... dicti eiusdem Rogeri

Exitus terre Rogeri in Pulston gen[er]al ... vj^d ... ten[ementum] ... man[erium] ...
... et ... ut supra Et ... vj^s ... dicti
eiusdem Rogeri

THE ELEMENTS OF THE COMMON LAWVES OF ENGLAND,

Branched into a double Tract:

THE ONE

Containing a Collection of some principall 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 Dunstans

A COLLECTION OF SOME PRINCIPAL RULES and MAXIMES of the Common Lawes of ENGLAND, WITH THEIR LATITUDE and EXTENT:

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

By Sir FRANCIS BACON, then Sollicitor *generall to the late renowned Queene* Elizabeth, *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. Dunstans Church-yard in Fleet-street. 1636.

TO HER SACRED MAJESTIE.

I 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* literæ mortuæ; *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 renew it, 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

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 remaines.*

Pace data terris animum ad civilia vertit
Jura ſuum, legeſq; tulit juſtiſsimus auctor.

Hence was collected the difference betweene 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 Corneliæ: 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 reduce the Romane lawes from infinite volumes, and much repugnancy, into one competent and uniforme corps of law; of which matter himſelfe doth ſpeake glorioufly, and yet aptly, calling of it,* proprium & ſanctiſſimum templum juſtitiæ conſe-

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 Romane 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 ſatisfaction 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 yeares 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

fineneſſe of cunning, doe draw alſo in further conſequence mulitudes of ſuits, and controverſies, and abuſes of law by evaſions and devices; which inconveniences in ſuch time growing more generall, doe more inſtantly ſolicite for the amendment of lawes to reſtrain and repreſſe 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 multipled 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 Councell 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 proviſion, 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

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 contentious 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 commeth to paſſe in things ſo excellent, there being no preſident 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-*

jeſty, ſo I hope in the maturity of your Majeſties owne time it will come up and beare fruit. But to returne 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 endevour themſelvs by way of amends, to be a helpe and ornament thereunto; 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

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 wherin the law is cleered 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 judgment, 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

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 cõmon 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

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 tooke 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-joyned Aphoriſmes doth leave the wit of man more free to turne, and toſſe, and make uſe of that which is ſo delivered

to

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 down 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

feſſed Lawyers, it was better manners to exclude them by the ſtrangeneſſe 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 beene underſtood, or, which is worſe, miſtaken.

Fiftly, 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 maximes; wherein I had the example of Mr *Littleton* and Mr *Fitzherbert*, whoſe writings are the inſtitutions of the lawes of England, wherof the one forbeareth 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 expreſly 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 authori-

ty

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 accompt 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, & ſomtimes 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

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.

REGULÆ.

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

2 *Non potest adduci exceptio ejusdem rei, cujus 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 æstimationem de futuro.* 29

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

8 *Æstimatio præteriti 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 personæ.* 43

11 *Jura sanguinis nullo jure civili dirimi possunt.* 44

12 *Recceditur a placitis juris potius quam injuria, ne delicta maneant impunita.* 51

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

14 *Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur 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 quæstio, sed de scientia sive error sit Judicis sive facti.* 62

18 *Persona conjuncta æquiparatur interesse proprio.* 65

19 *Non impedit clausula derogatoria qua minus ab eadem potestate res dissolvantur a quibus constituuntur.* 67

20 *Actus inceptus cujus perfectio pendet ex voluntate partium revocari potest, si autem pendet ex voluntate tertiæ personæ vel ex contingenti, revocari non potest.* 71

21 *Clausula vel dispositio inutilis per præsumptionem remotam vel causam ex post facto non fulcitur.* 74

22 *Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutavit.* 81

23 *Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur.* 82

24 *Licita bene miscentur, formula nisi juris obstet.* 85

25 *Præsentia corporis tollit errorem nominis, & veritas nominis tollit errorem demonstrationis.* 86

THE

THE MAXIMES OF THE LAW.

In jure non remota causa sed proxima spectatur.

IT 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 & impendendo*, and the grantee commit treason, whereby 6.H.8.Dy.

wherby he is impriſoned, ſo that the grantor cannot have acceſs unto him for his counſel, yet nevertheles the annuity is not determined by this *non feaſance*; 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 100l. 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 fecurity of money: but becauſe the entring 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 Winningtons caſe, ore report per le treſreverend Judge, le Sñr 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 prepenſed diſcharge a Piſtoll at I.D. and miſſeth him, whereupon hee throwes downe his Piſtoll, and flyes, 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.

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.*

Lit. cap. de diſc.

If

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. 21. Eliz. 24. H. 8. fo. 4. Dy.

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 priviledged, 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. *Mariæ*, bee 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. 9 H. 7. 24. 3. & 4. P. & M. Dr 143.

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 himſelfe, who brings a *formedon*, and the diſcontinuee pleadeth villenage, this is no plea, becauſe the deveſting of the mannor, 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.

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 38.Ed.3.32. 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 bee avoided in the ſame ſuite but in another ſuit, is doubtfull; 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 comē 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 bē a plea, theſe were to exclude him utterly of his right; and therfore 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 bee given till both pleas be diſcuſſed: and if either plea bee found without error, there ſhall bee no reverſall 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 errour, 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 errour 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 accrue *de priſne 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 errour 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 attaindor, that he muſt reply that he hath a writ alſo depending of the ſame fine, and ſo demand judgment.

To

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 in taile with aſſets be pleaded, it is no replication for the iſſue to ſay, that a *Præcipe* dependeth brought by I.S. to evict the aſſets.

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 ſtrongliеſt 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 buſineſſe, 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.

2.R.3.18. 21.H.7.29. 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, 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. 8.Aſſ.p.10.

So if I demiſe *omnes boſcos meos in villa de dale* for yeares, this paſſeth the ſoile, but if I demiſe all my lands in dale *exceptis boſcis*, this extendeth to the trees onely and not to the ſoile. 14.H.8. 28.H.8.Dr.19.

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 the leſſee by implication ſhall have the warren 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 8.H.7. 32.H.6.

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

29.Aſſ.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 intendment by the grant of the rent: but if I be ſeized 26.aſſ.pl.66. 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.

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.

* Quære car le ley ſemble dée le contrary, entant que in un grant quant l'un part del fait ne poit eſtoier ove lauter le darr: ſerra void, autrement in un deviſe & accordant fuit lopin 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. aſſ. pl. 66. 46. Ed. 3. 18.

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 mannour 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- 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.

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.

21.Ed.3.49. 31. & 32.H.8. Dyer 46. Plow.fo.37. 35.H.6.34.

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.*

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

14.Aſſ.pl.25.

tra metas & bundas villæ 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 feoffement abſolute. Lit. cap. condic.

So it is a rule, that the law will not intend a wrong, which the Civilians utter thus: *Ea eſt accipienda interpretatio, quæ 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.* 10. Ed. 4. 1.

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 in dale*, with a clauſe of diſtreſſe, although there be atturnement 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 atturnement, 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 imperfecti-

ons

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 feoffement of I.D. judgement *de briefe*, 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 feoffement, 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, therfore 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. Sheriffes 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 Sheriffes 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 neerly 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 anceſter, 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. 18. 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 moity for 21. yeeres from the date of the deed, the other moity from the ſurrender,

der, expiration, or determination of the eſtate of I. D. *qui tenet prædict' medietatem ad terminum vitæ ſuæ 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 moity are repugnant, and it ſhall not bee 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 300l. 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. 9.Ed.4. 4.Ed.6.Plow.

So there is another rule, that in pleading a man

ſhall

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 moity, and ſhee declares upon the cuſtome of the Realme by which the feme is to have a moity, 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 exact 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, Iudgements, &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 evidēce.

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 prooses 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 mischiefe, which mischiefe is remedied by a demurrer; but in evidence if it bee short,impertinent, or incertaine, the adverse party is at no mischiefe, because it is to bee thought that the Jury will passe against him;yet nevertheless 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 therfore 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 Cõmon for ten beasts, or ten loads of wood out of my copps, 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 forbeare for the space of two yeares, here the time is certain and precise. 17.H.6.10.

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 poverty 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 advocationem* 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
29.H.8.Dy.38. *proximam advocationem* to I.D. and then graunt *proximam advocationem* to I.S. this shall bee intended the next to the next, which I may lawfully grant or dispose. *Quære.*

But if I grant *proximam advocationem* to I.S. and I.N. is Incumbent, and I grant by precise words, *illam advocationem, 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.

Ne-

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 in preſumption of law mans nature cannot overcome, ſuch neceſsity carrieth a priviledge 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 incertainty) ſhal forfeit his merchandize, and it is ſo that by tempeſt a great quantity of the merchan- 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 overquantity 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 acceſſary, 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 Embaſſadours are uſed to bee excuſed of practices 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 repaire 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. 32.Ed.3. Fitzh.Waſt. 105. 44.Ed.3.31.

But then it is to bee noted, that necessity priviledgeth only *quoad jura privata*, for in all cases if the act that should deliver a man out of the necessity bee against the Cõmonwealth, necessity excuseth not: for *privilegium non valet contra rempublicam:* and as another saith, *necessitas publica major est quam privata:* for death is the last and farthest point of particular 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 answerable: 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, *Necesse 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 obedience doth not excuse the offence as it doth in felony, because it is against the Commonwealth. 13.H.8.16. per Shelley.

So if a fire bee taken in a street, I may justifie the pulling down of the wall or house of another man to 12.H.8.10.per Brooke. 22.Ass.pl.56.

save

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 Cõmonwealth: But if it had bin but a private treſpaſſe, 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 Saref.

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 kils 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*. 21.H.7.13.

Corporalis injuria non recipit æſtimationem de futuro. Reg.6.

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 incertainty 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 langaidus in priſona,* there 5.Ed.4.8o. 3.H.6.3.

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

So if a man menace me in my goods, and that hee will burne certaine 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 dureſſe I make a deed, I ſhall avoid it by plea.

7.Ed.4.21.

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.

13.H.8.15.
21.H.7.28.

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 recepit æſtimationem*: 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 dãmagiis.*

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

IN Capitall cauſes in *favorem vitæ* 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 Buts, this hath a pardon of courſe: but if a man be hurt or maimed onely, an action of treſpaſſe 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 misfeiſance.

So if Baron and Feme be, and they commit felony together, the Feme is neither principall nor acceſſary, in regard of her obedience to the will of her husband: but if Baron and Feme join in committing a treſpaſſe 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 treſpaſſe.

35.H.6.11.

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

37.H.4.19.

Reg. 8. *Æſtimatio 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 ſubſequent, which laid together with the beginning ſhould ſeeme to draw it to a higher nature, yet the

the law doth not extend or amplifie 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 mony, 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 mony commeth 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 retaine the same person into his service, who afterwards goeth away with his goods, this is no felony 28.H.8.pl.2.

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.*

But note that it is ſaid *præteriti delicti*; for any acceſſary 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 murther enſue, in either caſe he is acceſſary to the murther, *quia in criminalibus præſtantur accidentia.*

18.Eliz.175.

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 *Præcipe* 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 moity 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 therfore 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 34.H.8.Dyer 3 49. 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*.

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 beene 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, rendring 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. 28.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 francketenement 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 commeth in by his owne act: but this caſe differeth from all other caſes, becauſe the diſcontinuance was Lit.pl.3.6.

but particular at firſt, and the new gained reverſion is but by intendment and neceſsity of law; & therfore is but as it were *ab initio*, with a limitation to determine whenſoever the particular diſcontinuance endeth, & the ſtate cõmeth 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
6.H.8.pl.3.Dy doth amount to the value of that they laid forth, to themſelves in property, and upon a plea of fully adminiſtred it ſhall be allowed: the reaſon is, becauſe it may be matter of neceſsity for the well adminiſtring 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

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

So if I have a leaſe for yeeres worth 20l. by the yeere, and grant unto I.D. a rent of 10l. a yeere, and after make him my executor, now I.D. ſhall be charged with aſſets 10l. onely, and the other 10l. 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.Aſſ.52.F. Rec.in value 23.

Like law it is, where the debtor makes the debtee his executor, the debt ſhall bee conſidered in the aſſets, 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 leaſe 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. 10.H.7.per Pol. 35.H.6.Fitz. Barr.168.

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. Graunts 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.

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 7.H.6.40. 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 atturne, therefore it ſhall paſſe by grant by deed without atturnment.

9.Ed.2.Fitz. Attornments 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 atturne, therefore I may paſſe my reverſion without atturnment. *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.

6.Ed.6.Dy.72. Vide contra 2. E.3.fo.8. que per preſentmẽt del feme ladvowſon eſt deveign diſimpropriate a touts jours quel eſt agree in Snr Cok. Rep.7.fo.8.a.

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 advocationis*, or *medietas advocationis* 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 advocationis* 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 apportionment, that hee ſhould preſent all the turnes, and his Incumbent but to have a moity of the profits, nor yet the act of impropriation ſhall not bee defeated.

45.Ed.3. 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 fuit 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 *Littletons* 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.

25.H.8.Dy.1. 7.

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 personæ. 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 fitnesse 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 11. *Jura ſanguinis nullo jure civili dirimi poſſunt.*

THey bee the very words of the Civill law, which cannot be amended to explaine this rule. *Hæres eſt nomen Juris, Filius eſt nomen Naturæ:* 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 murthered 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 bloud 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 bloud 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 bloud dye, the adminiſtration ought to be committed to his other brother of the halfe bloud, if there bee no neerer by the father.

5. Ed. 6. Adm. 47.

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 ſoccage; for that ſavoureth ſo little of the privity of heire, as the poſſibility to inherit ſhutteth not.

33. H. 6. 55.

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 bloud ſo hee be next in eſtate, yet the recompence is underſtood for the ſtaine of his bloud, 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 naturæ* but as the increaſe of a flock.

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

F.N.br. 829.

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

Receditur à placitis juris, potius quàm injuriæ, & delicta maneant impunita. Regula 82.

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 *regulæ 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 feebleneſſe 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.

45.Ed.3.3. 22.H.6.24. 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 moity of the place wasted, and the aunt the other moity and the entire damages; and yet *actio injuriarum moritur cum persona*, but *in favorabilibus magis attenditur quod prodest, quàm quod nocet.*

20.Ed.3. 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

F.discem. 16. against the parceners, notwithstanding the privity faile in the one.

33.Eliz. 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

to

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 murther goeth not to the heire where the party murthered hath a wife, nor to the younger brother where there is an elder; yet if the wife murther her husband, becauſe ſhee is the party offendor, the appeale leaps over to the heire; and ſo if the ſonne and heire murther 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 maximes, that are *regulæ rationales*, and not *poſitivæ*, 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 *Gloſt.* that gives the action of waſte againſt him that holds *pro termino vitæ vel annorum.* It is true, that if a man holds but for a yeare, he is within the ſtatute, for it is to be noted, that penall ſtatutes are taken ſtrictly and literally onely in the point of defi- Plow. 467. Lit. cap. 46. Ed. 3. 3. 10.

n'ng and ſetting downe the fact and the puniſh-ment,& in thoſe clauſes that doe concerne them, and not generally in words that are but circum-ſtances 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 offendor hath had his right hand before cut off in the warres, he ſhall not loſe his left hand, but the crime ſhall rather paſſe with-out 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 falſam quæ 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 doubt-full 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 er-ror or falſehood.

12. Eliz. 6. 291. 23. Eliz. Dyer 376. 7. Ed. 6. Dy. 56. 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 goe 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 facti 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 præcedens quæ ſortiatur 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 meerely 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 betweene 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.

20.Eliz. 19.H.6.62. 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

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 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. 27. Ed. 3.

So if a reverſion be granted to I. S. and I. D. a ſtranger by his deed doe grant to I. S. that if he purchaſe the particular eſtate, hee will atturne to the grant, this is a voyd atturnment, notwithſtanding he doth afterwards purchaſe the particular eſtate. 29. Ed. 3. 6. 24. Eliz.

But of declarations the law is contrary; as if the diſſeiſee make a Charter of feoffement to I. S. and a letter of atturney to enter and make livery 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, and there is a new act which is the livery ſubſequent, therefore it is good in law. 13. 14. Eliz. 20. 21. Eliz. 25. Eliz. M. 38. & 39. Eliz.

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 feoffement and the ſecond, and letters of atturney accordingly, and both thoſe deeds of 36. Eliz.

feoffement, and letters of atturney are delivered at a time, ſo that the ſecond deed of feoffement and letters of atturney 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 mannour 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 bee done, *viz.* the fine.

25. Eliz. 27. Eliz. 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.

Com. Plowd. Rigdens caſe. So if I deviſe the mannour 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 device 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

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 morgage 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 bargaine 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 bargaine and ſale, at what time he had nothing but a naked condition. 31. Eliz.

So if two Joyntenants be, and one of them bargaine, and ſell the whole land, and before the enrolment his companion dyeth, nothing paſſeth of the moity 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 impoiſoned apple be laid in a place to poiſon I. S. and I. D. commeth by chance and eateth it, this is murther 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.

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

Cave.

Cr. Iuſt. peace. fol. 18, 19.

But *quære*, if I. S. lay impoiſoned 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 interpretationem, ſed illicita latam & extenſam.*

IN committing of lawfull authority to another, a man may limit it as ſtrictly as it pleaſeth him, and if the party authorized doe tranſgreſſe his authority, though it be but in circumſtance expreſſed, 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 atturney to I. S. to deliver livery and seisin in the capitall Messuage, 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 atturney deliver it to I. B. in all these cases the act of the atturney as to execute the estate, is voyd; but if I say generally to I. D. whom I meane onely to enfeoffe, and my atturney make it to his atturney, 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 nevertheless. 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 hee 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 quæstio, 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 bee 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.aff.3. So if I will alledge for errour, that whereas I. S. offered to plead a sufficient barre, the Court refused it, and drave me from it, this errour 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 errour.

As

As if an appeale of Maihem be brought, and the Court, by the assistance of the Chirurgians adjudge it to be a Maihem, whether the party grieved may bring a writ of errour, and I hold the Law to be he cannot. 1.Mar.5. 28.ass.pl.15. 21.H.7.40.35.

So if one of the Prothonotaries of the Common pleas bring an assize of his office, and alleage fees belonging to the same office in certainty, and issue is taken upon these fees, this issue shall be tried 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 errour 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 judgement given on either side no error lies. 8.H.6.23. 2.El.285.Dy. 43.ass.26. 41 ass.5. 39.ass.9.

So if *nul tiel record* be pleaded which is to bee tryed by the inspection of the record, and judgement 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 errour lyeth. 22.ass.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 wrongfully, errour 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 9. Ass.8. F. N. Br.21.

the

the damage bee outragious.

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 attaint ; 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 attaint the Court.

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

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

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

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 therefore if a man will assigne for error that fact, that whereas the Judges gave judgement for him, the 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. 2.R.3.20. F.N.Br.21. 9.Ed.4.3.

Persona conjuncta æquiparatur interesse proprio. Regula 18.

THe law hath that respect of nature and conjunction of bloud, as in divers cases it compareth and matcheth neerenesse of bloud with

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 bloud, 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 bloud is not to ground a personall contract upon: as if I contract with my sonne, that in consideration of bloud 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 bloud.

14. & 15. Eliz.
21. Ed. 4. 75.
Com. 425. So in challenges of Juries, challenge of bloud is as good as challenge within distresse, and it is not materiall how farre off the kindred be, so the pedegree can be conveyed in a certainty whether it be of the halfe bloud 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.4.21. 20.Aſſ.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 aliments or erudition. Perk.4. D. cap.18.

Non impedit clauſula derogatoria, quo minùs 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 Parlament bee made wherein there is a clauſe contained, that it ſhall not bee 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 Parlament; 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 remaines 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, wherein 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 quæ 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 reguletur, & per conſequens quod ſequens diſpoſitio duretur ſine voluntate & ſic quod non ſit 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 tertiæ perſonæ, vel ex contigenti, 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 contigency, 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.

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

So if I contract with I. 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.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 backagaine, 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, to 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 atturnement, yet becauſe the atturnment 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.atturnmēt. 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.*

Clauſula 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 nugation, 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.

32. H. 8. Goord. 39. Ber. 2. M. Br. deviſes 41. And therefore if a man demiſe land at this day to his ſonne and heire, this is a voyd deuiſe, becauſe the diſpoſition of law did caſt the ſame upon the heire by deſcent, and yet if it be Knights ſervice

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 coper- 29.H.8.Dyer.
cenary, but by the deviſe they ſhall take joyntly, and this is not any forreine collaterall purpoſe, but in point of taking of eſtate.

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 bee 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.8.11. 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.

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.

32.H.8.43.Dy. 20.H.8 8.Dy. 7.Eliz.237.Dy.

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 moity, 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.

10.El.274.Dy. 2.Ed.3.19. 30.E.1.Fitz. Deviſe.9.

So

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 expreſſed, 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 intierties 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.aſſ.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 nevertheleſſe the law at firſt accepteth of theſe words but as words of explana-

tion, and then notwithſtanding the whole rent is extinct.

So if a gift intaile be made upon condition, that if tenant intaile dye without iſſue it ſhall be lawfull 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.

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

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 ſoccage, now the tenure which the law makes betweene the donor and donee ſhall be in ſoccage, 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.

22.Aſſ.pl.52.

But if a gift intaile had beene made of lands held in ſoccage 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 act, 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 or act, 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 confirmes 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 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.

Litt. pl 362. 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 diſſeiſed 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 nevertheless will reserve to my selfe an entry.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. Regula 28

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 duressed 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 duressor, 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

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 appeares 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 *I. D. & I. S. & hæredibus*, 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 manerium de S.* there it is clearely an election : ſo if I recite, Where I have two tenements in St. *Dunſtans*, 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 Univerſitate 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 obstet. Regula 24.

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.

Semble cleerement le ley d'estre contrary in ambideux cases, car lou est sans fait est livery solement de cestui in le rem' & surr' de partic' ten' auterment serra forfeiture de son estate, & lou est per fait le livery passa solement de tenant, car il adle franktenement, vide accordanr. Sn'. Co. lib. 1. 76. b. 77. a. Com. Plow. 59. A. 140. a. 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

Quære. leaſe and warranted by the ſtatute of 32. H. 8. and yet it is good in part by the authority which tenant intaile 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 Starchamber 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 part' facienda*, becauſe it behooveth the feoffee to mention the ſtatute in his writ.

Vide 1. 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

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 suæ 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 hæc 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 ſound 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 abuttals, 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 ſound 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 proprietory tenure or poſſeſſor is but a thing tranſitory in reſpect of land; *Generatio venit, generatio migrat, terra autem manet in æternum.*

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 æſtimationem* 20. *acras*, or if (*per æſtimationem*) 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 icy le grant uſt eſte aſſets bon, cõe 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

But if I grant *tenementum meam quod perquisivi 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 perquiſivi, &c.*) is onely falſe. Vide ib. quæ contraria eſt lex, car icy auxl le primer certainty eſt faux.

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

So if I grant all my lands, being parcels *manerii 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 & hæredi G. S.* where indeed he is a baſtard, yet this obligation is good.

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

although he never instructed me.

But *è converso*, if I grant land to I. S. *filio & hæredi 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 certainty 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 prædict' 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 eſe the grant is void, alwayes 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 avant 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.

FINIS.

THE VSE
OF
THE LAW.

Provided for Preſervation
OF
Our { *Perſons,* / *Goods,* and / *Good Names.*

According to the Practice
OF
The { *Lawes* / *and* / *Cuſtomes* } *of this Land.*

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

LONDON,
Printed by the Aſſignes of IOHN
MOORE Eſquire. 1635.

Cum Privilegio.

THE USE

OF

THE LAW.

Provided for Preservation

OF

Our { Persons, Goods, and Lives.

According to the Practice

OF

The { Laws and Customs } of this Land.

By the Lord Viscount [illegible], &c.

LONDON,

Printed by the Assigns of [illegible]

[illegible]

A Table of the Contents of this ensuing Treatise.

Leaſe

THE VSE 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 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 nor.

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 miſchance.

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. Deodand.

The Cutting out of a mans Tongue, or putting out his Eyes malicioufly, 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. *Conſtabularii*
2. *Conſervatores* } *Pacis.*

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 threatning 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 Eveſdroppers, 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.

1. Petty Conſtable for every village.

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

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 yearely 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

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 Allegeance 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, Robbery, 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.

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

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 chiefest 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

Court of Marshalsee erected, and its Iurisdiction 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. Inſomuch, 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 Allegeance, for which purpoſe the County did once every yeare keepe a Court, called the Sheriffes Tourne. At which all the County (except Women, 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 Franci plegii*, A view of the pledges of Freemen; or, *Turnus Comitatus.*

Sheriffes Tourne inſtituted upon the diviſion of England into Counties, the charge of this Court was committed to the Earle of the ſame Countie: this was likewiſe called *Curia Viſus franc. pleg.*

At which meeting or Court, there fell by occaſion of great Aſſemblies much bloud-ſhed, ſcarcity of Victuals, Mutinies, and the like miſchiefes; which are incident to the Congregations of people, by which the King was moved to allow a ſubdiviſion 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 hundred 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

Subdiviſion of the Countie Court into Hundreds.

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 *Vicecomites*, 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 Crown.

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

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

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.

County Court kept monethly by the Sheriffe.

This Sheriffe doth ſerve the Kings writs of Proceſſe, be they Sommons, Attachments to compell men to anſwer to the Law, and all writs of execution of the Law, according to Judgements of Superiour 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

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 Conſtables.

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 Allegeance, 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 deceipt of the people. They may puniſh thoſe that doe ſtop, ſtraiten or annoy the high wayes, or doe not according to the proviſion enacted, repaire or amend them, or divert water courſes, or deſtroy frey of Fiſh, or uſe engines or nets to take Deere, Conies, Pheſants, 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 matters they enquire 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 outragious 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.

Iuſtices of Peace ordained in lieu of Conſervators. Power of placing and diſplacing Iuſt. of Peace by uſe deligated from the King to the Chancellor.

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 Iuſt. of Peace, to fine the Offenders to the Crowne, and not to recompence the party grieved. Parle Stat. 17. R. 2. Cap. 10. & *x. Dier* 63. b. Ils ount 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 ſuppreſſe 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 Beggers puniſhed. They are both to licence and ſuppreſſe Alehouſes, Badgers of Corne and Victuals, and to puniſh Foreſtallers, regrators, and engroſſers.

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

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.

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

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

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

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 Ryot 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.

The authority of Juſtices of the Peace out of their Seſſions.

But if the party accuſed, ſeeme upon pregnant matter

matter in the accuſation and to the Juſtice to be guilty, and the offence heinous, or the offendor taken with the maner, 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.

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

The Judges of the Aſſizes as they bee now become into the place of the ancient Juſtices in Eyre, called *Juſticiarii 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.

1. Kings Bench.
2. Marſhals 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.

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 ſixe Circuits.

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

England divided into six Circuits, and two learned men in the Laws, assigned by the Kings Commission to ride twice a yeare 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 yeare 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 transflated by Parliament to Iustices of Assize.

The authority of these Judges in Eyre, is in part transflated 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 yeare, and the place of their sitting.

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

The Iustices 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.

The busines 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*

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.

Oyer and Terminer, in which the Iudges are of the Quorum, and this is the largeſt Cōmiſſion they have.

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 deale 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

Gaol delivery directed onely to Iudges 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 maner of the proceedings of the Iuſtices of Circuits in their Circuits.

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

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,

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 pilfring 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.

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

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.

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.

Concerning the allowing of the Clergy to the priſoner.

Clergy allowed in al 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 Star. of 18. Eliz. the Iudges are appointed to allow Clergy, and to ſee them burned in the hand, & to diſcharge the priſoners without delivering them to the Biſhop.

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 offendors 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 upon

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 trespasse 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.

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

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

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 diſcreet Freeholders of his County at a certaine day to try this iſſue ſo joyned, 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

* Diſtringas.

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

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

againſt the day they ſhould have appeared a-bove, to returne the verdict read in the Court a-bove, 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 aſſeſſe.

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

5. Commiſſion is a Commiſſion of the Peace.

The Iuſtices of the Peace and the Sheriffe are to attend the Iudges in their County.

allowed by the Judges, all that time they bee 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 Eſcheat.
4 Moſt uſually by Conveyance.

1 PRoperty 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 adjoyning, 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 entreth 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 therfore 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 teſtamentory, 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 entreth, 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 entreth 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 diſcent 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 unkles, and for lack of unkles, 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 neereneſſe 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 entreth 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 certaine places.

And there is another note to bee obſerved in Fee-ſimple inheritance, and that is, that every heire having fee-ſimple land or inheritance, bee 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 collaterall 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.

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 clearely 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 attain-

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 *Annum 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.

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.

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

Concerning the tenure of lands.

The Conquerour got by right of Conqueſt all the land of the Realme into his owne hands in demeaſne, 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.

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. Horſe for ſervice
3. Homage & fealty
4. Primer Seiſin.

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

The policy of the Conq. in the reſervation of ſervices conſtituted in 4. particulars, was to have the mariage of his Wards both Male and Female.

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 unmaried, then the King 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 imployed, and doth at this day in every tenure called Knights ſervice.

Intereſt of mariage goeth imployed in every tenure by 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.

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 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.

But if this inheritance descend upon a woman that cannot serve by her sex, then the King is not to have the lands, shee 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 form every one of his Tenants in Knights service, that hold by a whole fee 20. s. and from every Tenant in Soccage 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 lāds, 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 assessement 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 Coronæ*, it well appeareth in the Records of the Exchequer called the booke of Doomeſday. And the Tenants by ancient Demeſne, 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 *Soccage*, 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 diſgeſted is eaſie and of courſe.

Office of alienation.

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

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.

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.

Aid a ſumme of mony ratably levyed 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.

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.

Tenants by Soccage in Cap. muſt ſue livery and pay Primer ſeiſin, and 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 Oath of Fealty, Wardſhip, Mariage, and reliefe. This reliefe is to pay five pound for every Knights Fee

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.

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

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 repaire the Houſe, Parke pale, or otherwiſe, or to give him for his proviſion Capons, Hens, Pepper, Commin, Roſes, Gilliflowers, Spurres, Gloves, or the like; or to pay him a certaine rent, and to bee ſworne 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.

Soccage tenure reſerved by the Lord.

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

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

Aid mony and Eſcuage mony is likewiſe due unto the Lords of their Tenants, *vide* 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 freedome 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.

Villenage or Tenure by Coppy of Court Roll.

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 treſpaſſe under 40. li. value, and the Freeholders are to judge of the cauſe upon proofe produced upon both ſides. And therefore the Free-holders of theſe Mannors, as incident to their Tenures, doe

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 lãds, ſuch as if the Tenants dye without heire, or bee attainted of felony or treaſon, ſhall have the land by Eſcheat.

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

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.

Of an Attainder by Out-lawry.

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 attainder

of

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 himſelf 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 treason 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 Coppy-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 Escheatable for Felony, for they have an old saying; The Father to the Bough, and the Son to the Plough.

The wife loseth no power notwithstanding the husband be attainted of felony.

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.

1. 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 attainder of felony by out-lawry, it hath beene 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, whereupon 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 waſting, 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 attainder of out-lawry, otherwiſe it is in the attainder 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.

It

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 accompted 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.

Property of land by conveyance divided into,
1. Estates in Fees.
2. In Tayle.
3. For Life.
4. For Yeares.

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; such a lease may be made by writing Pole, or indented of devise, grant and to farme let, and so also by fine of Record, but whether any Rent be reserved or no, 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 forfeitable

Lease Paroll.

Lease by writing Pole or indented.

A rent need not to be reserved.

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.

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.

Extents upon Stat. Staple, Merchant, Elegit, Wardſhip of body and lands are Chattels, and forfeitable in the ſame maner 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 tearm 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 & witneſſe of it.

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 Eſcheat; and it is not forfeited by any of the meanes before mentioned of leaſes for yeares.

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.

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

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

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

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.

Occupant.

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 mariage, or blood, the reaſons whereof are hereafter expreſſed.

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

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

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.

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.

The great inconvenience that enſued thereof.

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 intailes, 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.

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

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 demeaſne, or any leaſe in reverſion, nor leſſe rent reſerved then the Tenants have payed moſt part of 21. yeares before, nor have any maner of diſcharge for doing waſts 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 intailes bee cut off by fine and recovery.

26. H. 8.

32. H. 8.

33. H. 8.

13. & 39. Eliz. Entailes 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 he doe, to forfeit his owne eſtate, & that his next heire muſt enter.

But it is to be noted that ſince theſe notable Statutes, and remedies provided by Statutes, do dock intailes, 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

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. Where-

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

The inconveniences of thoſe Perpetuities.

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 Soveraigne 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.

Quære whether it be better to restraine men by these Perpetuities from alienations, or to hazard the undoing of houses 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;

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

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

The difference between a remainder and a reversion.

A reversion cannot be granted by word.

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 atturne it, which is to give his aſſent by word, or paying rent, or the like; and except the tenant will thus atturn, the party to whom the Reverſion is granted cannot have the Reverſion, neither can hee compell him by any law to atturne, 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 waſts 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.

Atturnment muſt be had to the grāt of the reverſion.

The tenant not compellable to atturne but where the reverſion is granted by fine.

Lands are conveyed by theſe 6. meanes; Firſt, by Feofment, which is, where by Deed lands are given to one and his heires, and liverie 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 conveied, but is otherwiſe called a leaſe for life or gift intaile as above mentioned.

What a Feofment of land is.

Lands may be conveyed ſixe maner 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 peremptorilie, whether the heire doth claime within five yeares or not, if he claime by him that levied the Fine.

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.

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

What Recoveries are.

Common Voucher 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 againſt the tenant in taile.

Judgement for the tenant to recover ſo much land in value of the Common 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 barreth an Eſcheat taile and all reverſions and remaindments 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 recovery 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.

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

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, Feoſment, or Recovery, according to the uſe and intent of the parties.

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 grounded upon one St.

Upon this Statute is likewiſe grounded the fourth and fifth of the ſixe 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 bargaine and ſale.

Before 27. H. 8. there was no remedy for a uſe, but in Chancery.

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

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

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 St. of 27. H. 8 extendeth not into Cities and corporate townes where they did uſe to enroll Deeds.

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.

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 the land thereupon executed, by 27. H. 8.

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

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

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 bargain and ſale, or covenant.

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 mariage, 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.

Of the continuance of land by will.

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 diſpoſing of lands by will, was thought to be a defect at the common law.

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 houre of death, mens mindes might alter upon further proofes of their children or kindred, or

encreaſe

encreaſe 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.

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 Feoffeers in truſt, to ſuch perſons as they ſhould declare in their Will.

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.

The inconveniences of putting land into uſe.

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

of being Tenant by curteſie. The Lord of his Wardſhip, Reliefe, Heriot, and Eſcheat. The Creditor 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.

The frauds of coveiances to uſe by degrees of time, as they increaſed, were remedied by the Statutes.

Which frauds by degrees of time as they encreaſed, 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, 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*.

1. H. 6.
4. H. 8.
1. R. 3.
4. H. 7.
16. H. 8.
} Stat. binding Ceſtuy que uſe.

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 bee preſently caried out of the friends in truſt, and ſetled and inveſted on him that had the uſes, for ſuch tearme and time as he had the uſe.

27. H.8. taking away all uſes reduceth the law to the ancient forme of Conveyances of land, by Feoffment, Fine, and Recovery.

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 bee 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.

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.

The third part must descend to the heire to answer Guardship, Livery and seisin to the Crowne.

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.

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.

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.

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.

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 Ward ship, 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 affictione 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 bee 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.

The maner of making ſupply when the part of the heire is not a full third.

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 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 ſuſpitious 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 plainely 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 Chattels, 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 Tolled 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 Properry, 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 ſtoln 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 ſtoln.

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 bee 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.

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.

Nevertheleſſe 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.

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.

4. By

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.

Executors may before *probat* dispose of the goods, but not bring an action for any debt.

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.

What *probat* of the Will is, and in what manor 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.*

Pijs 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.

Where the Intestate had *Bona notabilia* in divers Dioceses, then the Archbishop of that Province where he dyed is to commit the Administration.

In which controversie the rule is thus, that if the partie dead had at the time of his death *bona notabilia* in divers Dioceses 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.

If

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.

Executor may refuſe before the Biſhop, if he have not intermedled the goods.

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.

Executor ought to pay, 1. Judgements. 2. Stat. Recogn. 3. Debts by bonds and bils ſealed. 4. Rent unpayed. 5. Servants wages. 6. Head workmen 7. Shop-booke and Contracts by word.

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.

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 Aſſets 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 Biſhip 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. But otherwiſe, if the Adminiſtrato die making his Executer, or if Adminiſtration be committed of his goods. In both caſes, the Ordinary ſhall commit Adminiſtration of the goods of the firſt inteſtate.

And if an Executor die making an Executor, the ſecond Executor is Executor to the firſt Teſtator.

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, Bils 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 Legacy to pay debts.

Debts, or a Leaſe of goods to pay a money Legacy. But they may ſell any Legacy which they will to pay Debts, if they have not enough beſides.

When a Will is made and no Executor named, Adminiſtration is to be committed *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 performe the Will, and he is to doe it in ſuch ſort, as the Executor ſhould have done, if he had been named.

FINIS.