the same. Another reason is, because times of peace, for the most part drawing with them abundance of wealth, and
finenesse.

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finenesse of cunning, doe draw also in further consequence multitudes of suits; and controversies, and abuses of law by evasions and devices; which inconveniences in such time growing more generall, doe more instantly sollicite for the amendment of lawes to restrain and repress them.

Your Majesties reigne having beene blessed from the Highest with inward peace, and falling into an age wherein if science bee increased, conscience is rather decayed; and if mens wits bee great, their wills bee greater; and wherein also lawes are multiplied in number, and slackened in vigour and execution, It was not possible but that not onely suits in law should multiply and increase (whereof a great part are alwayes unjust) but also that all the indirect courses and practices to abuse law and justice should have bin much attempted and put in ure, which no doubt had bred greater enormities, had they not by the royall policy of your Majesty, by the censure and fore-sight of your Councill Table and Star-chamber, and by the gravity and integrity of your Benches, beene repressed and restrained; for it may bee truly observed, that as concerning frauds in contracts, bargaines and assurances, and abuses of lawes by delayes, covins, vexations, and corruptions in Informers, Jurors, Ministers of justice, and the like, there have beene sundry excellent Statutes made in your Majesties time, more in number, and more politicke in provizion, than in any your Majesties predecessors times.

But I am an unworthy witnesse to your Majesty of an higher intention and project, both by that which
was

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was published by your Chancellor in full Parliament from your royall mouth, in the five and thirtieth of your happy reigne; and much more by that which I have beene since vouchsafed to understand from your Majesty, imparting a purpose for these many yeeres infused into your Majesties breast, to enter into a generall amendment of the states of your lawes, and to reduce them to more brevity and certainty, that the great hollownesse and unsafety in assurances of lands and goods may bee strengthened, the swarving penalties that lye upon many subjects removed, the execution of many profitable lawes revived, the Judge better directed in his sentence, the Counseller better warranted in his Counsaile, the Student eased in his reading, the contentions Suitor that seeketh but vexation disarmed; and the honest Suitor that seeketh but to obtaine his right relieved; which purpose and intention, as it did strike me with great admiration when I heard it, so it might bee acknowledged to bee one of the most chosen workes, and of the highest merit and beneficence towards the subject, that ever entred into the minde of any King; greater than wee can imagine, because the imperfections and dangers of the lawes are covered under the clemency and excellent temper of your Majesties government. And though there bee rare presidents of it in government, as it cometh to passe in things so excellent, there being no president at full in view but of Justinian, yet I must say as Cicero said to Cæsar, Nihil vulgatum te dignum videri potest; and as it is no doubt a precious seed sowne in your Majesties heart by the hand of Gods divine Ma-

The Epistle Dedicatory.

jesty, so I hope in the maturity of your Majesties owne time it will come up and beare fruit. But to retorne thence whither I have beene carried: observing in your Majesty, upon so notable proofes and grounds, this disposition in generall of a prudent and royall regard to the amendment of your lawes, and having by my private labour and travell collected many of the grounds of the Common Lawes, the better to establish and settle a certaine sense of Law, which doth now too much waver in incertainty, I conceived the nature of the subject, besides my particular obligation, was such, as I ought not to dedicate the same to any other than to your sacred Majesty; both because, though the collection bee mine, yet the lawes are yours; and because it is your Majesties reigne that hath beene as a goodly seasonable spring-weather to the advancing of all excellent arts of peace. And so concluding with a prayer answerable to the present argument, which is, That God will continue your Majesties reign in a happy and renowned peace, and that he will guide both your policy and armes to purchase the continuance of it with surety and honour, I most humbly crave pardon, and commend your Majesty to the divine preservation.

Your sacred Majesties most humble
and obedient subject and servant,

FRANCIS BACON.



THE PREFACE.



Hold every man a debtor to his profession, from the which as men of course doe seeke to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends, to be a helpe and ornament there-

unto; this is performed in some degree by the honest and liberall practice of a profession, when men shall carry a respect not to descend into any course that is corrupt and unworthy thereof, and preserve themselves free from the abuses wherewith the same profession is noted to bee infected : but much more is this performed if a man bee able to visite and strengthen the roots and foundation of the science it selfe ; thereby not onely gracing it in reputation and dignity, but also amplifying it in perfection & substance. Having therefore from the beginning comne to the study of the lawes of this Realme , with a desire no lesse (if I could attaine unto it) that the same lawes should bee the better for my industry , than that my selfe should be the better for the knowledge of them: I doe not finde that by mine owne travell, without the help of authority , I can in any kinde conferre so profitable an addition unto that science, as by collecting the rules and grounds , dispersed throughout the body of the same lawes : for hereby no small

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light will be given in new cases, wherein the authorities doe square and vary, to confirme the law, and to make it received one way, and in cases wherein the law is cleared by authority; yet neverthelesse to see more profoundly into the reason of such judgements and ruled cases, and thereby to make more use of them for the decision of other cases more doubtfull; so that the incertainty of law, which is the principall and most just challenge that is made to the lawes of our nation at this time, will, by this new strength laid to the foundation, be somewhat the more settled and corrected: Neither will the use hereof bee onely in deciding of doubts, and helping soundnesse of judgement, but further in gracing of argument, in correcting unprofitable subtlety, and reducing the same to a more sound and substantiall sense of law, in reclaiming vulgar errors, & generally the amendment in some measure of the very nature and complection of the whole law, and therefore the conclusions of reason of this kinde are worthily and aptly called by a great Civilian *legum leges*, lawes of lawes, for that many *placita legum*, that is, particular and positive learnings of lawes do easily decline from a good temper of justice, if they be not rectified and governed by such rules.

Now for the manner of setting downe of them, I have in all points to the best of my understanding & foresight applied my selfe not to that which might seeme most for the ostentation of mine owne wit or knowledge, but to that which may yeeld most use and profit to the Students & professors of our lawes.

And

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And therefore, whereas these rules are some of them ordinary and vulgar, that now serve but for grounds and plaine songs to the more shallow and impertinent sort of arguments: other of them are gathered and extracted out of the harmony and congruity of cases, and are such as the wisest and deepest sort of Lawyers have in judgement and use, though they be not able many times to expresse & set them downe.

For the former sort, which a man that should rather write to raise an high opinion of himselfe, than to instruct others, would have omitted, as trite and within every mans compasse; yet nevertheless I have not affected to neglect them, but have chosen out of them such as I thought good: I have reduced them to a true application, limiting and defining their bounds, that they may not be read upon at large, but restrained to a point of difference: for as both in the Law, and other Sciences, the handling of questions by Common-place without aime or application is the weakest; so yet neverthelesse many cōmon principles & generalities are not to be contemned, if they be well derived and deduced into particulars, & their limits and exclusions duely assigned: for there bee two contrary faults and extremities in the debating and sifting out of the law, which may bee best noted in two severall manner of arguments: Some argue upon generall grounds, and come not neere the point in question; others without laying any foundation of a ground or difference, doe loosely put cases, which though they goe neere the point,

yet

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yet being put so scattered, prove not, but rather serve to make the law appeare more doubtfull, than to make it more plaine.

Secondly, whereas some of these rules have a concurrence with the civill Roman law, & some others a diversity, & many times an opposition, such grounds which are common to our law and theirs I have not affected to disguise into other words than the Civilians use, to the end they might seem invented by me, and not borrowed or translated from them: No, but I rooke hold of it as a matter of greater Authority and Majesty to see and consider the concordance between the lawes penn'd, and as it were dicted *verbatim* by the same reason: on the other side, the diversities between the civill Roman rules of law & ours, happening either when there is such an indifferency of reason, so equally ballanced, as the one law imbraceth one course, and the other the contrary, and both just after either is once positive and certaine, or where the lawes vary in regard of accommodating the law to the different considerations of estate, I have not omitted to set downe.

Thirdly, whereas I could have digested these rules into a certain method or order, which I know would have bin more admired, as that which would have made every particular rule through coherence and relation unto other rules seeme more cunning and deep, yet I have avoided so to do, because this delivering of knowledge in distinct and dis-joynd Aphorismes doth leave the wit of man more free to turne, and tosse, and make use of that which is so delivered

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to more severall purposes and applications ; for wee see that all the ancient wisdom and science was wont to be delivered in that forme, as may be seen by the parables of *Solomon*, and by the Aphorismes of *Hippocrates*, and the morall verses of *Theognes* and *Phocilides*, but chiefly the president of the Civill law, which hath taken the same course with their rules, did confirme me in my opinion.

Fourthly, whereas I know very well it would have bin more plausible & more currant, if the rules, with the expositions of them, had been set downe either in Latine or in English, that the harshnesse of the language might not have disgraced the matter, and that Civilians, States-men, Schollars, and other sensible men might not have beene barred from them ; yet I have forsaken that grace and ornament of them, and onely taken this course : The rules themselves I have put in Latine, not purified further than the property of the termes of the law would permit, which language I chose as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest authority and Majesty to bee avouched and alledged in argument : and for the expositions and distinctions, I have retained the peculiar language of our law, because it should not bee singular among the books of the same science, and because it is most familiar to the Students and professors thereof, and because that it is most significant to expresse conceits of law ; and to conclude, it is a language wherein a man shall not bee inticed to hunt after words, but matter ; and for the excluding of any other than professed

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uffed Lawyers, it was better manners to exclude them by the strangeness of the language, than by the obscurity of the conceit; which is, as though it had been written in no private and retired language, yet by those that are not Lawyers would for the most part not have been understood, or, which is worse, mistaken.

Fifthly, whereas I might have made more flourish and ostentation of reading, to have vouched the authorities, and sometimes to have enforced or noted upon them, yet I have abstained from that also, and the reason is, because I judged it a matter undue and preposterous to prove rules and maxims; wherein I had the example of Mr *Littleton* and Mr *Fitzherbert*, whose writings are the institutions of the lawes of England, wherof the one forbearth to vouch any authority altogether, the other never reciteth a booke, but when hee thinketh the case so weake of credit in it selfe, as it needs a surety; and these two I did far more esteem than Mr *Perckings* or Mr *Stamford* that have done the contrary: well will it appear to those that are learned in the lawes, that many of the cases are judged cases, either within the bookes or of fresh report, and most of them fortified by judged cases, and similitude of reason; though in some few cases I did intend expressly to weigh downe the authority by evidence of reason, and therein rather to correct the law, than either to sooth a received error, or by unprofitable subtlety, which corrupteth the sense of law, to reconcile contrarieties: for these reasons I resolved not to derogate from the authority

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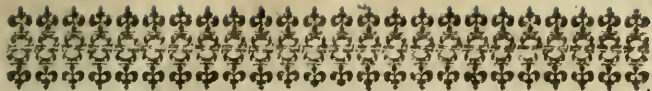
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ty of the rules, by vouching of any of the authority of the cases, though in mine owne copy I had them quoted: for although the meannesse of mine owne person may now at first extenuate the authority of this collection, and that every man is adventrous to controule, yet surely according to *Gamduels* reason, if it bee of weight, time will settle and authorize it; if it be light and weake, time will reprove it: So that, to conclude, you have here a worke without any glory of affected novelty, or of method, or of language, or of quotations and authorities, dedicated onely to use, and submitted onely to the censure of the learned, and chiefly of time.

Lastly, there is one point above all the rest, I account the most materiall for making these reasons indeed profitable and instructing, which is, that they be not set downe alone, like short darke Oracles, which every man will be content still to allow to bee true, but in the meane time they give little light or direction; but I have attended them, a matter not practiced, no not in the Civill law to any purpose; and for want whereof indeed, the rules are but as proverbes, and many times plaine fallacies, with a cleere and perspicuous exposition, breaking them into cases, and opening them with distinctions, & sometimes shewing the reasons above whereupon they depend, and the affinity they have with other rules. And though I have thus with as good discretion and fore-sight as I could, ordered this work, and as I might say, without all colours or shewes husbanded it best to profit, yet neverthelesse not
C wholly

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wholly trusting to mine own judgment, having collected 300. of them, I thought good before I brought them all into form, to publish some few, that by the taste of other mens opinions in this first, I might receive either approbation in mine own course, or better advice for the altering of the other which remain; for it is great reason that that which is intended to the profit of others, should be guided by the conceits of others.



REGULAE.

1 **I**n jure non remota causa, sed proxima spectatur. fol. I.

2 Non potest adduci exceptio ejusdem rei, cu jus petitur dissolutio. 5

3 Verba fortius accipiuntur contra proferentem. 9

4 Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem vel compensationem. 22

5 Necessitas inducit privilegium quoad jura privata. 25

6 Corporalis injuria non recipit estimationem de futuro. 29

7 Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. 31

8 Estimatio praeteriti delicti ex post facto nunquam crescit. 33

9 Quod remedio destituitur ipsa re valet, si culpa absit. 34

10 Verba generalia restringantur ad habilitatem rei vel persona. 43

11 Jura sanguinis nullo jure civili dirimi possunt. 44

12 Receditur a placitis juris potius quam injuria, ne delicta maneat impunita. 51

13 Non accipi debent verba in demonstrationem falsam, quae competunt in limitationem veram. 54

- 14 *Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio precedens qua sortitur effectum interveniente novo actu.* 56
- 15 *In criminalibus sufficit generalis malitia intentionis cum facto paris gradus.* 59
- 16 *Mandata licita recipiunt strictam interpretationem, sed illicita latam & extensivam.* 60
- 17 *De fide & officio Judicis non recipitur questio, sed de scientia sive error sit Judicis sive facti.* 62
- 18 *Persona conjuncta equiparatur interesse proprio.* 63
- 19 *Non impedit clausula derogatoria qua minus ab eadempotestate res dissolvantur a quibus constituuntur.* 67
- 20 *Actus inceptus cujus perfectio pendet ex voluntate partium revocari potest, si autem pendet ex voluntate tertiae personae vel ex contingenti, revocari non potest.* 71
- 21 *Clausula vel dispositio inutilis per praesumptionem remotam vel causam ex post facto non fulcitur.* 74
- 22 *Non videtur consensum retinuisse, si quis ex praescripto minantis aliquid immutavit.* 81
- 23 *Ambiguitas verborum latens verificatione supplementur, nam quod ex facto oritur ambiguum verificatione facti tollitur.* 82
- 24 *Licita bene miscentur, formula nisi juris obstat.* 85
- 25 *Prasentia corporis tollit errorem nominis, & veritas nominis tollit errorem demonstrationis.* 86



THE MAXIMES OF THE LAW.

*In jure non remota causa sed proxima
spectatur.*



T were infinite for the law to judge the causes of causes, and their impulsions one of another, therefore it contenteth it selfe with the immediate cause, and judgeth of acts by that, without looking to any further degree.

As if an annuity bee granted *pro consilio impenso* 6.H.3.Dy.
& *impendendo*, and the grantee commit treason,
whereby

whereby he is imprisoned, so that the grantor cannot have access unto him for his counsel, yet nevertheless the annuity is not determined by this *non feasant*; yet it was the grantees act and default to commit the treason, whereby the imprisonment grew: But the law looketh not so farre, but excuseth him, because the not giving counsell was compulsary, and not voluntary, in regard of the imprisonment.

Litt. cap.
2 H. 4. 3.
26 H. 8. 2.

So if a Parson make a lease, and be deprived or resigne, the successors shall avoid the lease, and yet the cause of deprivation, and more strongly of a resignation moved from the party himselfe; but the law regardeth not that, because the admission of the new Incumbent is the act of the Ordinary.

So if I be seised of an advowson in grosse, and an usurpation bee had against me, and at the next avoidance I usurpe arere, I shall bee remitted, and yet the presentation, which is the act remote, is mine owne act: but the admission of my Clerk, whereby the inheritance is reduced to me, is the act of the Ordinary.

5 H. 7. 25.

So if I covenant with I. S. a stranger in consideration of naturall love to my son, to stand seised to the use of the said I. S. to the intent he shall infeoffe my sonne; by this no use ariseth to I. S. because the law doth respect that there is no immediate consideration between me and I. S.

So if I be bound to enter into a statute before the Mayor of the Staple at such a day, for the security of 100^l. and the obligee before the day accept of mee a lease of an house in satisfaction, this is no plea in debt upon my obligation, and yet the end of that statute
was

was but security of money : but because the entering into this statute it selfe , which is the immediate act whereunto I am bound, is a corporall act which lieth not in satisfaction, therefore the law taketh no consideration that the remote intent was for money.

So if I make a feoffment in fee , upon condition that the feoffee shall infeoffe over, and the feoffee be disseised, & a discēt cast, & then the feoffee bind himselfe in a statute, which statute is discharged before the recovery of the land, this is no breach of the condition , because the land was never liable to the statute, and the possibility that it should be liable upon the recovery, the law doth not respect.

M. 40. & 41. El.
Julius Win-
ningtons case,
ore report per
le trefreverd
Judge, le Snr
Coke, lib. 2.

So if I enfeoffe two, upon condition to enfeoffe, & one of them take a wife, the condition is not broken, and yet there is a remote possibility that the jointenant may die, and then the feme is entitled to dower:

So if a man purchase land in fee-simple , and dye without issue , in the first degree the law respecteth dignity of sexe and not proximity, and therefore the remote heire on the part of the father shall have it before the neere heire on the part of the mother : but in any degree paramount the first the law respecteth not, and therefore the neare heire by the grandmother on the part of the father, shall have it before the remote heire of the grandfather on the part of the father.

This rule faileth in covenous acts , which though they be conveighed through many degrees and reaches , yet the law taketh heed to the corrupt beginning, and counteth all as one entire act.

As

As if a feoffment be made of lands held by Knights service to I.S. upon condition that within a certaine time he shall infeoffe I.D. which feoffement to I.D. shall be to the use of the wife of the first feoffor for her jointure, &c. this feoffment is within the statute of 32.H.8. *nam dolus circuitu non purgatur.*

In like manner, this rule holdeth not in criminall acts, except they have a full interruption, because when the intention is matter of substance, and that which the law doth principally behold, there the first motive will be principally regarded, and not the last impulsion. As if I.S. of malice prepened discharge a Pistoll at I.D. and misseeth him, whereupon hee throwes downe his Pistoll, and flies, and I.D. pursueth him to kill him, whereupon he turneth and killeth I.D. with a Dagger; if the law should consider the last impulsive cause, it should say, that it was in his owne defence; but the law is otherwise, for it is but a pursuance and execution of the first murtherous intent.

44 Ed. 3.

But if I.S. had fallen downe his Dagger drawne, and I.D. had fallen by haste upon his Dagger, there I.D. had been *felo de se*, and I.S. shall go quit.

Also you may not confound the act with the execution of the act; nor the entire act with the last part, or the consummation of the act.

Lit. cap. de disc.

For if a disseisor enter into religion, the immediate cause is from the party, though the discent be cast in law: but the law doth but execute the act which the party procureth, and therefore the discent shall not bind, & *sic è converso.*

If a lease for yeeres be made rendring a rent, and the lessee make a feoffement of part, and the lessor enter, the immediate cause is from the law in respect of the forfeiture, though the entry be the act of the party; but that is but the pursuance and putting in execution of the title which the law giveth, and therefore the rent or condition shall be appointed.

So in the binding of a right by a discent, you are to consider the whole time from the disseisin to the discent cast, and if at all times the person be not privileged, the discent bindes.

And therefore if a feme covert be disseised, and the Baron dieth, and shee taketh a new husband, and then the discent is cast: or if a man that is not *infra* 4. *Maria*, be disseised, and hee returne into England, and goe over sea againe, and then a discent is cast, this discent bindeth because of the *interim* when the persons might have entered, and the law respecteth not the state of the person at the last time of the discent cast, but a continuance from the very disseised to the discent.

So if Baron and feme bee, and they joine in a feoffement of the wives land rendring a rent, and the Baron dye, and the feme take a new husband before any rent day, and he accepteth the rent, the feoffment is affirmed for ever.

Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio. Regula 2.

IT were impertinent and contrary in it selfe, for the law to allow of a plea in barre of such matter as is

to be defeated by the same suit; for it is included, otherwise a man should never come to the end and effect of his suit, but be cut off in the way.

And therefore if tenant intaile of a mannour, whereunto a villeine is regardant, discontinue and dye, and the right of the entaile descend to the villeine himselve, who brings a *formedon*, and the discontinuee pleadeth villenage, this is no plea, because the deuesting of the mannour, which is the intention of the suit, doth include this plea, because it determineth the villenage.

So if tenant in ancient demesne bee disseised by the Lord, whereby the seigniory is suspended, and the disseisee bring his assize in the Court of the Lord, Francke fee is no plea, because the suite is brought to undoe the disseiss. and so to revive the seigniory in ancient demesne.

7.H.4.39.
7.H.6.44.

So if a man be attainted and executed, and the heire bring a writ of error upon the attaindor, and the corruption of blood by the same attaindor bee pleaded to interrupt his conveighing in the same writ of error, this is no plea, for then hee were without remedy ever to reverse the attaindor.

38.Ed.3.32.

So if tenant intaile discontinue for life rendring a rent, and the issue brings a *formedon*, and the warranty of his ancestor with assets be pleaded against him, and the assets is laid to bee no other but his reversion with the rent, this is no plea, because the *formedon* which is brought to undoe this discontinuance doth inclusively undoe this new reversion in fee with the rent thereunto annexed.

But

But whether this rule may take place where the matter of plea is not to be avoided in the same suite but in another suit, is doubtful; and I rather take the law to be that this rule doth extend to such cases, for otherwise the party were at a mischief, in respect the exceptions and bars might be pleaded crosse either of them in the contrary suit, and so the party altogether prevented & intercepted to come by his right.

So if a man be attainted by two severall attaindors, and there is error in them both, there is no reason but that there should be a remedy open for the heire to reverse those attaindors being erroneous, as well if they be twenty as one.

And therefore if in a writ of error brought by the heire of one of them, the attaindor should be a plea peremptorily, and so again if in error brought of that other, the former should be a plea, these were to exclude him utterly of his right; and therefore it should be a good replication to say that hee hath a writ of error depending of that also, and so the Court shall proceed; but no judgement shall be given till both pleas be discussed: and if either plea be found without error, there shall be no reverfall either of the one or of the other: and if hee discontinue either writ, then shall it be no longer a plea: and so of severall outlawries in a personall action.

And this seemeth to mee more reasonable, than that generally an outlawry or an attaindor should be no plea in a writ of error brought upon a divers outlawry or an attaindor, as 7. H. 4. and 7. H. 6. seeme to hold, for that is a remedy too large for the

mischiefe; for there is no reason but if any of the outlawries or attainders be indeed without error, but it should be a peremptory plea to the person in a writ of error as well as in any other action.

But if a man levie a fine *S^r conuſaunce de droit come ceo que il ad de son done*, and suffer a recovery of the same lands, and there be error in them both, hee cannot bring error first of the fine, because by the recovery his title of error is discharged and released in law *inclusivè*, but hee must begin with the error upon the recovery (which he may do, because a fine executed barreth no titles that accrued *de presne temps* after the fine levied) and so restore himselfe to his title of error upon the fine: but so it is not in the former case of the attainder; for a writ of error to a former attainder is not given away by a second, except it be by expresse words of an act of Parliament, but onely it remaineth a plea to his person while he liveth, and to the conveyance of his heire after his death.

But if a man levie a fine where he hath nothing in the land, which inureth by way of conclusion onely, and is executory against all purchases and new titles which shall grow to the Conuſor afterwards, and he purchase the land, and suffer a recovery to the Conuſee, and in both fine and recovery, there is error. This fine is *Janus bifrons*, and will looke forward, and barre him of his writ of error brought of the recovery, and therefore it will come to the reason of the first case of the attainder, that he must reply that he hath a writ also depending of the same fine, and so demand judgment.

To returne to our first purpose, like law it is if tenant in taile of two acres make two severall discontinuances to severall persons for life rendring a rent, and bringeth a *formedon* of both, and in the *formedon* brought of white acre the reversion and rent reserved upon blacke acre is pleaded, and so contrary. I take it to be a good replication, that he hath a *formedon* also upon that depending, whereunto the tenant hath pleaded the discent of the reversion of white acre, and so neither shall be a barre; and yet there is no doubt but if in a *formedon* the warranty of tenant intaile with assents be pleaded, it is no replication for the issue to say, that a *Præcipe* dependeth brought by I.S. to evict the assents.

But the former case standeth upon the particular reason before mentioned.

Verba fortius accipiuntur contra proferentem.

Reg. 3.

THis rule, that a mans deeds and his words shall be taken strongliest against himselfe, though it be one of the most common grounds of the law, it is notwithstanding a rule drawne out of the depth of reason; for first it is a Schoole-master of wisdome and diligence in making men watchfull in their owne businessse, next it is author of much quiet and certainty, and that in two sorts: first, because it favoureth acts and conveyances executed, taking them still beneficially for the grauntees and possessours: and secondly, because it makes an end of many questions and doubts about construction of words: for if
the

the labour were onely to picke out the intention of the parties, every Judge would have a severall sense, whereas this rule doth give them a sway to take the law more certainly one way.

But this rule, as all other which are very generall, is but a sound in the aire, and commeth in sometimes to helpe and make up other reasons without any great instruction or direction, except it be duely conceived in point of difference, where it taketh place, and where not; and first we will examine it in grants, and then in pleadings.

The force of this rule is in three things, in ambiguity of words, in implication of matter, and deducing or qualifying the exposition of such grants as were against the law, if they were taken according to their words.

And therefore if I.S. submit himselfe to arbitrement of all actions and suites betweene him and I.D. and I.N. it rests ambiguous whether the submission shall bee intended collective of joint actions onely, or distributive of severall actions also; but because the words shall bee taken strongliest against I.S. that speakes them; it shall be understood of both: for if I.S. had submitted himselfe to arbitrement of all actions and suites which hee hath now depending, except it be such as are betweene him and I.D. and I.N. now it shall bee understood collective onely of joint actions, because in the other case at large construction was hardest against him that speakes, and in this case strict construction is hardest.

So

So if I graunt ten pounds rent to Baron and feme, ^{8. Aff. p. 10.} and if the Baron dye that the feme shall have three pounds rent, because these words rest ambiguous whether I intend three pounds by way of encrease, or three pounds by way of restraint and abatement of the former rent of ten pounds, it shall bee taken strongliest against me that am the grauntor, that it is 3. pounds addition to the ten: but if I had let land to Baron and feme for three lives, reserving ten pounds *per annum*, and if the Baron dye reserving three pounds, this shall bee taken contrary to the former case, to abbridge my rent onely to three pounds.

So if I demise *omnes boscos meos in villa de dale* ^{14. H. 8.} for yeares, this passeth the foile, but if I demise all ^{23. H. 8. D^r. 19.} my lands in dale *exceptis boscis*, this extendeth to the trees onely and not to the foile.

So if I sow my lands with corne, and let it for yeares, the corne passeth to my lessee, if I except it not; but if I make a lease for life to I. S. upon condition that upon request hee shall make mee a lease for yeares, and I. S. soweth his ground, and then I make request, I. S. may well make mee a lease excepting his corne, and not breake the condition.

So if I have free warren in mine owne hand, and let my land for life, not mentioning the warren, yet ^{8. H. 7.} the lessee by implication shall have the warren ^{32. H. 6.} discharged and extract during his lease: but if I let the land *una cum libera warrenna*, excepting white acre, there the warren is not by implication reserved unto me either to be injoyed or extinguished, but

but the leasee shall have warren against me in white acre.

29. Aff. pl. 10.

So if I. S. hold of mee by fealty and rent onely, and I grant the rent, not speaking of the fealty, yet the fealty by implication shall passe, because my grant shall be taken strongly as of a rent service, and not of a rent secke.

44. Ed. 3. 19.

Otherwise had it been if the seigniory had beene by homage, fealty, and rent, because of the dignity of the service, which could not have passed by indentment by the grant of the rent: but if I be seized of the mannor of Dale in fee, whereof I. S. holds by fealty and rent, and I graunt the mannor, excepting the rent, the fealty shall passe to the grantee, and I. S. shall have but a rent secke.

26. aff. pl. 66.

So in grants against the law, if I give land to I. S. and his heires males, this is a good fee-simple, which is a larger estate than the words seem to intend, and the word (males) is void: But if I make a gift entaile reserving a rent to me and the heires of my body, the words (*of my body*) are not void, and to leave it a rent in fee-simple; but the word (heires) and all are void, and leaves but a rent for life, except that you will say, it is but a limitation to any my heire in fee-simple which shall be heire of my body; for it cannot be a rent entaile by reservation.

But if I give land with my daughter in francke marriage, the remainder to I. S. and his heires, this grant cannot bee good in all the parts, according to the words: for it is incident to the nature of a gift in francke marriage, that the donee hold it of the donor,

donor, and therefore my deed shall bee taken so strongly against my selfe, * that rather than the remainder shall be void, the francke marriage though it be first placed in the deed shall be void as a franck marriage.

But if I give land in francke marriage reserving to mee and my heires ten pounds rent, now the franck marriage stands good and the reservation is void, because it is a limitation of a benefit to my selfe, and not to a stranger.

So if I let White Acre, Blacke Acre, and Greene Acre to I.S. excepting White Acre, his exception is voide, because it is repugnant; but if I let the three Acres aforesaid, rendring twenty shillings rent, viz. for White Acre ten shillings, and for Blacke Acre ten shillings, I shall not distraine at all in Greene Acre, but that shall bee discharged of my rent.

So if I graunt a rent to I.S. and his heires out of my manour of Dale, & *obligo manerium & omnia bona & catalla mea super manerium prædictum existentia ad distringendum per Balivum Domini Regis*: this limitation of the distresse to the Kings Bailiffe is void, and it is good to give a power of distresse to I.S. the grauntee and his Bailiffes.

But if I give land intaile *tenend' de capitalibus Dominis per redditum viginti solidorum & fidelitatem*: this limitation of tenure to the Lord is voide, and it shall not bee good, as in the other case, to make a reservation of twenty shillings good unto my selfe, but it shall be utterly voide as if no reserva-

* Quære car le ley semble d'ee le contrary, en tant que in un grant quant l'un part del fait ne poir estoier ove l'auter le darr; serra void, autrement in un devise & accordant fuit lopiñ de Sur Anderson & Owen Just: contra Walmesley Just: P. 40. Eliz. in le case de Countesse de Warwick & Sur Barkley in com. banco.

4. H. 6. 22.
26. aff. pl. 66.
46. Ed. 3. 18.

2. Ed. 4. 5.

tion at all had been made; and if the truth be that I that am the donor hold of the Lord paramount by ten shillings onely, then there shall bee ten shillings onely reserved upon the gift entaile as for ovelty.

21. Ed. 3. 49.

31. & 32. H. 8.

Dyer 46.

Plov. fo. 37.

35. H. 6. 34.

So if I give land to I. S. and the heires of his body, and for default of such issue *quod tenementum prædictum revertatur ad I. N.* yet these words of reservation will carry a remainder to a stranger. But if I let white acre to I. S. excepting ten shillings rent, these words of exception to mine owne benefit shall never inure to words of reservation.

But now it is to be noted, that this rule is the last to be resorted to, and is never to be relyed upon but where all other rules of exposition of words faile; and if any other come in place, this giveth place. And that is a point worthy to be observed generally in the rules of the law, that when they encounter and crosse one another in any case, it be understood which the law holdeth worthier, and to bee preferred; and it is in this particular very notable to consider, that this being a rule of some strictnesse and rigour, doth not as it were its office, but in absence of other rules which are of more equity and humanity; which rules you shall afterwards find set down with their expositions and limitations.

But now to give a taste of them to this present purpose, it is a rule that generall words shall never be stretched too farre in intendment, which the Civilians utter thus: *Verba generalia restringuntur ad habilitatem personæ, vel ad aptitudinem rei.*

14. Aff. pl. 25.

Therefore if a man grant to another Common *in-*

ira meas & bundas villa de dale, and part of the ville is his severall, and part his waste and Common; the grauntee shall not have Common in the Severall, and yet this is the strongest exposition against the grantor.

So it is a rule, *Verba ita sunt intelligenda, ut res magis valeat quam pereat*: and therefore if I give land to I. S. and his heires, *reddend. quinque libras annuatim* to I. D. and his heires, this implies a condition to me that am the grantor; yet it were a stronger exposition against mee, to say the limitation should be void, and the feoffment absolute.

So it is a rule, that the law will not intend a wrong, which the Civilians utter thus: *Ea est accipienda interpretatio, qua vitio caret*. And therefore if the executor of I. S. grant *omnia bona & catalla sua*, the goods which they have as executors will not passe, because *non constat* whether it may be a devastation, and so a wrong; and yet against the trespasser that taketh them out of their hand, they shall declare *quod bona sua cepit*.

So it is a rule, that words are so to be understood, that they worke somewhat, and be not idle and frivolous: *verba aliquid operari debent, verba cum effectu sunt accipienda*. And therefore if I buy and sell you the fourth part of my mannor of dale, and say not in how many parts to bee divided, this shall bee construed foure parts of five, and not of 6. nor 7. &c. because that it is the strongest against me; but on the other side, it shall not be intended foure parts of four parts, or the whole or foure quarters; and yet that

were strongest of all, but then the words were idle and of none effect.

3.H.6.20.

So it is a rule, *Divinatio non interpretatio est, quæ omnino recedit a litera*: and therefore if I have a fee farme rent issuing out of white acre of ten shillings, and I reciting the same reservation doe grant to I.S. the rent of five shillings *percipiend' de reddit' predict' & de omnibus terris & tenementis meis indale*, with a clause of distresse, although there be atturment yet nothing passeth out of my former rent, and yet that were strongest against me to have it a double rent, or grant of part of that rent with an enlargement of a distresse in the other land, but for that it is against the words, because *copulatio verborum indicat acceptionem in eodem sensu*, and the word *de* (*anglice* out of) may be taken in two senses, that is, either as a greater summe out of a lesse, or as a charge out of land, or other principall interest; and that the coupling of it with lands and tenements, *viz.* I reciting that I am seised of such a rent of ten shillings, doe grant five shillings *percipiend' de eodem reddit'* it is good enough without atturment, because *percipiend' de &c.* may well bee taken for *parcella de &c.* without violence to the words, but if it had been *de reddit' predict'* although I.S. be the person that payeth mee the foresaid rent of ten shillings, yet it is void, and so it is of all other rules of exposition of grants when they meet in opposition with this rule they are preferred.

Now to examine this rule in pleadings as we have done in grants, you shall finde that in all imperfections

ons of pleadings, whether it bee in ambiguity of words and double intendments, or want of certainty and averments, the plea shall bee strictly and strongly against him that pleads.

For ambiguity of words, if in a writ of entry upon disseisin, the tenant pleads jointenancy with I.S. of the gift and feoffment of I.D. judgement *de brieve*, the demandant saith that long time before I.D. any thing had, the demandant himselfe was seised in fee *quousque predict' I. D. super possessionem ejus intravit*, and made a joint feoffment, whereupon he the demandant re-entred, and so was seised untill by the defendant alone hee was disseised; this is no plea, because the word *intravit* may bee understood either of a lawfull entry, or of a tortious, and the hardest against him shall bee taken, which is, that it was a lawfull entry, therefore he should have alledged precisely that I.D. *disseisivit*.

So upon ambiguities that grow by reference, ^{3. Ed. 6. Dy. 66.} If an action of debt bee brought against I.N. and I.P. Sherifes of London upon an escape, and the plaintiffe doth declare upon an execution by force of a recovery in the prison of Ludgate *sub custodia I.S. & I.D.* then Sherifes in 1. K. H. 8. and that hee so continued *sub custodia I.B. & I.G.* in 2. King H. 8. and so continued *sub custodia I.N. & I.L.* in 3. K. H. 8. and then was suffered to escape: I.N. & I.L. plead that before the escape supposed at such a day *anno superius in narratione specificato* the said I.D. and I.S. *ad tunc vicecomites* suffered

red him to escape, this is no good plea, because there bee three yeeres specified in the declaration, and it shall be hardest taken that it was 1. or 3. H. 8. when they were out of office: and yet it is nearly induced by the *ad tunc vicecomites*, which should leave the intendment to be of that yeere in which the declaration supposeth that they were Sheriffes, but that sufficeth not, but the yeare must be alledged in fact, for it may be misse-laid by the Plaintiffe, and therefore the Defendants meaning to discharge themselves by a former escape, which was not in their time, must alledge it precisely.

26. H. 8.

For incertainty of intendment, if a warranty collaterall be pleaded in barre, and the plaintife by replication to avoid the warranty, saith, that hee entred upon the possession of the defendant, *non constat* whether this entry was in the life of the ancestor, or after the warranty attached: and therefore it shall be taken in hardest sense, that it was after the warranty descended, if it be not otherwise averred.

38. H. 6. 13.
39. H. 6. 5.

For impropriety of words, if a man plead that his ancestor died by protestation seised, and that I. S. abated, &c. this is no plea, for there cannot bee an abatement except there be a dying seised alledged in fact, and an abatement shal not be improperly taken for disseisin in pleading *car parols sont pleas*.

For repugnancy, if a man in avowry declare that hee was seised in his demesne as of fee of white acre, and being so seised did demise the said white acre to I. S. *habendum* the moiety for 21. yeeres from the date of the deed, the other moiety from the surrender,

der, expiration, or determination of the estate of I. D. *qui tenet prædict' medietatem ad terminum vitæ sue reddend' 40. s. rent*, this declaration is insufficient, because the seisin that he hath alledged in himselfe in his demesne as of fee in the whole, and the state for life of a moiety are repugnant, and it shall not be cured by taking the last which is expressed to controll the former, which is but generall and formall, but the plea is naught, and yet the matter in law had bin good to have intituled him to have distrained for the whole rent.

But the same restraint followes this rule in pleading that was before noted in grants: for if the case be such as falleth within another rule of pleading, this rule may not be urged.

And therefore it is a rule that a barre is good to a common intent, though not to every intent. As, if a debt be brought against five executors, and three of them make default, and two appeare and plead in barre a recovery had against them two of 300^l. and nothing in their hands over and above that summe. If this barre should be taken strongliest against them, it should be intended that they might have abated the first suit, because the other three were not named, and so the recovery not duely had against them; but because of this other rule the barre is good: for that the more common intent will say that they two did onely administer, and so the action well considered, rather than to imagine, that they would have lost the benefit and advantage of abating the writ.

So there is another rule, that in pleading a man shall

9. Ed. 4.
4. Ed. 6. Plow.

shall not disclose that which is against himselfe : and therefore if it bee matter that is to bee set forth on the other side, then the plea shall not be taken in the hardest sense, but in the most beneficiall, and to be left unto the contrary party to alledge.

28.H.8.Dy.
fol. 17.

And therefore if a man bee bound in an obligation, that if the feme of the obligee doe decease before the feast of Saint John the Baptist, which shall be in the yeere of our Lord God 1598. without issue of her body by her husband lawfully begotten then living, that then the bond shall bee void, and in debt brought upon this obligation the defendants plead that the feme died before the said feast without issue of her body then living: if this plea should bee taken strongliest against the defendant, then should it bee taken that the feme had issue at the time of her death, but this issue died before the feast; but that shall not bee so understood, because it makes against the defendant, & it is to be brought in of the plaintiffes side, and that without traverse.

So if in a detinue brought by a feme against the executors of her husband for her reasonable part of the goods of her husband, and her demand is of a moiety, and shee declares upon the custome of the Realme by which the feme is to have a moiety, if no issue be had betweene her and her husband, and the third part if there be issue had, and declareth that her husband dieth without issue had between them; if this count should be hardliest construed against the party, it should be intended that her husband had issue by another wife, though not by her, in which
case

case the feme is but to have the third part likewise ; but that shall not be so intended, because it is matter of reply to be shewed of the other side.

And so it is of all other rules of pleadings, these being sufficient not only for the expounding of these other rules, but *obiter* to shew how this rule which we handle is put by when it meets with any other rule.

As for Acts of Parliament, Verdicts, Judgements, &c. which are not words of parties: in them this rule hath no place at all, neither in devises and wills upon severall reasons; but more especially it is to be noted, that in evidence it hath no place, which yet seemes to have some affinity with pleadings, specially when demurrer is joyned upon the evidence.

And therefore if land be given by will by H. C. to his son I. C. and the heires males of his body begotten; the remainder to F. C. and the heirs males of his body begotten; the remainder to the heires males of the body of the devisor; the remainder to his daughter S. C. and the heires of her body, with a clause of perpetuity, and the question comes upon the point of forfeiture in an assize taken by default, and evidence is given, and demurrer upon evidence, and in the evidence given to maintaine the entry of the daughter upon a forfeiture, it is not set forth nor averred that the devisor had no other issue male, yet the evidence is good enough, and it shall bee so intended; and the reason hereof cannot bee, because a Jury may take knowledge of matters not within the evidence, and the Court contrariwise cannot take knowledge of any matters not within the pleas: for it is cleere, that

if the evidence had bin altogether remote, & not proving the issue, there, although the Jury might find it, yet a demurrer might wel be taken upon the evidence.

But if I take the reason of difference to be between pleadings, which are but openings of the case, & evidences which are the proofs of an issue, for pleadings being but to open the verity of the matter in fact indifferently on both parts, hath no scope & conclusion to direct the construction & intendment of them, and therefore must bee certain; but in evidence and proofs the issue which is the state of the question and conclusion shall encline and apply all the proofes as tending to that conclusion.

Another reason is, that pleadings must be certain, because the adverse party may know wherto to answer, or else he were at a mischief, which mischief is remedied by a demurrer; but in evidence if it bee short, impertinent, or incertaine, the adverse party is at no mischief, because it is to bee thought that the Jury will passe against him; yet neverthelesse the Jury is not compellable to supply the defect of evidence out of their own knowledge, though it bee in their liberty so to doe, therefore the law alloweth a demurrer upon evidence also.

Reg. 4.

Quod sub certa forma concessum vel reservatum est non trahitur ad valorem vel compensationem.

THE law permitteth every man to part with his own interest, and to qualifie his own grant as it pleaseth himself, and therefore doth not admit any allowance or recompence if the thing be not taken as it is granted. So

So in all posits *a prender*, if I grant Cōmon for ten 17.H.6.10. beasts, or ten loads of wood out of my coppes, or ten loads of hay out of my meads to bee taken for three yeeres, he shall not have Common for 30. beasts, or 30. loads of wood or hay the third yeare if hee forbear for the space of two yeares, here the time is certain and precise.

So if the place be limited, or if I grant Estovers to be spent in such a house, or stone towards the reparation of such a Castle, although the grantee do burne of his fuell and repaire of his own charge, yet he can demand no allowance for that he took it not.

So if the kinde be specified, as if I let my Park reserving to my selfe all the Deer and sufficient pasture for them, if I doe decay the game whereby there is no Deere, I shall not have quantity of pasture answerable to the feed of so many Deere as were upon the ground when I let it, but am without any remedy except I replenish the ground again with Deere.

But it may be thought that the reason of these cases is the default and laches of the grantor, which is not so.

For put the case that the house where the Estovers should be spent be overthrowne by the act of God, as by tempest, or burnt by the enemies of the King, yet there is no recompence to be made.

And in the strongest case where it is in default of the grantor, yet he shall make void his owne graunt rather than the certain forme of it should be wrested to an equity or valuation.

As if I grant Common *ubicunq; averia mea ierint;*

the Commoner cannot otherwise entitle himselfe, except that he averre that in such grounds my beasts have gone and fed, and if I never put in any, but occupy my grounds otherwise, he is without remedy; but if I put in, and after by poyerty or otherwise I desist, yet the Commoner may continue; contrariwise, if the words of the grant had been *quandocunque averia mea ierint*, for there it depends continually upon the putting in of my beasts, or at least the generall seasons when I put them in, not upon every houre or moment.

But if I grant *tertiam advocacionem* to I.S. if hee neglect to take his turne *ea vice*, he is without remedy: but if my wife bee before intituled to Dower, and I dye, then my heire shall have two presentments, and my wife the third, and my grauntee shall have the fourth; and it doth not impugne this rule at all, because the graunt shall receive that construction at the first that it was intended such an avoidance as may bee taken and enjoyed: as if I graunt *proximam advocacionem* to I.D. and then graunt *proximam advocacionem* to I.S. this shall bee intended the next to the next, which I may lawfully grant or dispose. *Quare.*

29.H.8.Dy.38.

But if I grant *proximam advocacionem* to I.S. and I.N. is Incumbent, and I grant by precise words, *illam advocacionem, quam post mortem, resignationem, translationem, vel deprivationem I.N. immediate fore contigerit*, now the grant is meerly void, because I had granted that before, and it cannot bee taken against the words.

Necessitas inducit privilegium quoad jura privata. Regula 5.

THe law chargeth no man with default where the act is compulsory, and not voluntary, and where there is not a consent and election; and therefore if either there bee an impossibility for a man to doe otherwise, or so great a perturbation of the judgment and reason as a presumption of law mans nature cannot overcome, such necessity carrieth a privilege in it selfe. 4.Ed.6.cond.

Necessity is of three sorts, necessity of conservation of life, necessity of obedience, and necessity of the act of God or of a stranger. Stamf.

First of conservation of life, If a man steale viands to satisfie his present hunger, this is no felony nor larceny. Stamf.

So if divers bee in danger of drowning by the casting away of some boat or barge, & one of them get to some plancke, or on the boats side to keepe himselfe above water, and another to save his life thrust him from it, whereby he is drowned; this is neither *se defendendo* nor by misadventure, but justifiable.

So if divers felons bee in a Jaile, and the Jaile by casualty is set on fire, whereby the prisoners get forth, this is no escape, nor breaking of prison. Cond. 13.6. per Brooke. 15.H.7.2 per Keble.

So upon the Statute, that every Merchant that setteth his merchandize on land without satisfying the customer or agreeing for it (which agreement is construed to be uncertainty) shal forfeit his merchandize, and it is so that by tempest a great quantity of the merchant- 14.H.7.29. per Read. 4.Ed.6.pl. 4.Ed.6.20. condic.

merchandize is cast over board, whereby the Merchant agrees with the Customer by estimation, which falleth out short of the truth, yet the over-quantity is not forfeited; where note that necessity dispenseth with the direct letter of a statute law.

Lit. pl. 4. 19.
12. H. 4. 20.
14. H. 4. 30.
B. 38. H. 6. 11.

28. H. 6. 8.
39. H. 6. 50.

So if a man have right to land, and doe not make his entry for terrour of force, the law allowes him a continuall claime, which shall bee as beneficiall unto him as any entry; so shall a man save his default of appearance by *cretain de eau*, and avoide his debt by *duresse*, whereof you shall finde proper cases elsewhere.

Stamf. 26. 2.
Ed. 3. 160. cor.
Fitzh.

The second necessity is of obedience, and therefore where Baron and Feme commit a felony, the Feme can neither be principal nor accessory, because the law intends her to have no will, in regard of the subjection and obedience she owes to her husband.

So one reason among others why Embassadors are used to bee excused of practises against the State where they reside, except it be in point of conspiracy, which is against the law of nations and society, is, because *non constat* whether they have it *in mandatis*, and then they are excused by necessity of obedience.

So if a warrant or precept come from the King to fell wood upon the ground whereof I am tenant for life or for yeeres, I am excused in waste.

B. 42. Ed. 3. 6.
B. Wast. 31.
42. Ed. 3. 6.

19. Ed. 3. per
Th. Fitzh. Wast
30.

The third necessity is of the act of God, or of a stranger, as if I be particular tenant for yeeres of a house, and it be overthrowne by grand tempest, or thunder & lightning, or by sudden floods, or by invasion of enemies, or if I have belonging unto it some

Cot-

Cottage which hath been infected, whereby I can procure none to inhabite them, no workeman to re-
 paire them, and so they fall down, in all these cases I
 am excused in waste: but of this last learning when
 and how the act of God and strangers doe excuse,
 there be other particular rules.

But then it is to bee noted, that necessity priviled-
 geth only *quoad jura privata*, for in all cases if the act
 that should deliver a man out of the necessity bee a-
 gainst the Cōmonwealth, necessity excuseth not: for
privilegium non valet contra rempublicam: and as an-
 other saith, *necessitas publica major est quam priva-
 ta*: for death is the last and farthest point of particu-
 lar necessity, and the law imposeth it upon every
 subject, that hee preferre the urgent service of his
 Prince and Country before the safety of his life: As
 if in danger of tempest those that are in the ship
 throw over other mens goods, they are not answe-
 rable: but if a man be commanded to bring Ordnance
 or munition to relieve any of the Kings towns that are
 distressed, then he cannot for any danger of tempest
 justifie the throwing of them overboard, for there it
 holdeth which was spoken by the Romane, when he
 alledged the same necessity of weather to hold him
 from imbarquing, *Neesse est ut eam, non ut vivam*.
 So in the case put before of husband and wife, if
 they joine in committing treason, the necessity of o-
 bedience doth not excuse the offence as it doth in fe-
 lony, because it is against the Commonwealth.

So if a fire bee taken in a street, I may justifie the
 pulling down of the wall or house of another man to
 save

32. Ed. 3.
 Fi. zh. Wast.
 105.
 44. Ed. 3. 31.

13. H. 8. 16. per
 Shelley.
 12. H. 8. 10. per
 Brooke.
 22. Aff. pl. 56.

save the row from the spreading of the fire ; but if I be assailed in my house in a City or Towne, and distressed, and to save my life I set fire on mine own house, which spreadeth and taketh hold upon other houses adjoining, this is not justifiable, but I am subject to their action upon the case, because I cannot rescue mine own life by doing any thing which is against the Commonwealth: But if it had bin but a private trespassse, as the going over anothers ground, or the breaking of his inclosure when I am pursued for the safeguard of my life, it is justifiable.

6. Ed. 4. 7. per
Sares.

4. H. 7. 2.

This rule admitteth an exception when the law doth intend some fault or wrong in the party that hath brought himselfe into the necessity: so that is *necessitas culpabilis*. This I take to bee the chiefe reason why *seipsum defendendo* is not matter of justification, because the law intends it hath a commencement upon an unlawfull cause, because quarrels are not presumed to grow without some wrongs either in words or deeds on either part, and the law that thinketh it a thing hardly triable in whose default the quarrell began, supposeth the party that kills another in his owne defence not to bee without malice; and therefore as it doth not touch him in the highest degree, so it putteth him to sue out his pardon of course, and punisheth him by forfeiture of goods: for where there cannot bee any malice or wrong presumed, as where a man assailes me to rob me, and I kill him that assaileth mee; or if a woman kill him that assaileth her to ravish her, it is justifiable without any pardon.

So

So the common case proveth this exception, that is, if a mad man commit a felony, hee shall not lose his life for it, because his infirmity came by the Act of God: but if a drunken man commit a felony, hee shall not bee excused because his imperfection came by his owne default; for the reason and losse of deprivation of will and election by necessity and by infirmity is all one, for the lack of (*arbitrium solutum*) is the matter: and therefore as *infirmitas culpabilis* excuseth not, no more doth *necessitas culpabilis*.

Corporalis injuria non recipit estimationem de futuro.

Reg. 6^a

THe law in many cases that concerne lands or goods doth deprive a man of his present remedy, and turneth him over to a further circuit of remedy, rather than to suffer an inconvenience; but if it be question of personall paine, the law will not compell him to sustaine it and expect remedy, because it holdeth no damage a sufficient recompence for a wrong which is corporall.

As if the Sheriffe make a false returne that I am summoned, whereby I lose my land; yet because of the inconvenience of drawing all things to uncertainty and delay, if the Sheriffes returne should not bee credited, I am excluded of my averment against it, and am put to mine action of deceit against the Sheriffe and Summoners: but if the Sheriffe upon a *Cap.* returne a *Cepi corpus*, & *quod est languidum in prisona*,

G

there

3.H.6.3.

there I may come in and falsifie the returne of the Sheriffe to save my imprisonment.

7. Ed. 4. 21.

So if a man menace me in my goods, and that hee will burne certainè evidences of my land which hee hath in his hand, if I will not make unto him a bond, yet if I enter into bond by this terrour, I cannot avoid it by plea, because the law holdeth it an inconvenience to avoid a speciality by such matter of averment, and therefore I am put to mine action against such a menacer: but if he restraine my person, or threaten me with a battery, or with the burning of my house, which is a safety and protection to my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; if upon such menace or dureffe I make a deed, I shall avoid it by plea.

13. H. 8. 15.

21. H. 7. 28.

So if a trespasser drive away my beasts over anothers ground, I pursue them to rescue them, yet am I a trespasser to the stranger upon whose ground I came; but if a man assaile my person, and I flye over anothers ground, now am I no trespasser.

This ground some of the Canonists doe aptly inferre out of Christs sacred mouth, *Amen, est corpus supra vestimentum*, where they say *vestimentum* comprehendeth all outward things appertaining to a mans condition, as lands and goods, which they say, are not in the same degree with that which is corporall; and this was the reason of the ancient *lex talionis, oculus pro oculo, dens pro dente*, so that by that law *corporalis injuria de præterito non recipit estimationem*; But our law when the injury is already executed.

cuted & inflicted, thinketh it best satisfaction to the party grieved to relieve him in damage; and to give him rather profit than revenge; but it wil never force a man to tolerate a corporall hurt, & to depend upon that inferiour kind of satisfaction, *ut in dāmagiis.*

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Reg. 7.

IN Capitall causes in *favorem vite* the law will not punish in so high a degree, except the malice of the will and intention appeare; but in Civill trespasses and injuries that are of an inferiour nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong doer: and therefore,

The law makes a difference between killing a man upon malice fore-thought, and upon present heat: But if I give a man slanderous words, whereby I damnifie him in his name and credit; it is not material whether I use them upon sudden choler and provocation, or of set malice, but in an action upon the case I shall render damages alike.

So if a man be killed by misadventure, as by an arrow at Butts, this hath a pardon of course: but if a man be hurt or maimed onely, an action of trespassse lieth, though it be done against the parties mind and will, and he shall be punished in the law as deeply as if he had done it of malice. Stamf. 16.
6. Ed. 4. 7.

So if a Surgeon authorized to practice, do through negligence in his cure cause the party to dye, the Stamf. 16.

Surgeon shall not be brought in question of his life; and yet if he doe onely hurt the wound, whereby the cure is cast backe, and death ensues not, he is subject to an action upon the case for his misfeasance.

So if Baron and Feme be, and they commit felony together, the Feme is neither principall nor accessory, in regard of her obedience to the will of her husband: but if Baron and Feme join in committing a trespassse upon land or otherwise, the action may be brought against them both.

So if an infant within yeeres of discretion, or a mad man kill another, he shall not be impeached thereof; but if they put out a mans eye, or doe him like corporall hurt, he shall be punished in trespassse.

35.H.6.11.

So in felonies the law admitteth the difference of principall and accessory, and if the principall dye, or be pardoned, the proceeding against the accessory faileth: but in a trespassse, if one cominand his man to beat you, and the servant after the battery dye, yet your action of trespassse stands good against the Master.

37.H.4.19.

Reg. 8.

*Estimatio præteriti delicti ex postremo facto
nunquam crescit.*

THE law construeth neither penall lawes, nor penall facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as if any circumstance or matter be subseqent, which laid together with the beginning should seeme to draw it to a higher nature, yet
the

the law doth not extend or amplify the offence.

Therefore if a man be wounded, and the percussor is voluntarily let goe at large by the Jailor, and after death ensueth of the hurt, yet this is no felonious escape in the Jailor. 11.H.4.12.

So if the Villein strike the heire apparent of the Lord, and the Lord dieth before, and the person hurt who succeedeth to be Lord to the Villeine dieth after, yet this is no pety treason.

So if a man compasse and imagineth the death of one that after commeth to bee King of the land, not being any person mentioned within the statute of 25. Ed. 3. this imagination precedent is not high treason.

So if a man use slanderous words of a person upon whom some dignity after descends that maketh him a Peere of the Realme, yet hee shall have but a simple action of the case, and not in the nature of a *scandalum Magnatum* upon the statute.

So if John Stile steale sixpence from mee in monny; and the King by his Proclamation doth raise monies, that the weight of silver in the piece now of sixpence should goe for twelve pence, yet this shall remaine pety larceny and no felony: and yet in all civill reckonings the alteration shall take place: as if I contract with a Labourer to doe some worke for twelve pence, and the inhaunsing of monny cometh before I pay him, I shall satisfie my contract with a sixpenny piece so raised.

So if a man deliver goods to one to keep, and after retain the same person into his service, who afterwards goeth away with his goods, this is no felony 28.H.8.pl.27.

by

by the Statute of 21. H. 8. because he was no servant at that time.

In like manner, if I deliver goods to the servant of I. S. to keep, and after dye, and make I. S. my executor, and before any new commandement of I. S. to his servant for the custody of the same goods, his servant goeth away with them, this is also out of the statute. *Quod nota.*

18. Eliz. 175.

But note that it is said *præteriti delicti*; for any accessory before the fact is subject to all the contingencies pregnant of the fact, if they be pursuances of the same fact: As if a man command or counsell one to rob a man, or beat him grievously, and murder ensue, in either case he is accessory to the murder, *quia in criminalibus præstantur accidentia.*

Regula 9.

Quod remedio destituitur ipsa re valet si culpa absit.

THe benignity of the law is such, as when to preserve the principles and grounds of law, it depriveth a man of his remedy without his owne fault, it will rather put him in a better degree and condition than in a worse; for if it disable him to pursue his action, or to make his claime, sometimes it will give him the thing it selfe by operation of law without any act of his owne, sometimes it will give him a more beneficiall remedy.

And therefore if the heire of the disseisor which is in by discent make a lease for life, the remainder for life unto the disseisee, and the lessee for life die, now
the

the francktenement is cast upon the disseisee by act in law, & therby he is disabled to bring his *Pracipe* to recover his right, whereupon the law judgeth him in his ancient right as strongly as if it had bin recovered and executed by action, which operation of law is by an ancient terme and word of law called a remitter; but if there may bee assigned any default or laches in him, either in accepting the freehold, or in accepting the interest that drawes the freehold, then the law denyeth him any such benefit.

And therefore if the heire of the disseisor make a lease for yeeres, the remainder in fee to the disseisee, the disseisee is not remitted, and yet the remainder is in him without his owne knowledge or assent; but because the freehold is not cast upon him by act in law, it is no remitter. *Quod nota.* Lit. pl. 682.

So if the heire of the disseisor infeoffe the disseisee and a stranger, and make him livery, although the stranger die before any agreement or taking of the profits by the disseisee, yet hee is not remitted, because though a moiety bee cast upon him by survivor, yet that is but *Jus accrescendi*, and it is no casting of the freehold upon him by act in law, but he is still as an immediate purchaser, and therefore no remitter. Lit. pl. 685.

So if the husband bee seised in the right of his wife, and discontinue and dieth, and the Feme takes another husband, who takes a feoffement from the discontinuee to him and his wife, the feme is not remitted; and the reason is, because shee was once Semble in cest case clerement le ley deeme contrary.

Lit. pl. 666.

once sole, and so a laches in her for not pursuing her right : but if the feoffement taken back had been to the first husband and her selfe, she had been remitted.

2. M. condic. 3.

Yet if the husband discontinue the lands of the wife, and the discontinuee make a feoffement to the use of the husband and wife, shee is not remitted; but that is upon a speciall reason, upon the letter of the statute of 27. H. 8. of uses, that wisheth that the *cestui que use* shall have the possession in quality and degree as hee had the use; but that holdeth place onely upon the first vesting of the use; for when the use is absolutely executed and vested, then it doth insue meerly the nature of possessions; as if the discontinuee had made a feoffement in fee to the use of I. S. for life, the remainder to the use of Baron and Feme, and lessee for life dye, now the Feme is remitted, *causa qua supra*.

34. H. 8. Dyer 3
49.

Also if the heire of the disseisor make a lease for life, the remainder to the disseisee, who chargeth the remainder, and the lessee for life dies, the disseisee is not remitted; and the reason is, his intermedling with the wrongfull remainder, whereby hee hath affirmed the same to bee in him, and so accepted it: but if the heire of the disseisor had granted a rent charge to the disseisee, and afterwards made a lease for life, the remainder to the disseisee, and the lessee for life had died, the disseisee had bene remitted; because there appeareth no assent or acceptance of any estate in the freehold, but onely of a collaterall charge.

So

So if the feme bee disseised and intermarry with the disseisor, who makes a lease for life, rendering rent, and dieth leaving a sonne by the same feme, and the sonne accepts the rent of the lessee for life, and then the feme dies, and the lessee for life dies, the son is not remitted, yet the francktenement was cast upon him by act in law, but because hee had agreed to bee in the tortious reversion by acceptance of the rent, therefore no remitter. 6. Ed. 3. 17.
23. H. 8. pl. 207

So if tenant intaile discontinue, and the discontinuee make a lease for life, the remainder to the issue intaile being within age, and at full age the lessee for life surrendreth to the issue intaile, and tenant intaile dies; and lessee for life dies, yet the same issue is not remitted; and yet if the issue had accepted a feoffement within age, and had continued the taking of the profits when he came of full age, and then the tenant intaile had died, notwithstanding his taking of the profits he had been remitted: for that which guides the remitter, is, if he be once in of the freehold without any laches: as if the heire of the disseisor enfeoffes the heire of the disseisee who dies, and it descends to a second heire upon whom the francktenement is cast by descent, who enters and takes the profits, and then the disseisee dies, this is a remitter, *causa qua supra.*

Also if tenant intaile discontinue for life, and take a surrender of the leasee, now is hee remitted and seised againe by force of the taile, and yet hee cometh in by his owne act: but this case differeth from all other cases, because the discontinuance was

but particular at first, and the new gained reversion is but by intendment and necessity of law; & therefore is but as it were *ab initio*, with a limitation to determine whensoever the particular discontinuance endeth, & the state cometh back to the ancient right.

To proceed from cases of remitter, which is a great branch of this rule, to other cases: If executors doe redeeme goods pledged by their testator with their own mony, the law doth convert so much goods as doth amount to the value of that they laid forth, to themselves in property, and upon a plea of fully administered it shall be allowed: the reason is, because it may be matter of necessity for the well administering of the goods of the testator, and executing their trust that they disburst mony of their owne: for else perhaps the goods would be forfeited, and he that had them in pledge would not accept other goods but mony, & so it is a liberty which the law gives them, and they cannot have any suit against themselves; and therefore the law gives them leave to retain so much goods by way of allowance: and if there bee two executors, and one of them pay the mony, hee may likewise retain against his companion if he have notice thereof.

3. Eliz. 187.
pl. 8.

But if there bee an overplus of goods, above the value of that he shall disburse, then ought he by his claime to determine what goods hee doth elect to have in value, or else before such election if his companion doe sell all the goods, hee hath no remedy but in spirituall Court: for to say he should bee tenant in common with himselfe and his companion

pro rata of that he doth lay out, the law doth reject that courſe for intricatenefſe.

So if I have a leafe for yeeres worth 20^{l.} by the yeere, and grant unto I. D. a rent of 10^{l.} a yeere, and after make him my executor, now I. D. ſhall be charged with affets 10^{l.} onely, and the other 10^{l.} ſhall be allowed and conſidered to him; and the reaſon is, becauſe the not refuſing ſhall bee accounted no laches unto him, becauſe an executorſhip is *pium officium*, and matter of conſcience and truſt, and not like a purchaſe to a mans owne uſe.

19. H. 8. pl. 7. in fine.
22. A. ſ. 2. F.
Rec. in value
23.

Like law it is, where the debtor makes the debtee his executor, the debt ſhall bee conſidered in the affets, notwithstanding it bee a thing in action.

2. H. 4. 21.
Cond. 185.
2. H. 7. 5.
37. H. 6. 32.

So if I have a rent charge, and graunt that upon condition, now though the condition be broken, the grantees eſtate is not defeated till I have made my claim; but if after ſuch grant my father purchaſe the land, and it deſcend to mee, now if the condition bee broken, the rent ceaſeth without claime: But if I had purchaſed the land my ſelfe, then I had extincted mine owne condition, becauſe I had diſabled my ſelfe to make my claime, and yet a condition collaterall is not ſuſpended by taking back an eſtate; as if I make a feoffement in fee, upon condition that I. S. ſhall marry my daughter, and take a leafe for life from my feoffee, if the feoffee break the condition, I may claime to hold in by my fee-ſimple; but the caſe of the charge is otherwiſe, for if I have a

6. Ed. 6. cond.
133.
Lit. pl. 135.

20. H. 7. per Pol.
35. H. 6. Fitz.
Barr. 16e.

rent charge issuing out of 20. acres, and grant the rent over upon condition, and purchase but one acre, the whole condition is extinct, and the possibility of the rent by reason of the condition, is as fully destroyed as if there had been no rent in *Esse*.

30.H.6.pl.
Grants 91.

So if the King grant to mee the wardship of I.S. the sonne and heire of I.S. when it falleth, because an action of covenant lieth not against the King, I shall have the thing my selfe in interest.

7.H.6.40.

But if I let land to I.S. rendring a rent, with a condition of re-entry, and I.S. bee attainted, whereby the lease commeth to the King, now the demand upon this land is gone, which should give me benefit of re-entry, and yet I shall not have it reduced without demand; and the reason of difference is, because my condition in this case is not taken away in right, but onely suspended by the priviledge of the possession: for if the King grant the lease over, the condition is revived as it was.

Also if my tenant for life graunt his estate to the King, now if I will graunt my reversion over, the King is not compellable to attorne, therefore it shall passe by grant by deed without atturment.

9.Ed.2.Fitz.
Atturments
18.

So if my tenant for life bee, and I graunt my reversion *per auter vie*, and the grauntee dye, living *cei que vie*, now the privity betweene tenant for life and mee is not restored, and I have no tenant in *esse* to attorne, therefore I may passe my reversion without atturment. *Quod nota.*

So if I have a nomination to a Church, and another hath the presentation, and the presentation comes

comes to the King, now because the King cannot be attendant, my nomination is turned to an absolute patronage.

So if a man bee seised in an advowson, and take a wife, and after title of dower given her, joine in impropriating the Church, and dieth, now because the Feme cannot have the turne because of the perpetuall incumbency, shee shall have all the turns during her life; for it shall not be disimpropriated to the benefit of the heire contrary to the graunt of tenant in fee-simple.

But if a man graunt the third presentment to I.S. and his heires, and impropriate the advowson, now the grauntee is without remedy, for he tooke his graunt subject to that mischiefe at first, and therefore it was his laches, and therefore not like the case of the dower; and this graunt of the third avoidance is not like *tertia pars advocacionis*, or *medietas advocacionis* upon a tenancy in common of the advowson; for if two tenants in common bee; and an usurpation bee had against them, and the usurper doe impropriate, and one of the tenants in common doe release, and the other bring his writ of right *de medietate advocacionis* and recover, now I take the law to bee that because tenants in common ought to joine in presentment, which cannot now bee, hee shall have the whole patronage: for neither can there bee an appportionment, that hee should present all the turnes, and his Incumbent but to have a moiety of the profits, nor yet the act of impropriation shall not bee defeated.

6.Ed.6.Dy.72.
Vide contra 2.
E.3.fo.8. que
per presentmēt
del feme lad-
vowson est de-
ueign disim-
propriate a
tous jours
quel est agree
in Snr Cok.
Rep.7. fo.8.1.

feated. But as if two tenants in common bee of a Ward, and they joine in a writ of right of Ward, and one release, the other shall recover the entire Ward, because it cannot bee divided: so shall it be in the other case, though it bee an inheritance, and though he bring his action alone.

As if a disseisor be disseised, and the first disseisee release to the second disseisor upon condition, and a descent be cast, and the condition broken; now the meane disseisor whose right is revived shall enter notwithstanding this discent, because his right was taken away by the act of a stranger.

Le contrary
sui resolve in
Martin Trotts
case, pa. 32.
Eliz. in Com.
Banco, & Pa. 1.
Jac. ib.
vide 7. R. 2.
Scire fac. 3.
41. E. 3. 14. per
Finchden.

But if I devise land by the statute of 32. H. 8. and the heire of the devisor enters and makes a feoffment in fee, and the feoffee dieth seised, this discent binds, and there shall not be a perpetuall liberty of entry, upon the reason that he never had seison whereupon he might ground his action, but hee is at a mischiefe by his owne laches: and like law is of the Kings Patentee; for I see no reasonable difference betweene them and him in the remainder, which is *Listletons* case.

But note, that the law by operation and matter in fact will never countervaile and supply a title grounded upon a matter of record, and therefore if I bee entituled unto a writ of error, and the land descend unto mee, I shall never bee remitted, no more shall I be unto an attaint, except I may also have a writ of right.

So if upon my avowry for services, my tenant disclaime where I may have a writ of right as upon disclaimer,

claimer, if the land after descend to me, I shall never be remitted.

Verba generalia restringuntur ad habilitatem rei vel persona.

Reg. 10.

IT is a rule that the Kings grants shall not be taken or construed to a speciall intent; it is not so with the grants of a common person, for they shall be extended as well to a forrein intent as to a common intent; yet with this exception, that they shall never be taken to an impertinent or a repugnant intent: for all words, whether they bee in deeds or statutes, or otherwise if they bee generall and not expresse and precise, shall bee restrained unto the fitnessse of the matter or person.

As if I grant Common *in omnibus terris meis* in D. and I have in D. both open grounds and severall, it shall not bee stretched to my common in severall, much lesse in my gardens and orchards. Peik. pl. 108.

So if I graunt to a man *omnes arbores meas crescentes supra terras meas* in D. hee shall not have Apple trees, or other fruit trees growing in my gardens or orchards, if there bee any other trees upon my ground. 14. H. 8. 2.

So if I graunt to I. S. an annuity of x. l. a yeere *pro consilio impenso & impendendo*, if I. S. be a Physitian, it shall be understood of his counsell in physick; and if he be a Lawyer, of his counsell in Law. 41. Ed. 3. 6. 19.

So if I do let a tenement to I. S. neer by my dwelling house in a Borough, provided that he shall not erect

erect or use any shop in the same without my licence, and afterwards I licence him to erect a shop, and I. S. is then a Miller, hee shall not by vertue of these generall words erect a Joiners shop.

16. Eliz. 337.
Dyer.

So the statute of Chantries that willeth all lands to be forfeited, given or imployed to a superstitious use, shall not be construed of the glebe lands of parsonages: nay further, if the lands bee given to the Parson of D. to say a Masse in his Church of D. this is out of the statute, because it shall be intended but as an augmentation of his glebe; but otherwise had it been if it had been to say a Masse in any other Church but his owne.

So in the statute of wrecks that willeth that goods wrackt where any live domesticall creature remains in a vessell, shall be preserved to the use of the owner that shall make his claime by the space of one yeere, doth not extend to fresh victuals or the like, which is impossible to keep without perishing or destroying it; for in these and the like cases generall words may be taken, as was said, to a rare and forrein intent, but never to an unreasonable intent.

Regula II.

Jura sanguinis nullo jure civili dirimi possunt.

THEY bee the very words of the Civill law, which cannot be amended to explaine this rule. *Heres est nomen Juris, Filius est nomen Natura:* therefore corruption of blood taketh away the privity of the one, that is, of the heire, but not of

of the other, that is, of the sonne ; therefore if a man be attainted and murdered by a stranger, the eldest sonne shall not have the appeale, because the appeale is given to the heire, for the youngest sonnes who are equall in blood shall not have it ; but if an attainted person be killed by his sonne, this is petty treason, for that the privitie of a sonne remaineth : for I admit the law to be, that if the sonne kill his father or mother, it is pettie treason, and that there remaineth so much in our lawes of the ancient foot-steps of *Potestas patris* and naturall obedience, which by the law of God is the very instance it selfe, and all other government and obedience is taken but by equity, which I adde, because some have thought to weaken the law in that point.

36.H.6.57.58.

21.Ed.3.17.

So if land descend to the eldest sonne of a person attainted from his ancestour, of the mother held in Knights service, the guardian shall enter, and ouste the father, because the law giveth the father that prerogative in respect hee is his sonne and heire ; for of a daughter or a speciall heire in taile he shall not have it : but if the sonne be attainted, and the father covenant in consideration of naturall love to stand seised of land to his use, this is good enough to raise an use, because the privity of a naturall affection remaineth.

F.N.Br.fo.143.

So if a man be attainted and have a Charter of pardon, and be returned of a Jury betweene his sonne and I. S. the challenge remaineth ; for hee may maintaine any suit of his sonne, notwithstanding the blood be corrupted.

So by the statute of 21. the Ordinary ought to commit the administration of his goods that was attainted, and purchase his Charter of pardon to his children, though borne before the pardon, for it is no question of inheritance: for if one brother of the halfe blood dye, the administration ought to be committed to his other brother of the halfe blood, if there bee no neerer by the father.

5. Ed. 6. Adm.

47.

33. H. 6. 55.

So if the uncle by the mother be attainted, and pardoned, and land descend from the father to the sonne within age held in socage, the uncle shall be guardian in socage; for that savoureth so little of the privy of heire, as the possibility to inherit shutteth not.

But if a Feme tenant in taile assent to the ravisher, and have no issue, and her cousin is attainted, and pardoned, and purchaseth the reversion, hee shall not enter for a forfeiture. For though the law giveth it not in point of inheritance, but onely as a perquisite to any of the blood so hee be next in estate, yet the recompence is understood for the staine of his blood, which cannot be considered when it is once wholly corrupted before.

5 Ed 4 5.

So if a villeine be attainted, yet the Lord shall have the issues of his villein borne before or after the attainder; for the Lord hath them *Iure natura* but as the increase of a flock.

E.N. br. 829.

Quære whether if the eldest sonne be attainted, and pardoned, the Lord shall have aid of his tenants to make him a Knight, and it seemeth
hee

he shall ; for the words of the writ hath *filium primogenitum*, and not *filium & heredem*, and the like writ hath *pur file marrier* who is no heire. Register. fol. 87.

Receditur à placitis juris, potius quàm injuria, & delicta maneant impunita. Regula 12.

THe law hath many grounds and positive learnings, which are not of the maximes and conclusions of reason, but yet are learnings received with the law, set downe, and will not have called in question : these may be rather called *placita juris* than *regule juris* ; with such maximes the law will dispense, rather than crimes and wrongs should be unpunished, *quia salus populi suprema lex*, and *salus populi* is contained in the repressing offences by punishment.

Therefore if an advouſon be granted to two, and the heires of one of them, and an usurpation be had, they both shall joyne in a writ of right of advouſon ; and yet it is a ground in law, that a writ of right lyeth of no lesse estate than a fee-simple ; but because the tenant for life hath no other severall action in the law given him, and also that the joynture is not broken, and so the tenant in fee-simple cannot bring his writ of right alone, therefore rather than he shall be deprived wholly of remedy, and this wrong unpunished, he shall joyne his companion with him, notwithstanding the feebleness of his estate.

But if lands be given to two, and to the heires 46. Ed. 3. 21.

of one of them, and they leese in a *Precipe* by default, now they shall not joyne in a writ of right, because the tenant for life hath a severall action, viz. a *Quod ei deforciat*, in which respect the joynture is broken.

So if tenant for life and his lessor joyne in a lease for yeares, and the lessee commit waste, they shall joyne in punishing this waste, and *locus vastatus* shall goe to the tenant for life, and the damages to him in reversion, and yet an action of waste lyeth not for tenant for life, but because he in the reversion cannot have it alone, because of the meane estate for life, therefore rather than the waste shall be unpunished, they shall joyne.

So if two coperceners be, and they lease the land, and one of them dye, and hath issue, and the lessee commit waste, the aunt and the issue shall joyne in punishing this waste, and the issue shall recover the moiety of the place wasted, and the aunt the other moiety and the entire damages; and yet *actio injuriarum moritur cum persona*, but *in favorabilibus magis attenditur quod prodest, quam quod nocet*.

So if a man recovers by erroneous judgement, and hath issue two daughters, and one of them is attainted, the writ of error shall be brought against the parceners, notwithstanding the privacy faile in the one.

Also it is a positive ground, that the accessary in felony cannot be proceeded against, untill the principall be tryed; yet if a man upon subtilty and malice set a mad man by some device

45. Ed. 3. 3.
22. H. 6. 24.

20. Ed. 1.

F. discern. 16.

33. Eliz.

to kill him, and he doth so, now forasmuch as the mad man is excused, because he can have no will, nor malice, the law accounteth the incitor as principall, though he be absent, rather than the crime shall goe unpunished.

So it is a ground of the law, that the appeale of murder goeth not to the heire where the party murdered hath a wife, nor to the younger brother where there is an elder; yet if the wife murder her husband, because shee is the party offender, the appeale leaps over to the heire; and so if the sonne and heire murder his father, it goeth to the second brother.

Fitz. Corone
459.
Ed. 4. M. 28. 6.
Stamff. lib. 2.
fol. 60.

But if the rule bee one of the higher sort of maxims, that are *regulae rationales*, and not *positivae*, then the law will rather endure a particular offence to escape without punishment, than violate such a rule.

As it is a rule that penall statutes shall not bee taken by equity, and the statute of 1. Ed. 6. enacts that those that are attainted for stealing of horses shall not have their Clergy, the Judges conceived, that this did not extend to him that should steale but one horse, and therefore procured a new act for it in 2. Ed. 6. cap. 33. and they had reason for it, as I take the law, for it is not like the case upon the statute of *Gloft.* that gives the action of waste against him that holds *pro termino vite vel annorum*. It is true, that if a man holds but for a year, he is within the statute, for it is to be noted, that penall statutes are taken strictly and literally onely in the point of defini-

Plow. 467.

Lit. cap.

46. Ed. 3. 31.

ning and setting downe the fact and the punishment, & in those clauses that doe concerne them, and not generally in words that are but circumstances and conveyance in the putting of the case, and so see the diversity; for if the law be, that for such an offence a man shall leese his right hand; and the offender hath had his right hand before cut off in the warres, he shall not lose his left hand, but the crime shall rather passe without the punishment which the law assigned, than the letter of the law should be extended; but if the statute of 1. Ed. 6. had beene, that hee that should steale one horse should be ousted of his Clergie, then there had beene no question at all, but if a man had stolne more horses than one, but that he had beene within the statute, *quia omne majus continet in se minus.*

Regula 13. *Non accipi debent verba in demonstrationem falsamque competunt in limitationem veram.*

THough falsity of addition or demonstration doth not hurt where you give the thing a proper name, yet neverthelesse if it stand doubtfull upon the words, whether they import a false reference and demonstration, or whether they be words of restraint that limit the generality of the former name, the law will never intend error or falsehood.

Therefore if the Parish of Hurst do extend into the Counties of Wiltsh. and Barksh. and I grant my

my Close called Callis, situate and lying in the Parish of Hurst in the countie of Wiltsh. and the troth is, that the whole Close lieth in the County of Barksh. yet the law is, that it passeth well enough; because there is a certainty sufficient in that I have given it a proper name which the false reference doth not destroy, and not upon the reason that these words, in the County of Wiltsh. shall be taken to go to the Parish onely, and so to be true in some sort, and not to the Close, and so to be false. For if I had granted *omnes terras meas in Parochia de Hurst in Com. Wiltsh.* and I had no lands in Wiltsh. but in Barksh. nothing had past.

But in the principall case, if the Close called Callis had extended part into Wiltsh. and part into Barksh. then onely that part had passed which lay in Wiltsh.

9. Ed. 4. 7.
21. Ed. 3. 18.
18. Eliz.

So if I grant *omnes & singulas terras meas in tenura I. D. quas perquesivi de I. N. in Indentura dimissionis facta I. B. specificat.* If I have land wherein some of these references are true and the rest false, and no land wherein they are all true, nothing passeth: as if I have land in the tenure of I. D. and purchased of I. N. but not specified in the Indenture to I. B. or if I have land which I purchased of I. N. and specified in the Indenture of demise to I. B. and not in the tenure of I. D.

29. Reg.

But if I have some land wherein all these demonstrations are true, and some wherein part of them are true and part false, then shall they be intended words of true limitation to passe only those

those lands wherein all those circumstances are true.

Regula 14.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio precedens quæ sortitur effectum interveniente novo actu.

THe law doth not allow of grants except there be a foundation of an interest in the grantor; for the law that will not accept of grants of titles, or of things in action which are imperfect interests, much lesse will it allow a man to grant or incumber that which is no interest at all but meere future.

But of declarations precedent befor any interest vested, the law doth allow, but with this difference, so that there be some new act or conveyance to give life and vigour to the declaration precedent.

Now the best rule of distinction between grants and declarations, is, that grants are never countermandable not in respect of the nature of the conveyance or instrument, though sometime in respect of the interest granted they are, whereas declarations evermore are countermandable in their natures.

And therefore if I grant unto you, that if you enter into an obligation to me of 100.^l. and after doe procure me such a lease, that then the same obligation shall be void, and you enter into such an obligation unto me, & afterwards do procure
such

20. Eliz.
19. H. 6. 62.

such a lease, yet the obligation is simple, because the defeisance was made of that which was not.

So if I grant unto you a rent charge out of ^{27.Ed.3} white acre, and that it shall be lawfull for you to distraine in all my other lands whereof I am now seised, and which I shall hereafter purchase, although this be but a liberty of distresse, and no rent save onely out of white acre, yet as to the lands afterwards to be purchased the clause is voyd.

So if a reversion be granted to I. S. and I. D. ^{29.Ed.3.6.} a stranger by his deed doe grant to I. S. that if ^{24.Eliz.} he purchase the particular estate, hee will attorne to the grant, this is a voyd attornment, notwithstanding he doth afterwards purchase the particular estate.

But of declarations the law is contrary ; as if ^{13.14.Eliz.} the disseisee make a Charter of feoffement to I. S. ^{20.21.Eliz.} and a letter of attorney to enter and make livery ^{25.Eliz.} and seisme, and deliver the deed of feoffement, and afterwards livery and seisme is made accordingly, this is a good feoffement, and yet he had no other thing than a right at the time of the delivery of the Charter, but because a deed of feoffement is but matter of declaration and evidence, ^{M. 38. &} and there is a new act which is the livery ^{39.Eliz.} subsequent, therefore it is good in law.

So if a man make a feoffement to I. S. upon condition to enfeoffe I. N. within certaine dayes, and there are deeds made both of the first ^{36.Eliz.} feoffement and the second, and letters of attorney accordingly, and both those deeds of
 K feoffement,

feoffment, and letters of attorney are delivered at a time, so that the second deed of feoffment and letters of attorney are delivered when the first feoffee had nothing in the land, and yet if both liveries be made accordingly, all is good.

So if I covenant with I. S. by indenture, that before such a day I will purchase the manour of D. and before the same day I will levy a fine of the same land, and that the same fine shall be to certaine uses which I expresse in the same indenture, this indenture to lewd vses being but matter of declaration and countermandable, at my pleasure will suffice, though the land be purchased after, ; because there is a new act to be done, *viz.* the fine.

But if there were no new act, then otherwise it is ; as if I covenant with my sonne, in consideration of naturall love, to stand seised unto his use of the lands which I shall afterwards purchase, yet the use is void ; and the reason is, because there is no new act, nor transmutation of possession following to perfect this inception ; for the use must be limited by the feoffor, and not the feoffee, and hee had nothing at the time of the covenant.

So if I devise the manour of D. by speciall name, of which at that time I am not seised, and after I purchase it, except I make some new publication of my will, this devise is void ; and the reason is, because that my death, which is the consummation of my will, is the act of God, and not my act, and therefore no such act as the law requireth.

But

25. Eliz.

27. Eliz.

Com. Plowd.
Rigdens case.

But if I grant unto I. S. authority by my deed to demise for yeares, the land whereof I am now seised, or hereafter shall be seised ; and after I purchase the lands, and I. S. my Atturney doth demise them, this is a good demise, because the demise of my atturney is a new act, and all one with a demise by my selfe.

But if I mortgage land, and after covenant with I. S. in consideration of money which I receive of him, that after I have entred for the condition broken, I will stand seised to the use of the same I. S. and I enter, and this deed is enrolled, and all within the six months, yet nothing passeth away; because this enrolment is no new act, but a perfective ceremony of the first deed of bargain and sale ; and the law is more strong in that case, because of the vehement relation which the enrolment hath to the time of the bargain and sale, at what time he had nothing but a naked condition. 61. Eliz.

So if two Joyntenants be, and one of them bargain, and sell the whole land, and before the enrolment his companion dyeth, nothing passeth of the moiety accrued unto him by survivor. 6. Ed. 6. Br.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus. Regula 15.

ALl crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact ; which though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of that error, if another particular ensue of as high a nature.

18. Eliz. Sanders case com.
474.

Therefore if an im-poisoned apple be laid in a place to poison I. S. and I. D. commeth by chance and eateth it, this is murder in the principall that is actor, and yet the malice *in individuo* was not against I. D.

Cr. I. peace. 30. So if a thiefe find the doore open, and come in by night and rob an house, and be taken with the manner, and breake a doore to escape, this is burglary, yet the breaking of the doore was without any felonious intent, but it is one entire act.

Cave.

So if a Caliver be discharged with a murthe-rous intent at I. S. and the Peece breake, and strike into the eye of him that dischargeth it and killeth him, he is *felo de se*, and yet his intention was not to hurt himselfe ; for *felonia de se* and murder are *crimina paris gradus*. For if a man perswade another to kill himselfe, and bee present when he doth so, he is a murderer.

Cr. Iust. peace.
fol. 18, 19.

But *quare*, if I. S. lay im-poisoned fruit for some other stranger his enemy, and his father or mother come and eat it, whether this be petty treason, because it is not altogether *crimen paris gradus*.

Regula 16.

*Mandata licita recipiunt strictam interpreta-
tionem, sed illicita latam & extensam.*

IN committing of lawfull authority to another, a man may limit it as strictly as it pleateth him, and if the party authorized doe transgresse his authority, though it be but in circumstance expres- sed, it shall be voyd in the whole act.

But

But when a man is author and monitor to another to commit an unlawfull act, then he shall not excuse himselfe by circumstances not pursued.

Therefore if I make a letter of attorney to I. S. to deliver livery and seisin in the capitall Mesuage, and he doth it in another place of the land, or betweene the houres of 2. and 3. and he doth it after or before ; or if I make a Charter of feoffement to I. D. and I. B. and expresse the seisin to be delivered to I. D. and my attorney deliver it to I. B. in all these cases the act of the attorney as to execute the estate, is voyd ; but if I say generally to I. D. whom I meane onely to enfeoffe, and my attorney make it to his attorney, it shall be intended, for it is a livery to him in law.

10.H.7. 19. 15.
16.
16.El. Dy. 337.

16.El. Dy. 337..
11:El.Dy. 283
38.H.8.68. Dy.

But on the other side, If a man command I. S. to rob I. D. on Shooters-hill, and hee doth it on Gads-hill, or to robbe him such a day, and he doth it not himselfe but procureth I. B. to doe it; or to kill him by poyson, and hee doth it by violence ; in all these cases notwithstanding the fact be not executed, yet he is accessary neverthelesse.

18.El.Sanders
case. Com.175.

But if it be to kill I. S. and he killeth I. D. mistaking him for I. S. then the acts are distant in substance, and he is not accessary.

Ibidem..

And be it that the facts be of differing degrees, and yet of a kind.

As if a man bid I. S. to pilfer away such things out of a house, and precisely restraine him to doe it sometimes when he is gotten in without breaking of the house, and yet hee breaketh the house, yet hee is accessary to the burglary :

for a man cannot condition with an unlawfull act, but he must at his perill take heed how he putteth himselfe into another mans hands.

But if a man bid one rob I. S. as he goeth to Sturbridge-faire, and he rob him in his house, the variance seemes to be of substance, and he is not accessarie.

18. Eliz in Sanders case.
pl. Com. 475.

Regula 17. *De fide & officio Iudicis non recipitur questio, sed de scientia, sive error sit Iuris sive facti.*

THe law doth so much respect the certaintie of judgement, and the credit and authority of Judges, as it will not permit any error to be assigned that impeacheth them in their trust and office, and in wilfull abuse of the same, but only in ignorance, and mistaking either of the law or of the case and matter in fact.

F. N. br. fol. 21.
7. H. 7. 4.

And therefore if I will assigne for error, that whereas the verdict passed for me, the Court received it contrary, and so gave judgement against me, this shall not be accepted.

3. H. 6. ass. 3.

So if I will alledge for error, that whereas I. S. offered to plead a sufficient barre, the Court refused it, and drave me from it, this error shall not be allowed.

2. M. Dy. 114.

But the greatest doubt is where the Court doth determine of the verity of the matter in fact; so that is rather a point of tryall than a point of judgement, whether it shall be re-examined in error.

As

As if an appeale of Maihem be brought, and the Court, by the assistance of the Chirurgians ad-
judge it to be a Maihem, whether the party grie-
ved may bring a writ of error, and I hold the
Law to be he cannot.

1. Mar. 5.
28. aff. pl. 15.
21. H. 7. 40. 35.

So if one of the Prothonotaries of the Com-
mon pleas bring an assize of his office, and allege
fees belonging to the same office in certainty, and
issue is taken upon these fees, this issue shall be tri-
ed by the Judges by way of examination, and if
they determine it for the plaintiffe, and he have
judgement to recover arrerages accordingly, the
defendant can bring no writ of error of this
judgement, though the fees in troth be other.

8. H. 4. 3.
1. Mar. Dy. 89.
5. Mar. Dy. 16.

So if a woman bring a writ of dower, and the
tenant plead her husband was alive, this shall be
tryed by proofes and not by jury, and upon judge-
ment given on either side no error lies.

8. H. 6. 23.
2. El. 285. Dy.
43. aff. 26.
41. aff. 5.
39. aff. 9.

So if *nul tiel record* be pleaded which is to be
tryed by the inspection of the record; and judge-
ment be thereupon given, no error lyeth.

5. Ed. 4. 3.
9. H. 7. 2.
19. H. 6. 52.

So if in the assize the tenant saith, he is *Countee*
de dale & nient nosme Countee, in the writ this shall
be tryed by the records of the Chancery, and upon
judgement given no error lyeth.

22. aff. pl. 24.
19. Ed. 4. 6.

So if a felon demand his clergy, and read well
and distinctly, and the Court who is judge thereof
doe put him from his clergie wrongtally, error
shall never be brought upon the attainder.

So if upon judgement given upon confession
for default, and the Court doe assesse dammages,
the defendant shall never bring a writ, though
the

9. Aff. 8.
F. N. Br. 21.

the damage bee outrageous.

And it seemeth in the case of maihem, and some other cases, that the Court may dismisse themselves of discussing the matter by examination, and put it to a Jury, and then the party grieved shall have his attainr ; and therefore it seemeth that the Court that doth deprive a man of his action, should be subject to an action ; but that, notwithstanding, the law will not have, as was said in the beginning, the Judges called in question in the point of their office when they undertake to discusse the issue, and that is the true reason ; for to say that the reason of these cases should bee, because tryall by the Court should be peremptory as tryall by certificate, (as by the Bishop in case of bastardy, or by the Marshall of the King &c.) the cases are nothing alike ; for the reason of those cases of certificate is, because if the Court should not give credit to the certificate, but should re-examine it, they have no other meane but to write againe to the same Lord Bishop, or the same Lord Marshall, which were frivolous, because it is not to bee presumed they would differ from their former certificate ; whereas in these other cases of error the matter is drawne before a superiour Court, to re-examine the errors of an inferiour Court : and therefore the true reason, as was said, that to examine againe that which the Court had tryed, were in substance to attainr the Court.

And therefore this is a certaine rule in error, that error in law is ever of such matters as were
not

21. Aff. 14.
11. H. 4. 41.
7. H. 6. 37.

not crossed by the record, as to alledge the death of the tenant at the time of the judgement given, nothing appeareth upon record to the contrary.

So when the infant levies a fine, it appeareth F.N.Br.21. not upon the record that he is an infant, therefore it is an error in fact, and shall bee tried by inspection during nonage.

But if a writ of error be brought in the Kings Bench, of a fine levied by an infant, and the Court by inspection and examination doth affirme the fine, the infant, though it bee during his infancy, shall never bring a writ of error in the Parliament upon this judgement; not but that error lyes after error, but because it doth now appeare upon the record that he is now of full age, therefore it can be no error in fact. And there- F.N.Br.21. fore if a man will assigne for error that fact, that whereas the Judges gave judgement for him, the 9.Ed.43. Clerkes entred it in the roll against him, this error shall not be allowed, and yet it doth not touch the Judges but the Clerks; but the reason is, if it be an error, it is an error in fact; and you shall never alledge an error in fact contrary to the record.

*Persona conjuncta equiparatur
interesse proprio.*

Regula 18.

THe law hath that respect of nature and conjunction of blood, as in divers cases it compareth and matcheth neerenesse of blood with
L consideration.

consideration of profit and interest, yea, and in some cases alloweth of it more strongly.

7. & 8. Eliz.

Therefore if a man covenant in consideration of blood, to stand seised to the use of his brother, or sonne, or neere kinsman, an use is well raised of this covenant without transmutation of possession; nevertheless it is true, that consideration of blood is not to ground a personall contract upon: as if I contract with my sonne, that in consideration of blood I will give unto him such a summe of mony, this is a *nudum pactum*, and no *assumpsit* lyeth upon it; for to subject me to an action, there needeth a consideration of benefit, but the use the law raiseth without suit or action; and besides, the law doth match reall considerations with reall agreements and covenants.

19. Ed. 4. 5.

19. Ed. 4. 22.

22. H. 6. 35.

21. H. 6. 15. 16.

22. H. 6. 5.

20. H. 6.

14. H. 6. 6.

14. H. 7. 2.

So if a suit be commenced against me, my sonne, or brother, I may maintaine aswell as hee in remainder for his interest, or his Lawyer for his fee, and if my brother have a suit against my nephew or cousin, yet it is at my election to maintaine the cause of my nephew or cousin, though the adverse party bee neerer unto mee in blood.

14. & 15. Eliz.

21. Ed. 4. 75.

Com. 425.

So in challenges of Juries, challenge of blood is as good as challenge within distresse, and it is not materiall how farre off the kindred be, so the pedigree can be conveyed in a certainty whether it be of the halfe blood or whole.

15. H. 6. 17.

39. H. 6. 50.

21. Ed. 4. 13.

18. H. 6. 21.

15. Ed. 4. 1.

So if a man menace mee, that hee will imprison, or hurt in body my father, or my childe, except I make such an obligation, I shall avoyd this duresse, as well as if the duresse had beene to mine

mine owne person : and yet if a man menace me, by taking away or destruction of my goods, this is no good duresse to plead ; and the reason is, because the law can make me reparation of that losse, and so it cannot of the other. 39.H.6.91.
7.Ed.4.27.
20.Aff.14.

So if a man under the yeares of 21. contract for the nursing of his lawfull childe ; this contract is good, and shall not be avoyded by infancy, no more than if hee had contracted for his owne alimments or erudition. Perk.4.
D. cap. 28.

Non impedit clausula derogatoria, quo minus ab eadem potestate res dissolvantur à quibus constituuntur. Regula 19.

ACts which are in their natures revocable, cannot by strength of words be fixed or perpetuated, yet men have put in ure two meanes to bind themselves from changing or dissolving that which they have set downe, whereof one is *clausula derogatoria*, the other *interpositio juramenti*, whereof the former is onely pertinent to this present purpose.

This *clausula derogatoria* is by the common practicall terme called *clausula non obstante de futuro esse*, the one weakening and disanulling any matter past to the contrary, the other any matter to come, and this latter is that only whereof wee speake.

The *clausula de non obstante de futuro*, the law judgeth to be idle and of no force, because it doth

deprive men of that which of all other things is most incident to humane condition, and that is alteration or repentance.

Therefore if I make my will, and in the end thereof doe adde such like clause, [Also my will is if I shall revoke this present will, or declare any new will, except the same shall be in writing, subscribed with the hands of two witnesses, that such revocation or new declaration shall be utterly voyd, and by these presents I doe declare the same not to be my will, but this my former will to stand] any such pretended will to the contrary notwithstanding ; yet neverthelesse this clause or any the like never so exactly penned, and although it doe restraine the revocation but in circumstance and not altogether, is of no force or efficacie to fortifie the former will against the second, but I may by paroll without writing repeale the same will, and make a new.

28. Ed. 3. cap. 7.

24. Ed. 3. cap. 9.

2. H 7. 6.

So if there be a statute made that no Sheriffe shall continue in his office above a yeare, and if any Patent be made to the contrary, it shall bee voyd, and if there be any *Clausula de non obstante* contained in such Patent to dispence with this present act, that such clause also shall be voyd ; yet neverthelesse a Patent of the Sheriffes office made by the King with a *non obstante* will be good in law, contrary to such statute, which pretendeth to exclude *non obstantes*, and the reason is, because it is an inseparable prerogative of the Crowne to dispense with politicke statutes and of that kind, and then the derogatory clause hurteth not.

So

So if an act of Parliament be made wherein there is a clause contained, that it shall not be lawfull for the King by authority of Parliament during the space of seven yeares to repeale and determine the same act, this is a voyd clause, and such act may be repealed within the seven yeares, and yet if the Parliament should enact in the nature of the ancient *Lex Regia*, that there should be no more Parliaments held, but that the King should have the authority of the Parliament; this act were good in Law, *quia potestas suprema seipsum dissolvere potest, ligare non potest*: for as it is in the power of a man to kill a man, but it is not in his power to save him alive and to restraine him from breathing or feeling; so it is in the power of a Parliament to extinguish or transfer their owne authority, but not whilst the authority remains entire to restraine the functions and exercises of the same authority.

So in the 28. of K. H. 8. chap. 17. there was a statute made, that all acts that passed in the minority of Kings, reckoning the same under the yeares of 24. might be annulled and revoked by their letters Patents when they came to the same yeares; but this act in the first of K. Ed. 6. who was then betweene the yeares of 10. & 11. ca. 11. was repealed, and a new law surrogate in place thereof, where in a more reasonable liberty was given: and wherein, though other lawes are made revocable according to the provision of the former law with some new forme prescribed, yet that very Law of revocation, together with pardons, is

14. El. Dy. 313.

E. Com. 563.

made irrevocable and perpetuall, so that there is a direct contrariety betweene these two lawes : for if the former stands, which maketh all latter lawes during the minority of Kings revocable without exception of any law whatsoever, then that very law of repeale is concluded in the generality, and so it selfe made revocable : on the other side, that law making no doubt of the absolute repeale of the first law, though it selfe were made during the minority, which was the very case of the former law in the new provision which it maketh, hath a precise exception, that the law of repeale shall not be repealed.

But the law is, that the first law by the impertinency of it was voyd *ab initio* & *ipso facto* without repeale, as if a law were made, that no new statute should be made during seven yeares, and the same statute be repealed within the seven yeares, if the first statute should be good, then the repeale could not be made thereof within that time ; for the law of repeale were a new law, and that were disabled by the former law, therefore it is voyd in it selfe, and the rule holds, *perpetua lex est nullam legem humanam ac positivam perpetuam esse, & clausula que abrogationem excludit initio non valet.*

Neither is the difference of the civill law so reasonable as colourable, for they distinguish and say that a derogatory clause is good to disable any latter act, except you revoke the same clause before you proceed to establish any later disposition, or declaration ; for they say, that *clausula derogatoria*

derogatoria ad alias sequentes voluntates posita in testamento (viz. si testator dicat qd' si contigerit eum facere aliud testamentum non vult illud valere) operatur quod sequens dispositio ab ipsa clausula regulatur, & per consequens quod sequens dispositio duretur sine voluntate & sic quod non fit attendendum.
The sense is, that where a former will is made, and after a later will, the reason why without an expresse revocation of the former will it is by implication revoked, is because of the repugnancie betweene the disposition of the former and the later.

But where there is such a derogatory clause, there can be gathered no such repugnancy, because it seemeth that the testator had a purpose at the making of the first will to make some shew of a new will, which neverthelesse his intention was should not take place : but this was answered before ; for if that clause were allowed to be good untill a revocation, then would no revocation at all be made, therefore it must needs be voyd by operation of law at first. Thus much of *Clausula derogatoria*.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest ; si autem pendet ex voluntate tertiae personae, vel ex contingenti, non potest. Regula 20.

IN acts that are fully executed and consummate, the law makes this difference, that if the first parties have put it in the power of a third person, or of a contingency, to give a perfection to their acts,

acts, then they have put it out of their owne reach and liberty ; therefore there is no reason they should revoke them : but if the consummation depend upon the same consent, which was the inception, then the law accounteth it in vaine to restraine them from revoking of it, for as they may frustrate it by omission, and *non feisance*, at a certaine time or in a certaine sort, or circumstance, so the law permitteth them to dissolve it by an expresse consent, before that time, or without that circumstance.

Therefore if two exchange land by deed, or without deed, and neither enter, they may make a revocation or dissolution of the same exchange by mutuall consent, so it be by deed, but not by paroll, for as much as the making of an exchange needeth no deed, because it is to be perfected by entry, which is a ceremony notorious in the nature of a livery ; but it cannot bee dissolved but by deed, because it dischargeth that which is but title.

So if I contract with l. D. that if he lay me into my seller three tunnes of wine before Mich. that I will bring into his Garner 20. quarters of wheat before Christmas, before either of these dayes the parties may by assent dissolve the contract ; but after the first day there is a perfection given to the contract by action on the one side, and they may make crosse releases by deed or paroll, but never dissolve the contract ; for there is a difference betweene dissolving the contract and release or surrender of the thing contracted for : as if lessee for 20. yeares make a lease for 10. yeares, and after he
take

F.N.Br.36.
13.H.7.13.14.

F.56.Eliz.

take a lease for five yeares, yet this cannot inure by way of surrender : for a petty lease derived out of a greater cannot be surrendred back againe, but inureth onely by dissolution of contract ; for a lease of land is but a contract executory from time to time of the profits of the land, so arise as a man may sell his corne or his tythe to spring or to be perceived for divers future yeares.

But to returne from our digression, on the other side, if I contract with you for cloth at such a price as I. S. shall name ; there if I. S. refuse to name, the contract is voyd, but the parties cannot discharge it, because they have put it in the power of the third person to perfect.

So if I grant my reversion, though this be an imperfect act before atturment, yet because the atturment is the act of a stranger, this is not simply revokable, but by a policy or circumstance in law, as by levying a fine, or making a bargaine and sale, or the like.

11. H. 7. 19.
1 R. 2.
F. atturment. 8.

So if I present a Clerke to the Bishop, now can I not revoke this presentation, because I have put it out of my selfe, that is the Bishop by admission to perfect my act begun.

31. Ed. 1. F. Q.
Imp. 185.
14. Ed. 4. 2.
38. Ed. 3. 35.

The same difference appeareth in nominations and elections ; as if I enfeoffe such a one as I. D. shall name within a yeare, and I. D. name I. B. yet before the feoffement and within the yeare I. D. may countermand his nomination and name againe, because no interest passeth out of him. But if I enfeoffe I. S. to the use of such a one as I. D. shall name within a yeare, then if I. D.

14. Ed. 4. 2.

name I. B. it is not revocable, because the use passeth presently by operation of law.

So in judiciall acts the rule of the civill law holdeth, *sententia interlocutoria revocari potest*; that is, that an order may be revoked, but a judgement cannot; and the reason is, because there is a title of execution or barre given presently unto the party upon judgement, and so it is out of the Judge to revoke in Courts ordered by the common law.

Regula 21. *Clausula vel dispositio inutilis per presumptionem remotam vel causam, ex post facto non fulcitur.*

C*Lausula vel dispositio inutilis* are said, when the act or the words doe worke or expresse no more than the law by intendment would have supplied; and therefore the doubling or iterating of that and no more, which the conceit of law doth in a sort prevent and preoccupate, is reputed nagation, and is not supported and made of substance either by a forreine intendment of some purpose, in regard whereof it might be materiall, nor upon any cause emerging afterwards, which may induce an operation of those idle words.

And therefore if a man demise land at this day to his sonne and heire, this is a voyd devise, because the disposition of law did cast the same upon the heire by descent, and yet if it be Knights service

31. H. 8. Goord.
39. Ber.
2. M.
Br. devises 41.

service land, and the heire within age, if hee take by the devise he shall have two parts of the profits to his owne use, and the guardian shall have benefit but of the third ; but if a man devise land to his two daughters, having no sonnes, then the devise is good, because he doth alter the disposition of law, for by the law they shall take in coparcenary, but by the devise they shall take joyntly, and this is not any forreine collaterall purpose, but in point of taking of estate.

29. H. 8. Dy. 12.

So if a man make a feoffement in fee, to the use of his last will and testament, these words of speciall limitation are voyd, and the law reserveth the ancient use to the feoffor and his heires : and yet if the words might stand, then might it be authority by his will to declare and appoint uses, and then though it were Knights service land, hee might dispose the whole. As if a man make a feoffement in fee, to the use of the will and testament of a stranger, there the stranger may declare an use of the whole by his will; notwithstanding it be Knights service land, but the reason of the principall case is, because uses before the statute of 27.

H. 8. were to have beene disposed by will, and therefore before that statute an use limited in the forme aforesaid, was but a frivolous limitation, in regard of the old use that the law reserved was devisable; and the statute of 27. altereth not the law,

19. H. 8. Dy. 12.
5. Ed. 4. 8.

as to the creating and limiting of any use, and therefore after that statute, and before the statute of wills, when no land could have beene devised,

yet was it a voyd limitation as before, and so continueth to this day.

But if I make a feoffement in fee, to the use of my last will and testament, thereby to declare an estate taile and no greater estate; and after my death and after such estate declared shall expire, or in default of such declaration then to the use of I. S. and his heires, this is a good limitation; and I may by my will declare an use of the whole land to a stranger, though it be held in Knights service; and yet I have an estate in fee simple by vertue of the old use during life.

19. H. 8. 11.
6. Ed. 4. 8.

32. H. 8. 43. Dy.
20. H. 8. 8. Dy.
7. Eliz. 2. 37. Dy.

So if I make a feoffement in fee to the use of my right heires, this is a voyd limitation, and the use reserved by the law doth take place, and yet if the limitation should be good the heire should come in by way of purchase, who otherwise commeth in by descent, but this is but a circumstance which the law respecteth not, as was proved before.

But if I make a feoffement in fee to the use of my right heires, and the right heires of I. S. this is a good use, because I have altered the disposition of law; neither is it voyd for a moiety, but both our right heires when they come in being shall take by joynt purchase, and he to whom the first falleth shall take the whole subject, neverthelesse to his companions titles, so it have not descended from the first heire to the heire of the heire: for a man cannot be joynt tenant claiming by purchase, and the other by descent, because they be severall titles.

2. Ed. 3. 19.
30. E. 1. Fitz.
Devise. 9.

So if a man having land on the part of his Mother make a feoffement in fee to the use of himselfe and his heires, this use though expresse, shall not goe to him and the heires of the part of his Father as a new purchase, no more than it should have done if it had beene a feoffement in fee nakedly without consideration, for the intendment is remote. But if baron and feme be, and they joyne in a fine of the femes land, and expresse an use to the husband and wife and their heires; this limitation shall give a joynt estate by intieries to them both, because the intendment of law would have conveyed the use to the feme alone. And thus much touching forreine intendments.

4. M. 133.
pl. 6. Dyer.

5. Ed. 4. 8.
19. H. 8. 11.

For matter *ex post facto*, if a lease for life be made to two, and the survivor of them, and they after make partition: now these words (and the survivor of them) should seeme to carry purpose as a limitation, that either of them should be stated of his part for both their lives severally; but yet the law at the first construeth the words but words of dilating to describe a joynt estate; and if one of them dye after partition there shall be no occupant, but his part shall revert.

30. aff. 8. Fitz.
part. 16.

31. H. 8. 46.
p. 7. D.

So if a man grant a rent charge out of 10. acres, and grant further that the whole rent shall issue out of every acre, and distresse accordingly, and afterwards the grantee purchase an acre: now this clause should seeme to be materiall to uphold the rent; but yet nevertheless the law at first accepteth of these words but as words of explanation,

tion, and then notwithstanding the whole rent is extinct.

4.E.6.Com.33.
per Hinde.
27.H.8.6

So if a gift intaile be made upon condition, that if tenant intaile dye without issue it shall be lawful for the donor to enter and the donee discontinue and dye without issue : now this condition should seeme materiall to give him benefit of entry, but because it did at the first limit the estate according to the limitation of law, it worketh nothing upon this matter emergent afterward.

22.Aff.pl.52.

So if a gift in taile be made of lands held in Knights service with an expresse reservation of the same service, whereby the land is held over, and the gift is with warranty, and the land is evicted, and other land recovered in value against the donor held in foccage, now the tenure which the law makes betweene the donor and donee shall be in foccage, and not in Knights service, because the first reservation was according to the owelty of service, which was no more than the law would have reserved.

But if a gift intaile had beene made of lands held in foccage with a reservation of Knights service tenure, and with warranty, then because the intendment of law is altered, the new land shall be held by the same service the last land was, without any regard at all to the tenure paramount : and thus much of matter *ex post facto*.

This Rule faileth where that the law saith as much as the party, but upon forreine matter not pregnant and appearing upon the same att, and conveyance,

conveyance, as if lessee for life be, and he lets for 20. yeares, if he live so long; this limitation (if he live so long) is no more than the law saith, but it doth not appeare upon the same conveyance oract, that this limitation is nugatory, but it is forreine matter in respect of the truth of the state whence the lease is derived: and therefore if lessee for life make a feoffement in fee, yet the state of the lease for yeares is not enlarged against the feoffee, otherwise had it beene if such limitation had not beene but that it had beene left onely to the law.

16. H. 7. 4.
per Keble.
24 Ed. 3. 28.
Fitz. pl. 98.

So if tenant after possibility make a lease for yeares, and the donor confirms to the lessee to hold without impeachment of waste during the life of tenant in taile, this is no more than the law saith, but the privilege of tenant after possibility is forreine matter, as to the lease and confirmation: and therefore if tenant after possibility doe surrender, yet the lessee shall hold dispunishable of waste; otherwise had it beene if no such confirmation at all had beene made.

Also heed must be given that it be indeed the same thing which the law intendeth, and which the party expresseth, and not like or resembling, and such as may stand both together: for if I let land for life rendring a rent, and by my deed warrant the same land, this warranty in law and warranty in deed are not the same thing, but may both stand together.

20. Ed. 2. Fitz. 7.
21. Ed. 1. Zouch.
289.

There remaineth yet a great question on this rule.

A

A principall reason whereupon this rule is built, should seeme to be because such acts or clauses are thought to bee but declaratory and added upon ignorance and *ex consuetudine Clericorum* upon observing of a common forme, and not upon purpose or meaning, and therefore whether by particular and precise words a man may not controule the intendment of the law.

To this I answer, that no precise or expresse words will controule this intendment of law; but as the generall words are voyd, because they say contrary to that the law saith; so are they which are thought to be against the law: and therefore if I demise my land being Knights service tenure, to my heire, and expresse my intention to be, that the one part should descend to him as the third appointed by statute, and the other he shall take by devise to his owne use, yet this is voyd; for the law saith hee is in by discent of the whole; and I say, he shall be in by devise, which is against the Law.

Lit. pl. 361.

But if I make a gift intaile, and say upon condition, that if tenant intaile discontinue and after dye without issue it shall be lawfull for me to enter; this is a good clause to make a condition, because it is but in one case, and doth not crosse the law generally: for if the tenant intaile in that case be disseif d and a descent cast, and dye without issue, I that am the donor shall not enter.

But if the clause had beene provided, that if tenant intaile discontinue, or suffer a descent, or
doe.

doe any other fact whatsoever, that after his death without issue it shall be lawfull for mee to enter: now this is a voyd condition, for it importeth a repugnancy to law: as if I would over-rule that where the law saith I am put to my action, I neverthelesse will reserve to my selfe an entry.

Non videtur consensum retinuisse si quis ex Regula 2^a prescripta minantis aliquid immutavit.

ALthough choice and election be a badge of consent, yet if the first ground of the act be duresse, the law will not construe that the duresse doth determine, if the party duresed doe make any motion or offer.

Therefore if a party menace me, except I make unto him a bond of 40. l. and I tell him that I will not doe it, but I will make unto him a bond of 20. l. the law shall not expound this bond to be voluntary, but shall rather make construction that my minde and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion, notwithstanding, into the lesser.

But if I will draw any consideration to my selfe, as if I had said, I will enter into your bond of 40. l. if you will deliver me that peece of Plate, now the duresse is discharged, and yet if it had beene moved from the duresor, who had said at the first, you shall take this peece of Plate, and make me a bond of 40. l. now the gift of the Plate

N

had

had beene good, and yet the bond shall be avoyded by duresse.

Regula 23. *Ambiguitas verborum Latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur.*

THere be two sorts of ambiguities of words, the one is *Ambiguitas Patens*, and the other *Latens*. *Patens* is that which appears to be ambiguous upon the deed or instrument, *Latens* is that which seemeth certaine and without ambiguity, for any thing that appeareth upon the deed or instrument; but there is some collaterall matter out of the deed, that breedeth the ambiguity.

Ambiguitas Patens is never holpen by averrement, and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averrement, which is of inferiour account in law; for that were to make all deeds hollow, and subject to averrements, and so in effect, that to passe without deed, which the law appointeth shall not passe but by deed.

Therefore if a man give land to *J. D. & I. S. & heredibus*, and doe not limit to whether of their heires, it shall not bee supplied by averrement to whether of them, the intention was, the inheritance should be limited.

So if a man give land intaile, though it be by will,

will, the remainder intaile, and adde a *Proviso*, in this manner : Provided that if hee or they or any of them doe any &c. according to the usuall clauses of perpetuities, it cannot be averred upon the ambiguities of the reference of this clause, that the intent of the devisor was, that the restraint should goe onely to him in the remainder, and the heires of his body ; and that the tenant intaile in possession, was meant to be at large.

Of these, infinite cases might be put, for it holdeth generally that all ambiguitie of words by matter within the deed, and not out of the deed, shall be holpen by construction, or in some case by election, but never by averrement, but rather shall make the deed voyd for uncertainty.

But if it be *Ambiguitas latens*, then otherwise it is : as if I grant my mannour of S. to I. F. and his heires, here appeareth no ambiguity at all ; but if the truth be that I have the mannours both of South S. and North S. this ambiguity is matter in fact, and therefore it shall holpen by averrement, whether of them was that the party intended should passe.

So if I set forth my land by quantity, then it shall be supplied by election, and not averment.

As if I grant ten acres of wood in sale, where I have an hundred acres, whether I say it in my deed or no that I grant out of my hundred acres, yet here shall be an election in the grantee, which ten hee will take.

And the reason is plaine, for the presumption

of the law is, where the thing is onely nominated by quantity, that the parties had indifferent intentions, which should be taken, and there being no cause to helpe the uncertainty by intention, it shall be holpen by election.

But in the former case the difference holdeth, where it is expressed and where not ; for if I recite, Whereas I am seised of the mannour of North S. and South S. I lease unto you *unum mannerium de S.* there it is clearely an election : so if I recite, Where I have two tenements in St. *Dur-*
stans, I lease unto you *unum tenementum,* there it is an election, not averment of intention, except the intent were of an election, which may be specially averred:

Another sort of *Ambiguitas latens* is correlative unto these : for this ambiguity spoken of before, is when one name and appellation doth denominate divers things, and the second, when the same thing is called by divers names.

As if I give lands to Christ Church in Oxford, and the name of the Corporation is *Ecclesia Christi in Univeritate Oxford,* this shall be holpen by averment, because there appeares no ambiguity in the words : for this variance is matter in fact, but the averment shall not be of intention, because it doth stand with the words.

For in the case of equivocation the generall intent includes both the speciall, and therefore stands with the words : but so it is not in variance, and therefore the averment must be of
matter,

matter, that do endure quantity, and not intention.

As to say of the precinct of Oxford, and of the university of Oxford is one and the same, and not to say that the intention of the parties was, that the grant should be to Christ-Church, in that University of Oxford.

Licita bene miscentur, formula nisi juris Regula 24.
obster.

THe law giveth that favour to lawfull acts, that although they be executed by severall authorities, yet the whole act is good.

As when tenant for life is the remainder in fee, and they joyne in a livery by deed or without, this is one good entire livery drawne from them both, and doth not inure to a surrender of the particular estate if it be without deed or confirmation of those in the remainder; if it be by deed, but they are all parties to the livery.

Scemble cleere-
ment le ley
d'estre contra-
ry in ambideux
cases, car lou

est sans fait est livery solement de cestui in le rem' & surr' de partic' ten' autrement sera forfeiture de son estate, & lou est per fait le livery passa solement de tenant, car il adle franktenement, vide accordant. Snr. Co. lib. 1. 76. b. 77. a. Com. Plow. 59. A. 40. 2. H. 5. 7. 13. H. 7. 14. 13. E. 4. 4. a. 27. H. 8. 13. M. 16 & 17. EL Dy. 339.

So if tenant for life the remainder in fee be, and they joyne in granting a rent, this is one solid rent out of both their estates, and no double rent, or rent by confirmation.

So if tenant intaile be at this day, and he make a lease for three lives, and his owne, this is a good

N 3. lease,

Quere.

lease and warranted by the statute of 32. H. 8. and yet it is good in part by the authority which tenant intaille hath by the common law, that is, for his owne life, and in part by the authority which he hath by the statute, that is, for the other three lives.

So if a man seised of lands deviseable by custome, and of other land held in Knights service, and devise all his lands, this is a good devise of all the land customary by the common law, and of two parts of the other land by the statutes.

So in the Star Chamber a sentence may be good, grounded in part upon the authority given the Court by the statute of 3. H. 7. and in part upon that ancient authority which the Court hath by the common law, and so upon severall commissions.

But if there be any forme which law appointeth to be observed, which cannot agree with the diversities of authorities, then this rule faileth.

As if three Coparceners be, and one of them alien her purparty, the feoffee and one of the sisters cannot joyne in a writ *de pari' facienda*, because it behooveth the feoffee to mention the statute in his writ.

Vide 2. Instit.
166. b.

Regula 25. *Præsentia corporis tollit errorem Nominis,
& veritas nominis tollit errorem Demonstrationis.*

THERE be three degrees of certainty.

1 Presence,

2 Name.

2 Name.

3 Demonstration or Reference.

Whereof the Presence the law holdeth of greatest dignity, the Name in the second degree, and the Demonstration or Reference in the lowest, and alwayes the errour or falsity in the lesse worthy.

And therefore if I give a horse to I. D. being present, and say unto him, I. S. take this, this is a good gift, notwithstanding I call him by a wrong name ; but so had it not beene if I had delivered him to a stranger to the use of I. S. where I meant I. D.

So if I say unto I. S. here I give you my ring with the Ruby, and deliver it with my hand, and the Ring beare a Diamond and no Ruby, this is a good gift notwithstanding I name it amisse.

So had it beene if by word or writing without the delivery of the thing it selfe, I had given the Ring with the Ruby, although I had no such, but only one with a Diamond which I meant, yet it would have passed.

So if I by deed grant unto you by generall words, all the lands that the King hath passed unto me by letters patents dated 10. May unto this present Indenture annexed, and the Patent annexed have date 10. July, yet if it be proved that that was the true Patent annexed, the presence of the Patent maketh the error of the date recited not materiall ; yet if no Patent had been annexed, and there had beene also no other certainty given, but the reference of the Patent, the date whereof

was mis-recited, although I had no other Patent ever of the King, yet nothing would have passed.

Like law is it, but more doubtfull, where there is not a presence, but a kind of representation, which is lesse worthy than a presence, and yet more worthy than a Name or Reference.

As if I covenant with my Ward, that I will tender unto him no other marriage, than the gentlewoman, whose picture I delivered him, and that picture hath about it *Ætatis sue anno. 16.* and the gentlewoman is seventeene yeares old, yet nevertheless if it can be proved that the picture was made for that gentlewoman, I may notwithstanding this mistaking, tender her well enough.

So if I grant you for life a way over my land according to a plot intended betweene us, and after I grant unto you and your heires a way according to the first plot intended, whereof a table is annexed to these presents, and there be some speciall variance betweene the table and the originall plot, yet this representation shall be certainty sufficient to lead unto the first plot, and you shall have the way in fee nevertheless, according to the first plot, and not according to the table.

So if I grant unto you by generall words the land which the King hath granted me by his letters patents, *Quarum tenor sequitur in hac verba, &c.* and there be some mistaking in the recitall and variance from the originall patent, although it be in a point materiall, yet the representation of this whole Patent shall be as the annexing of the true
 Patent,

patent, and the grant shall not be void by this variance.

Now for the second part of this rule touching the Name and the Reference, for the explaining thereof, it must be noted what things found in demonstration or addition; as first in lands, the greatest certainty is, where the land hath a name proper, as the mannor of Dale, Grandfield, &c. the next is equall to that, when the land is set forth by bounds and abuttrals, as a close of pasture bounding on the East part upon Emsden-wood, on the South upon, &c. It is also a sufficient name to lay the generall boundary, that is, some place of larger precinct, if there be no other land to passe in the same precinct, as all my lands in Dale, my tenement in S. Dunstans Parish, &c.

A farther sort of denomination is to name land by the attendancy they have to other lands more notorious, as parcell of my manour of D. belonging to such a Colledge lying upon Thames banke.

All these things are notes found in denomination of lands, because they be signes to call, and therefore of property to signifie and name a place; but these notes that found only in demonstration and addition, are such as are but transitory and accidentall to the nature of the place.

As *modo in tenura & occupatione*, of the proprietary tenure or possessor is but a thing transitory in respect of land; *Generatio venis, generatio migrat, terra autem manet in aeternum.*

So likewise matter of conveyance, title, or instrument.

As, *quæ perquisivi de I. D. quæ descendebant à I. N. patre meo*, or, *in prædicta Indentura dimissionis*, or, *in prædictis literis patentibus specificat.*

So likewise *continent per estimationem 20. acras*, or if (*per estimationem*) be left out, all is one, for it is understood, and this matter of measure, although it seeme locall, yet it is indeed but opinion and observation of men.

The distinction being made, the rule is to be examined by it.

Therefore if I grant my close called Dale in the Parish of Hurst, in the County of Southampton, and the Parish likewise extendeth into the County of Barkshire, and the whole close of Dale lyeth in the County of Barkshire, yet because the parcell is especially named, the falsity of the addition hurteth not, and yet this addition is found in name, but (as it was said) it was lesse worthy than a proper name.

So if I grant *tenementum meum*, or *omnia tenementa mea* (for the universall and indefinite to this purpose are all one) *in parochia Sancti Butolphi*

extra Aldgate (where the verity is *extra Bishopsgate*) *in tenura Guilielmi*, which is true, yet this grant is voyd, because that which sounds in denomination is false, which is the more worthy, and that which sounds in addition is true, which is the lesse; * and though *in tenura Guilielmi*, which is true, had beene first placed, yet it had beene all one.

* Semble icyle grant ust este affets bon, cōc fuit resolu per Cur', Co lib. 3. fo. 10. a. vide 33. H. 8. Dy 50. b. 12. Eliz. ib. 292. b. & Co. lib. 2. fo 33 a.

But if I grant *tenementum meum quod perquisi- sivi de R. C. in Dale*, where the truth was T. C. and I have no other tenements in D. but one, this grant is good, because that which soundeth in name (*viz. in Dale*) is true, and that which sounded in addition (*viz. quod perquisiwi, &c.*) is onely false.

Vide ib. quæ
contraria est
lex, car icy aux
le primer cer-
tainty est faux.

So if I grant *Prata mea in Sale continentia 10 acris*, and they containe indeed 20. acres, the whole 20. passe.

So if I grant all my lands, being parcels *mannerii de D. in prædictis literis patentibus specificat*, and there be no letters patents, yet the grant is good enough.

The like reason holds in demonstrations of persons that have beene declared in demonstration of lands and places, the proper name of every one is in certainty worthiest, next are such appellations as are fixed to his person, or at least of continuance, as sonne of such a man, wife of such a husband; or addition of office, as Clerke of such a Court, &c. and the third are actions or accidents, which sound no way in appellation or name, but onely in circumstance, which are lesse worthy, although they may have a poore particular reference to the intention of the grant.

And therefore if an obligation be made to *I. S. filio & heredi G. S.* where indeed he is a bastard, yet this obligation is good.

So if I grant land *Episcopo nunc Londinensi qui me erudit in pueritia*, this is a good grant,

although he never instructed me.

But *à converso*, if I grant land to I. S. *filiò & heredi G. S.* and it be true that hee is sonne and heire unto G. S. but his name is Thomas, this is a voyd grant.

Or if in the former grant it was the Bishop of Canterbury who taught me in my childhood, yet shall it be good (as was said) to the Bishop of London, and not to the Bishop of Canterbury.

The same rule holdeth of denomination of times, which are such a day of the Moneth, such a day of the weeke, such a Saints day or Eave, To day, to-morrow; these are names of times.

But the day that I was borne, the day that I was married; these are but circumstances and addition of times.

And therefore if I bind my selfe to doe some personall attendance upon you, upon Innocents day being the day of your birth, and you were not borne that day, yet shall I attend.

There resteth two questions of difficulty, yet upon this rule: first, of such things whereof men take not so much note as that they shall faile of this distinction of name and addition.

As, my box of Ivory lying in my study sealed up with my seale of armes, my suit of Arras with the story of the Nativity and Passion; of such things there can be no name, but all is of description, and of circumstance, and of these I hold the law to be, that precise truth of all recited circumstances is not required.

But

But in such things *ex multitudine signorum colligitur identitas vera*, therefore though my box were sealed, and although the arras had the story of the nativity, and not of the passion, if I had no other box, nor no other suit, the gifts are good, and there is certainly sufficient, for the law doth not expect a precise description of such things as have no certaine denomination.

Secondly, of such things as doe admit the distinction of name and addition, but the notes fall out to be of equall dignity all of name or addition.

As, *prata mea juxta communem fossam in D.* whereof the one is true, the other false, or, *tenementum meum in tenura Guilielmi quod perquisivi de R. C. in pradiet' Indent' specificat'* whereof one is true and two are false, or two are true and one false.

So *ad curiam quam tenebat die Mercurii tertio die Martii*, whereof the one is true, the other false.

In these cases the former rule *ex multitudine signorum*, &c. holdeth not, neither is the placing of the falsitie or verity first or last materiall, but all must be true, or else the grant is void, always understood, that if you can reconcile all the words, and make no falsity, that is quite out of this rule, which hath place onely where there is a direct contrariety, or falsity not to be reconciled to this rule.

Vide livers a-
vant dit pur
cest auxi.

As if I grant all my land in *D. in tenura I. S.* which I purchased of *I. N.* specified in a devise to *I. D.* and I have land in *D.* whereof in part of

them all these circumstances are true, but I have other lands in D. wherein some of them faile, this grant will not passe all my land in D. for there these are references, and no words of falsity or error, but of limitation and restraint.

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FINIS.

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THE USE

OF

THE LAW.

Provided for Preservation

OF

Our { *Persons,*
Goods, and
Good Names.

According to the Practice

OF

The { *Laws*
and } *of this Land.*
{ *Customes* }

By the Lord Verulam Viscount of S. *Albans &c.*

LONDON,

Printed by the Assignes of IOHN
MOORE Esquire. 1635.

Cum Privilegio.

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OF

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Provided for Preservation

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The
Law
of this Land.

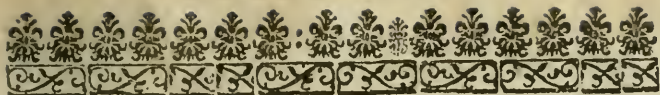
By the Lord Verulam Viscount of Albemarle.

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THE USE OF THE LAW,

And wherein it principally consisteth.

THE Use of the Law consisteth principally in these three things:

- 1 To secure Mens persons from Death and Violence.
- 2 To dispose the property of their Goods and Lands.
- 3 For preservation of their good Names from shame and infamy.

FOr safety of persons, the Law provideth that any man standing in feare of another, may take his Oath before a Justice of Peace, that hee standeth in feare of his life, and the Justice shall compell the other to be bound with Sureties to keepe the Peace. Surety to keepe the Peace.

If any man Beat, wound or maime another, or give false scandalous words that may touch his Credit, the Law giveth thereupon an action of the Case, for Slander, Battery, &c. Action of the Case, for Slander, Battery, &c.

the

the Case, for the slander of his good name ; and an Action of Battery, or an appeale of Maime, by which recompence shall be recovered, to the value of the hurt, dammage or danger.

Appeale of
Murther given
to the next of
kinne.

If any man kill another with malice, the Law giveth an appeale to the wife of the dead, if hee had any, or to the next of kinne that is Heire in default of a Wife, by which appeale the Defendant convicted is to suffer Death, and to lose all his Lands and Goods ; But if the Wife or Heire will not sue or be compounded withall, yet the King is to punish the offence by Indictment or Presentment of a lawfull inquest and tryall of the Offenders before competent Judges ; whereupon being found guilty, he is to suffer Death, and to lose his lands and goods.

Man-slaughter,
and when a
forfeiture of
Goods, and
when not.

If one kill another upon a suddaine quarrell, this is Man-slaughter, for which the Offender must dye, except he can read ; and if he can read, yet must he lose his goods, but no lands.

And if a man kill another in his owne defence, he shall not lose his Life, nor his Lands, but he must lose his Goods, except the party slaine did first assault him, to kill, rob, or trouble him by the High-way side, or in his owne House, and then he shall lose nothing.

Felon. de se.

And if a man kill himselfe, all his Goods and Chattels are forfeited, but no Lands.

Felony by mis-
chance.

If a man kill another by misfortune, as shooting an Arrow at a Butt or Marke, or casting a Stone over an house, or the like, this is losse of his goods and

and Chattels, but not of his lands, nor life.

If a Horse, or Cart, or a Beast, or any other thing doe kill a man, the Horse, Beast or other thing is forfeited to the Crowne, and is called a *Deodand*, and usually granted and allowed by the King to the Bishop Almner, as goods are of those that kill themselves.

The Cutting out of a mans Tongue, or putting out his Eyes maliciously, is Felony ; for which the offender is to suffer Death, and lose his lands and goods.

Cutting out of
Tongues and
putting out of
Eyes, made
Felony.

But for that all punishment is for Examples sake ; it is good to see the meanes whereby Offenders are drawne to their punishment ; and first for matter of the peace.

THe ancient Lawes of England planted here by the Conquerour, were, that there should be Officers of two sorts in all the parts of this Realme to preserve the Peace :

- | | |
|-------------------------|-----------------|
| 1. <i>Constabularii</i> | } <i>Pacis.</i> |
| 2. <i>Conseruatores</i> | |

The Office of the Constable was, to arrest the parties that he had seene breaking the Peace, or in fury ready to breake the peace, or was truly informed by others, or by their owne confession,

The Office of
the Constable.

that they had freshly broken the peace; which persons he might imprison in the Stocks, or in his owne house, as his or their quality required, untill they had become bounden with sureties to keepe the peace; which obligation from thenceforth, was to be sealed and delivered to the Constable to the use of the King. And that the Constable was to send to the Kings Exchequer or Chancery, from whence Proceſſe should be awarded to levy the debt, if the peace were broken.

But the Constable could not arrest any, nor make any put in Bond upon complaint of threatening onely, except they had seene them breaking the peace, or had come freshly after the peace was broken. Also, these Constables should keepe watch about the Towne for the apprehension of Rogues and Vagabonds, and Night-walkers, and Evedroppers, Scouts, and such like, and such as goe Armed. And they ought likewise to raise hue and cry against Murtherers, Manslayers, Theeves and Rogues.

2. High Constables for every hundred.

First, High Constables.
2. ly, Petty Constables.

1. Petty Constable for every village.

Of this Office of Constable there were High Constables, two of every Hundred; Petty Constables one in every Village, they were in ancient time all appointed by the Sheriffe of the Shire yearly in his Court called the Sheriffes Tourne, and there they received their oath. But at this day, they are appointed either in the Law-day of that Precinct wherein they serve; or else by the high Constable in the Sessions of the peace.

The Sheriffes Tourne is a Court very ancient, incident to his Office. At the first, it was erected by the Conquerour, and called the Kings-Bench, appointing men studied in the Knowledge of the Lawes to execute justice, as substitutes to him in his name, which men are to be named, *Iusticiarii ad placita coram Rege assignati*. One of them being *Capitalis Iusticiarius* called to his fellowes; the rest in number as pleaseth the King, of late but three *Iusticiarii*, holden by Patent. In this Court every man above twelve yeares of age, was to take his Oath of Allegiance to the King, if hee were bound, then his Lord to answer for him. In this Court the Constables were appointed and sworne; breakers of the peace punished by fine and imprisonment, the parties beaten or hurt recompenced upon complaints of damages; All appeales of Murther, Maime, Røbbery, decided; contempts against the Crowne, publique annoyances against the people, Treasons and Felonies, and all other matters of wrong, betwixt party and party, for Lands and goods.

But the King seeing the Realme grow daily more and more populous, and that this one Court could not dispatch all; did first ordaine that his Marshall should keepe a Court, for Controversies arising within the *Virge*. Which is within xii. miles of the chiefe Tunnell of the Court, which did but ease the Kings Bench in matters onely concerning debts, Covenants, and such like, of those of the Kings household onely, never dealing in breaches of the Peace, or concerning the Crowne by

The Kings Bench first instituted, and in what matters they anciently had jurisdiction.

Court of Marshall created, and its jurisdiction within 12. miles of the chiefe Tunnell of the King, which is the full extent of the *Virge*.

any other persons, or any pleas of Lands. Inso-
 much, as the King for further ease having divided
 this Kingdome into Counties, and committing the
 Charge of every Countie to a Lord or Earle; did
 direct, that those Earles, within their limits
 should looke to the matter of the peace, and take
 charge of the Constables, and reforme publike
 annoyances, and sweare the people to the Crowne,
 and take pledges of the Freemen for their Allege-
 ance, for which purpose the County did once eve-
 ry yeare keepe a Court, called the Sheriffes
 Tourne. At which all the County (except Wo-
 men, Clergie, Children under 12. and not aged
 above 60.) did appeare to give or renew their
 pledges for Allegeance. And the Court was called,
Curia Franciplegii, A view of the pledges of Free-
 men; or, *Turnus Comitatus*.

Sheriffes
 Tourne insti-
 tuted upon the
 division of
 England into
 Counties, the
 charge of this
 Court was
 committed to
 the Earle of the
 same Countie :
 this was like-
 wise called *Curia Visus fra-
 pleg.*

Subdivision of
 the Countie
 Court into
 Hundreds.

At which meeting or Court, there fell by occa-
 sion of great Assemblies much bloud-shed, scarcie-
 ty of Victuals, Mutinies, and the like mischiefes;
 which are incident to the Congregations of people,
 by which the King was moved to allow a subdivi-
 sion of every Countie into Hundreds, and every
 Hundred to have a Court, whereunto the people
 of every Hundred should be assembled twice a
 yeare for surveigh of Pledges, and use of that
 Justice which was formerly executed in that grand
 Court for the Countie; and the Count or Earle
 appointed a Bayliffe under him to keepe the hun-
 dred Court. But in the end, the Kings of this
 Realme found it necessary to have all execution of
 Justice immediately from themselves, by such as
 were

were more bound than Earles to that service, and readily subject to correction for their negligence or abuse ; and therefore, tooke to themselves the appointing of a Sheriffe yearely in every County, calling them *Viccomites*, and to them directed such writs and precepts for executing Justice in the County, as fell out needfull to have beene dispatched, committing to the Sheriffe *Custodium Comitatus* ; by which the Earles were spared of their toyles and labours, and that was layd upon the Sheriffes. So as now the Sheriffe doth all the Kings businesse in the Countie, and that is now called, the Sheriffes Tourne ; that is to say, he is Judge of this grand Court for the Countie, and also of all Hundred Courts not given away from the Crowne.

The charge of the County taken from the Earles, and committed yearely to such persons as it pleased the King.

Hee hath another Court, called the Countie Court, belonging to his office, wherein men may sue monethly for any debt or dammages under 40^l. and may have writs for to replevy their cattell distrained and impounded by others, and there try the cause of their distresse ; and by a writ called *Iusticies*, a man may sue for any summe, and in this Court the Sheriffe by a writ, called an *Exigent*, doth proclaime men sued in Courts above, to render their bodies, or else they be Out-lawed.

The Sheriffe is Judge of all Hundred Courts not given away from the Crowne.

County Court kept monethly by the Sheriffe.

This Sheriffe doth serve the Kings writs of Pro-
cess, be they Sommons, Attachments to compel men to answer to the Law, and all writs of execution of the Law, according to Judgements of Superior Court, for taking of Mens Goods, Lands, or Bodies, as the cause requireth.

The Office of the Sheriffe.

The Hundred Courts, were most of them granted

Hundred
Courts to
whom they
were at first
granted.

granted to Religious Men, Noble men, and others of great place. And also many men of good quality have attained by Charter, and some by usage within Mannors of their owne liberty of keeping Law-dayes, and to use there Justice appertaining to a Law-day.

Lord of the
Hundred to
appoint two
High Consta-
bles.

Whosoever is Lord of the Hundred Court, is to appoint two high Constables of the Hundred, and also is to appoint in every Village, a petty Constable with a Tithing-man to attend in his absence, and to be at his commandement when he is present in all services of his office for his assistance.

There have beene by use and Statute Law (besides surveying of the Pledges of Freemen, and giving the oath of Allegiance, and making Constables,) many additions of powers and authority given to the Stewards of Leets and Law-dayes to be put in ure in their Courts ; as for example, they may punish Inne-keepers, Victuallers, Bakers, Butchers, Poulterers, Fishmongers, and Tradesmen of all sorts, selling with under weights or measures, or at excessive prizes, or things unwholsome, or ill made in deceit of the people. They may punish those that doe stop, straiten or annoy the high wayes, or doe not according to the provisi-
on enacted, repaire or amend them, or divert wa-
ter courses, or destroy frey of Fish, or use engines or nets to take Deere, Conies, Pheasants, or Partridges, or build Pigeon houses ; except he be Lord of the Mannor, or Parson of the Church. They may also take presentment upon Oath of the
xii. sworne Jury before them of all felonies ; but
they

Of what mat-
ters they en-
quire of in
Leets and Law-
dayes.

they cannot try the Malefactors, onely they must by Indenture deliver over those presentments of felonie to the Judges, when they come their circuits into that Countie. All those Courts before mentioned are in use, and exercised as Law at this day, concerning the Sheriffes Law-dayes and Leets, and the offices of High Constables, petty Constables, and Tithingmen; howbeit, with some further additions by Statute lawes, laying charge upon them for taxation for poore, for Souldiers, and the like, and dealing without corruption, and the like.

Conservators of the Peace were in ancient times certaine, which were assigned by the King to see the Peace maintained, and they were called to the Office by the Kings writ, to continue for terme of their lives, or at the Kings pleasure.

Conservators of the Peace called by the Kings writ for terme of their lives, or at the Kings pleasure

For this Service, choice was made of the best men of calling in the Countrie, and but few in the Shire. They might binde any man to keepe the peace, and to good behaviour, by Recognizance to the King with suerties, and they might by Warrant send for the party, directing their warrant to the Sheriffe or Constable, as they please, to arrest the party, and bring him before them. This they used to doe, when complaint was made by any, that he stood in feare of another, and so tooke his Oath; or else, where the Conservator himselfe did without oath or complaint; see the disposition of any man inclined to quarrell and breach of the Peace, or to misbehave himselfe

Conservators of the Peace, and what their Office was.

himselfe in some outrageous manner of force or fraud: There by his owne Discretion he might send for such a fellow, and make him finde Sureties of the peace or of his good behaviour, as hee should see cause; or else commit him to the Goale if he refused.

Conservators
of the Peace
by vertue of
their Office.

The Judges of either Bench in *westminster*, Barons of the Exchequer, Master of the Rolles, and Justices in Eire and Assizes in their circuits, were all without writ Conservators of the Peace in all Shires of England, and continue to this day.

Justices of
Peace ordain-
ed in lieu of
Conservators.
Power of plac-
ing and dis-
placing Just.
of Peace by
use deligated
from the King
to the Chan-
cellor.

But now at this day, Conservators of the Peace are out of use; And in lieu of them, there are ordained Justices of Peace, assigned by the Kings Commissions in every Countie, which are moveable at the Kings pleasure; but the power of placing and displacing Justices of the Peace, is by use Deligated from the King to the Chancellor.

That there should be Justices of Peace by Commissions, it was first enacted by a Statute made 1. *Edward 3.* and their Authority augmented by many statutes made since in every Kings reigne.

a The power of
the Just. of
Peace, to fine
the Offenders
to the Crowne,
and not to re-
compence the
party grieved.
Parle Stat. 17.
R. 2. Cap. 10. &
v. *Dier 69. b.* Ils
out poiar
d'inquier de
murder car. ce
Felon.

^a They are appointed to keepe foure Sessions every yeare; That is, every Quarter one. These Sessions are a sitting of the Justices to dispatch the affaires of their Commissions. They have power to heare and determine in their Sessions, all Felonies, breaches of the Peace, Contempts and trespasses, so farre as to fine the Offender to the Crowne, but not
to

to award recompence to the party grieved.

They are to suppress Ryots, and Tumults, to restore Possessions forcibly taken away, to examine all Felons apprehended and brought before them; To see impotent poore people, or maimed souldiers provided for, according to the Lawes. And Rogues, Vagabonds, and Beggars punished. They are both to licence and suppress Alehouses, Badgers of Corne and Victuals, and to punish Fore-stallers, regrators, and engrossers.

Through these in effect runne all the County services to the Crowne, as Taxations of Subsidies, Mustring men, Arming them, and levying forces, that is done by a speciall Commission or Precept from the King. Any of these Justices by Oath taken by a man that he standeth in feare that another man will beate him, or kill him, or burne his house, are to send for the party by warrant of Attachment directed to the Sheriffe or Constable, and then to binde the party with sureties by Recognizance to the King to keepe the peace, and also to appeare at the next Sessions of the Peace; at which next Sessions, when every Justice of Peace hath therein delivered all their Recognizances so taken, then the parties are called and the cause of binding to the Peace examined, and both parties being heard, the whole Bench is to determine as they see cause, either to continue the party so bound, or else to discharge him.

The Justices of Peace in their Sessions, are attended by the Constables and Bailiffes of all Hundreds and liberties within the County, and by the

R

Sheriffe

Authority of the Justices of Peace, through whom run all the County services unto the Crowne.

Beating, killing, burning of Houses. Attachments for surety of the Peace.

Recognizance of the Peace delivered by the Justices at their Sessions.

Quarter Sessions held by the Justices of the Peace.

Sheriffe or his deputy, to be employed as occasion shall serve in executing the precepts and directions of the Court. They proceed in this sort, The Sheriff doth summon 24. Free-holders, discreet men of the said County, whereof some 16. are selected and sworne, and have their charge to serve as the grand Jury, the party indicted is to traverse the indictment, or else to confesse it, and so submit himselfe to be fined as the Court shall thinke meet (regard had to the offence) except the punishment be certainly appointed (as often it is) by speciall Statutes.

The Justices of Peace are many in every County, and to them are brought all Traitors, Felons, and other malefactors of any sort upon their first apprehension, and that Justice to whom they are brought, examineth them, and heareth their accusations, but judgeth not upon it; onely if he finde the suspition but light, then hee taketh bond with sureties of the accused, to appeare either at the next Assizes, if it be a matter of Treason or Felony; or else at the quarter Sessions, if it be concerning Riot or mis-behaviour, or some other small offence. And hee also then bindeth to appeare those that give testimony and prosecute the accusation, all the accusers and witnesses, and so setteth the party at large. And at the Assizes or Sessions (as the case falleth out) he certifieth the Recognizances taken of the accused, accusers, and witnesses, who being there are called, and appearing, the cause of the accused is debated according to Law for his clearing or condemning.

But if the party accused, seeme upon pregnant matter

The authority
of Justices of
the Peace out
of their Sessi-
ons.

matter in the accusation and to the Justice to be guilty, and the offence heinous, or the offender taken with the manner, then the Justice is to commit the party by his warrant called a *Mittimus* to the Gaoler of the common Gaole of the County, there to remaine untill the Assizes. And then the Justice is to certifie his accusation, examination, & Recognizance taken for the appearances and prosecution of the witnesses, so as the Judges may, when they come, readily proceed with him as the Law requireth.

The Judges of the Assizes as they bee now become into the place of the ancient Justices in Eyre, called *Iusticiarii itinerantes*, which in the prime Kings after the Conquest untill *H. 3.* time especially, and after in lesser measure even to *R. 2.* time, did execute the justice of the Realme; they began in this sort.

The King not able to dispatch businesse in his owne person, erected the Court of King Bench; that not able to receive all, nor meet to draw the people all to one place, there were ordained

Counties & the Sheriffes Tournes, Hundred Courts, and particular Leets, and Law-dayes, as before mentioned, which dealt only with Crowne matters for the publique; but not the private titles of Lands or Goods, nor the tryall of grand offences of Treasons and Felonies, but all the Counties of the Realme were divided into six

The authority of Tournes, Leets, Hundreds, and Law-dayes, as it was confirmed to some speciall causes touching the publique good.

offences of Treasons and Felonies, but all the Counties of the Realme were divided into six

Judges of Assize come in place of the ancient Judges in Eyre about the time of *R. 2.*

1. Kings Bench.
 2. Marshalls Court
 3. County Court.
 4. Sheriffes Tournes.
 5. Hundred Leets and Law-dayes.
- All which dealt onely in Crowne matters, but the Iustice in Eyre dealt in private titles of lands or goods, and in all Treasons and Felonies, of whom there were 12. in number, the

whole Realme being divided into six Circuits.

England divided into six Circuits, and two learned men in the Laws, assigned by the Kings Commission to ride twice a year through those Shires allotted to that circuit, for their tryall of private titles to lands and goods, and all Treasons and Felonies, which the County Courts meddle not in.

Circuits. And two learned men well read in the Lawes of the Realme, were assigned by the Kings Commission to every Circuit, and to ride twice a year through those shires allotted to that Circuit, making Proclamation before-hand, a convenient time in every County, of the time of their comming, and place of their sitting, to the end the people might attend them in every County of that Circuit.

They were to stay 3. or 4. dayes in every County, and in that time all the causes of that County were brought before them by the parties grieved, and all the Prisoners of the said Gaole in every Shire, and whatsoever controversies arising concerning Life, lands or goods.

The authority of these Judges in Eyre, is in part translated by Act of Parliament to Justices of Assize; which be now the Judges of Circuits, and they doe use the same course that Justices in Eyre did, to proclaime their comming every halfe year, and the place of their sitting.

The businesse of the Justices in Eyre, and of the Justices of Assize at this day is much lessened, for that in H. 3 time there was erected the Court of Common-pleas at Westminster, in which Court have beene ever since and yet are, begun and handled the great suits of lands, debts, benefices and contracts, fines for assurance of lands and recoveries, which were wont to be either in the Kings Bench, or else before the Justices in Eyre. But the Statute of *Mag. Char. Cap. 11. 5.* is negative against it. *Viz. Communia placita non sequantur*

The authority translated by Parliament to Justices of Assize.

The authority of the Justices of Assizes much lessened by the Court of Common Pleas, erected in H. 3. time.

The Justices of Assize have at this day 5. Commissions by which they sit.

1. Oyer & Term.
2. Gaole delivery.
3. To take Assizes
4. To take Nisi p.
5. Of the Peace.

sequantur Curiam nostram, sed teneantur in aliquo loco Certo; which *locus Certus* must be the Common pleas; yet the Judges of Circuits have now five Commissions by which they sit.

The first is a Commission of Oyer and Terminer, directed unto them, and many others of the best account, in their Circuits; but in this Commission the Judges of Assize are of the *Quorum*, so as without them there can be no proceeding.

This Commission giveth them power to deal with Treasons, Murthers, and all maner of Felonies and misdemeanours whatsoever; and this is the largest Commission that they have.

The second is a Commission of Gaole delivery; That is onely to the Judges themselves, and the Clerk of the Assize associate: And by this Commission they are to deal with every Prisoner in the Gaole, for what offence soever he bee there. And to proceed with him according to the Lawes of the Realme, and the quality of his offence; And they cannot by this Commission doe any thing concerning any man, but those that are Prisoners in the Gaole. The course now in use of execution of this Commission of Gaole delivery, is this: There is no Prisoner but is committed by some Justice of Peace, who before he committed him tooke his examination, and bound his accusers and witnesses to appeare and prosecute at the Gaole delivery. This Justice doth certifie these examinations and bonds, and thereupon the accuser is called solemnly into the Court, and when hee appeareth he is willed to

Oyer and Terminer, in which the Judges are of the *Quorum*, and this is the largest Commission they have.

Gaol delivery directed onely to Judges themselves and the Clerk of the Assize.

prepare a Bil of indictment against the Prisoner, and goe with it to the grand Jury, and give evidence upon their oathes, he and the witnesses; which he doth: and then the grand Jury write thereupon either *Billa vera*, & then the Prisoner standeth indicted, or else *Ignoramus*, & then he is not touched. The grand Jury deliver these Bills to the Judges in their Court, and so many as they finde indorsed *Billa vera*, they send for those Prisoners, then is every mans indictment put and read to him, and they aske him whether hee bee guilty or not: If he saith guilty, his confession is recorded; if he say not guilty, then hee is asked how he will be tryed; he answereth, by the Countrey. Then the Sheriffe is commanded to returne the names of 12. Freeholders to the Court, which Freeholders be sworne to make true delivery betweene the King and the Prisoner, and then the indictment is againe read, and the witnesses sworne, to speake their knowledge concerning the fact, and the Prisoner is heard at large, what defence he can make, and then the Jury goe together and consult. And after a while they come in with a verdict of guilty or not guilty, which verdict the Judges doe record accordingly. If any Prisoner plead not guilty upon the indictment, and yet will not put himselfe to tryall upon the Jury, (or stand mute) hee shall bee pressed.

The Judges when many prisoners are in the Gaole, doe in the end before they goe, peruse every one. Those that were indicted by the grand Jury,

The maner of the proceedings of the Iustices of Circuits in their Circuits.

The course now in use with the Judges for the execution of the Commission of Gaole delivery.

Jury, and found not guilty by the select Jury, they judge to be quitted, and so deliver them out of the Gaole. Those that are found guilty by both Juries they judge to death, and command the Sheriffe to see execution done. Those that refuse tryall by the Country, or stand mute upon the indictment, they judge to be pressed to death: some whose offences are pilfiring under twelve pence value, they judge to be whipped. Those that confesse their indictments, they judge to death, whipping or otherwise, as their offence requireth. And those that are not indicted at all, but their bill of indictment returned with *Ignoramus* by the grand Jury, and all other in the Gaole against whom no bills at all are preferred, they doe acquit by proclamation out of the Gaole; That one way or other they rid the Gaol of all the prisoners in it. But because some prisoners have their bookes, and be burned in the hand and so delivered, it is necessary to shew the reason thereof. This having their bookes is called their Clergy, which in ancient time began thus.

For the scarcity of the Clergy in the Realme of England, to be disposed in Religious houses, or for Priests, Deacons and Clerkes of parishes, there was a prerogative allowed to the Clergy, that if any man that could reade as a Clerk, were to be condemned to death, the Bishop of the Diocesse might if he would, claime him as a Clerk, and hee was to see him tryed in the face of the Court.

Book allowed to Clergy for the scarcity of them, to be disposed in religious houses.

Whether

Whether he could reade or not, the book was prepared and brought by the Bishop, and the Judge was to turne to some place as hee should thinke meete, and if the prisoner could reade, then the Bishop was to have him delivered over unto him to dispose of in some places of the Clergy, as he should think meete. But if either the Bishop would not demand him: or that the Prisoner could not reade, then was to bee put to death.

And this Clergy was allowable in the ancient times and Law, for all offences whatsoever they were, except Treason and robbing of Churches their goods and ornaments. But by many Statutes made since, the Clergy is taken away for Murther, Burglary, Robbery, Purse-cutting, Horse-stealing, and divers other felonies particularized by the Statutes to the Judges; and lastly, by a Statute made 18. *Elizabeth*, the Judges themselves are appointed to allow Clergy to such as can reade, being not such offenders from whom Clergy is taken away by any Statute, and to see them burned in the hand, and so discharge them without delivering them to the Bishop, howbeit the Bishop appointeth the deputy to attend the Judges with a booke to try whether they could reade or not.

The third Commission that the Judges of Circuits have, is, a Commission directed to themselves onely and the Clerk of Assize to take Assizes, by which they are called Justices of Assize, and the office of those Justices is to doe right up-

Concerning the allowing of the Clergy to the prisoner.

Clergy allowed in all offences except Treason and robbing of Churches, and now taken away by many Statutes.

2. In Treason.

2. In Burglary.

3. Robbery.

4. Purse-cutting.

5. Horse-stealing,

and in divers other offences particularized in severall Statutes.

By the Stat. of 18.

Eliz. the Judges

are appointed to

allow Clergy, and

to see them burn-

ed in the hand, &

to discharge the

prisoners without

delivering them

to the Bishop.

on Writs called Assizes, brought before them by such as are wrongfully thrust out of their Lands. Of which number of Writs there was far greater store brought before them in ancient times then now, for that mens seizons and possessions are sooner recovered by sealing Leases upon the ground, and by bringing an *Ejectione firme*, and trying their title so, then by the long suites of Assizes.

The fourth Commission, is a Commission to take *Nisi prius* directed to none but to the Judges themselves and their Clerks of Assizes, by which they are called Justices of *Nisi Prius*. These *Nisi Prius* happen in this sort, when a suit is begun for any matter in one of the three Courts, the Kings Bench, Common Pleas, or the Exchequer here above, and the parties in their pleadings do vary in a point of fact; As for example, if in an action of debt upon obligation the defendant denies the obligation to be his debt, or in any action of trespass growne for taking away goods, the defendant denieth that he tooke them, or in an action of the Case for slanderous words, the defendant denieth that he spake them, &c.

Then the Plaintiffe is to maintaine and prove that the obligation is the defendants deed, that he either tooke the goods, or spake the words; upon which deniall and affirmation the Law saith, that issue is joyned betwixt them, which issue of the fact is to be tryed by a Jury of twelve men of the County where it is supposed by the Plaintiffe to be done, and for that purpose the

4. Commission is to take *Nisi Prius* & this is directed to two Iudges and the Clerke of the Assize.
Nisi Prius.

Judges of the Court doe award a Writ of *Venire facias* in the Kings name to the Sheriffe of that County, commanding him to cause foure and twenty discret Freeholders of his County at a certaine day to try this issue so joynd, out of which foure and twenty, onely twelve are chosen to serve. And that double number is returned, because some may make default, and some be challenged upon kindred, alliance, or partiall dealing.

These foure and twenty the Sheriffe doth name and certifie to the Court, and withall that he hath warned them to come at the day according to their Writ. But because at his first summons there falleth no punishment upon the foure and twenty if they come not, they very seldome or never appeare upon the first Writ, and upon their default there is another Writ

* returned to the Sheriffe, commanding him to distraine them by their Lands to appeare at a certaine day appointed by the Writ, which is the next terme after, *Nisi prius Iusticiarii nostri ad Assizas capiendas venerint, &c.* of which words the Writ is called a *Nisi prius*, and the Judges of the Circuit of that County in that vacation and meane time before the day of appearance appointed for the Jury above, here by their Commission of *Nisi prius* have authority to take the appearance of the Jury in the County before them; and there to heare the Witnesses and proofes on both sides concerning the issue of fact, and to take the verdict of the Jury, and
against

The manner of proceeding of Iustices of Circuits in their Circuits.

The course the Judges hold in their Circuits in the execution of their Commission concerning the taking of *Nisi prius*

* *Distringas.*

against the day they should have appeared above, to returne the verdict read in the Court above, which returne is called a *Postea*.

Postea.

And upon this verdict clearing the matter in fact, one way or other, the Judges above give judgement for the party for whom the verdict is found, and for such damages and costs as the Jury doe asseffe.

By those tryalls called *Nisi prius*, the Juries and the parties are eased much of the charge they should be put to, by comming to London with their evidences and witnesses, and the Courts of Westminster are eased of much trouble they should have, if all the Juries for tryalls should appeare and try their causes in those Courts; for those Courts above have little leisure now; though the Juries come not up, yet in matters of great weight or where the title is intricate or difficult, the Judges above, upon information to them, doe retaine those causes to be tryed there, and the Juries do at this day in such causes come to the Barre at *Westminster*.

The fifth Commission that the Judges in their Circuits doe sit by, is the Commission of the Peace in every County of their Circuit. And all the Justices of the Peace having no lawfull impediment, are bound to be present at the Assizes to attend the Judges, as occasion shall fall out: if any make default, the Judges may set a fine upon him at their pleasure and discretions. Also the Sheriffe in every Shire through the Circuit, is to attend in person, or by a sufficient deputy

y. Commission is a Commission of the Peace.

The Justices of the Peace and the Sheriffe are to attend the Judges in their County.

allowed by the Judges, all that time they be within the County, and the Judges may fine him if he faile, or for negligence or misbehaviour in his Office before them; and the Judges above may also fine the Sheriffe for not returning or not sufficient returning of writs before them.

Property

Property in Lands, is gotten and transferred by one to another, by these foure maner of Wayes.

- 1 By Entry.
- 2 By Discent.
- 3 By Etcheat.
- 4 Most usually by Conveyance.

I. **P**ROperty by Entry is, where a man findeth a piece of Land that no other possesseth or hath title unto, and he that so findeth it doth enter, this Entry gaineth a Property; this Law seemeth to be derived from this text, *Terra dedit filiis hominum*, which is to be understood, to those that will till and manure it, and so make it yeeld fruit; and that is he that entreth into it, where no man had it before. But this maner of gaining Lands was in the first dayes, and is not now of use in England, for that by the conquest, all the land of this Nation was in the Conquerours hands, and appropriated unto him; except Religious and Church-lands, and the lands in Kent, which by composition were left to the former owners, as the Conquerour found them, so that no man but the Bishopricks, Churches, and the men of Kent, can at this day make any greater title then from the Conquest to any lands in England; and Lands possessed without any such title, are in the Crowne, and not in him that first entreth; as it is by land left by the Sea, this land belongeth to the

Of property of Lands to be gained by Entry.

All lands in England were the Conquerours and appropriated to him upon the conquest of England, and held of him, except 1. Religious & Church lands. 2. the lands of the men of Kent.

Land left by the Sea belongeth to the King.

King and not to him that hath the lands next adjoining, which was the ancient Sea bankes: This is to be understood of the inheritance of lands: viz. that the inheritance cannot be gained by the first entry. But an estate for another mans life by out-Lawes, may at this day be gotten by entry. As a man called *A.* having land conveyed unto him for the life of *B.* dyeth without making any estate of it, there, whosoever first entred into the land after the decease of *A.* getteth the property in the land for time of the continuance of the estate which was granted to *A.* for the life of *B.* which *B.* yet liveth, and therefore the said land cannot revert till *B.* die. And to the heire of *A.* it cannot goe, for that it is not any state of inheritance, but onely an estate for another mans life; which is not descendable to the heire, except he bee specially named in the grant: viz. to him and his heirs. As for the Executors of *A.* they cannot have it, for its not an estate testamentary, that it should goe to the Executors as goods and Chattels should, so as in truth no man can entitle himself unto those lands; and therefore the Law preferreth him that first entred, and he is called *Occupans*, and shall hold it during the life of *B.* but must pay the rent, performe the conditions, and doe no wast. And he may by deed assigne it to whom he please in his life time. But if he die before he assigne it over, then it shall goe againe to whomsoever first entred and holdeth. And so all the life of *B.* so often as it shall happen.

Occupancy.

Likewise

Likewise if any man doth wrongfully enter into another mans possession, and put the right owner of the freehold and inheritance from it, he thereby getteth the freehold and inheritance by disseisin, and may hold it against all men, but him that hath right, and his heires, and is called a disseisor. Or if any one die seised of lands, and before his heire doth enter, one that hath no right doth enter into the lands, and holdeth them from the right heire, he is called an Abator, and is lawfull owner against all men, but the right heire.

And if such person Abator, or disseisor (so as the disseisor hath quiet possession five yeares next after the disseisin) doe continue their possession, and die seised, and the land discend to his heire, they have gained the right to the possession of the land against him that hath right till he recover it by fit action reall at the common law. And if it be not sued for at the common law within threescore yeares after the disseisin, or abatement committed, the right owner hath lost his right by that negligence. And if a man hath divers children, and the elder being a bastard doth enter into the land and enjoyeth it quietly during his life, and dyeth thereof so seised, his heirs shall hold the land against all the lawfull children and their issues.

Property of lands by discent is, where a man hath lands of inheritance and dyeth, not disposing of them, but leaving it to goe (as the law casteth it) upon the heire. This is called a discent

Property of lands
by discent.

of.

of law, and upon whom the descent is to light, is the question. For which purpose the law of inheritance preferreth the first child before all others, and amongst children the male before the female; and amongst males the first borne. If there be no children, then the brother, if no brothers; then sisters, if neither brothers nor sisters; then uncles, and for lack of uncles, aunts, if none of them, then couzens in the neereſt degree of conſanguinity, with theſe three rules of diverſities. 1. That the eldeſt male ſhall ſolely inherit; but if it come to females, then they being all in an equall degree of neereſſe ſhall inherit altogether, and are called Parceners, and all they make but one heire to the Anceſtor. 2. That no brother nor ſiſter of the halfe blood ſhall inherit to his brother or ſiſter; but as a child to his parents, as for example. If a man have two wives, and by either wife a ſonne, the eldeſt ſonne overliving his Father is to be preferred to the inheritance of the Father being Fee-ſimple; but if hee entred and dyeth without a child, the brother ſhall not be his heire, becauſe hee is of the halfe blood to him, but the uncle of the eldeſt brother or ſiſter of the whole blood, yet if the eldeſt brother had dyed or had not entred in the life of the Father, either by ſuch entry or conveyance, then the yongeſt brother ſhould inherit the land that the Father had, although it were a child by the ſecond wife, before any daughter by the firſt. The third rule about diſcents. That land purchaſed ſo by the party himſelfe that dyeth, is to bee inherited;

Of diſcent three rules.

Brother or ſiſter of the halfe blood ſhall not inherit to his brother or ſiſter, but only as a child to his Parents.

inherited; first, by the heires of the Fathers side, then if he have none of that part, by the heires of the Mothers side. But lands descended to him from his father or mother, are to goe to that side onely from which they came, and not to the other side.

Discent,

Those Rules of discent mentioned before are to be understood of Fee-simples, and not of entailed lands, and those rules are restrained by some particular customes of some particular places: as namely, the custome of *Kent*, that every male of equall degree of Childhood, Brotherhood or kindred, shall inherit equally, as daughters shall being Parceners, and in many Borough Townes of England, and the custome alloweth the youngest sonne to inherit, and so the youngest Daughter. The custome of *Kent*, is called *Gavelkind*. The custome of Boroughs, *Burgh English*.

Customes of certain places.

And there is another note to be observed in Fee-simple inheritance, and that is, that every heire having fee-simple land or inheritance, be it by common Law or by custome of either gavelkinde or burghEnglish, is chargeable so farre forth as the value thereof extendeth with the binding acts of the ancestors from whom the inheritance descendeth; and these acts are collateral encombrances, and the reason of this charge is, *Qui sentit commodum sentire debet & incommodum sive onus*. As for example, if a man binde himselfe and his heires in an obligation, or doe covenant by writing for him and his heires, or

Every heire having land is bound by the binding acts of his ancestors if he be named.

T

doe

doe grant an Annuity for him and his heires, or doe make a warranty of land binding him and his heires to warranty : in all these cases the law chargeth the heire after the death of the ancestor with this obligation, Covenant, Annuity, and Warranty ; yet with these three cautions : first, that the party must by speciall name binde himselfe and his heires, or covenant; grant and warrant for himselfe and his heires; otherwise the heire is not to bee touched. Secondly, that some action must bee brought against the heire whilest the land or other inheritance resteth in him unaliened away : for if the ancestor die, and the heire, before an action be brought against him upon those bonds, covenants, or warranties doe alien away the land, then the heire is cleane discharged of the burthen, except the land was by fraud conveyed away of purpose, to prevent the suit intended against him. Thirdly, that no heire is further to bee charged then the value of the land descended unto him from the same ancestor that made the instrument of charge, and that land also, not to bee sold out-right for the debt, but to be kept in extent & at a yearely value, untill the debt or damage be run out. Neverthelesse if an heire that is sued upon such a debt of his ancestor doe not deale clearly with the Court when he is sued, that is, if he come not in immediately, and by way of confession set down the true quantity of his inheritance descended, and so submit himselfe therefore, as the Law requireth, then that heire that otherwise demeaneth

Dyer 114. Plowd.

Dyer 149. Plowd.

Day & Pepps
case.

eth himselfe, shall be charged of his owne lands or goods, and of his money, for this Deed of his ancestor. As for example; If a man binde himselfe and his heires in an obligation of one hundred pounds, and dyeth leaving but ten acres of land to his heire, if his heire bee sued upon the bond, & commeth in, & denieth that he hath any lands by discent, and it is found against him by the verdict that he hath ten acres, this heire shall bee now charged by his false plea of his owne lands, goods and body, to pay the hundred pound, although the ten acres be not worth ten pound.

Heire charged for his false plea.

Property of lands by Escheat, is where the owner dyed seised of the lands in possession without child or other heire, thereby the land for lack of other heire is said to escheate to the Lord of whom it is holden. This lack of heire happeneth principally in two cases: First, where the lands owner is a Bastard. Secondly, where he is attainted of Felony or Treason. For neither can a Bastard have any heire except it be his owne childe, nor a man attainted of Treason, although it be his owne childe.

Property of lands by Escheat.

Two causes of Escheat.

1. Bastardy.
2. Attainder of Treason, Felony.

Upon attainder of Treason the King is to have the land, although he be not the Lord of whom it is held, because it is a royall Escheat. But for Felony it is not so, for there the King is not to have the Escheat, except the land bee holden of him: and yet where the land is not holden of him, the King is to have the land for a yeare and a day next ensuing the judgement of the attainder

Attainder of treason entitleth the King, though lands be not holden of him, otherwise in attainder of felony, &c. for there the King shall have but *Annus diem & vastum*.

der, with a liberty to commit all maner of wast all that yeare in houses, gardens, ponds, lands, and woods.

In Escheat two things are to be observed. 1. The tenure. 2. The maner of the Attainder.

All lands are holden of the Crowne immediately or mediately by Mesne Lords, the Reason.

Concerning the tenure of lands.

The Conquerour by right of Conquest got all the lands of the realm into his hands, & as he gave it, he still reserved rents and services.

Knights service in *capite* first institut. The reservations in Knights service tenure was 4.

1. Mariage of the Wards male and female.

2. Hoise for service

3. Homage & fealty

4. Primer Seisin.

The policy of the Conq. in the reservation of services constituted in

4. particulars, was to have the marriage of his Wards both Male and Female.

In these Escheats, two things are especially to be observed; the one is, the tenure of the lands, because it directeth the person to whom the Escheat belongeth, viz. the Lord of the Mannor of whom the land is holden. 2. The manner of such attainder which draweth with it the Escheat. Concerning the Tenures of lands, it is to be understood, that all lands are holden of the Crowne either mediately or immediately, and that the Escheat appertaineth to the immediate Lord, and not to the mediate. The reason why all land is holden of the Crowne immediately or by Mesne Lords, is this.

The Conquerour got by right of Conquest all the land of the Realme into his owne hands in demesne, taking from every man all estate, tenure, property and liberty of the same, (except Religious and Church lands, and the land in *Kent*) and still as hee gave any of it out of his owne hand, hee reserved some retribution of rents, or services, or both, to him and to his heires; which reservation, is that, which is called the tenure of Land.

In which reservation, he had foure institutions, exceeding politique and sutable to the state of a Conquerour.

1. Seeing his people to be part *Normans*, and part *Saxons*, the *Normans* he brought with him, the *Saxons* he found here: hee bent himselfe to conjoyne

conjoyne them by mariages in amity, and for that purpose ordaines, that if those of his nobles, Knights, and Gentlemen, to whom hee gave great rewards of lands should die, leaving their heire within age, a Male within 21. and a female within 14. yeares, and unmarried, then the King

Interest of marriage goeth employed in every tenure by Knights service

should have the bestowing of such heires in mariage in such a family, and to such persons as hee should thinke meete, which interest of mariage went still employed, and doth at this day in every tenure called Knights service.

The second was, to the end that his people should still be conserved in warlike exercises and able for his defence; when therefore he gave any good portion of lands, that might make the party of abilities or strength, hee withall reserved this service, That that party and his heires having such lands, should keep a horse of service continually, and serve upon him himselfe when the King went to wars, or else having impediment to excuse his owne person, should finde another to serve in his place; which service of horse and man, is a part of that tenure called Knights service at this day.

But if the tenant himselfe bee an infant, the King is to hold this land himselfe untill he come to full age, finding him meat, drinke, apparell, and other necessaries, and finding a horse and a man, with the overplus, to serve in the warres as the tenant himselfe should doe if he were at full age.

Reservation that his tenant should keep a horse of service, and serve upon him himselfe, when the King went to wars, which is a part of that service called Knights service.

But if this inheritance descend upon a woman that cannot serve by her sex, then the King is not to have the lands, (she being of 14. yeares of age; because she is then able to have an husband, that may doe the service in person.

3. Institution of the Conquerour was, that his tenants by Knights service vow unto loyalty, which hee called Homage, and make unto him oath of his faith which was called Fealty.

1. Homage.
2. Fealty.

The third Institution, that upon every gift of land the King reserved a vow & an oath to binde the party to his faith and loyalty, that vow was called *Homage*, the oath *Fealty*. Homage is to bee done kneeling, holding his hands between the knees of the Lord, saying in the French tongue; I become your man of life and limbe, and of earthly honour. Fealty is to take an oath upon a book, that hee will bee a faithfull Tenant to the King, and doe his service, and pay his rents according to his tenure.

Ayde money to make the Kings eldest Son a Knight, or to marry his eldest Daughter, is likewise due to his Majesty from every one of his Tenants in Knights service, that hold by a whole fee 20. s. and from every Tenant in Socage if his land be worth 20. pound *per ann.* 20. s. *vide* N. 3. fol. 82.

4. Institution was for Recognizon of the Kings bounty, to bee paid by every heire upon the death of his ancestor, which is one yeares profit of the lands called *Primer seisin*.

The fourth Institution, was that for Recognizon of the Kings bounty by every heire succeeding his ancestor in those Knights service lads, the King should have *Primer seisin* of the lands, which is one yeares profit of the lands, and untill this be paid the King is to have possession of the land, and then to restore it to the heire; which continueth at this day

Escuage was likewise due unto the King from his tenant by Knights service: when his Majesty made a voyage royall to warre against another Nation, those of his Tenants that did not attend him there for 40. dayes with horse & furniture fit for service, were to be assessed in a certain summe by act of Parliament, to bee paid unto his Majesty, which assessment is called *Escuage*.

day in use, and is the very cause of suing Livery, and that as well where the heire hath beene in Ward as otherwise.

These before mentioned be the rights of the tenure, called Knights service in *Capite*, which is as much to say, as tenure *de persona Regis*, & *Caput* being the chiefest part of the person, it is called a tenure in *Capite*, or in chiefe. And it is also to bee noted, that as this tenure in *Capite* by Knights service generally was a great safety to the Crowne, so also the Conquerour instituted other tenures in *Capite* necessary to his estate; as namely, he gave divers lands to be holden of him by some speciall service about his person, or by bearing some speciall office in his house, or in the field, which have Knights service and more in them, and these hee called tenures by *Grand Serjeanty*. Also he provided upon the first gift of lands, to have revenews by continuall service of Ploughing his land; repairing his houses, Parkes pales, Castles and the like. And sometimes to a yearely provision of Gloves, Spurres, Hawkes, Horses, Hounds, and the like; which kinde of reservations are called also tenures in chiefe or in *Capite* of the King, but they are not by Knights service, because they required no personall service, but such things as the tenants may hire another to do, or provide for his money. And this tenure is called a tenure by Soccage in *Capite*, the word *Socagium* signifying the Plough, howbeit in this latter time, the service of Ploughing the land is turned into money rent, and so of harvest

Knights service in *Capite*, is a tenure *de persona Regis*.

Tenants by grand Serjeanty, were to pay reliefe at the full age of every heire, which was one yeares value of the lands so held, *ultra Repriss*.

Grand serjeanty.
Petty serjeanty.

The institution of soccage in *Capite*, and that it is now turned into monies rents.

Harvest workes, for that the Kings doe not keep their Demeasne in their owne hands as they were wont to doe, yet what lands were *De antiquo Dominio Corona*, it well appeareth in the Records of the Exchequer called the booke of Doomesday. And the Tenants by ancient Demeasne, have many immunities and priviledges at this day, that in ancient times were granted unto those tenants by the Crowne, the particulars whereof are too long to set downe.

These tenures in *Capite*, as well that by *Socage*, as the others by *Knights service*, have this property; that the tenants cannot alien their lands without licence of the King: if he doe, the King is to have a Fine for the contempt, and may seize the land, and retaine it untill the fine bee paid. And the reason is, because the King would have a liberty in the choice of his tenant, so that no man should presume to enter into those lands and hold them (for which the King was to have those speciall services done him) without the Kings leave; this licence and fine as it is now digested is easie and of course.

There is an office called the office of *Alienation*, where any man may have a licence at a reasonable rate, that is, at the third part of one years value of the land moderately rated. A Tenant in *Cap.* by *Knights service* or grand Serjeanty, was restrained by ancient Statute, that he should not give nor alien away more of his lands, then that with the rest he might be able to doe the service due to the King; and this is now out of use.

Office of alienation.

Alicence of alienation is the third part of one yeares value of the land moderately rated.

And

And to this tenure by Knights service in chief, was incident that the King should have a certain summe of money, called *Aid*; due to be ratably levied amongst all those Tenants proportionably to his lands, to make his eldest son a Knight, or to marry his eldest Daughter.

And it is to be noted, that all those that hold lands by the tenure of Soccage in *Capite* (although not by Knights service) cannot alien without licence, and they are to sue livery, and pay Primer seisin, but not to be in Ward for body or land.

By example and resemblance of the Kings policy in these institutions of Tenures, the Great men and Gentlemen of this Realme did the like so neere as they could; as for example, when the K. had given to any of them two thousand Acres of land, this party purposing in this place to make his dwelling, or (as the old word is) his Mansion house, or his Mannor house; did devise how hee might make his land a compleat habitation to supply him with all maner of necessaries, and for that purpose, he would give of the uttermost parts of those two thousand Acres, 100. or 200. Acres, or more or lesse, as he should think meet, to one of his most trusty servants, with some reservation of rent to finde a horse for the Warres, and goe with him when he went with the King to the Warres, adding vow of Homage, and the

Knights service tenure created by the Lord is not a tenure by Knights service of the person of the Lord, but of his Mannor.

Oath of Fealty, Wardship, Mariage, and reliefe. This reliefe is to pay five pound for every Knights

V

Fee

Aid a summe of money ratably levied according to the proportion of the lands.

Every Tenant by Knights service in *Capite*, had to make the Kings eldest sonne a Knight, or to marry his eldest daughter.

Tenants by Soccage in *Cap.* must sue livery and pay Primer seisin, and not to be in Ward for body or land. How Mannors were at first created.

Mannors created by great men in imitation of the policy of the King in the institutions of tenures. *A manere*, the word Mannor.

Knights service tenure reserved to common persons.

Reliefe is five pound to be paid by every tenant by Knights service to his Lord upon his entrance respectively for every Knights fee descended.

Fee, or after the rate for more or lesse at the entrance of every heire; which tenant so created and placed, was and is to this day called a tenant by Knights service, and not by his owne person, but of his Mannors; of these he might make as many as he would. Then this Lord would provide that the land which he was to keepe for his owne use, should bee ploughed, and his harvest brought home, his house repaired, his Park pailed; and the like: and for that end he would give some lesser parcels to sundy others, of twenty, thirty, forty or fifty Acres; reserving the service of Ploughing a certaine quantity, or so many dayes of his land, and certaine harvest workes or dayes in the harvest to labour, or to repair the House, Parke pale, or otherwise, or to give him for his provision Capons, Hens, Pepper, Commin, Roses, Gilliflowers, Spurrès, Gloves, or the like; or to pay him a certaine rent, and to bee swornè to be his faithfull tenant, which tenure was called a soccage tenure, and is so to this day; howbeit most of the ploughing and harvest services, are turned into money rents:

The Tenants in Soccage at the death of every Tenant were to pay reliefe; which was not as Knights service is; five pound a Knights fee. But it was, and so is still, one yeares rent of the land; and no wardship or other profit to the Lord. The remainder of the two thousand Acres he kept to himselfe, which he used to manure by his bondmen, and appointed them at
the

Soccage tenure reserved by the Lord.

Reliefe of tenant in Soccage, one yeares rent and no wardship or other profit upon the dying of the Tenant.

Aid money and Escuage money is likewise due unto the Lords of their Tenants, vi. de N. 3. fol. 82. & 83.

the Courts of his Mannor how they should hold it, making an entry of it into the Roll of the Remembrances of the Acts of his Court, yet still in the Lords power to take it away: and therefore they were called tenants at will, by Coppy of Court Roll; being in truth bondmen at the beginning, but having obtained freedom of their persons, and gained a custome by use of occupying their lands, they now are called Coppy-holders, and are so priviledged, that the Lord cannot put them out, and all through Custome. Some Coppy-holders, are for lives, one, two, or three successively; and some inheritances from heire to heire by custome, and custome ruleth these estates wholly, both for widdowes estates, fines, harriots, forfeitures, and all other things.

Mannors being in this sort made at the first, reason was that the Lord of the Mannor should hold a Court, which is no more then to assemble his tenants together, at a time by him to be appointed; in which Court, he was to be informed by oath of his tenants, of all such duties, rents, reliefes, Wardships, Coppy-holds or the like, that had hapned unto him; which information is called a presentment, and then his Bailife to seize and distraine for those duties if they were denied or with holden, which is called a Court Baron, and herein a man may sue for any debt or trespassse under 40. li. value; and the Freeholders are to judge of the cause upon prooffe produced upon both sides. And therefore the Freeholders of these Mannors, as incident to their Tenures,

Villenage or Tenure by Coppy of Court Roll.

Court Baron, with the use of it.

Suit to the Court of the Lord incident to the tenure of the freeholders.

doe hold by suit of Court, which is to come to the Court, and there to judge betweene party and party in those petty actions; and also to informe the Lord of duties rents and services unpaid to him from his tenants. By this course it is discerned who be the Lords of lads, such as if the Tenants dye without heire, or bee attainted of felony or treason, shall have the land by Escheat.

Now concerning what attainders shall give the Escheat to the land, it is to be noted, that it must either be by judgement of death given in some Court of Record against the Felon found guilty by Verdict, or confession of the Felony, or it must be by out-lawry of him.

The Out-lawry groweth in this sort, a man is indicted for felony, being not in hold, so as hee cannot be brought in person to appeare and to bee tryed, insomuch that Processe of *Capias* is therefore awarded to the Sheriffe, who not finding him, returneth *Non est inventus in Balliva mea*; and thereupon another *Capias* is awarded to the Sheriffe, who likewise not finding him maketh the same returne, then a Writ called an *Exigent* is directed to the Sheriffe, commanding him to Proclaime him in his County Court five severall Court dayes to yeeld his body, which if the Sheriffe doe, and the party yeeld not his body, he is said by the default, to be Out-lawed, the Coroners there adjudging him Out-lawed, and the Sheriffe making the returne of the Proclamations and of the judgement of the Coroners upon the back-side of the Writ. This is an attainer

of

What attainders shall give the Escheat to the Lord.
Attainders, 1. By judgement, **2.** By verdict or confession, **3.** By out-lawry, give the lands to the Lord

Of an Attainder by Out-lawry.

of Felony, whereupon the offender doth forfeit his lands by an Escheat to the Lord of whom they are holden.

But note, that a man found guilty of Felony by verdict or confession, and praying his Clergy, and thereupon reading as a Clerke, and so burnt in the hand and discharged, is not attainted, because he by his Clergy preventeth the judgement of death, and is called a Clerk convict, who loseth not his lands, but all his goods, Chattels, Leases, and Debts.

Prayer of Clergy.

So a man indicted that will not answer nor put himselfe upon tryall, although he be by this to have judgement of Pressing to death, yet hee doth forfeit no lands, but Goods, Chattels, Leases, and Debts, except his offence be treason, and then he forfeiteth his lands to the Crowne.

He that standeth mute, forfeiteth no lands, except for Treason.

So a man that killeth himselfe shall not lose his lands, but his Goods, Chattels, Leases, and Debts. So of those that kill others in their owne defence, or by mis-fortune.

He that killeth himselfe forfeiteth but his Chattels.

A man that being pursued for Felony, and flyeth for it, loseth his goods for his flying, although he returne and is tryed, and found not guilty of the Fact.

Flying for felony a forfeiture of goods.

So a man indicted of Felony, if hee yeeld not his body to the Sheriffe untill after the Exigent of Proclamation is awarded against him, this man doth forfeit all his goods for his long stay, although he be found not guilty of the Felony, but none is attainted to lose his lands, but onely such as have Judgements of death by tryall upon

Hee that yeeldeth his body upon the Exigent for Felony forfeiteth his goods.

verdict or their owne confession; or that they be by Judgement of the Coroners out-lawed as before.

Lands entailed,
Escheat to the
King for treason.

Besides the Escheats of lands to the Lords of whom they be holden for lacke of heires, and by attainder for Felony (which onely doe hold place in Fee-simple lands) there are also forfeiture of lands to the Crowne by attainder of Treason; as namely, if one that hath entailed lands commit Treason, hee forfeiteth the profits of the lands for his life to the Crowne, but not to the Lord.

Stat. 26. H. 8.

Tenant for life
committeth trea-
son or felony,
there shall be no
Escheat to the Lo:

And if a man having an estate for life of himselfe or of another, commit Treason or Felony, the whole estate is forfeited to the Crowne, but no Escheat to the Lord.

But a Cobby-hold, for fee-simple, or for life, is forfeited to the Lord and not to the Crowne; and if it be entailed, the Lord is to have it during the life of the offender onely, and then his heire is to have it.

The Custome of *Kent* is, that Gavelkind land is not forfeitable nor Elcheatable for Felony, for they have an old saying; The Father to the Bough, and the Son to the Plough.

If the Husband was attainted; the Wife was to lose her thirds in cases of Felony and Treason, but yet she is no offender; but at this day it is holden by Statute Law that she loseth them not for the husbands Felony. The relation of these forfeits are these.

The wife loseth
no power not-
withstanding the
husband be at-
tainted of felony.

I. That

1. That men attainted of Felony or Treason by verdict or confession; doe forfeit all the lands they had at the time of their offence committed, and the King or the Lord whosoever of them hath the Escheat or forfeiture, shall come in and avoid all Leases, Statutes, or conveyances done by the offender, at any time since the offence done. And so is the Law cleare also if a man be attainted for treason by out-lawry; but upon attainer of felony by out-lawry, it hath bene much doubted by the Law bookes whether the Lords title by Escheat shall relate back to the time of the offence done; or onely to the date or teste of the Writ of Exigent for Proclamation, wheteupon hee is outlawed; howbeit at this day it is ruled, that it shall reach back to the time of his fact, but for goods, chattels, and debts, the Kings title shall looke no further back then to those goods, the party attainted by verdict or confession, had at the time of the verdict and confession given or made, and in outlawries at the time of the Exigent as well in Treasons as Felonies: wherein it is to be observed; that upon the parties first apprehension, the Kings Officers are to seize all the goods and chattels, and preserve them together, dispending onely so much out of them as it fit for the sustentation of the person in prison, without any waisting, or disposing them untill conviction, and then the property of them is in the Crown, and not before.

Of the relation of Attainders, as to the forfeiture of lands and goods with the diversity.

Attainder in felony or treason by verdict, confession or out-lawry, forfeiteth all they had from the time of the offence committed.

And so it is upon an attainer of out-lawry, otherwise it is in the attainer by verdict, confession, and outlawry, as to their relation for the forfeiture of goods and Chattels.

The Kings officers upon the apprehension of a Felon are to seize his goods and Chattels.

A person attainted may purchase, but it shall bee to the Kings use. There can be no restitution in blood without act of Parliament, but a pardon enableth a man to purchase, and the heire begotten after shall inherit those lands.

It is also to be noted, that persons attainted of Felony or Treason, have no capacity in them to take, obtaine or purchase, save onely to the use of the King, untill the party bee pardoned. Yet the party giveth not backe his lands or goods without a speciall Patent of Restitution, which cannot restore the blood without an Act of Parliament. So if a man have a Sonne, and then is attainted of Felony or Treason and pardoned, and purchaseth lands, and then hath issue another Sonne, and dyeth; the Sonne he had before he had his pardon, although he be his eldest Son, and the Patent have the words of restitution to his lands, shall not inherit, but his second Sonne shall inherit them, and not the first; because the blood is corrupted by the Attainder, and cannot be restored by Patent alone, but by act of Parliament. And if a man have two Sonnes; and the eldest is attainted in the life of his Father, and dyeth without issue, the Father living, the second Sonne shall inherite the Fathers lands; but if the eldest Sonne have any issue, though he die in the life of his Father, then neither the second Sonne, nor the issue of the eldest, shall inherit the Fathers lands, but the Father shall there bee accounted to die without heire, and the land shall Escheat, whether the eldest Sonne have issue or not afterward or before, though he be pardoned after the death of his Father.

Property of Lands by Conveyance, is first distributed into estates, for yeares, for life, in taile, and Fee-simple.

THese Estates are created by word, by writing, or by record. For Estates of yeares, which are commonly called Leases for yeares, they are thus made; where the owner of the land agreeth with the other by word of mouth, that the other shall have, hold, and enjoy the land, to take the profits thereof for a time certaine of yeares, moneths, weekes or dayes, agreed between them; and this is called a

Lease Paroll.

Lease by writing
Pole or indented.

farme let, and so also by fine of Record, but whether any Rent be reserved or no,

A rent need not to
be reserved.

it is not materiall. Unto these leases there may be annexed such exceptions, conditions, and covenants, as the parties can agree on. They are called Chattels Reall, and are not inheritable by the heires, but goe to the Executors and Administrators, and be saleable for debts in the life of the owner, or in the Executors or Administrators hands by Writs of Execution upon Statutes, Recognizances, Judgements of debts or damages. They bee also

Property of land
by conveyance di-
vided into,

1. Estates in Fees.
2. In Tayle.
3. For Life.
4. For Yeares.

Lease for yeares
they goe to the
Executors and
not to the heires.

Leases are to bee forfeited by attainder.

1. In Treason. 2. Felony. 3. Premunire. 4. By killing himselfe. 5. For flying. 6. Standing out or mute, or refusing to be tryed by the Country. 7. By conviction. 8. Petty larceny. 9. Going beyond the Sea without Licence.

Extents upon Stat. Staple, Merchant, Elegit, Wardship of body and lands are Chattels, and forfeitable in the same maner as leases for yeares are.

Lease for life is not forfeitable by outlawry except in cases of Felony or Premunire, and then to the King and not to the Lord by Elcheat; and it is not forfeited by any of the meanes before mentioned of leases for yeares.

forfeitable to the Crowne by Outlawry, by attainder for Treason, Felony, or Premunire, killing himself, Flying for Felony, although not guilty of the fact, standing out or refusing to be tryed by the Country, by conviction of Felony, by verdict without Judgement, Petty larceny, or going beyond the Sea without licence.

By what meanes they are forfeitable.

They are forfeitable to the Crowne, in like maner as Leases for yeares, or interest gotten in other mens lands, by extending for debt upon Judgement in any Court of Record, Stat. Merchant, Stat. Staple, Recognizances; which being upon Statutes are called Tenants by Stat. Merchant, or Staple, the other Tenants by Elegit, and by Wardship of body and lands, for all these are called Chattels reall, and goe to the Executors and Administrators, and not to the heires, and are saleable and forfeitable as Leases for yeares are.

Leases for lives are also called Freeholds, they may also be made by Word or Writing, there must be Livery and Seisin given at the making of the Lease, whom we call the Lessor; who commeth to the doore, backside or garden if it be a house, if not, then to some part of the Land, and there hee expresseth, that hee doth grant unto the taker called the Lessee, for term of his life: and in Seisin thereof, hee delivereth to him a Turfe, twig, or Ring of the doore; and

What Livery of Seisin is, and how it is requisite to every Estate for life

Indorsement of Livery upon the back of the deed & witness of it.

if

if the Lease be by writing, then commonly there is a note written on the backside of the Lease, with the names of those witnesses who were present at the time of the Livery of Seisin made; This estate is not saleable by the Sheriffe for debt, but the land is to be extended for a yearely value, to satisfie the debt. It is not forfeitable by Outlawry, except in cases of Felony, nor by any of the meanes before mentioned, of leases for yeares; saving in an Attainder for Felony, Treason, Premunire, and then onely to the Crowne, and not to the Lords by Escheat.

And though a Noble man or other, have liberty by Charter, to have all Felons goods; yet a Tenant holding for term of life, being attained of Felony, doth forfeit unto the King and not to this Noble man.

If a man have an Estate in lands for another mans life, and dyeth; this land cannot goe to his heire, nor to his Executors, but to the party that first entreth; and he is called an Occupant as before hath been declared.

A Lease for yeares or for life may be made also by fine of Record, or bargaine and sale, or covenant to stand seized upon good considerations of marriage, or blood, the reasons whereof are hereafter expressed.

Entailes of lands are created by a gift, with Livery and Seisin to a man, and to the heires of his body; this word (body) making the entaile, may bee demonstrated and restrained to the Males or Females, heires of their two bodies, or

Lease for life not to be sold by the Sheriffe for debt but extended yearely.

A man that hath bona Felon. by Charter, shall not have the meanes if lease for life be attained.

Occupant.

Of estate tailes; and how such an estate may be limited.

of the body of either of them, or of the body of the grand father or father.

By the Stat. of West. 1. made in Ed. 1. time, estates in taile were so strengthened they were not forfeitable by any attainder.

The great inconvenience that ensued thereof.

Entailes of lands began by a Statute made in Ed. 1. time, by which also they are so much strengthened, as that the Tenant in taile could not put away the land from the heire by any act of conveyance or attainder, nor let it, nor incumber it, longer then his owne life.

But the inconvenience thereof was great, for by that meanes, the land being so sure tyed upon the heire as that his Father could not put it from him, it made the Sonne to be disobedient, negligent, and wastfull; often marrying without the Fathers consent, and to grow insolent in vice, knowing, that there could be no check of disinheriting him. It also made the owners of the land lesse fearefull to commit Murthers, Felonies, Treasons, and Manslaughters; for that they knew none of these acts could hurt the heire of his inheritance. It hindred men that had intailed lands, that they could not make the best of their lands by fine and improvement, for that none upon so uncertaine an estate as for terme of his owne life; would give him a fine of any value, nor lay any great stock upon the land that might yeeld rent improved.

The prejudice the Crowne received thereby.

Lastly, those entailes did defraud the Crown, and many subjects of their debts; for that the land was not lyable longer then his owne life time; which caused that the King could not safely commit any office of accompt to such, whose land were intailed, nor other men trust them with loane of money.

These

These inconveniences were all remedied by acts of Parliament; as namely, by acts of Parliament later then the acts of intailles, made 4.H.7. 32.H.8. A Tenant in taile may disinherit his Sonne by a fine with Proclamation, and may by that meanes also, make it subject to his debts and Sales.

By a Statute made, 26.H.8. A Tenant in taile doth forfeit his lands for Treason; and by another act of Parliament, 32.H.8. Hee may make leases good against his heire for 21. yeares, or three lives; so that it be not of his chiefe houses, lands, or demesne, or any lease in reversion, nor lesse rent reserved then the Tenants have payed most part of 21. yeares before, nor have any manner of discharge for doing waists and spoiles: by a Statute made 33. H. 8. Tenants of Entailed lands are lyable to the Kings debts by Extent, and by a Stat. made 13. & 39. Eliz. they are saleable for the arrerages upon his accompt for his Office; So that now it resteth, that intailed lands have two priviledges onely, which bee these. First, not to be forfeited for Felonies. Secondly, not to be extended for debts after the parties death, except the intailles bee cut off by fine and recovery.

But it is to be noted that since these notable Statutes, and remedies provided by Statutes, do dock intailles, there is start up a device called Perpetuity, which is an intaile with an addition of a *Proviso* Conditionall, tyed to his estate, not to put away the land from his next heire; and if

The Stat. 4. H. 7. and 32 H. 8. to bar estates taile by fine.

26. H. 8.

32. H. 8.

33. H. 8.

13. & 39. Eliz.

Entales two priviledges. 1. Not forfeitable for felony. 2. Not extendable for the debts of the party after his death:

Proviso, not to put away the land frō his next heire. If hee doe, to forfeit his owne estate, & that his next heire must enter.

Of the new device called a Perpetuity, which is an intaile with an addition,

he doe, to forfeit his owne estate. Which Perpetuities if they should stand, would bring in all the former inconveniences subject to intailes, that were cut off by the former mentioned Statutes, and farre greater; for by the Perpetuity, if he that is in possession start away never so little, as in making a lease, or selling a little quillet, forgetting after two or three discents; as often they doe, how they are tyed, the next heire must enter; who peradventure is his Sonne, his Brother, Uncle, or Kinsman, and this raiseth unkind suits, setting all that kindred at jarres, some taking one part, some another, and the principall parties wasting their time and money in suits of law. So that in the end, they are both constrained by necessity to joyne both in a Sale of the land, or a great part of it, to pay their debts, occasioned through their suits: And if the chiefest of the Family for any good purpose of well seating himselfe, by selling that which lieth farre off is to buy that which is neere, or for the advancement of his Daughters or yonger Sonnes should have reasonable cause to sell, this Perpetuitie, if it should hold good, restraineth him. And more then that, where many are owners of inheritance of land not intailed, may during the minority of his eldest sonn, appoint the profits to goe to the advancement of the yonger Sons and daughters, and pay debts, by intailes and perpetuities, the owners of these lands cannot doe it, but they must suffer the whole to discend to his eldest son, and so to come to the Crowne by Wardship all the time of his Infancy.

These Perpetuities would bring in all the former inconveniences of Estates tailles.

The inconveniences of those Perpetuities.

Where-

Wherefore seeing the dangerous times and untowardly heires, they might prevent those mischiefes of undoing their houses by conveying the land from such heires, if they were not tyed to the stake by those Perpetuities, and restrained from forfeiting to the Crown, & disposing it to their owne or to their childrens good; therefore it is worthy of consideration, whether it be better for the Subject and Sovereigne to have the lands secured to mens names and bloods by perpetuities, with all inconveniences above mentioned, or to bee in hazard of undoing his house by unthrifty posterity.

The last and greatest estate of lands is Fee-simple, and beyond this there is none of the former for lives, yeares or intailes; but beyond them is Fee-simple. For it is the greatest, last and uttermost degree of estates in land; therefore hee that maketh a lease for life, or a gift in taile, may appoint a remainder when hee maketh another for life or in taile, or to a third in Fee-simple; but after a Fee-simple hee can limit no other estate. And if a man doe not dispose of the Fee-simple by way of remainder, when hee maketh the gift in taile, or for lives, then the Fee-simple resteth in himselfe as a Reversion. The difference between a Reversion and a Remainder is this. The Remainder is alwayes a succeeding estate, appointed upon the gifts of a precedent estate, at the time when the precedent is appointed. But the Reversion is an estate left in the giver, after a particular estate made by him for yeares, life, or intaile;

Quære whether it be better to restrain men by these Perpetuities from alienations, or to hazard the undoing of houses by unthrifty posterity.

The last and greatest estate in land is Fee-simple.

A remainder cannot be limited upon an estate in Fee-simple.

The difference between a remainder and a reversion.

A reversion cannot be granted by word.

Attornment must
be had to the grāt
of the reversion.

The tenant not
compellable to
attorne but
where the rever-
sion is granted by
fine.

intaile; where the remainder is made with the particular estates, then it must be done by deeds in writing, with livery and seisin, and cannot be by words; And if the giver will dispose of the Reversion after it remaineth in himselfe, he is to doe it by writing, and not by word, and the Tenant is to have notice of it, and to attorne it, which is to give his assent by word, or paying rent, or the like; and except the tenant will thus attorn, the party to whom the Reversion is granted cannot have the Reversion, neither can hee compell him by any law to attorne, except the grant of the Reversion be by fine; and then hee may by writ provided for that purpose: and if he doe not purchase that writ, yet by the fine the Reversion shall passe, and the tenant shall pay no rent, except he will himselfe, nor be punished for any waists in houses, woods, &c. unlesse it bee granted by bargaine and sale by Indenture inrolled; These Fee-simple estates lie open to all perills of Forfeitures, Extents, Incumbrances, and Sales.

Lands are conveyed by these 6. What a Feofment of land is.
meanes; First, by Feofment, which is, where by Deed lands are given to one and his heires, and livery and seisin made according to the forme and effect of the deed; if a lesser estate then Fee-simple bee given, and livery of seisin made, it is not called a Feofment, except the Fee-simple be conveyed, but is otherwise called a lease for life or gift intaile as above mentioned.

Lands may be
conveyed fixe ma-
ner of wayes.

1. By Feofment.
2. By Fine.
3. By Recovery.
4. By Use.
5. By Covenant.
6. By Will.

A Fine is a reall agreement, beginning thus, *Hæc est finalis concordia, &c.* This is done before the Kings Judges in the Court of Commonpleas, concerning lands that a man should have from another to him and his heires, or to him for his life, or to him and the heires males of his body, or for yeares certaine, whereupon rent may bee reserved, but no condition or covenants. This Fine is a Record of great credit, and upon this Fine are foure Proclamations made openly in the Common Pleas; that is, in every Terme one for foure Termes together; and if any man having right to the same, make not his claime within five yeares after the Proclamations ended, hee loseth his right for ever, except he be an Infant, a Woman covert, a Mad-man, or beyond the Seas, and then his right is saved; so that he claim within five yeares after the death of her husbands full age, recoverie of his wits, or returne from beyond the Seas. This Fine is called a Feofment of Record, because that it includeth all that the Feofment doth, and worketh further of his own nature, and barreth intailes peremptorie, whether the heire doth claime within five yeares or not, if he claime by him that levied the Fine.

Recoveries are where for assurances of lands the parties doe agree, that one shall begin an action reall against the other, as though he had good right to the land, and the other shall not enter into defence against it, but alleadge that hee bought the land of *I. H.* who had warranted unto him, and pray that *I. H.* may bee called in to

-Y

defend

What a Fine is, & how lands may be conveyed hereby.

Five yeares non claime barreth not,

- 1 An Infant.
- 2 Feme covert.
- 3 Mad-man.
- 4 Beyond Sea.

Fine is a Feofment of Record.

What Recoveries are.

Common Vou-
cher one of the
Criers of the
Court.

defend the Title, which *I. H.* is one of the Cryers of the Common Pleas, and is called the *Common Voucher*. This *I. H.* shall appeare and make as if he would defend it, but shall pray a day to bee assigned him in his matter of defence; which being granted him, at the day he maketh default, and thereupon the Court is to give Judgement against him; which cannot be for him to lose his lands because he hath it not, but the party that hee hath sold it to, hath that who vouched him to warrant it.

Judgement for the
Demandant a-
gainst the tenant
in taile.

Judgement for the
tenant to recover
so much land in
value of the Com-
mon voucher.

Therefore the Demandant who hath no defence made against it, must have Judgement to have the land against him that hee sued (who is called the Tenant) and the Tenant is to have Judgement against *I. H.* to recover in value so much land of his, where in truth hee hath none, nor never will. And by this device grounded upon the strict Principles of Law, the first tenant loseth the land; and hath nothing for it; but it is by his owne agreement for assurance to him that bought it.

A recovery bar-
reth an Escheat
taile and all re-
versions and re-
maindments
thereupon.

This Recovery barreth Entailes, and all Remainders and Reversions that should take place after the Entailes, saving where the King is giver of the Entaile and keepeth the reversion to himselfe; then neither the heire, nor the remainder, nor reversion, is barred by the recovery.

The reason why a
Common reeve-
ry barreth those
in remainder and
reversions.

The reason why the heires, remainders, and reversions are thus barred, is because in strict law the recompence adjudged against the Cryer that was Vouchee, is to goe in succession of

Estate

Estate as the Land should have done, and then it was not reason to allow the heire the liberty to keep the land it selfe, and also to have recompence; and therefore hee loseth the land, and is to trust to the recompence.

This sleight was first invented, when intailes fell out to be so inconvenient as is before declared, so that men made no conscience to cut them off, if they could finde law for it. And now by use, those recoveries are become common assurances against intailes, remainders, and reversions, and are the greatest security purchasers have for their monies; for a Fine will barre the heire in taile, and not the remainder, nor reversion, but a common recovery will barre them all.

Upon Feofments and recoveries, the estate doth settle as the use and intent of the parties is declared by word or writing, before the act was done; As for example, if they make a writing, that one of them shall levy a Fine; make a Feofment, or suffer a common recovery to the other; but the use and intent is, that one should have it for his life, and after his decease, a stranger to have it in taile, and then a third in Fee-simple. In this case the land setleth in an estate according to the use and intent declared. And that by reason of the Statute made 27. H. 8. conveying the land in possession to him that hath interest in the use, or intent of the Fine, Feofment, or Recovery, according to the use and intent of the parties.

The many inconveniences of estates in taile brought in these recoveries, which are made now common conveyances and assurances for land.

Upon Fines, Feofments, and recoveries, the estate doth settle according to the intent of the parties.

Bargaines, Sales
and Covenants to
stand seized to a
use, are all groun-
ded upon one St.

Upon this Statute is likewise grounded the fourth and fifth of the fixe Conveyances, *viz.* Bargaines, Sales, Covenants, to stand seized to uses; for this Statute wheresoever it findeth an use, conjoyneth the possession to it, and turneth it into like quality of Estate, Condition, Rent, and the like, as the use hath.

What a use is.

The use is but the equity and honesty to hold the Land *in conscientia boni viri*. As for example: I and you agree that I shall give you money for your land, and you shall make me assurance of it. I pay you the money, but you made me no assurance of it. Here although the estate of the land bee still in you, yet the equity and honesty to have it is with me; and this equity is called the use, upon which I had no remedy but in Chancery, untill this Statute was made of 27. H. 8, and now this Statute conjoyneth and containeth the land to him that hath the use. I for my money paid to you, have the land it selfe, without any other Conveyance from you; and it is called a bargain and sale.

Before 27. H. 8.
there was no re-
medy for a use,
but in Chancery.

But the Parliament that made that Statute did foresee, that it would be mischievous that mens lands should so sodainly upon the paiment of a little money be conveyed from them, peradventure in an Alehouse or a Taverne upon strainable advantages, did therefore gravely provide another Act in the same Parliament, that the land upon paiment of this money should not passe away, except there were a Writing Indented, made betweene the said two parties, and the said Writing

The Stat. of 27.
H. 8. doth not
passe land upon
the paiment of
money without a
deed indented and
inrolled.

Writing also within sixe moneths inrolled in some of the Courts at Westminster, or in the Sessions Rolls in the Shire where the land lyeth; unlesse it bee in Cities or Corporate Townes where they did use to enroll Deeds, and there the Statute extendeth not.

The fifth conveyance of a Fine, is a Conveyance to stand seized to uses: it is in this sort; A man that hath a wife and children, brethren, and kinsfolkes, may by writing under his Hand and Seale; agree, that for their or any of their preferment hee will stand seized of his lands to their uses, either for life in taile or Fee, so as hee shall see cause; upon which agreement in Writing, there ariseth an equity or honesty; that the Land should goe according to those agreements; Nature and Reason allowing these provisions; which equity and honesty is the use. And the use being created in this sort, the Statute of 27. H. 8. before mentioned, conveyeth the estate of the land, as the use is appointed.

And so this Covenant to stand seized to uses, is at this day since the said Statute, a Conveyance of land, and with this difference from a bargaine and sale; in that this needeth no inrollment as a bargaine and sale doth, nor needeth it to be in writing indented, as bargaine and sale must: and if the party to whose use hee agreeth to stand seized of the land, be not wife, or childe, couzen, or one that he meaneth to marry, then will no use rise, and so no Conveyance; for although the Law alloweth such weightie

The Stat. of 27. H. 8. extendeth not in- to Cities and corporate townes where they did use to enroll Deeds.

A conveyance to stand seized to a use.

Vpon an agreement in writing to stand seized to the use of any of his kindred, a use may be created, & the estate of the land thereupon executed, by 27. H. 8.

A covenant to stand seized to a use needeth no enrollment as a bargaine and sale to a use doth, so it be to the use of Wife, Childe, or Couzen, or one he meaneth to marry.

Considerations of marriage and blood to raise uses, yet doth it not admit so trifling Considerations, as of Acquittance, Schooling, Services, or the like.

But where a man maketh an estate of his land to others, by Fine, Feofment, or Recovery, he may then appoint the use to whom he listeth, without respect of marriage, kindred, or other things; for in that case his owne Will and declaration guideth the equity of the estate. It is not so when hee maketh no estate, but agreeth to stand seized, nor when he hath taken any thing, as in the cases of bargaine, and sale, and covenant, to stand to uses.

The last of the six Conveyances, is a Will in writing; which course of Conveyance was first ordained by a Statute made 32. H. 8. before which Statute no man might give land by will, except it were in a Borough Town, where there was an especiall custome that men might give their lands by will; as in London, and many other places.

The not giving of land by Will, was thought to be a defect at Common law, that men in wars, or suddainly falling sick, had not power to dispose of their lands, except they could make a Feofment, or levie a Fine, or suffer a recovery; which lack of time would not permit : and for men to doe it by these meanes, when they could not undoe it againe, was hard; besides, even to the last hour of death, mens mindes might alter upon further proofes of their children or kindred, or
encrease

Vpon a Fine, Feofment, or recovery a man may limit the use to whom he listeth, without consideration of blood, or money. Otherwise, in a bargaine and sale, or covenant.

Of the continuance of land by will.

The not disposing of lands by will, was thought to be a defect at the common law.

increase of children or debt, or defect of servants or friends, to be altered.

For which cause, it was reason that the Law should permit him to reserve to the last instant the disposing of his lands, and to give him means to dispose it, which seeing it did not fitly serve, men used this devise.

They conveyed their full estates of their lands in their good health, to friends in trust, properly called Feoffees in trust; and then they would by their wills declare how their friends should dispose of their lands; and if those friends would not performe it, the Court of Chancery was to compell them, by reason of trust; and this trust was called, the use of the land; so as the Feoffees had the land and the party himselfe had the use, which use was in equity, to take the profits for himselfe; and that the feoffees should make such an estate as he should appoint them; and if he appointed none, then the use should goe to the heire, as the estate it selfe of the land should have done; for the use was to the estate like a shadow following the body.

But this course of putting lands into use, there were many inconveniences; (as this use which grew first for a reasonable cause,) viz. To give men power and liberty to dispose of their owne, was turned to deceive many of their just and reasonable rights; as namely, a man that had cause to sue for his land, knew not against whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds. The husband
of

The Court that was invented before the St. of 32. H. 8. first gave power to devise lands by Will, which was a conveyance of lands to Feoffees in trust, to such persons as they should declare in their Will.

The inconveniences of putting land into use,

of being Tenant by curtesie. The Lord of his Wardship, Reliefe, Heriot, and Escheat. The Crēditor of his Extent for debt. The poore Tenant of his lease; for these right and duties were given by law from him that was owner of the land, and none other; which was now the Feoffee of trust, and so the old owner which we call the Feoffor should take the profits, and leave the power to dispose of the land at his discretion to the Feoffee, and yet he was not such a Tenant as to be seized of the land, so as his wife could have Dower, or the lands be extended for his Debts, or that he could forfeit it for Felony or Treason, or that his heire could be Ward for it, or any duty of tenure fall to the Lord by his death, or that he could make any leases of it.

Which frauds by degrees of time as they increased, were remedied by divers Statutes; as namely, by a Statute of 1.

H. 6. and 4.H.8. it was appointed that the action may be tryed against him which taketh the profits,

1. H. 6.
4. H. 8.
1. R. 3.
4. H. 7.
16. H. 8.

} Stat. binding
Cestuy que
use.

which was then *Cestuy que use* by a Statute made 1. R. 3. Leases and Estates made by *Cestuy que use* are made good, and Estat. by him acknowledged. 4. H. 7. the heire of *Cestuy que use* is to bee in Ward: 16. H. 8. the Lord is to have reliefe upon the death of any *Cestuy que use*.

The frauds of evasions to use by degrees of time, as they increased, were remedied by the Statutes.

Which

Which frauds neverthelesse multiplying daily, in the end 27. H. 8. the Parliament purposing to take away all those uses, and reducing the Law to the ancient forme of conveying of lands by publike livery of Seisin, Fine, and Recovery; did ordaine, that where lands were put in trust or use, there the possession and estate should be presently carried out of the friends in trust, and settled and invested on him that had the uses, for such tearme and time as he had the use.

By this Statute of 27. H. 8. the power of disposings land by Will, is clearely taken away amongst those frauds; whereupon 32. H. 8. another Statute was made, to give men power to give lands by Will in this sort. First; it must be by Will in writing. Secondly, he must be seized of an Estate in Fee-simple; For tenant for another mans life, or tearme in taile, cannot give land by Will, by that Statute 32. H. 8. hee must be solely seized, and not joyntly with another; and then being thus seized, for all the land he holdeth in Soccage Tenure, hee may give it by Will, except he hold any piece of land in *Capite* by Knights service of the King; and then laying all together, hee can give but two parts by Will; for the third part of the whole, as well in Soccage as in *Capite*, must descend to the heire, to answer Wardship, Livery, and Primer Seisin, to the Crowne.

27. H. 8. taking away all uses reduceth the law to the ancient forme of Conveyances of land, by Feoffment, Fine, and Recovery.

In what maner the St. of 32. H. 8. giveth power to dispose of lands by Will.

If a man be seized of Capite lands and Soccage, he cannot devise but two parts of the whole.

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And

The third part must descend to the heire to answer Guardianship, Livery and Seisin to the Crowne. A conveyance by devise of Capite lands to the wife for her joynture, or to his children for their good, or to pay debts is void for a third part, by 32. H. 8.

But a conveyance by act executed in the life time of the party of such lands to such uses is not void, but a third part: but if the heire be within age, hee shall have one of the Acres to bee in Ward.

And so if he hold lands by Knights service of a subject, he can devise of the land but two parts, and the third the Lord by Wardship, and the heire by descent is to hold.

And if a man that hath three Acres of land holden in *Capite* by Knights service, doe make a joynture to his Wife of one, and convey another to any of his children, or to friends, to take the profits, and to pay his debts or legacies, or daughters portions, then the third Acre or any part thereof he cannot give by Will, but must suffer it to descend to the heire, and that must satisfie Wardship.

Yet a man having three Acres as before, may convey all to his wife or children by Conveyance in his life time, as by Feofment, Fine, Recovery, Bargaine and sale, or covenant to stand seized to uses and to disinherite the heire. But if the heire be within age when his Father dyeth, the King or other Lord shall have that heire in Ward, and shall have one of the three Acres during the Wardship, and to sue Livery and Seisin. But at full age the heire shall have no part of it, but it shall goe according to the Conveyance made by the Father.

Afflictis
afflictione
addere.

Entailed lands part of the thirds. The King nor Lord cannot intermeddle if a full third part be left to descend to the heire.

It hath been debated how the thirds shall be set forth. For it is the use that all lands which the Father leaveth to descend to the heire, being Fee-simple, or in taile, must be part of the thirds; and if it be a full third, then the King, nor heire, nor Lord, can intermeddle with the rest; If it be not a full third, yet they must take it so much as

it

it is, and have a supply out of the rest.

This supply is to be taken thus; if it bee the Kings Ward, then by a Commission out of the Court of Wards, whereupon a Jury by oath, must set forth so much as shal make up the thirds, except the Officers of the Court of Wards can otherwise agree with the parties. If there be no Wardship due to the King, then the other Lord is to have this supply by a Commission out of the Chancery, and Jury thereupon.

But in all those cases the Statutes doe give power to him that maketh the Will to set forth and appoint of himselfe which lands shall goe for thirds, and neither King nor Lord can refuse it. And if it be not enough, yet they must take that in part, and onely have a supply in maner as before is mentioned out of the rest.

The maner of making supply when the part of the heire is not a full third.

The Statutes give power to the Testator to set out the third himselfe, and if it be not a third part, yet the King or Lord must take that in part, and have a supply out of the Rent.

Property in Goods.

- | | | |
|---|---|-----------------------|
| Of the severall wayes whereby a man may get Propertie in Goods or Chattels. | } | 1. By Gift. |
| | | 2. By Sale. |
| | | 3. By Stealing. |
| | | 4. By Waving. |
| | | 5. By Straying. |
| | | 6. By Shipwrack. |
| | | 7. By Forfeiture. |
| | | 8. By Executorship. |
| | | 9. By Administration. |
| | | 10. By Legacy. |

1. *Property by Gift.*

A deed of gift of goods to deceive his Creditors is void against them, but good against the Executors Administrators, or Vender of the party himselfe.

By gift the property of goods may be passed by word or writing; but if there be a generall Deed of gift made of all his Goods, this is suspicious to be done upon fraud, to deceive the Creditors.

And if a man who is in debt, make a Deed of gift of all his goods to protract the taking of them in Execution for his debt, this deed of gift is void, as against those to whom he stood indebted; but as against himselfe, his owne Executors or Administrators, or any man to whom afterwards he shall sell or convey them, it is good.

2. *By Sale.*

What is a sale *bona fide* and what not, when there is a private reservation of trust betweene the parties.

Property in goods by Sale. By Sale any man may convey his owne goods to another; and although he may feare Execution for debts, yet hee may sell them out-right for money at any time before the Execution served, so that there be no reservation of trust betweene them, paying the money, he shall have the goods againe; for that trust in such case, doth prove plainly a fraud to prevent the Creditors, from taking the goods in Execution.

3. *By*

3. *By Theft or taking in Jest.*

Property of Goods by Theft or taking in Jest. If any man steale my Goods or Chartels, or take them from me in Jest, or borrow them of me, or as a Trespasser or Felon carrie them to the Market or Faire, and sell them, this Sale doth barre me of the property of my goods, saving that if hee bee a horse hee must bee ridden two houres in the Market or Faire, between ten and five a clock, and Tolloed for in the Toll-book, and the seller must bring one to avouch his sale, knowne to the Toll-book-keeper, or else the sale bindeth me not. And for any other goods, where the Sale in a Market or faire shall bar the owner being not the seller of his Property, it must bee sale in a Market or Faire where usually things of that nature are sold. As for example: if a man steale a horse, and sell him in Smithfield, the true owner is barred by this Sale; but if he sell the horse in Cheapside, Newgate or Westminster market, the true owner is not barred by this Sale; because these Markets are usuall for Flesh, Fish, &c. and not for horses.

How a sale in Market shall be a bar to the owner.

Of Markets and what Markets such a sale ought to be made in.

So whereas by the custom of *London* in every Shop there is a Market all the dayes of the week, saving Sundayes and Holy daies; Yet if a piece of Plate or Jewell that is lost, or Chaine of Gold or Pearle that is stolon or borrowed, be sold in a Drapers or Scriveners shop, or any others but a Goldsmith, this sale barreth not the true owner, *Et sic in similibus.*

The owner may seize his goods after they are stolne.

Yet by stealing alone of Goods, the Thiefe getteth not such property, but that the owner may Seize them againe wheresoever he findeth them; except they were sold in Faire or Market, after they were stolne; and that *bono fide* without fraud.

If the Thiefe be condemned for Felony, or outlawed, or forfeit the stolne goods to the Crowne, the owner is without remedy.

But if he make fresh pursuit he may take his goods from the Thiefe.

Or if hee prosecuted the law against the Thiefe and convict him of the same Felony, he shall have his goods againe by a writ of Restitution.

But if the Thiefe be condemned of the Felony, or outlawed for the same, or outlawed in any personall action, or have committed a forfeiture of goods to the Crowne, then the true owner is without remedy.

Nevertheless if fresh after the goods were stolne, the true owner maketh pursuit after the Thiefe and goods, and taketh the goods with the Thiefe, he may take them againe: And if he make no fresh pursuit, yet if he prosecute the Felon, so farre as Justice requireth, that is, to have him arraigned, indicted, and found guilty (though he be not hanged, nor have Judgement of death) or have him outlawed upon the indictment; in all these cases he shall have his goods againe, by a writ of Restitution to the party in whose hands they are.

4. *By waving of Goods.*

BY waving of Goods, a property is gotten thus. A Thiefe having stolne goods, being pursued flyeth away and leaveth the goods. This leaving is called Waving, and the property is in the King; except the Lord of the Mannor have right to it, by Custome or Charter.

But if the Felon bee indicted, adjudged, or found guilty, or outlawed at the suit of the owner of these good, hee shall have restitution of these goods, as before.

5. *By Straying.*

BY Straying, property in live Cattell is thus gotten. When they come into other mens grounds straying from the owners, then the party or Lord into whose grounds or Mannors they come, causeth them to be seized, and a With put about their neckes, and to be cryed in three Markets adjoyning, shewing the Markes of the Cattell; which done, if the true owner claimeth them not within a yeare and a day, then the property of them is in the Lord of the Mannor whereunto they did stray, if he have all strayes by Custome or Charter, else to the King.

6. *Wracke,*

6. *Wracke, and when it shall
be said to bee.*

BY Shipwracke, property of goods is thus gotten. When a Ship loaden is cast away upon the Coasts, so that no living creature that was in it when it began to sinke escapeth to land with life, then all those goods are said to be wracked, and they belong to the Crown if they be found; except the Lord of the Soile adjoyning can entitle himselfe unto them by Custome, or by the Kings Charter.

7. *Forfeitures.*

BY Forfeitures, Goods and Chattels are thus gotten. If the owner be outlawed, if he bee indicted of Felony, or Treason, or either confesse it, or be found guilty of it, or refuse to bee tryed by Peeres or Jury, or bee attainted by Judgement, or fly for Felony; although he bee not guilty, or suffer the Exigent to goe forth against him; although he be not outlawed, or that he goe over the Seas without licence, all the goods he had at the Judgement, he forfeiteth to the Crowne; except some Lord by Charter can claime them. For in those cases prescripts will not serve, except it be so ancient, that it hath had
allow-

allowance before the Justices in Eyre in their Circuits, or in the Kings Bench in ancient time.

8. *By Executorship.*

BY Executorship goods are gotten. When a man possessed of Goods maketh his last Will and Testament in writing or by word, and maketh one or more Executors thereof; These Executors have by the Will and death of the parties, all the property of their Goods, Chattels, Leases for yeares, Wardships and Extents, and all right concerning those things.

Those Executors may meddle with the goods and dispose them before they prove the Will, but they cannot bring an action for any debt or duty before they have proved the Will.

The proving of the Will is thus. They are to exhibite the Will into the Bishops Court, and there they are to bring the witnesses, and there they are to be sworne, and the Bishops Officers are to keep the Will Originall, and certifie the Copie thereof in Parchment under the Bishops Seale of Office, which Parchment so sealed, is called the Will proved.

Executors may before *probat* dispose of the goods, but not bring an action for any debt.

What *probat* of the Will is, and in what maner it is made.

9. *By Letters of Administration.*

BY Letters of Administration property in goods is thus gotten. When a man possessed of goods dyeth without any Will, there such goods as the Executors should have had if hee had made a Will, were by ancient Law to come to the Bishop of the Diocesse, to dispose for the good of his soule that dyed, hee first paying his Funerals and Debts, and giving the rest *Ad pios usus*.

This is now altered by Statute Lawes, so as the Bishops are to grant Letters of Administration of the goods at this day to the Wife if she require it, or children, or next of kin; if they refuse it, as often they doe, because the debts are greater then the estate will beare; then some Creditor or some other will take it as the Bishops Officers shall thinke meet. It groweth often in question what Bishop shall have the right of proving Wills, and granting Administration of goods.

In which controversie the rule is thus, that if the partie dead had at the time of his death *bona notabilia* in divers Diocesses of some reasonable value, then the Arch-bishop of the Province where he dyed is to have the probat of his Will, and to grant the Administration of his goods as the case falleth out; otherwise, the Bishop of the Diocesse where he dyed is to doe it.

Piusus.

Where the Intestate had *Bona notabilia* in divers Diocesses, then the Archbishop of that Province where he dyed is to commit the Administration.

If there be but one Executor made, yet hee may refuse the Executorship comming before the Bishop, so that hee hath not entermedled with any of the goods before, or with receiving Debts, or paying Legacies.

And if there be more Executors then one, so many as list may refuse; and if any one take it upon him, the rest that did once refuse may when they will take it upon them, and no Executor shall be further charged with Debts or Legacies; then the value of the goods come to his hands; So that he fore-see that he pay Debts upon Record, first debts to the King, then upon Judgements, Statutes, Recognizances, then debts by bond and bill sealed, Rent unpaied, Servants wsges, paiment to head workmen, and lastly; Shop-bookes, and Contracts by word. For if an Executor, or Administrator pay debts to others before to the King, or debts due by Bond before those due by Record, or debts by Shop-bookes and Contracts before those by Bond, arrerages of Rent, and Servants, or workmens wages, hee shall pay the same over againe to those others in the said degrees.

But yet the Law giveth them choice, that where divers have Debts due in equall degree of Record or specialty, he may pay which of them he will, before any suite brought against him; but if suit be brought he must first pay them that get Judgement against him.

Executor may refuse before the Bishop, if he have not intermedled the goods.

Executor ought to pay, 1. Judgements. 2. Stat. Recogn. 3. Debts by bonds and bills sealed. 4. Rent unpayed. 5. Servants wages. 6. Head workmen 7. Shop-booke and Contracts by word.

Debts due in equall degree of Record, the Executor may pay which of them he please before suit commenced.

Any one Executor may doe as much as all together, but if a debt be released and Affets wanting, he shall onely be discharged.

Any one Executor may convey the goods, or release Debts without his companion, and any one by himself may doe as much as all together; but one mans releasing of Debts or selling of Goods, shall not charge the other to pay so much of the Goods, if there be not enough to pay debts; but it shall charge the party himselfe that did so release or convey.

Otherwise of Administrators.

But it is not so with Administrators, for they have but one authority given them by the Bishop over the goods, which authoritie being given to many is to be executed by all of them joyned together.

Executor dyeth making his Executor, the second Executor shall be Executor to the first Testator.

And if an Executor die making an Executor, the second Executor is Executor to the first Testator.

But otherwise, if the Administration to die making his Executor, or if Administration be committed of his goods. In both cases, the Ordinary shall commit Administration of the goods of the first intestate.

But if an Administrator die intestate, then his Administrator shall not be Executor or Administrator to the first; But in that case the Bishop, whom we call the Ordinary, is to commit the Administration of the first Testators goods to his Wife, or next of kin, as if he had dyed intestate; Alwayes provided, that that which the Executor did in his life time, is to be allowed for good. And so if an Administrator dye and make his Executor, the Executor of the Administrator shall not be Executor to the first intestate; But the Ordinary must new commit the Administration of the goods of the first intestate againe.

If the Executor or Administrator pay debts, or funeralls, or Legacies of his owne money, hee may retain so much of the goods in kinde, of the Testator or intestate, and shall have property of it in kinde.

Executors or Administrators may retaine.

10. Property by Legacy.

PROPERTIE by Legacie, is where a man maketh a Will and Executors, and giveth Legacies; he or they to whom the Legacies are given must have the assent of the Executors or one of them to have his legacie, & the property of that Lease or other goods bequeathed unto him, is said to be in him; but he may not enter nor take his Legacy without the assent of the Executors or one of them; because the Executors are charged to pay Debts before Legacies. And if one of them assent to pay Legacies, hee shall pay the value thereof of his owne purse, if there be not otherwise sufficient to pay debts.

Executors or Administrators may retaine; because the Executors are charged to pay some debts before Legacies.

But this is to be understood, by debts of Record to the King, or by Bill and Bond sealed, or arrerages of Rent, or Servants or Workmens wages; and not debts of Shop-bookes, or Bills unsealed, or Contract by word; for before them Legacies are to be payed.

Legacies are to be paid before debts by Shopbookes, Bills unsealed, or Contracts by word.

And if the Executors doubt that they shall not have enough to pay every Legacy, they may pay which they list first; but they may not sell any speciall Legacie which they will to pay

Executor may pay which Legacy he will first.

If the Executors
doe want they
may sell any Le-
gacy to pay debts.

Debts, or a Lease of goods to pay a money Lega-
cy. But they may sell any Legacy which they
will to pay Debts, if they have not enough be-
sides.

When a Will is
made and no Ex-
ecutor named,
Administration
is to be commit-
ted *cum testamento
annexo.*

If a man make a Will and make no Executors,
or if the Executors refuse, the Ordinary is to
commit Administration *Cum Testamento annexo*,
and take bonds of the Administrators to per-
forme the Will, and he is to doe it in such sort, as
the Executor should have done, if he had been
named.

FINIS.





